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Supplements the 2014 *Oregon Administrative Rules Compilation*

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Published by
KATE BROWN
Secretary of State

INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

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

Background on Oregon Administrative Rules

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

OAR Citations

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

Understanding an Administrative Rule's "History"

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

Locating Current Versions of Administrative Rules

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

Locating Administrative Rule Publications

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

Filing Adminstrative Rules and Notices

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

Administratrative Rules Coordinators and Delegation of Signing Authority

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

Publication Authority

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

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

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REQUEST FOR COMMENTS
DIVISION OF MEDICAL ASSISTANCE PROGRAMS (DMAP) PROPOSES TO AMEND THE DURABLE MEDICAL EQUIPMENT (DME) FEE SCHEDULE TO A PERCENTAGE OF 2012 MFS THAT WILL APPROXIMATE MAINTENANCE OF BUDGET NEUTRALITY

COMMENTS DUE: February 7, 2014
PROPOSAL: A State Plan Amendment will be filed with the Centers for Medicare and Medicaid in order for DMAP to amend the DME fee schedule to a percentage of 2012 MFS that will approximate maintenance of budget neutrality. Some DMEPOS categories are at a higher rate of reimbursement than others, as negotiated by those particular provider groups and taking rates history into consideration. Rates for items not covered by Medicare will remain unchanged. This includes incontinent supplies, dialysis supplies, vision services, EPIV services/supplies billed by non-EPIV providers. Payment methodology on miscellaneous codes (E1399, K0108, A4649) and items that are manually priced will also remain unchanged.
EFFECTIVE DATE: 2/1/14
HOW TO COMMENT: Send written comments by fax, mail or email to:
Jesse Anderson, State Plan Manager
Division of Medical Assistance Programs
500 Summer Street NE
Salem, Oregon 97301
Fax: 503-947-1119
Email: jesse.anderson@state.or.us
NEXT STEPS: OHA will consider all comments received.

REQUEST FOR COMMENTS
PROPOSED APPROVAL OF CLEANUP AT FLORAGON-NORTHERN PARCELS

COMMENTS DUE: March 2, 2014
PROJECT LOCATION: South Molalla Avenue at South Molalla Forest Road, Molalla, Oregon.
PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a No Further Action (NFA) determination for the approximately 83-acre northern portion of the Floragon site in Molalla, Oregon (the Northern Parcels). DEQ is proposing the NFA because residual contamination does not exceed acceptable risk levels.
HIGHLIGHTS: Lumber mills formerly occupied the Floragon site. Environmental contamination related to former mill operations, in particular wood treating at former dip tanks, has been found, primarily in the southern portion of the site (the Southern Parcels). The Southern Parcels consist of Bear Creek and approximately 22 acres south of the creek, where environmental work continues with DEQ oversight. North of the creek in the Northern Parcels, sampling and risk analysis identified little contamination in upland soil, but elevated levels of some contaminants in the stormwater system and ditches. Storm system and ditch sediment cleanout were completed in late 2013 and early 2014 under DEQ oversight, in order to further reduce contaminant levels. Remaining contamination in the Northern Parcels does not pose a significant risk to public health or the environment. A NFA decision is therefore proposed for the Northern Parcels.
HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Northwest Region Office at 2020 SW 4th Avenue, Suite 400, Portland, OR 97201. To schedule an appointment to review the file, please contact Dawn Weinberger at (503) 229-6729. To access site summary information and the Site Closure Memorandum in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp, then enter 0009 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 0009 in the Site ID/Info column. Written comments may be sent to Dan Hafley, Project Manager, by e-mail or regular mail to the addresses listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments. Comments must be received by 4:30 PM on March 2, 2014 in order to be considered in DEQ's decision.
THE NEXT STEP: DEQ will consider all public comments received by the close of the comment period before making a final decision regarding the "No Further Action" determination. A public notice announcing the final decision will be published in this publication.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call DEQ's TTY number, (503) 229-5471.

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Board of Examiners for Engineering and Land Surveying
Chapter 820

Rule Caption: To repeal temporary rules and to properly file permanent rules.
Stat. Auth.: ORS 672.255
Other Auth.: ORS 670.310
Stats. Implemented: ORS 672.002–672.325
Proposed Amendments: 820-001-0020, 820-001-0025, 820-010-0010, 820-010-0227, 820-010-0228, 820-010-0305, 820-010-0442, 820-010-0620, 820-010-0621
Proposed Repeals: 820-001-0020(T), 820-001-0025(T), 820-010-0010(T), 820-010-0227(T), 820-010-0228(T), 820-010-0305(T), 820-010-0442(T), 820-010-0620(T), 820-010-0621(T)
Last Date for Comment: 2-21-14, 12 p.m.
Summary: To repeal temporary rules related to public records requests, the Board's contracting policies, digital signatures and final documents, registration and applications for registration, and to properly re-file all temporary rules as permanent rules.
Rules Coordinator: Mari Lopez
Address: Board of Examiners for Engineering and Land Surveying, 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301
Telephone: (503) 362-2666

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Board of Nursing
Chapter 851

Rule Caption: To reflect statutory changes and Board decisions implementing those changes

Date:	Time:	Location:
2-20-14	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Kay Carnegie
Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Proposed Amendments: 851-070-0005, 851-070-0040, 851-070-0080, 851-070-0090 and 851-070-0100
Last Date for Comment: 2-20-14, 5 p.m.
Summary: The rules are revised to reflect statutory changes made during the 2013 legislative session, and subsequent decisions by the Board on implementing those changes. The proposed amendments:

1. Update the definition of the Diagnostic and Statistical Manual (DSM) to reflect that the DSM is now in its fifth edition ("DSM 5").
2. Make clear that the Board does not authorize the program to approve or disapprove medications prescribed to a licensee for a documented medical condition.
3. Make clear the Board does not authorize the program to approve, or modify treatment plans developed by an Independent third-party evaluator.
4. Require Licensees with a mental health disorder to submit to random toxicology testing only when such testing is recommended by an Independent third-party evaluator.
5. Reflect statutory language relating to civil commitments and program enrollment solely for mental health disorders.

Rules Coordinator: Peggy A. Lightfoot
Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

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Department of Community Colleges and Workforce Development
Chapter 589

Rule Caption: Allows timely payment of state allocation to community colleges providing contracted out-of-district (COD) services

Date:	Time:	Location:
2-25-14	9 a.m.	CCWD, Public Service Bldg. 255 Capitol St. NE, 3rd Flr. Salem OR 97310

Hearing Officer: Linda Hutchins
Stat. Auth.: ORS 326.051, 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665
Stats. Implemented: ORS 341.626
Proposed Amendments: 589-002-0120
Last Date for Comment: 2-25-14, Close of Business
Summary: Authority for distribution of the Community College Support Fund (CCSF) is granted by OAR 589-002-0120. This rule amendment allows the allocation provided to community college districts for contracted out-of-district (COD) programs to be paid in the same fiscal year as the year the COD services are provided.
Rules Coordinator: Linda Hutchins
Address: Department of Community Colleges and Workforce Development, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-2456

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

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

Date:	Time:	Location:
2-24-14	9 a.m.	Labor & Industries Bldg., Rm. F 350 Winter St. NE Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.248, 656.252, 656.254 & 656.726(4)
Stats. Implemented: ORS 656, ORS 656.245, 656.248, 656.252 & 656.254
Proposed Adoptions: Rules in 436-009, 436-009-0023
Proposed Amendments: Rules in 436-009, 436-009-0001, 436-009-0004, 436-009-0005, 436-009-0008, 436-009-0010, 436-009-0018, 436-009-0020, 436-009-0025, 436-009-0030, 436-009-0035, 436-009-0040, 436-009-0060, 436-009-0080, 436-009-0090, 436-009-0110, 436-009-0998, 436-010-0005, 436-010-0230, 436-010-0240, 436-010-0270, 436-010-0280, 436-010-0290, 436-010-0330

Proposed Repeals: Rules in 436-009, 436-009-0002, 436-009-0003, 436-009-0006, 436-009-0015, 436-009-0050, 436-009-0070, 436-009-0095, 436-009-0114, 436-009-0115, 436-009-0120, 436-009-0125, 436-009-0130, 436-009-0135, 436-009-0140, 436-009-0145, 436-009-0155, 436-009-0160, 436-009-0165, 436-009-0170, 436-009-0175, 436-009-0177, 436-009-0180, 436-009-0185, 436-009-0200, 436-009-0205, 436-009-0206, 436-009-0207, 436-009-0210, 436-009-0215, 436-009-0220, 436-009-0225, 436-009-0230, 436-009-0235, 436-009-0240, 436-009-0245, 436-009-0255, 436-009-0260, 436-009-0265, 436-009-0270, 436-009-0275, 436-009-0285, 436-009-0290
Last Date for Comment: 2-27-14, Close of Business
Summary: The agency proposes to amend OAR 436-009, "Oregon Medical Fee and Payment Rules," to:

- Substantially revise and reorganize division 009, including deleting obsolete and otherwise unnecessary wording, and duplicating provisions found in other parts of OAR chapter 436, to make the rules more comprehensive and to facilitate consistent understanding;
- Adopt updated medical fee schedules (Appendices B, C, D, and E) and resources for the payment of health care providers;
- Adopt the National Council for Prescription Drug Programs (NCPDP) universal claim form for workers' compensation/property casualty and the implementation guide;
- Amend dispute resolution standards to be more consistent with OAR 436-010 (rules governing medical services);
- Explain time frames when medical providers must switch from ICD-9-CM to ICD-10-CM codes to describe a worker's medical condition;
- Remove the requirement that any service not identifiable with a code number must be described by report (because all services billed must be accompanied by a report documenting the services billed);
- Require that medical providers use the appropriate modifiers found in CPT® 2014, HCPCS' level II national modifiers, or anesthesia modifiers, when applicable;
- Specify billing requirements for modifier 22, involving medical services that require significantly greater effort than typically required, and require greater payment amounts for services codes with added modifier 22;
- Provide consistent requirements for payment of "no-show" appointments for arbiter exams, director-required medical exams, independent medical exams, worker-requested medical exams, and closing exams;
- Clarify that the health care provider's license number and NPI are not required to be printed on providers' chart notes;
- Provide more latitude for the timing of mechanical muscle testing;
- Provide that insurers may apply discounts to medical fees for all medical providers, including rural hospitals, other than medical service providers and clinics, if a written or verbal contract exists;
- Clarify that the maximum allowable payment for Oregon hospitals that are not listed in Bulletin 290, which lists hospitals' cost-to-charge ratios, is 80 percent of the amount billed;
- Require that insurers pay ambulatory surgery centers separately for surgical implants when the cost of components of an implant adds up to $100 or more;
- Describe how a worker may request advance payment for transportation and lodging necessary to attend a medical appointment;
- Require that specific, legible information be given to workers to explain reimbursements of their out-of-pocket expenses;
- Clarify that the time needed to obtain additional information is not counted in the 14 days allowed to reimburse a workers' out-of-pocket expenses upon acceptance of the workers' compensation claim;
- Allow insurers and "medical providers" (not just "medical service providers") to agree to send and receive payment information by email;
- Increase the maximum allowable payments for four chiropractic manipulation CPTÂ® codes: 98940, 98941, 98942, and 98943;
- Clarify that the payment limitation of three separate CPTÂ®-coded physical medicine and rehabilitation modalities and therapeutic procedures per day applies per provider (and therefore not per worker);
- Clarify that prescription medications do not require prior approval even after the worker is medically stationary;
- Specify billing requirements and time frames for interpreters to make them consistent with timeframes and processes applicable to other providers.

Specify that an insurer may not reduce payment due to late billing by an interpreter if the bill is submitted within 12 months of the date of service;

- Require insurers to pay interpreters within the same time frames as other medical providers;
- Increase the hourly maximum payment rate for American sign language interpreters from $60 to $70 per hour (minimum); and
- Require payment for interpreter services above one hour in 15-minute increments

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

- Establish a process for a health care provider to request an insurer's pre-authorization for diagnostic studies, as well as a time frame for the insurer to respond; and
- Reconcile conflicting requirements in OAR 436-010 and OAR 436-060 regarding work release notification.

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

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Rule Caption: Amendment of rule governing agency representation at certain types of hearings

Date:	Time:	Location:
2-24-14	9 a.m.	Labor & Industries Bldg., Rm. F 350 Winter St. NE Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 183.452, 656.704 & 656.726(4)
Stats. Implemented: ORS 183.452 & 656.704
Proposed Amendments: 436-001-0030
Last Date for Comment: 2-27-14, Close of Business
Summary: The agency proposes to amend OAR 436-001, "Procedural Rules, Rulemaking, Hearings, and Attorney Fees," to clarify the authority and limitations applicable to agency representatives at certain types of hearings.
Rules Coordinator: Fred Bruyns
Address: Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405
Telephone: (503) 947-7717

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Department of Energy
Chapter 330

Rule Caption: Establish SELPAC appointment process, set term limits and create Oregon State Treasurer representative ex-officio member

Date:	Time:	Location:
2-25-14	10 a.m.	OR Dept. of Energy 625 Marion St. NE Salem, OR 97301

Hearing Officer: Elizabeth Ross
Stat. Auth.: ORS 469.040 & 470.140
Stats. Implemented: ORS 470.050–470.815
Proposed Adoptions: 330-110-0012
Last Date for Comment: 2-26-14, 5 p.m.
Summary: The Oregon Department of Energy proposes draft rules for the Small Scale Local Energy Loan Program to formalize the Small Scale Local Energy Project Advisory Committee (SELPAC) recruitment and appointment process, set committee term limits and

create an ex-officio seat for an Oregon State Treasurer representative. The draft rule proposes a formal recruitment announcement and process to seek potential members and reserves the right for the director to remove members upon missing a certain number of committee meetings or other causes. By statute, committee members may serve four-year terms. The rule proposes setting a two-term limit, allowing members to serve eight years in total. Lastly, the draft rule proposes creating an ex-officio seat on the committee occupied by a designated representative of the Oregon State Treasurer. The ex-officio member would be a non-voting member of the committee and may not be counted for establishing a quorum. The department requests public comment on these draft rules.

A call-in number is available for the public hearing, please see website for details: http://www.oregon.gov/energy/pages/rulemaking-selp.aspx

Rules Coordinator: Kathy Stuttaford
Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301
Telephone: (503) 373-2127

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Department of Environmental Quality
Chapter 340

Rule Caption: Amendments to Oregon Smoke Management Plan and the Oregon State Implementation Plan for Air Quality

Date:	Time:	Location:
2-25-14	6 p.m.	La Grande Library 2006 4th St. La Grande, OR
2-26-14	6 p.m.	DEQ Eastern Region Office 473 NE Bellevue Bend, OR
3-4-14	6 p.m.	Lane Fire Authority 88050 Territorial Hwy. Veneta, OR
3-5-14	6 p.m.	Jackson County Roads and Parks 200 Antelope Rd. White City, OR
3-6-14	6 p.m.	CU Auditorium, OIT 3201 Campus Dr. Klamath Falls, OR

Hearing Officer: DEQ staff
Stat. Auth.: ORS 468.020 & 468A
Stats. Implemented: ORS 468A
Proposed Amendments: 340-200-0040
Last Date for Comment: 3-12-14, 5 p.m.
Summary: The Oregon Department of Forestry (ODF) and DEQ recently reviewed the Oregon Smoke Management Plan to evaluate the effectiveness of the smoke management program. As a result, ODF and DEQ are proposing changes to the plan under their respective authority:

1. ODF is proposing amendments to their smoke management rules under OAR 629-048 and Operational Guidance for the Oregon Smoke Management Program, directive 1-4-1-601, which together comprise the plan.

2. To incorporate ODF's amendments into the federally approved Oregon Clean Air Act State Implementation Plan, DEQ proposes amending OAR 340-200-0040.

ODF and DEQ review the Oregon Smoke Management Plan about every five years. For the most recent review, ODF convened the Smoke Management Review Committee that met eight times during 2012 and 2013. Committee recommendations are the basis for ODF's proposed amendments to the Oregon Smoke Management Plan:

1. Adopt additional voluntary provisions to provide greater visibility protection when burning near Crater Lake National Park and the Kalmiopsis Wilderness, both Oregon Class I areas. These provisions would help meet the federal Regional Haze Rule implemented under DEQ's 2010 Oregon Regional Haze Plan.

2. Adopt additional voluntary provisions to encourage greater use of alternatives to burning and emission reduction techniques.

3. For Special Protection Zone requirements adopted in 1992 to provide extra smoke management protection during the winter months for communities that exceeded federal air quality health standards:

a. Eliminate the La Grande Special Protection Zone. DEQ determined there is no longer a need for the La Grande Special Protection Zone (see below).

b. Reduce the size of the Special Protection Zone boundary for the Medford area, based on local topography and meteorology, to reflect the Medford airshed. Inside the boundary, prescribed burning would continue to follow the daily green, yellow, and red woodstove restrictions. Outside the boundary, prescribed burning would be prioritized to reduce burning on "red" woodstove days by only allowing smaller burn units that are farther away from Medford.

Both communities receive year-round smoke management protection under the plan. The Special Protection Zones ensure that any wintertime prescribed burning within 10-20 miles complies with local residential woodstove curtailment programs. In both communities, air quality levels have improved significantly and the communities now meet air standards. Around La Grande there is very little wintertime prescribed burning occurring. In the Medford area, there is considerably more burning in the winter, which justifies keeping the Special Protection Zone but changing to the boundary size, given the air quality improvements and burning prioritization noted above.

4. Allow ODF, rather than DEQ, to regulate a very small amount of prescribed burning on forestlands currently outside forest protection districts. The proposed ODF rule amendment would manage this burning under an interagency agreement between ODF and DEQ subject to the same requirements for all prescribed burning under the plan.

5. Require smoke monitoring for prescribed burns over 2000 tons in size following existing language in ODF guidance. This will allow the landowner the ability to cease lighting or burn a smaller amount if air quality conditions change.

6. Other miscellaneous revisions to ODF rules including clarification to Special Protection Zone language, and flexibility to the 5-year time period for plan review to allow an earlier or later time, but not to exceed 10 years if ODF and DEQ mutually agree.

Brief history:

ODF operates a smoke management program for prescribed burning in Oregon to eliminate unwanted forest debris, restore forest health, and reduce the potential for major wildfires. Each year approximately 150,000 acres are burned in Oregon forests through the practice of prescribed burning. Smoke from this burning can occasionally pose a risk to public health and result in air quality levels exceeding the federal air quality standard for fine particulate matter also called PM2.5. Even brief exposures to smoke can cause health problems for persons with asthma, emphysema, congestive heart disease and other existing medical conditions. The elderly, pregnant women and young children are especially high-risk groups. Smoke from forest burning also affects visibility in national parks and wilderness areas, as well as general outdoor recreation activities.

State law ORS 477.013 directs ODF to develop a smoke management plan for prescribed forestry burning in Oregon and to promulgate rules to carry out this plan. Consistent with the law, ODF developed the Oregon Smoke Management Plan, which consists of rules under OAR 629-048 and the Operational Guidance for the Oregon Smoke Management Program in directive 1-4-1-601. ODF implements the plan through a smoke management program for prescribed burning on federal, state and private forestland.

Adopted as a regulatory program in 1972, the objective of the smoke management program is to maximize burning opportunities, reduce the risk of wildfire, and minimize smoke impacts on the public. Most of the larger cities and heavily populated areas in Oregon are designated as Smoke Sensitive Receptor Areas by ODF, and have greater restrictions on prescribed burning to prevent smoke intrusions. ODF's smoke management office in Salem conducts daily

weather forecasts to determine areas in the state suitable for forestry burning, then issues daily burning instructions for those areas, that include size limits in tons, how far apart to space the burning and distance from Smoke Sensitive Receptor Areas. The forest district level makes the actual decision on which units to burn based on the burning instructions. Each burn unit has a burn plan and pays burn fees. After burning, the district reports back to State Forestry in Salem on the burning accomplished.

As directed under state law, ODF adopts all rules associated with the plan through their Board of Forestry. State law ORS 477.013 does provide DEQ with joint approval authority of the plan and cites the need to "meet the air quality objectives of the federal Clean Air Act". To ensure prescribed burning meets the federal Clean Air Act, DEQ previously adopted the plan into the Oregon Clean Air Act State Implementation Plan as provided in DEQ rule OAR 340-200-0040, and any changes to the Oregon Smoke Management Plan require DEQ approval as a State of Oregon Clean Air Act Implementation Plan revision.

ORS 477.552 states the need to "improve the management of prescribed burning as a forest management and protection practice" and to "minimize emissions from prescribed burning consistent with the air quality objectives of the federal Clean Air Act and the State of Oregon State Implementation Plan." In order to improve the management of prescribed burning, every five years DEQ and ODF conduct a review of the plan to evaluate the effectiveness of the smoke management program. The last plan review was in 2007. Improvements included increasing the number of Smoke Sensitive Receptor Areas in the state. There are currently 23 Smoke Sensitive Receptor Areas that include both individual communities and larger urbanized areas, such as the entire Willamette Valley and Columbia River Gorge National Scenic Area.

In addition to Smoke Sensitive Receptor Areas protection, there is also additional wintertime smoke management protection called "Special Protection Zones." There is typically limited prescribed burning during the winter months. Winter is also when many communities experience high smoke levels typically from woodstoves. Currently, Special Protection Zone requirements apply to five communities: Klamath Falls, Lakeview, Oakridge, Medford and La Grande, which have a history of exceeding the federal health standard for particulate matter and rely heavily on wintertime residential woodstove curtailment programs to improve air quality. The Special Protection Zone requirements restrict prescribed burning within 10-20 miles on the "green", "yellow" and "red" woodstove curtailment days. A red day means there can be no woodstove burning and no prescribed burning within the Special Protection Zone.

As noted above, the proposed plan amendments would eliminate the La Grande Special Protection Zone and reduce the size of the Medford Special Protection Zone. DEQ supports these changes, for the reasons cited.

Rules Coordinator: Maggie Vandehey
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390
Telephone: (503) 229-6878

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Department of Fish and Wildlife
Chapter 635

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

Date:	Time:	Location:
3-7-14	8 a.m.	4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: Oregon Fish & Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Proposed Amendments: Rules in 635-055
Last Date for Comment: 3-7-14, 8 a.m.
Summary: Amend rules related to the capture of Peregrine falcons for use in falconry and consider changes to species allowed to be taken from the wild for falconry
Rules Coordinator: Therese Kucera
Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6033

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Rule Caption: Amend wildlife integrity rules to classify species as non-controlled or prohibited

Date:	Time:	Location:
3-7-14	8 a.m.	4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: Oregon Fish & Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242
Proposed Amendments: Rules in 635-056
Last Date for Comment: 3-7-14, 8 a.m.
Summary: Amendments are being proposed to the wildlife integrity rules which involve adding six species to the noncontrolled classification and three species to the prohibited classification as well as minor amendments to the reclassification request process.
Rules Coordinator: Therese Kucera
Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6033

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Department of Forestry
Chapter 629

Rule Caption: Defining Special Forest Products and Firewood Permitting on State Forest Lands

Date:	Time:	Location:
3-4-14	6 p.m.	Oregon Dept. of Forestry 3150 Main St. Springfield, OR 97478
3-18-14	6 p.m.	Oregon Dept. of Forestry 2600 State St. Salem, OR 97310

Hearing Officer: Staff
Stat. Auth.: ORS 164.813
Other Auth.: ORS 526 & 530
Stats. Implemented: ORS 164.813 & 164.814
Proposed Adoptions: 629-028-0002, 629-028-0003, 629-028-0004
Proposed Amendments: 629-028-0015, 629-028-0020, 629-028-0025
Proposed Ren. & Amends: 629-028-0005 to 629-028-0001
Last Date for Comment: 4-1-14, 5 p.m.
Summary: The Oregon Department of Forestry (ODF) has initiated permanent rulemaking for the above administrative rules adopted under the Forest Practices Act (FPA). The primary rule change within this rulemaking process is reflected in Oregon Administrative Rule (OAR) 629-028-0005 Definitions, where the rule number will be renumbered and amended to include the definition of special forest products. These proposed rule amendments also include the process someone would need to follow to add or delete products from the definition. In 2013, House Bill (HB) 2615 passed, allowing the State Forester, acting under the authority of the Oregon Board of Forestry (BOF), to define special forest products in rule, which will include the change in identifying mushrooms and truffles as "wild, edible fungi". An emergency was declared under the HB requiring ODF to modify forms available for private landowners to use when allowing others permission to harvest special forest products on their land. The rules require revision prior to July 1, 2014 to meet requirements in the amended statute ORS 164.813.

Review of this proposed rulemaking package may be accessed on the Department's web page at: http://www.oregon.gov/odf/Pages/lawsrules.aspx#Proposed_Rules or at the office of the State Forester, and are available upon request. Associated supporting materials presented at the November 2013 Board of Forestry meeting are available online. They may be accessed through the Board of Forestry website: www.oregonforestry.gov.

Two public information meetings regarding the bill and the rulemaking process will be held at ODF offices in Forest Grove and Salem in February 2014. Two formal hearings will be held at ODF offices in March 2014: March 4th in Springfield at 6:00 p.m. (3150 Main Street) and March 18th in Salem at 6:00 p.m. (2600 State Street). Notice of the meetings and hearings will be promoted via flyers, email, media releases, and our website prior to the meeting dates.

Written comments must be received by 5:00 p.m. on April 1st, 2014. Submissions should be addressed to:

Private Forest HB 2615 Rulemaking, Oregon Department of Forestry, 2600 State Street, OR 97310; or send to ODFPF Comments@odf.state.or.us, or via fax 503-945-7490.

Comments received by 5:00 p.m. on April 1st, 2014, will be compiled and incorporated into information presented to the Board of Forestry for their review. From this information and the prior work with this rulemaking process, the Board of Forestry will decide whether to approve this proposed rulemaking package. The Department is planning to present this information at the June Board of Forestry meeting. The Department will propose an effective date for these rules which will be announced in the Secretary of State's Oregon Bulletin if the Board gives approval.

Rules Coordinator: Sabrina Perez
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

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Rule Caption: Oregon Smoke Management Plan Revision and Update

Date:	Time:	Location:
2-25-14	6 p.m.	La Grande Library 2006 4th St. La Grande, OR 97850
3-4-14	6 p.m.	Lane Fire Authority 88050 Territorial Hwy. Veneta, OR 97487
3-5-14	6 p.m.	Jackson Co. Roads and Parks 200 Antelope Rd. White City, OR 97503
3-6-14	6 p.m.	CU Auditorium, OIT 3201 Campus Dr. Klamath Falls, OR 97601

Hearing Officer: Mark Jacques, Bob Young
Stat. Auth.: ORS 477.013 & 477.562
Other Auth.: ORS 526.016 & 526.041
Stats. Implemented: ORS 477.013, 477.515 & 477.552–477.562
Proposed Amendments: 629-048-0001, 629-048-0005, 629-048-0130, 629-048-0200, 629-048-0210, 629-048-0230, 629-048-0310, 629-048-0450, 629-048-0500
Last Date for Comment: 3-12-14, 5 p.m.
Summary: This rule and the Smoke Management Plan is administered to manage prescribed burning on private, federal and other public land to protect air quality and maintain forest productivity and health. Changes to the rule include some housekeeping measures such as updating and adding new definitions, adding reference material related to burning alternatives, and adding another rule reference for smoke management compliance; fixing some inadvertent changes made during the last review such as regulating prescribed burning outside district boundaries, including a five-year review of the entire plan, and moving back burn plan deadlines to the day of the burn; and minor changes such as adding monitoring to large tonnage burns and clarifying fees for multiple burn types.

Review of this proposed rulemaking package may be accessed on the Department's web page at: http://www.oregon.gov/ODF/Pages/lawsrules.aspx#Proposed_Rules or at the office of the State Forester, and are available upon request.

Written comments must be received by 5:00 p.m., March 12, 2014. Submissions should be addressed to Sabrina Perez, Rules Coordinator, Oregon Department of Forestry, 2600 State Street, Salem, OR 97310, sent via email to sabrina.perez@state.or.us, or via fax to 503-945-7212.

Rules Coordinator: Sabrina Perez
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

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Department of Human Services,
Self-Sufficiency Programs
Chapter 461

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

Date:	Time:	Location:
3-5-14	10 a.m.	500 Summer St. NE, Rm. 254 Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.095, 411.101, 411.103, 411.404, 411.408, 411.660, 411.706, 411.816, 411.892, 412.006, 412.014, 412.049, 412.124, 414.231, HB 2089 (2013, Sec. 10)
Other Auth.: 7 CFR 273.16(e), 42 CFR 441.102, P.L. 92-336, Federal Affordable Care Act (ACA)
Stats. Implemented: ORS 183.417, 409.010, 409.610, 411.060, 411.070, 411.095, 411.101, 411.103, 411.111, 411.117, 411.404, 411.408, 411.439, 411.443, 411.445, 411.620, 411.630, 411.635, 411.640, 411.660, 411.706, 411.690, 411.816, 411.840, 411.892, 412.001, 412.006, 412.009, 412.014, 412.049, 412.069, 412.124, 414.231, 414.426, 414.440, 416.350
Proposed Amendments: 461-001-0000, 461-025-0310, 461-025-0316, 461-135-0505, 461-135-0750, 461-135-0950, 461-145-0280, 461-155-0150, 461-155-0290, 461-155-0291, 461-155-0295, 461-175-0230, 461-195-0501, 461-195-0521, 461-195-0541, 461-195-0561
Proposed Repeals: 461-001-0000(T), 461-135-0505(T), 461-145-0280(T), 461-195-0501(T), 461-195-0521(T), 461-195-0541(T), 461-195-0561(T)
Last Date for Comment: 3-6-14, 5 p.m.
Summary: OAR 461-001-0000 about definitions used in various DHS program rules is being amended to revise the definitions of "legally married", "marriage", "parent", and "spouse" so that the Department recognizes as being legally married those same-sex couples who have been united in marriage according to the law of the state or country in which the marriage occurred. The definitions of "legally married" and "spouse" are also being updated and clarified for the ERDC and SNAP programs to prevent unnecessary training in the context of this change.

OAR 461-025-0310 about hearing requests is being amended as part of the implementation of the federal Affordable Care Act and HB 2859 to address the statutory changes to the definition of "public assistance", and align the time periods for DHS medical programs with OHA OCCS medical programs, establishing 90 days to request a hearing, a good cause window, and allowing oral hearing requests. This amendment makes permanent a temporary rule change effective October 2, 2013.

OAR 461-025-0316 about Intentional Program Violation (IPV) Hearings for the SNAP Program is being amended to state that if the signature on the hearing waiver was obtained by fraud, the individual may obtain an IPV hearing on the merits. This rule is also being amended to state that the hearing may be conducted without the individual if the notice of hearing was sent using first class and returned as undeliverable; and to revise the policy about when an individual who misses the IPV hearing may obtain a hearing on the merits.

OAR 461-135-0505 about categorical eligibility for the Supplemental Nutrition Assistance Program (SNAP) is being amended make permanent a temporary rule change effective January 1, 2014 that implemented a $25,000 liquid asset test for some households to be determined categorically eligible. Liquid assets are assets that are easily accessible like a bank account or cash on hand. The asset test does not include currently excluded resources for the SNAP program such as a person's home, retirement accounts, or earned income tax refunds. The intent of the policy change is to identify individuals with large windfalls such as a lottery winning that exceeds $25,000 in order to exclude them from receiving SNAP benefits and focus benefits on individuals who need them.

OAR 461-135-0750 about the eligibility of individuals in long-term care or home and community-based care for the OSIPM program is being amended to indicate that individuals in a psychiatric institution do not need to qualify for DHS APD long term care services to qualify for Medicaid reimbursement while they are in the State Hospital. This rule is also being amended to clarify current policy which applies this rule to individuals applying for and receiving long-term care services.

OAR 461-135-0950 about eligibility for inmates and residents of state hospitals is being amended to correctly state the requirements to determine eligibility for an individual in the State Hospital by expanding Medicaid eligibility.

OAR 461-145-0280 about the treatment of in-kind income in determining eligibility for several DHS programs is being amended to make permanent temporary rule changes effective January 1, 2014 that remove the rule's coverage of the EXT, MAA, MAF, OHP, and SAC programs. The policies about financial eligibility for medical assistance have been moved from OAR 461 (DHS) into the OAR 410-200 (under OHA), and as part of the implementation efforts for the federal Affordable Care Act (ACA). For applications for medical assistance starting on October 1, 2013, financial eligibility policies are set out in OAR 410-200.

OAR 461-155-0150 about the child care eligibility standard, payment rates, and copayments is being amended to make permanent temporary rule changes effective October 1, 2013 and November 1, 2013 that increased child care provider rates and updated child age categories definitions. These amendments updated references to the Child Care Division to state the office's new name as the Oregon Office of Child Care; updated the Infant age category for licensed providers and the provider rates for Registered Family and Certified Family care providers as determined by the Final Memorandum of Agreement with the AFSCME provider union; updated the provider rates for Standard and Enhanced Family care providers as determined through SEIU provider bargaining agreements; supported provider rate increases for Standard, Enhanced and Certified child care centers; and stated that providers are not reimbursed more than they charge.

OAR 461-155-0290 about income standards for QMB-BAS, OAR 461-155-0291 about income standards for QMB-DW, and OAR 461-155-0295 about income standards for QMB-SMB and QMB-SMF are being amended to adjust these standards to reflect the annual updates to the federal poverty level that will occur March of 2014. These amendments keep Oregon aligned with current federal standards for Department Medicaid programs and changes in the federal poverty level.

OAR 461-175-0230 about notices sent to clients in nonstandard living situations is being amended to set the policy for the type of notice needed when ending Medicaid benefits for a person who has been committed to an institution. This amendment establishes that a basic decision notice is sent to terminate, suspend, or reduce Medicaid benefits in this situation

OAR 461-195-0501, 461-195, 0521, 461-195-0541, 461-195-0561 about overpayment definitions, calculations, liability, and compromise of claims are being amended to align with the October 1, 2013 rule changes to the OCCS Medical programs for the Oregon Health Authority. OAR 461-195 0501 is also being amended to state the Department's overpayment minimum threshold practices below which the Department does not pursue overpayments. This rule amendment supersedes prior statements on this topic in the Family Services Manual and states that there are no minimums in the SNAP program, if the overpayment was identified in a quality control review; in all programs, if the overpayment was caused by a client's receipt of continuing benefits in a contested case; and in all programs, if the overpayment caused by possible fraud by a client or provider.

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

Written comments may be submitted until March 6, 2014 at 5:00 p.m. Written comments may be e-mailed to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS–Self-Sufficiency Programs, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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Department of Justice
Chapter 137

Rule Caption: Updating cite references and correcting errors in miscellaneous rules.

Stat. Auth.: ORS 25.080, 25.729, 180.345 & 416.455

Stats. Implemented: ORS 18.228, 25.020, 25.080, 25.164, 25.167, 110.327, 110.333, 416.407, 416.416, 416.422, 416.425 & 416.440

Proposed Amendments: 137-055-1100, 137-055-3300, 137-055-3360, 137-055-3435, 137-055-3500, 137-055-3660, 137-055- 5510, 137-055-6120, 137-055-7180

Last Date for Comment: 3-21-14, 5 p.m.

Summary: The following rules are being amended to update cite references and correct typos and grammatical errors: OAR 137-055-1100, OAR 137-055-3360, OAR 137-055-3500, OAR 137-055-3660, OAR 137-055-5510 and OAR 137-055-6120

OAR 137-055-3300 is being amended to clarify that an incarcerated obligor is not precluded from requesting either periodic review or change of circumstance modification at any time.

OAR 137-055-3435 is being amended to clarify that a parent may contest whether there has been a change in physical custody and the time during which the change occurred, as provided in the other parent's change of custody affidavit.

OAR 137-055-7180 is being amended to clarify that a Determination of Controlling Order must be filed in court within 30 days of its issuance.

Please submit written comments by 5:00 p.m. Friday, March 21, 2014, to Lori Woltring, Policy Analyst, Division of Child Support, 1162 Court St. NE Salem, Oregon 97301. Questions may be directed to that address or you may call (503) 947-4367

Rules Coordinator: Carol Riches

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

Telephone: (503) 947-4700

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

Rule Caption: Updates and clarifies rules regarding the acceptance and verification of information submitted by electronic means

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 803.460 & 2013 OL Ch. 647,

Stats. Implemented: ORS 802.012, 802.560, 803.200, 803.220, 803.360, 803.370, 803.450, 803.460, 807.420, 807.560 & 2013 OL Ch. 647

Proposed Amendments: 735-018-0010, 735-018-0020, 735-018-0050, 735-018-0070, 735-018-0080
Last Date for Comment: 2-21-14, Close of Business
Summary: The Oregon Attorney General encourages state agencies to periodically review all agency rules. The review should ensure the rules have the intended effect, continue to be necessary, if the agency correctly estimated the fiscal impact and if subsequent law changes require a change in the rule.

DMV recently completed a review of OAR chapter 735, Division 18 (Acceptance and Verification of Information Submitted by Electronic Means). DMV concluded the rules comply with the factors described above. However, DMV is updating the rules to add definitions and to make other non-substantive changes to make terms consistent and improve readability.

Text of proposed and recently adopted ODOT rules can be found at web site http://www.oregon.gov/ODOT/CS/RULES/
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

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Employment Department
Chapter 471

Rule Caption: Automated Job Listings
Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657
Proposed Amendments: 471-020-0010, 471-020-0035
Last Date for Comment: 2-25-14, 5 p.m.
Summary: Update restrictions on Employment Department job listings to provide a richer job listing service to customers, while working in conjunction with partner staff and staying in compliance with all applicable state and federal regulations.
Rules Coordinator: Courtney Brooks
Address: Employment Department, 875 Union St. NE, Salem, OR 97311
Telephone: (503) 947-1724

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Oregon Business Development Department
Chapter 123

Rule Caption: These rule amendments relate to the methodology used to determine distressed areas.
Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.075, ORS 285A.020, 285B.062, 285B.065
Proposed Amendments: Rules in 123-024
Last Date for Comment: 2-21-14, Close of Business
Summary: Amendments have been made to the Distressed Areas methodology as it pertains to determining whether or not a city in a non-distressed county ought to be considered distressed. The four variables in 123-024-0031(2) remain unchanged, but the way that thresholds for all four variables are calculated will change from a method based on quartiles to a simpler method based on statewide averages. This change is being done because the existing methodology based on quartiles was resulting in thresholds that were too low to be considered distressed. The changes also make the methodology more simple and easy to understand.

In 123-024-0031(1)(a), is amended to fix a mistake in the wording of the Distressed Areas methodology as it pertains to determining whether or not a county ought to be considered distressed. This will have no effect on how counties are determined to be distressed.
Rules Coordinator: Mindee Sublette
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Rule Caption: This rule amendment relates to the procedures for contracts entered into with the department.
Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.075 & 279A.070
Proposed Amendments: 123-006-0035
Last Date for Comment: 2-21-14, Close of Business
Summary: The 2013 Legislature passed HB 2212 which amended the small business threshold to $10,000 and permitting amendments to $12,500. The amendment to 123-006-0035 reflects these changes.
Rules Coordinator: Mindee Sublette
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Rule Caption: This rule amendments relates to the Port Planning and Marketing Fund.
Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654–285A.660
Proposed Amendments: 123-025
Last Date for Comment: 2-21-14, Close of Business
Summary: Before final payment can be disbursed for a grant award from the Port Planning and Marketing Fund, the Peer Review Committee reviews the project deliverables. Currently ten percent of the grant award is withheld until the committee makes their final recommendations. The department is changing the language from ten percent being withheld to the final disbursement will be withheld.
Rules Coordinator: Mindee Sublette
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Oregon Health Authority
Chapter 943

Rule Caption: Standards for Race Ethnicity Preferred Spoken Signed and Written Language and Disability Status Data Collection

Date:	**Time:**	**Location:**
2-24-14	9 a.m.	421 SW Oak St., Suite 750 Lincoln Building 1st Floor, Pine Rm. Portland, OR 97204

Hearing Officer: Keely West
Stat. Auth.: ORS 413.042 & 413.161
Stats. Implemented: ORS 413.161
Proposed Adoptions: 943-070-0000, 943-070-0010, 943-070-0020, 943-070-0030, 943-070-0040, 943-070-0050, 943-070-0060, 943-070-0070
Last Date for Comment: 2-26-14, 5 p.m.
Summary: The Oregon Health Authority (Authority), Office of Equity and Inclusion is proposing to adopt Oregon Administrative Rules in chapter 943, division 70 relating to the standardization of demographic data categories collected by the Authority, the Department of Human Services, and agency contractors.

In HB 2134, the Legislature required the Authority to convene an advisory group and develop rules to standardize the collection of demographic information related to race, ethnicity, written, signed or spoken language and disability status.

The proposed rules provide for the standardization of response options when demographic data is being collected and the creation of implementing policies, procedures and training within the agencies.

Implementation of the rules will improve the ability of the Authority, Department, community stakeholders, elected officials, and other decision makers to recognize, address, target and eliminate inequities experienced by distinct racial, cultural, and linguistic communities, and by people with disabilities. Based on local, state, and national best practices, these standards allow the Authority and Department to meet federal reporting expectations; compare Oregon's progress with national trends; improve quality service delivery; and ensure equitable allocation of resources.

Rules Coordinator: Keely L. West
Address: Oregon Health Authority, 500 Summer St. NE, E-20, Salem, OR 97301
Telephone: (503) 945-6292

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Oregon Health Authority,
Division of Medical Assistance Programs
Chapter 410

Rule Caption: Immunization, Vaccines for Children and Immune Glogulins Rule Rewritten Clarifying Language and Removing Table

Date:	Time:	Location:
2-18-14	10:30 a.m.	500 Summer St. NE, Conference Rm.137B Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025 & 414.065
Proposed Amendments: 410-130-0255
Last Date for Comment: 2-20-14, 5 p.m.
Summary: Immunizations and immune glogulins are covered by OHP. This rule explains how providers are reimbursed for administering these services. It addresses billing for providers that are participating in the state's Vaccines for Children (VFC) program, a program that provides vaccine serum at no cost to the medical professional. Providers that participate in the VFC program are reimbursed for their time. Providers not participating in the program are reimbursed for both their time and the expense of obtaining serums. The current revision is to improve readability and the phrase "religious exemption" needed to be replaced with "non-medical exemption" to conform to recent statutory changes. Additionally a table of medical codes included in the rule was problematic because it needed frequent updating. Having the codes in rule necessitated formal rule changes for even minor change to the medical code set. The revised rule will remove the table and instead include a link to the code set that will be easier to maintain.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Eligibility Requirements for the Authority's Office of Client and Community Services Medical Programs

Date:	Time:	Location:
2-18-14	10:30 a.m.	500 Summer St. NE, Rm. 137B Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Other Auth.: 42 CFR: 435.110, 435.112, 435.115, 435.116, 435.118, 435.403, 435.940, 435.1200, 457.80, 457.340, 458.350, 435.3, 435.4, 435.406, 435.407, 435.940, 435.952, 435.956, 435.1008, 457.320, 457.380, 435.940, 435.956, 435.406, 457.380, 435.117, 435.170, 435.190, 435.916, 435.917, 435.926, 435.952, 435.1200, 435.1205, 447.56, 457.340, 457.350, 457.360, 457.805, 433.145, 433.147, 433.148, 433.146, 435.610, 435.115, 435.403, 435.1200, 457.80, 457.340, 458.350, 435.119, 435.222, 435.118, 433.138, 433.147, 433.148,435.602 & 435.608
Stats. Implemented: ORS 411.060, 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Proposed Adoptions: 410-200-0010, 410-200-0015, 410-200-0100, 410-200-0105, 410-200-0110, 410-200-0111, 410-200-0115, 410-200-0120, 410-200-0125, 410-200-0130, 410-200-0135, 410-200-0140, 410-200-0145, 410-200-0146, 410-200-0200, 410-200-0205, 410-200-0210, 410-200-0215, 410-200-0220, 410-200-0225, 410-200-0230, 410-200-0235, 410-200-0240, 410-200-0305, 410-200-0310, 410-200-0315, 410-200-0400, 410-200-0405, 410-200-0410, 410-200-0415, 410-200-0420, 410-200-0425, 410-200-0435, 410-200-0440, 410-200-0500, 410-200-0505, 410-200-0510
Proposed Repeals: 410-200-0515(T), 410-200-0406(T)
Last Date for Comment: 2-20-14, 5 p.m.
Summary: With passage of the Affordable Care Act (ACA), Medicaid and CHIP eligibility methodologies are mandated to be changed January 1, 2014 to use Modified Adjusted Gross Income (MAGI) methodologies. Oregon was approved for early implementation of the MAGI income and eligibility methodologies, an option provided by CMS to the states. These rules were adopted and effective on October 1, 2013 to explain the new household groups, whose income must be counted, and what income is considered in determining medical eligibility, time frames for determining medical eligibility, hearing processes, and processes for coordination when an individual must be referred to Cover Oregon.

Additional provisions of the ACA require that the above referenced rules be updated to reflect new policy effective January 1, 2014.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Amends Modifications Based on Client Circumstances to Medical Transportation for Recipients of Medical Assistance Programs

Date:	Time:	Location:
2-18-14	10:30 a.m.	500 Summer St. NE, Rm. 137B Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.042
Proposed Amendments: 410-136-3260
Last Date for Comment: 2-20-14, 5 p.m.
Summary: The temporary rule will align Oregon rules with federal regulations regarding providing non-emergent medical transportation.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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

Rule Caption: Amendment of Ambulatory Surgical Reporting relating to fee collection

Date:	Time:	Location:
2-19-14	1 p.m.	General Services Bldg. 1225 Ferry St. SE Silver Butte Rm. Salem, OR 97301

Hearing Officer: Zarie Haverkate
Stat. Auth.: ORS 442.120
Stats. Implemented: ORS 442.120
Proposed Amendments: 409-022-0050
Last Date for Comment: 2-21-14, 5 p.m.
Summary: The proposed rule is being amended to allow health care facilities that report ambulatory surgical data per ORS 442.120 to calculate costs and submit fees on a biannual, rather than quarterly, basis.
Rules Coordinator: Zarie Haverkate
Address: Oregon Health Authority, Office for Oregon Health Policy and Research, 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 373-1574

Rule Caption: Repeal of Safety Net Capacity Grant Program Rule
Stat. Auth.: ORS 413.225
Stats. Implemented: ORS 413.225 & 414.231
Proposed Repeals: 409-110-0000, 409-110-0005, 409-110-0010, 409-110-0015, 409-110-0020
Last Date for Comment: 2-21-14, 5 p.m.
Summary: The Office for Oregon Health Policy and Research is seeking to repeal rules relating to the Safety Net Capacity Grant Program as the grant program has ended.

A copy of the rule is available on OHPR's website at: http://www.oregon.gov/OHA/OHPR/pages/rulemaking/index.aspx
Rules Coordinator: Zarie Haverkate
Address: Oregon Health Authority, Office for Oregon Health Policy and Research, 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 373-1574

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Oregon Health Authority,
Public Health Division
Chapter 333

Rule Caption: Criteria for eligibility of school-based health center funding and grant awards

Date:	Time:	Location:
3-12-14	10 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 810 Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 413.225
Stats. Implemented: 2013 OL Ch. 683 & 413.225
Proposed Adoptions: 333-028-0260, 333-028-0270, 333-028-0280
Last Date for Comment: 3-14-14, 5 p.m.
Summary: The Oregon Health Authority, Public Health Division is proposing to adopt permanent rules pertaining to the criteria for continuation funding for certified school-based health centers (SBHCs), awarding grants to communities planning for certified SBHCs, and incentive funding to: (1) increase the number of SBHCs as patient-centered primary care homes; (2) improve the coordination of care of patients served by coordinated care organizations and school-based health centers; and (3) improve the effectiveness of the delivery of health services through school-based health centers to children who qualify for medical assistance as mandated by the passage of House Bill 2445 by the 2013 Legislature. The proposed rules are intended to fulfill the mandates by prescribing the criteria for eligibility of funding and grant awards.
Rules Coordinator: Brittany Sande
Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Rule Caption: Update newborn screening program rules and fees including addition of severe combined immunodeficiencies (SCID)
Stat. Auth.: ORS 431.180, 431.310, 433.285 & 433.290
Stats. Implemented: ORS 431.310, 433.285, 433.290 & 433.295
Proposed Amendments: 333-024-0205, 333-024-0210, 333-024-0215, 333-024-0220, 333-024-0225, 333-024-0230, 333-024-0231, 333-024-0232, 333-024-0235, 333-024-0240
Last Date for Comment: 3-10-14, 5 p.m.
Summary: The Oregon Health Authority, Public Health Division, Oregon State Public Health Laboratory is proposing to permanently amend administrative rules in chapter 333, division 24. The proposed amendments will: update newborn screening program rules regarding definitions, congenital disorders tested for and methods of testing, timing of specimen collection and requirements for fee exemption; add severe combined immunodeficiencies (SCID) to the screening panel no later than May 1, 2014; and increase the newborn screening kit fee effective May 1, 2014.
Rules Coordinator: Brittany Sande
Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Oregon Liquor Control Commission
Chapter 845

Rule Caption: Creates distinct licensing qualification and operating standards for outdoor areas not abutting a licensed premises.

Date:	Time:	Location:
2-27-14	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Annabelle Henry
Stat. Auth.: ORS 471, including ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.001, 471.030(1), 471.313(1) & 471.315(1)(d)
Proposed Adoptions: 845-005-0329, 845-006-0309
Proposed Amendments: 845-005-0331
Last Date for Comment: 3-13-14, 5 p.m.
Summary: Proposed new rule OAR 845-005-0329 establishes licensing qualification standards for outdoor areas that do not abut applicant's or licensee's previously licensed building or other similarly enclosed structure (i.e., food carts). This rule is designed to operate in conjunction with proposed new rule OAR 845-006-0309, which establishes operating requirements for outdoor areas that do not abut applicant's or licensee's previously licensed building or other similarly enclosed structure (i.e., food carts).

Existing rule OAR 845-005-0331 currently establishes licensing qualification standards that apply to all exterior areas. The proposed amendments clarify that going forward, this rule will only apply to outdoor areas that abut an applicant's or licensee's previously licensed building (i.e., patios and sidewalk cafes). The proposed amendments do not substantively change the qualification or operating standards that currently apply to these outdoor areas (i.e., patios and sidewalk cafes).
Rules Coordinator: Annabelle Henry
Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222
Telephone: (503) 872-5004

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Oregon Medical Board
Chapter 847

Rule Caption: Authorizes Executive Director and Medical Director to approve Consent Agreements for re-entry
Stat. Auth.: ORS 677.265 & 677.235
Stats. Implemented: ORS 677.100, 677.175, 677.265, 677.512, 677.759 & 677.825
Proposed Adoptions: 847-001-0045
Proposed Amendments: 847-008-0003, 847-020-0183, 847-050-0043, 847-070-0045, 847-080-0021
Last Date for Comment: 2-21-14, 5 p.m.
Summary: The proposed new rule and amendments delegate authority to the Executive Director and Medical Director to review and approve the terms and conditions in a Consent Agreement for re-entry to practice. The Applicant may be granted a license once the Consent Agreement is signed by the Executive Director or Medical Director.
Rules Coordinator: Kimberly Fisher
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Rule Caption: Decreases Data Order fees, changes license name, and deletes references to license no longer offered
Stat. Auth.: ORS 181.534, 431.972, 676.410, 677.265 & 677.290
Stats. Implemented: ORS 181.534, 192.440, 431.972, 676.410, 677.265 & 677.290

Proposed Amendments: 847-005-0005
Last Date for Comment: 2-21-14, 5 p.m.
Summary: The proposed rule amendment decreases the Data Order Charges fees to accurately reflect the current costs in fulfilling the request. The proposed rule amendment also deletes references to Limited License, Special as this license is no longer available and updates the title of Limited License, Postgraduate to Limited License, Pending Examination for Division 50 (Physician Assistants) and Division 70 (Acupuncturists).
Rules Coordinator: Kimberly Fisher
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Oregon Patient Safety Commission
Chapter 325

Rule Caption: Updates the Oregon Patient Safety Commission's 2013–2015 biennial budget by amending OAR 325-005-0015.

Date:	Time:	Location:
3-12-14	10 a.m.	2501 SW 1st Ave. Suite 200 Portland, OR 97201

Hearing Officer: Shannon O'Fallon
Stat. Auth.: ORS 442.820–442.835
Other Auth.: 2003 OL Ch. 686, Sec. 9
Stats. Implemented: ORS 182.462(1) & 182.462(2)
Proposed Amendments: 325-005-0015
Last Date for Comment: 3-12-14, Close of Business
Summary: In accordance with the rules governing semi-independent state agencies, this action updates the Oregon Patient Safety Commission 2013-2015 biennial budget from $2,844,268 to $3,242,464 by amending OAR 325-005-0015.
Rules Coordinator: Bethany A. Walmsley
Address: Oregon Patient Safety Commission, PO Box 285, Portland, OR 97204
Telephone: (503) 224-9226

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Oregon University System
Chapter 580

Rule Caption: Increase the amount of vacation payout to 260 hours for a set period of time
Stat. Auth.: ORS 240 & 351.070
Other Auth.: ORS 351
Stats. Implemented: ORS 351.070
Proposed Amendments: 580-021-0030
Last Date for Comment: 2-28-14, Close of Business
Summary: With the passage of Senate Bill 270 (2013) and the substantial change in the governance of Oregon's public universities, it is vital that the OSBHE and the Chancellor's Office make every reasonable effort to ensure that adequate staff are retained in order to make transition to Oregon State University, Portland State University, and the University of Oregon, as well as any possible change to the governance of the remaining OUS institutions, as seamless as possible. Under current administrative rules, as a general matter, full-time unclassified OUS employees accrue 15 hours of vacation each month; however, these employees may not accrue more than 260 hours of vacation leave and, upon separation of service, may not cash out more than 180 hours of vacation leave. In order to incent Chancellor's Office employees to remain at OUS during the critical period of transition facing public higher education in the state over the next 18 months and, after consulting other public sector vacation leave schemes in Oregon, including those for state employees under the purview of DAS, the OSBHE approved that payment for accrued vacation leave be increased for a specific period of time for unclassified employees in the Office of the Chancellor.
Rules Coordinator: Marcia M. Stuart
Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175
Telephone: (541) 346-5749

Oregon Watershed Enhancement Board
Chapter 695

Rule Caption: Revisions to Watershed Council Support grant rules to implement Outcome-based Watershed Council Capacity grant-making

Date:	Time:	Location:
3-4-14	12:30 p.m.	Sunridge Inn 1 Sunridge Ln. Baker City, OR
3-5-14	12:30 p.m.	Pendleton Center for the Arts 214 N Main St. Pendleton, OR
3-7-14	12:30 p.m.	Riverbend Community Center 799 SW Columbia Bend, OR
3-10-14	12:30 p.m.	Department of State Lands Land Board Rm. 775 Summer St. NE Salem, OR
3-12-14	12:30 p.m.	ODOT 100 Antelope Rd. White City, OR
3-14-14	12:30 p.m.	Bay City Hall 5525 B St, Bay City, OR

Hearing Officer: Courtney Shaff
Stat. Auth.: ORS 541.906
Stats. Implemented: ORS 541.918, 541.926(1)(e), 541.923 & 541.910
Proposed Adoptions: 695-040-0090, 695-040-0100, 695-040-0110, 695-040-0120, 695-040-0130, 695-040-0140, 695-040-0150
Proposed Amendments: 695-040-0010, 695-040-0020, 695-040-0030
Proposed Repeals: 695-040-0040, 695-040-0050, 695-040-0060, 695-040-0070, 695-040-0080
Last Date for Comment: 3-14-14, 5 p.m.
Summary: OWEB is proposing rule amendments and rulemaking related to the administration of the council support grant program. The purpose is to develop an outcome-based council capacity grant program that includes a streamlined review and award process and increases standards for eligibility to apply and merit evaluation criteria. Regarding changes to the rules, first, the name of the grants has been amended from Watershed Council Support to Watershed Council Outcome-Based Operating Capacity Grants. The purpose [695-040-0010], definitions [695-040-0020], and eligibility criteria [695-040-0030] have been amended. Rules outlining the previous Application Requirements [695-040-0040], Evaluation Criteria [695-040-0050], Grant Evaluation Process [695-040-0060], Grant Agreement Conditions [695-040-0070], and Waiver of Rules [695-040-0080] will be repealed. The repealed rules will be replaced by newly adopted rules describing the following components and requirements of the streamlined outcome-based council capacity grant program: Eligibility Determination [695-040-0090]; Application Requirements [695-040-0100]; Merit Evaluation [695-040-0110]; Board Action on Eligible Applications [695-040-0120]; Use of Funds [695-040-0130] Grant Agreement Conditions [695-040-0140]; and Waiver of Rules [695-040-0150].

Public comment will be accepted on the proposed rules from February 24, 2014 through 5:00pm on March 14, 2014. Copies of the proposed amendments will be available February 24, 2014 on OWEB's website (http://www.oregon.gov/OWEB/pages/admin_rules_statutes.aspx).
Rules Coordinator: Renee Davis-Born
Address: Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301
Telephone: (503) 986-0029

Psychiatric Security Review Board
Chapter 859

Rule Caption: Program rules and guidelines regarding Civil Commitments for Extremely Dangerous Persons with Mental Illness

Date:	Time:	Location:
2-25-14	11 a.m.	610 SW Alder St., Suite 420 Portland, OR 97205

Hearing Officer: Lucy Heil
Stat. Auth.: 2013 OL Ch. 715 (SB 421) & ORS 161.387
Stats. Implemented: 2013 OL Ch. 715 (SB 421)
Proposed Adoptions: 859-200-0005, 859-200-0010, 859-200-0015, 859-200-0020, 859-200-0025, 859-200-0030, 859-200-0035, 859-200-0040, 859-200-0045, 859-200-0050, 859-200-0055, 859-200-0060, 859-200-0065, 859-200-0070, 859-200-0075, 859-200-0080, 859-200-0085, 859-200-0090, 859-200-0095, 859-200-0100, 859-200-0105, 859-200-0110, 859-200-0115, 859-200-0120, 859-200-0125, 859-200-0130, 859-200-0135, 859-200-0140, 859-200-0145, 859-200-0150, 859-200-0200, 859-200-0205, 859-200-0210, 859-200-0215, 859-200-0220, 859-200-0225, 859-200-0230, 859-200-0235, 859-200-0300, 859-200-0305, 859-200-0310
Last Date for Comment: 3-3-14, 5 p.m.
Summary: SB 421 (2013) created a new type of civil commitment and authorizes courts to place these individuals under the Psychiatric Security Review Board's jurisdiction for monitoring, treatment and supervision. These rules establish procedures and guidelines for the Psychiatric Security Review Board to supervise, monitor, determine appropriate placement and conduct hearings for these civilly committed persons placed under its jurisdiction.
Rules Coordinator: Lucy Heil
Address: Psychiatric Security Review Board, 610 SW Alder St., Suite 420, Portland, OR 97205
Telephone: (503) 229-5596

Secretary of State,
Business Services Division
Chapter 167

Rule Caption: Revising Secretary of State's procurement rules.

Date:	Time:	Location:
2-24-14	9 a.m.	255 Capitol St. NE, Suite 180 BSD Conference Rm. Salem, OR

Hearing Officer: Sarah Roth
Stat. Auth.: ORS 279A.050, 279A.065 & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065 & 279A.070
Proposed Amendments: 167-001-0007, 167-001-0020, 167-001-0030, 167-001-0081, 167-001-0300, 167-001-0360, 167-001-0600, 167-001-0620, 167-001-0635
Proposed Repeals: 167-001-0040, 167-001-0050, 167-001-0060, 167-001-0065, 167-001-0070, 167-001-0085, 167-001-0625
Last Date for Comment: 2-24-14, 2 p.m.
Summary: The Secretary of State is amending current procurement rules for clarification and repealing several rules that are duplicated in the Department of Justice model rules.
Rules Coordinator: Sarah Roth
Address: Secretary of State, Business Services Division, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 986-2357

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Secretary of State,
Corporation Division
Chapter 160

Rule Caption: Notary Public
Stat. Auth.: 2013 OL Ch. 219, Sec. 26
Stats. Implemented: 2013 OL Ch. 219
Proposed Amendments: 160-100-0000
Last Date for Comment: 2-21-14, 12 p.m.
Summary: Clarifies what constitutes "practice in this state" for non-resident notary public commission applicants.
Rules Coordinator: Ginger Spotts
Address: Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310
Telephone: (503) 986-2333

Appraiser Certification and Licensure Board
Chapter 161

Rule Caption: Adoption of temporary rules to implement Senate Bill 617 and removing prior disclosure requirement.
Adm. Order No.: ACLB 6-2013(Temp)
Filed with Sec. of State: 12-19-2013
Certified to be Effective: 1-1-14 thru 6-2-14
Notice Publication Date:
Rules Amended: 161-006-0155, 161-006-0160, 161-025-0060, 161-570-0025, 161-570-0030
Subject: Temporarily amends Oregon Administrative Rule 161, Division 6, Rule 0155, regarding Allegation Reports; Rule 0160, regarding Complaints, Investigations and Audits; Division 025, Rule 0060 regarding Appraisal Standards and USPAP; Division 570, Rule 0025, regarding Allegation Reports; and Rule 0030, regarding Complaints, Investigations and Audits.
Rules Coordinator: Gae Lynne Cooper—(503) 485-2555

161-006-0155
Allegation Reports

(1) All allegation reports must be in writing.

(2) Any person may file an allegation report.

(3) A member of the Board or the Administrator may initiate an allegation report.

(4) The Board will accept anonymous allegation reports.

(5) The allegation report will be reviewed by the Administrator or the Administrator's designee to determine whether, there may be an objective basis to believe that an alleged violation has occurred, or whether the matter may be dismissed as either frivolous or not within the board's jurisdiction.

(6) If the Administrator or the Administrator's designee determines that there is an objective basis to believe that an alleged violation has occurred, the Enforcement Oversight Committee must review the report and the Board may initiate the investigation process.

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674.310
Hist.: ; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14

161-006-0160
Complaints, Investigations and Audits

(1) A notice of investigation, together with a true copy of the allegation report as submitted to the Board's office, including all supporting documentation, shall be promptly sent by certified mail, return receipt requested, to the last known address of the person against whom the allegation is filed. Unless otherwise specified in the notice of investigation, the Respondent must produce:

(a) True copies of records, including the workfile, within 30 days. No extension of the time will be granted, except for good cause where the Respondent shows that circumstances beyond the reasonable control of the Respondent prevent a response within the 30 days; and

(b) Within 30 days, a written response to the allegations set forth in the allegation report.

(A) A respondent may request an extension to file a response to a notice of investigation. An extension of up to 30 days only will be approved, provided the extension request is submitted in writing to the Administrator within the 30 day time period. Good cause must exist that shows circumstances beyond the reasonable control of the respondent preventing a response within 30 days.

(B) The Administrator may grant one additional extension of no more than 30 days only upon showing of good cause.

(2) The investigation may include all inquiries deemed appropriate to ensure that each case is processed in accordance with ORS Chapter 183.

(3) The Board may initiate an audit or other type of inquiry or investigation to verify an individual's compliance with ORS Chapter 674 and OAR Chapter 161.

(4) Every licensed or certified appraiser or registered appraiser assistant must cooperate with the Board and must respond fully and truthfully to Board inquiries and comply with any requests from the Board, subject only to the exercise of any applicable right or privilege. Failure to cooperate with the Board is unethical and is grounds for discipline including revocation or suspension of a license, certificate or registration, imposition of a civil penalty, or denial of a license, certificate, or registration, or any combination thereof.

(5) At the completion of the investigation process, the Enforcement Oversight Committee shall review the allegation report and all documents related to the investigation. If the Enforcement Oversight Committee determines that an objective basis exists to believe that violations of ORS Chapter 674 and/or OAR Chapter 161 occurred, the Enforcement Oversight Committee shall submit a report to the Board setting forth specific violations along with the facts supporting the Committee's recommendation.

(6) Upon receipt of the Enforcement Oversight Committee's report, the Board may proceed with disciplinary proceedings.

Stat. Auth.: ORS 674.170, 674.305 & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 3-2005, f. & cert. ef 7-22-05; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14

161-025-0060
Appraisal Standards and USPAP

(1) All licensees must develop and communicate each appraisal assignment in compliance with these administrative rules and USPAP.

(2) A licensee employed by a group or organization that conducts itself in a manner that does not conform to USPAP Standards must take steps that are appropriate under the circumstances to ensure compliance with the Standards.

(3) All licensees must certify to what extent they personally inspected the property that is the subject of the appraisal assignment. Each report must clearly state that the subject property was: inspected both inside and out; inspected from the exterior only; or was not personally inspected by the licensee.

(4) In addition to certifying as to the extent of the subject's inspection, all licensees must also certify to what extent each of the comparable sales relied upon in the appraisal were personally inspected.

(5) All licensees must disclose in all appraisal reports whether the comparable sales analyzed in the appraisal report were or were not confirmed by a party to the transaction or an agent or representative of a party to the transaction.

(6) All licensees testifying or presenting evidence in an administrative or judicial proceeding must base their testimony or evidence only upon a written summary or self-contained appraisal report in compliance with USPAP, reflecting a report date that precedes the date of testimony, unless such testimony is being compelled by legal subpoena.

(7) The "Uniform Standards of Professional Appraisal Practice", 2012–2013 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2012, are incorporated into the Administrative Rules of the Appraiser Certification and Licensure Board as the standards of professional conduct which shall guide the behavior of licensed and certified appraisers in the State of Oregon. Copies of the Uniform Standards of Professional Appraisal Practice may be obtained from the Appraisal Foundation located at 1029 Vermont Avenue, N.W., Suite 900, Washington D.C. 20005-3517.

(8) All licensees must list their certificate or license number and expiration date in each appraisal report.

(9) All licensees must comply with USPAP and all other applicable administrative rules in OAR Chapter 161 in all valuation activity, unless such valuation activity qualifies as an exclusion to real estate appraisal activity under ORS 674.100(2)(h).

(10) Notwithstanding any other provision of these rules, a licensee acting in one of the following capacities is not subject to the requirements of Standard 3 of USPAP when examining an appraisal report and workfile as part of an official investigation being conducted by the Board:

(a) Board member;

(b) Employee; or

(c) Contractor or volunteer serving at the request of the Board.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-1994; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-89; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 3-2000(Temp), f. 11-9-00, cert. ef. 11-9-00 thru 5-8-01; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-28-06; ACLB 2-2006, f. & cert.

ef. 7-26-06; ACLB 5-2007(Temp), f. 11-1-07, cert. ef. 1-1-08 thru 6-27-08; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 5-2009(Temp), f. 12-15-09, cert. ef. 1-1-10 thru 6-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 4-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-27-12; ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12; ACLB 5-2013, f. 10-29-13, cert. ef. 1-1-14; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14

161-570-0025
Allegation Reports

An allegation report may be filed against an appraisal management company and submitted to the Board's office.

(1) All allegation reports must be in writing.

(2) Any person may file an allegation report.

(3) A member of the Board or the Administrator may initiate an allegation report.

(4) The Board will accept anonymous allegation reports.

(5) The allegation report will be reviewed by the Administrator or the Administrator's designee to determine whether, there may be an objective basis to believe that an alleged violation has occurred, or whether the matter may be dismissed as either frivolous or not within the Board's jurisdiction.

(6) If the Administrator or the Administrator's designee determines that there is an objective basis to believe that an alleged violation has occurred, the Enforcement Oversight Committee must review the report and the Board may initiate the investigation process.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14

161-570-0030
Complaints, Investigations and Audits

(1) A notice of investigation, together with a true copy of the allegation report as submitted to the Board's office, including all supporting documentation, shall be promptly sent by certified mail, return receipt requested, to the last known address of each controlling person of the appraisal management company. Unless otherwise specified in the notice of investigation, a controlling person must produce:

(a) True copies of records within 30 days. No extension will be granted, except for good cause where the Respondent shows that circumstances beyond the reasonable control of the Respondent prevent a response within 30 days; and

(b) Within 30 days, a written response to the allegations set forth in the allegation report.

(A) A controlling person may request an extension to file a response to a notice of investigation. An extension of up to 30 days will be approved provided the extension request is submitted in writing to the Administrator within the 30 day time period. Good cause must exist that shows circumstances beyond the reasonable control of a controlling person preventing a response within 30 days.

(B) The Administrator may grant one additional extension of no more than 30 days only upon showing of good cause.

(2) The investigation may include all inquiries deemed appropriate to ensure that each case is processed in accordance with ORS Chapter 183.

(3) The Board may initiate an audit or other type of inquiry or investigation to verify an appraisal management company's compliance with ORS 674 and OAR 161.

(4) Every controlling person or subject individual of an appraisal management company must cooperate with the Board and must respond fully and truthfully to Board inquiries and comply with any requests from the Board, subject only to the exercise of any applicable right or privilege. Failure to cooperate with the Board is unethical and is grounds for discipline including revocation or suspension of the appraisal management company's registration, imposition of a civil penalty, or denial of a registration, or any combination thereof.

(5) At the completion of the investigation process, the Enforcement Oversight Committee shall review the allegation report and all documents related to the investigation. If the Enforcement Oversight Committee determines that an objective basis exists to believe that violations of ORS Chapter 674 and/or OAR Chapter 161 occurred, the Enforcement Oversight Committee shall submit a report to the Board setting forth specific violations along with the facts supporting the Committee's recommendation.

(6) Upon receipt of the Enforcement Oversight Committee's report, the Board may proceed with disciplinary proceedings.

Stat. Auth.: ORS 183.355, 674.305 & 674.310
Stats. Implemented: ORS 674.305(7), 674.310(2), 674.205, 674.215, 674.230, 674.245
Hist.: ACLB 1-2012, f. 7-2-12, cert. ef. 7-3-12; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 6-2013(Temp), f. 12-19-13, cert. ef. 1-1-14 thru 6-2-14

Board of Architect Examiners
Chapter 806

Rule Caption: Use of Electronic Seals and Signatures
Adm. Order No.: BAE 3-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 1-1-14
Notice Publication Date:
Rules Amended: 806-010-0045
Subject: Clarifies rules relating to requirements for the use of electronic seals and signatures.
Rules Coordinator: Jim Denno—(503) 763-0662

806-010-0045
Stamps, Seals and Signatures

(1) Every registered architect shall have a stamp or seal bearing the name of the registrant only, together with the city and state in which the architect's principal office is located. The stamp or seal may include the architect's registration number issued by the Oregon Board.

(2) The seal must be one of crimp type, rubber stamp type; computer generated type, or may be electronic.

(3) All technical submissions which are required by public authorities for building permits or regulatory approvals, or are intended for construction purposes, including all addenda and other changes to such submissions, shall be sealed and signed by the architect.

(4) The term "signature" or "signed" as used in ORS Chapter 671 means the following:

(a) A handwritten or digital representation of your handwritten identification that represents the act of putting your name on a document to attest to its validity. The handwritten or digital representation must be:

(A) An original written by hand;

(B) A scanned image of an original, handwritten identification; or

(C) A digital identification that is an electronic authentication process attached to or logically associated with an electronic document.

(b) Signatures must be:

(A) Permanently affixed to the document(s) being certified;

(B) Applied to the document by the identified licensee;

(C) Placed across the seal/stamp of the licensee.

(D) Unique to the licensee using it;

(E) Capable of independent verification;

(F) Under the exclusive control of the licensee using it.

(5) The stamp with the registrant's manual or digital signature must appear on the original title page of specifications and on every sheet of the drawings intended for permit and construction, whether or not the project is exempt under ORS 671.030, and must be the stamp of a registered, legally responsible member or employee of the firm. The originals may be reproduced for permit and construction purposes.

(6) By signing and sealing a technical submission the architect represents that the architect was in responsible control over the content of such technical submissions during their preparation and has applied the required professional standard of care.

(7) An architect may not seal and sign, or countersign, or allow his or her seal or signature to be affixed to any architectural plans, drawings, documents, specifications or reports not prepared by him or her or under his or her responsible control and supervision.

(a) Reviewing, or reviewing and editing, specifications and documents intended for permit and construction after they have been prepared by others does not constitute the exercise of responsible control and supervision because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation.

(b) Any architect signing or sealing technical submissions not prepared by that architect, but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, will maintain and make available to the Board, upon request, adequate records to demonstrate the nature and extent of the architect's control over, and detailed knowledge of, such technical submissions throughout their preparation.

(8) Notwithstanding other sections of this rule, a successor registered architect may complete a deceased or disabled architect's drawings and specifications intended for permitting and construction as though they were the successor's original, but must perform a thorough review and will become fully responsible for the content. The successor registered successor architect must use his or her own title block, seal, and signature, and must remove the title block, seal, and signature of the deceased or disabled architect.

[ED. NOTE: Images referenced are available from the agency.]
Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.020
Hist.: AE 5, f. 12-22-64; AE 11, f. 2-15-74, ef. 3-11-74; AE 2-1978, f. & ef. 3-6-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 3-1979, f. & ef. 11-29-79; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 1-1999, f. & cert. ef. 3-25-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 4-2004, f. & cert. ef. 5-5-04; BAE 1-2012, f. & cert. e.f 1-4-12; BAE 3-2013, f. 12-30-13, cert. ef. 1-1-14

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Rule Caption: Reciprocal Registration of NCARB Certified Licensees of Other Jurisdictions
Adm. Order No.: BAE 4-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 1-1-14
Notice Publication Date:
Rules Amended: 806-010-0035
Subject: Allows individuals licensed in other jurisdictions that have the NCARB Certificate to register by reciprocity without additional requirements.
Rules Coordinator: Jim Denno—(503) 763-0662

806-010-0035
Registration by Reciprocity

(1) To become registered by reciprocity to practice architecture in Oregon, an individual must possess an active registration from another board-recognized jurisdiction, and

(a) Possess an active NCARB Certificate, or

(b) Possess documentary evidence of the following:

(A) A first professional degree in architecture from a NAAB-accredited program of architecture;

(B) Successful completion of all sections of the ARE;

(C) Completion of the NCARB IDP program or two years of consecutive and active practice in architecture in a board-recognized jurisdiction after initial registration;

(D) If an individual has not previously been examined for seismic and lateral forces knowledge through successful completion of an NCARB examination in 1965 or later, the individual must provide evidence of successfully completing the NCARB Division Structural Systems examination.

(2) All applicants for registration by reciprocity must:

(a) Complete the Reciprocity Application;

(b) Pay required fees;

(c) Provide all required documentation in section (1);

(d) Pass the Jurisprudence Exam according to 806-010-0020(6).

(3) The Board reserves the right to require an oral interview of any reciprocity applicant. Oral interviews are held on regularly scheduled Board meeting dates. If an oral interview is required, the applicant will be notified.

Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.050 & 671.065
Hist.: AE 5, f. 12-22-64; AE 11, f. 2-15-74, ef. 3-11-74; AE 1-1978, f. & ef. 1-23-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 2-1980, f. & ef. 10-3-80; AE 1-1984, f. & ef. 8-22-84; AE 1-1987, f. & ef. 3-30-87; AE 1-1988, f. & cert. ef. 3-14-88; AE 1-1992, f. 1-9-92, cert. ef. 1-10-92; AE 3-1992, f. & cert. ef. 6-30-92; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; BAE 1-1999, f. & cert. ef. 3-25-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 5-2002, f. 8-14-02 cert. ef. 8-15-02; BAE 4-2003, f. 8-13-03, cert. ef. 8-14-03; BAE 2-2004, f. & cert. ef. 3-2-04; BAE 1-2008, f. & cert. ef. 2-28-08; BAE 2-2010, f. 6-11-10, cert. ef. 10-3-10; BAE 4-2013, f. 12-30-13, cert. ef. 1-1-14

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Board of Licensed Professional Counselors and Therapists
Chapter 833

Rule Caption: LMFT minimum experience requirements and graduate degree standards
Adm. Order No.: BLPCT 1-2014
Filed with Sec. of State: 1-8-2014
Certified to be Effective: 1-8-14
Notice Publication Date: 12-1-2013
Rules Amended: 833-020-0051, 833-040-0021, 833-060-0012
Subject: Clarifies that to meet the education requirements for licensure one must have graduated from a graduate program that was accredited by a national program accreditation body or a regional accrediting body.

Implements language in HB 2768 (2013) that provides authority for the Board to set equivalent experience requirements for those applying for licenses as marriage and family therapists.
Rules Coordinator: Becky Eklund—(503) 378-5499, ext. 3

833-020-0051
Reciprocity Method

(1) The reciprocity method is for applicants who seek acceptance of education and supervised clinical experience previously used to obtain a comparable license in another jurisdiction. The reciprocity method requires the applicant to document that the education and experience requirements under which the applicant obtained a comparable license held in another state are equivalent to the standards required for Oregon licensure as a professional counselor or as a marriage and family therapist.

(2) The Board will review each application designating the reciprocity method to determine if licensing is appropriate. The Board will compare the minimum standards in effect in the other jurisdiction when it granted a license with the current education, clinical experience, and examination standards required for Oregon licensure.

(3) Application for licensure must be submitted to the Board office in accordance with OAR 833-020-0011.

(4) The application must also include verification of from the sending state that applicant:

(a) Has a current, active license in that state;

(b) The license is comparable to the Oregon license requested;

(c) Applicant's license from other state is not temporary, probationary, expired, revoked, or suspended;

(d) The applicant has not been disciplined, including a reprimand or letter of concern; and

(e) Documentation of the education, clinical experience, and examination requirements for licensure in that state at the time licensure was granted.

(5) The applicant's license in the other state must have:

(a) Required at least a graduate degree in counseling, a graduate degree in marriage and family therapy, or a related degree. A related degree must have systemic coursework for a license as a marriage and family therapist;

(b) Been issued to an applicant whose qualifying degree meets Majority Standards for Graduate Degrees specified in OAR 833 Division 60;

(c) Required passage of a state or national competency exam; and

(d) Been obtained by a method of application that involved state review of documentation of education and clinical experience under adopted standards, and not obtained through reciprocity; act of portability; mutual recognition; recognition of non-governmental, professional certification or membership; waiver of any of the education, experience, or examination requirements; or "grandparenting".

(6) Five years or more of licensed clinical experience in another state may substitute for a maximum of 15 semester or 20 quarter credits of academic education required for licensure. Clinical experience may not substitute for diagnosis training.

(7) Completed supervised clinical experience performing direct client counseling or marriage and family therapy, which must have included no less than:

(a) At least 2,000 hours in at least two years or the equivalent for licensed professional counselor;

(A) A minimum of 1,000 hours of the required 2,000 must be direct client contact;

(B) A maximum of 1,000 hours of the required 2,000 may be from supervision, consulting, reporting.

(b) At least 2,000 hours earned in at least 3 years must be in the presence of a client for licensed marriage and family therapist.

(c) For those who apply on or after January 2, 2014, at least 2,000 hours earned in at least two years or the equivalent must be in the presence of a client for licensed marriage and family therapist.

(8) Five or more years of post license clinical experience may substitute for 1,000 hours of the required, supervised direct client contact hours required for Oregon licensure.

(9) The applicant must meet the examination requirements specified in:

(a) 833-020-0081 and 833-030-0041 for licensure as a professional counselor; or

(b) 833-020-0081 and 833-040-0041 for licensure as a marriage and family therapist.

(10) Documentation of acceptance on the national credentials registry for professional counselors may substitute for education and experience requirements for licensure as a professional counselor.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 1-2011, f. 1-13-11, cert. ef. 2-1-11; BLPCT 1-2013, f. 1-11-13, cert. ef. 2-1-13; BLPCT 1-2014, f. & cert. ef. 1-8-14

833-040-0021
Experience Requirements for Licensure as a Marriage and Family Therapist

(1) To qualify for licensure as a marriage and family therapist under ORS 675.715(4) and 675.720, an applicant must have completed at least three years of full-time supervised clinical experience that consisted of no less than 2,000 supervised client contact hours of therapy with at least 1,000 of those hours working with couples and families.

(2) Those who apply to become a licensed marriage and family therapist on or after January 2, 2014, must have completed the equivalent of three years of full-time supervised clinical experience that consisted of no less than 2,000 supervised client contact hours of therapy with at least 1,000 of those hours working with couples and families.

(3) Direct client contact hours must have been:

(a) Obtained after receipt of the qualifying graduate degree; and

(b) Face to face with a client or clients including through electronic communication.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11; BLPCT 1-2014, f. & cert. ef. 1-8-14

833-060-0012
Comparable Full Standards

The Board shall determine which graduate degrees are comparable in content and quality to degrees from CACREP, COAMFTE, or CORE approved programs and consistent with the Board's Code of Ethics. Degrees must meet the following standards. The degree was from an institution that:

(1) Was a fully accredited member of one of the regional institutional accreditation bodies at the time the degree was granted;

(2) Offered a minimum of a master's degree;

(3) Was at least two years' duration and at least:

(a) 48 semester credit hours or 72 quarter hours for graduate degrees granted before October 1, 2014; or

(b) 60 semester credit hours or 90 quarter credit hours for graduate degrees granted on or after October 1, 2014.

(4) Included all coursework requirements set forth in OAR 833-060-0042 or 833-060-0052.

(5) Included a required supervised clinical experience for all students of no less than:

(a) 600 total clock hours to include 240 direct client contact hours, for graduate degrees granted before October 1, 2014; or

(b) 700 total clock hours to include 280 direct client contact hours, for graduate degrees granted on or after October 1, 2014.

(6) Facilitated a practicum and/or internship experience that:

(a) Had supervisory staff with a minimum of a master's degree in the program emphasis and with pertinent professional experience;

(b) Made provision for faculty monitoring of operations;

(c) Kept records of student-client contact hours including summary of student progress by the supervisor;

(d) Had a written agreement with the program and student specifying learning objectives; and

(e) Had a mechanism for program evaluation.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11; BLPCT 2-2012, f. 9-5-12, cert. ef. 10-1-12; BLPCT 3-2013(Temp), f. 10-7-13, cert. ef. 10-8-13 thru 3-31-14; BLPCT 1-2014, f. & cert. ef. 1-8-14

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Board of Optometry
Chapter 852

Rule Caption: Revises rules governing additional and multiple practice location licenses for optometrists.
Adm. Order No.: OPT 1-2014
Filed with Sec. of State: 1-3-2014
Certified to be Effective: 1-3-14
Notice Publication Date: 12-1-2013
Rules Amended: 852-010-0080, 852-050-0005, 852-050-0016
Subject: Overall: This rule change simplifies licensing requirements and eliminates fees for optometric physicians practicing at more than one location.

Additional practice location licenses will no longer be required, and all actively licensed optometric physicians will receive a portable multiple practice location license at no charge.

Division 10: 852-010-0080 — Eliminates fees for additional practice location license and portable multiple practice location license.

Division 50:

852-050-0005 — Removes requirement to purchase additional practice location license or portable multiple practice location license for those optometric physicians practicing elsewhere than primary practice location. Provides free portable multiple practice location license to all active licensees.

852-050-0016 — Removes requirement that active licensees hold additional practice location license for work elsewhere than primary practice location.

Rules Coordinator: Nancy DeSouza—(503) 399-0662, ext. 23

852-010-0080
Schedule of Fees

The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

(1) Active license (see also 852-050-0006):

(a) Annual renewal — $323, of which $298 is for the active optometry license and $25 is the Prescription Drug Monitoring Fund fee collected by the licensing body on behalf of the Oregon Health Authority.

(b) Additional copy of Portable Multiple Practice Location license – $25 each.

(c) Failure to meet renewal date: Late renewal fee — $50 first failure, $75 second failure, $100 subsequent failure(s) in any seven-year period.

(d) Lapse in CPR certification during licensing period — $50.

(e) Failure to notify the Board of practice locations or address of record — $50 first failure, $100 second failure, $200 subsequent failure(s) in any seven-year period.

(2) Inactive License (see also 852-050-0012):

(a) Annual renewal — $98.

(b) Late renewal fee — $15.

(c) Failure to notify the Board of address of record — $50 first failure, $100 second failure, $200 subsequent failure(s) in any seven-year period.

(3) Application for Licensure:

(a) Application for Examination and Licensure — $200.

(b) Application for Endorsement Examination and Licensure — $300.

(c) Application for TPA Certification — $75.

(d) Law and Administrative Rule Examination — $75.

(4) Other fees:

(a) Written official license verification — $20.

(b) List of licensees (electronic or printed) — $25 each Active/Inactive.

(c) Reactivation of license — $100.

(d) Reinstatement of license — $100.

(e) Law and Administrative Rules booklet — $25 (available online at no charge).

(f) Decorative Wall Certificate of Registration (optional, personalized and signed by Board) — $30.

(5) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, or other person or entity has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683 & 182 & 431
Stats. Implemented: ORS 683.270, 182.466 & 431.972
Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 2-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14

852-050-0005
License and Certificate of Registration

(1) Upon becoming authorized to practice Optometry in Oregon, the licensee will receive:

(a) One original license, printed with and valid only at the address of the reported primary practice location. This current original license must be displayed in plain sight at the primary practice location where it can be viewed by any patient; and

(b) One Portable Multiple Practice Location license, printed with the reported primary practice location address, which may be used to practice at an unlimited number of additional reported practice locations. A Board-issued Portable Multiple Practice Location license must be displayed in plain sight at each non-primary practice location in an area where it can be viewed by any patient. Optometric physicians who wish not to transport this portable license among locations may purchase additional copies of the Portable Multiple Practice Location license from the Board.

(2) The licensee's status (active or inactive, T, AT or ATI certified) will be printed by the Board on each license.

(3) The licensee must notify the Board of each practice location before commencing work at that location.

(4) While practicing at any location, a current license must be displayed in plain sight at all times in an area where it can be viewed by any patient.

(5) Photocopies of licenses are void and may not be displayed.

(6) The original license and all Portable Multiple Practice Location licenses expire and must be renewed during the annual license renewal period.

(7) Any optometric physician actively licensed to practice in Oregon may purchase an optional decorative wall certificate of registration personalized and signed by the Board.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Hist.: OE 11, f. 5-19-72, ef. 6-1-72; OE 14, f. 2-20-73, ef. 3-1-73; OE 2-1980, f. 12-23-80, ef. 12-29-80; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1994, f. & cert. ef. 7-22-94; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 4-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14

852-050-0016

Notice of Place of Practice

(1) Each active licensee must notify the Board in writing of each place of practice before engaging in practice at that location. If the licensee is practicing in a mobile facility or with a portable unit, the licensee must report the Base of Operations and specific locations of such practice to the Board in compliance with this rule.

(a) Within 14 days of termination of practice at any location, licensee must notify the Board in writing, including information on the custody of any patient records generated by the licensee at that location.

(b) Written notification from a licensee to the Board must be signed, and may be made by mail, fax or scanned e-mail attachment. Standard e-mail notification from the licensee's professional or personal e-mail will be accepted with an electronic signature that is composed of the licensee's full legal name and optometry license number, followed by the last four digits of the licensee's Social Security number.

(2) Failure to notify the Board in writing of practice location(s) and any address change(s) in accordance with (1) above may subject the licensee to a fee of $50 for the first failure; $100 for the second failure; $200 for each subsequent failure in any seven-year period.

Stat. Auth.: ORS 683

Stats. Implemented: ORS 683.070, 683.100, 683.120 & 683.270

Hist.: OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14

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Board of Pharmacy
Chapter 855

Rule Caption: Amend Schedule I rules to reestablish other cannabinioid receptor agonists and an exception clause.

Adm. Order No.: BP 11-2013(Temp)

Filed with Sec. of State: 12-20-2013

Certified to be Effective: 12-20-13 thru 6-18-14

Notice Publication Date:

Rules Amended: 855-080-0021

Subject: This temporary rule is needed to correct and restore text that was deleted in error on the October 28, 2013 rule filing. It reestablishes as Schedule I items, other cannabinoid receptor agonists that are not listed in OARs 855-080-0022 through 0026 (Schedule II through V) or that are not an FDA approved drug. In addition this temporary rule reestablishes certain exceptions.

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

855-080-0021

Schedule I

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

(a) 1,4-butanediol;

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

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

(A) Methylmethcathinone (Mephedrone);

(B) Methylenedioxypyrovalerone (MDPV);

(C) Methylenedioxymethylcathinone (Methylone);

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

(E) Fluoromethcathinone (Flephedrone);

(F) 4-Methoxymethcathinone (Methedrone).

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

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

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

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

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

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

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

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

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

(i) Adamantoylindoles: Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole

ring, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent. Examples of this structural class include but are not limited to: AM-1248 and AB-001;

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

(k) Adamantylindazolecarboxamides: Any compound containing an N-adamantyl-1-indazole-3-carboxamide with substitution at the nitrogen atom of the indazole ring, whether or not further substituted in the indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent. Examples of this structural class include but are not limited to: AKB48.

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

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

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

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

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

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035, 475.059 & 475.065

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

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Rule Caption: Amends Remote Dispensing Facility name and Pharmacist Score Transfer and Supervising Physician Dispensing Outlet fees

Adm. Order No.: BP 1-2014

Filed with Sec. of State: 1-3-2014

Certified to be Effective: 1-3-14

Notice Publication Date: 11-1-2013

Rules Amended: 855-041-4200, 855-110-0005, 855-110-0007

Subject: These rules amend the name of Remote Dispensing Facility to Remote Distribution Facility for clarification purposes from other similar named rules. In addition, these rules implement revenue surplus reductions pursuant to ORS 291.055(3) for Pharmacist Score Transfer and Supervising Physician Dispensing Outlet fees.

Copies of the full text of these rules can be obtained on the Board's website at:

www.pharmacy.state.or.us, or by calling the Board office (971) 673-0001.

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

855-041-4200

Remote Dispensing Facility (RDF)

(1) A pharmacy physically located in Oregon may make written application to operate an RDF.

(2) At its discretion, the Board may approve an application for registration as an RDF which includes the following:

(a) An operation plan;

(b) Policies and Procedures;

(c) A training plan;

(d) A quality assurance plan for ensuring that there is a planned and systematic process for the monitoring and evaluation of the quality and appropriateness of pharmacy services and for identifying and resolving problems; and

(e) The fee specified in OAR 855-110-0007(14).

(3) Notwithstanding the definition of "supervision by a pharmacist" in OAR 855-006-0005, supervision in an RDF may be accomplished by a pharmacist via an audio-visual technology from the applying pharmacy.

(4) Notwithstanding rules in this division and in Division 19, a Certified Pharmacy Technician who works in an RDF may have access to the facility without the physical presence of a pharmacist, but may only perform Board approved functions when under the supervision of a pharmacist.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 3-2011, f. & cert. ef. 4-18-11; Renumbered from 855-041-0645, BP 7-2012, f. & cert. ef. 12-17-12; BP 1-2014, f. & cert. ef. 1-3-14

855-110-0005

Licensing Fees

(1) Pharmacist license examination (NAPLEX) and re-examination fee — $50.

(2) Pharmacist jurisprudence (MPJE) re-examination fee — $25.

(3) Pharmacist licensing by reciprocity fee — $200*. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)). Fee reduction shall be effective retroactive to July 1, 2013.

(4) Pharmacist licensing by score transfer fee — $200*. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)).

(5) Intern license fee. Expires November 30 every two years — $50.

(6) Pharmacist:

(a) License fee. Expires June 30 annually — $120*. Delinquent renewal fee, (postmarked after May 31) — $50. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)).

(b) Electronic Prescription Monitoring Fund fee. Due by June 30 annually — $25. (This is a mandatory fee, required by ORS 431.972 that must be paid with the pharmacist license renewal fee).

(c) Workforce Data Collection fee. Due by June 30 biennially — $5. (This is a mandatory fee, it may be charged annually at $2.50 per year as required by OAR 409-026-0130 that must be paid with the pharmacist license renewal fee.

(7) Certification of approved provider of continuing education course fee, none at this time.

(8)(a) Pharmacy Technician license fee. (This is a one year non-renewable license unless under the age of 19) — $50.

(b) Under 19 years of age expires September 30 annually — $50. Delinquent renewal fee, (postmarked after August 31) — $20.

(9) Certified Pharmacy Technician:

(a) License fee. Expires September 30 annually — $50. Delinquent renewal fee, (postmarked after August 31) — $20.

(b) Workforce Data Collection fee. Due by June 30 biennially — $5. (This is a mandatory fee, it may be charged annually at $2.50 per year as required by OAR 409-026-0130 that must be paid with the Certified Pharmacy Technician license renewal fee.

Stat. Auth.: ORS 689.205 & 291.055

Stats. Implemented: ORS 689.135, 431.972 & 676.410

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. &ef. 4-3-80; 1PB 3-1980, f. 5-3-80, ef. 5-3-80 & 7-1-80; 1PB 2-1982, f. 3-8-82, ef. 4-1-82; 1PB 1-1984, f. & ef. 2-16-84; 1PB 3-1985, f. & ef. 12-2-85; PB 3-1988, f. & cert. ef. 5-23-88; PB 7-1989, f. & cert. ef. 5-1-89; PB 15-1989, f. & cert. ef. 12-26-89; PB 10-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; BP 2-1998, f. & cert. ef. 3-23-98; BP 1-2001, f. & cert. ef. 3-5-01; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 1-2006, f. & cert. ef. 6-9-06; BP 5-2006(Temp), f. & cert. ef. 8-25-06 thru 1-20-07; BP 9-2006, f. & cert. ef. 12-19-06; BP 5-2009, f. & cert. ef. 12-24-09; BP 5-2010(Temp), f. 5-3-10, cert. ef. 5-4-10 thru 10-30-10; BP 6-2010, f. & cert. ef. 6-29-10; BP 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11; BP 8-2011, f. & cert. ef. 12-15-11; BP 2-2013(Temp), f. 4-4-13, cert. ef. 4-5-13 thru 9-28-13; BP 3-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-28-13; BP 4-2013(Temp), f. & cert. ef. 7-9-13 thru 1-5-14; BP 7-2013, f. & cert. ef. 9-23-13; BP 1-2014, f. & cert. ef. 1-3-14

855-110-0007

Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic (including family planning clinics). Expires March 31 annually — $75*. Delinquent renewal fee (postmarked after February 28) — $25. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)). Fee reduction shall be effective retroactive to July 1, 2013.

(2) Drug Distribution Agent. Expires September 30 annually — $400. Delinquent renewal fee (postmarked after August 31) — $100.

(3) Drug Room (including correctional facility). Expires March 31 annually — $75*. Delinquent renewal fee (postmarked after February 28) — $75. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)). Fee reduction shall be effective retroactive to July 1, 2013.

(4) Manufacturer. Expires September 30 annually — $400. Delinquent renewal fee (postmarked after August 31) — $100.

(5) Medical Device, Equipment & Gas Class C. Expires January 31 annually — $50. Delinquent renewal fee (postmarked after December 31) — $25.

(6) Nonprescription Class A. Expires January 31 annually — $50. Delinquent renewal fee (postmarked after December 31) — $25.

(7) Nonprescription Class B. Expires January 31 annually — $50. Delinquent renewal fee (postmarked after December 31) — $25.

(8) Nonprescription Class D. Expires January 31 annually — $100. Delinquent renewal fee (postmarked after December 31) — $25.

(9) Prophylactic and/or Contraceptive Wholesaler and/or Manufacturer — $50*. Expires December 31 annually. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)). Fee reduction shall be effective retroactive to July 1, 2013.

(10) Re-inspection fee — $100. Applies to any re-inspection of a drug outlet occasioned to verify corrections of violations found in an initial inspection.

(11) Retail or Institutional Drug Outlet. Expires March 31 annually — $175*. Delinquent renewal fee (postmarked after February 28) — $75. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)). Fee reduction shall be effective retroactive to July 1, 2013.

(12) Wholesaler Class I, Expires September 30 annually — $400. Delinquent renewal fee (postmarked after August 31) — $100.

(13) Wholesaler Class II. Expires September 30 annually — $400. Delinquent renewal fee (postmarked after August 31) — $100.

(14) Remote Dispensing Machine or Remote Distribution Facility. Expires March 31 annually — $100. Due by February 28 annually.

(15) Charitable Pharmacy. Expires March 31 annually — $75. Delinquent renewal fee (postmarked after February 28) — $25.

(16) Home Dialysis. Expires March 31 annually — $175*. Delinquent renewal fee (postmarked after February 28) — $75. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)). Fee reduction shall be effective retroactive to July 1, 2013.

(17) Supervising Physician Dispensing Outlet. Expires March 31 annually — $175*. (*Temporary revenue surplus fee reduction pursuant to ORS 291.055(3)). Delinquent renewal fee (postmarked after February 28) — $75.

Stat. Auth.: ORS 689.205 & 291.055
Stats. Implemented: ORS 689.135, 689.774 & 2012 OL Ch. 34
Hist.: PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1998, f. & cert. ef. 3-23-98; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09; BP 6-2010, f. & cert. ef. 6-29-10; BP 5-2011(Temp), f. 6-24-11, cert. ef. 7-1-11 thru 12-27-11; BP 8-2011, f. & cert. ef. 12-15-11; BP 5-2012(Temp), f. & cert. ef. 6-19-12 thru 12-16-12; BP 6-2012, f. & cert. ef. 12-13-12; BP 3-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-28-13; BP 4-2013(Temp), f. & cert. ef. 7-9-13 thru 1-5-14; BP 7-2013, f. & cert. ef. 9-23-13; BP 1-2014, f. & cert. ef. 1-3-14

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2014.
Adm. Order No.: BLI 5-2013
Filed with Sec. of State: 12-16-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Amended: 839-025-0700
Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2014.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0700
Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2014, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2014, and the effective dates of the applicable special wage determination and rates amendments:

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2014, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060
Stats. Implemented: ORS.279C.815
Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. & ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09, BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef. 1-19-10; BLI 4-2010, f. & cert. ef 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10; BLI 17-2010, f. 6-29-10, cert. ef. 7-1-10; BLI 20-2010, f. & cert. ef. 10-1-10; BLI 24-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 2-2011, f. 3-25-11, cert. ef. 4-1-11; BLI 4-2011, f. 6-30-11, cert. ef. 7-1-11; BLI 7-2011, f. & cert. ef. 10-12-11; BLI 10-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 4-2012, f. & cert. ef. 3-29-12; BLI 6-2012, f. & cert. ef. 7-2-12; BLI 10-2012, f. 9-26-12, cert. ef. 10-1-12; BLI 13-2012, f. 12-28-12, cert. ef. 1-1-13; BLI 1-2013, f. & cert. ef. 3-25-13; BLI 2-2013, f. & cert. ef. 9-20-13; BLI 3-2013, f. 9-30-13, cert. ef. 10-1-13; BLI 5-2013, f. 12-16-13, cert. ef. 1-1-14

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Rule Caption: Implements legislation relating to direct deposit of wages and seasonal farmworker final wages
Adm. Order No.: BLI 6-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 839-001-0440, 839-001-0450
Subject: H.B. 2683 amended ORS 652.110 to permit an employer to pay an employee's wages without discount through the direct deposit of wages into the employee's account in a financial institution unless the employee requested to be paid by check. In addition, S.B. 677 amended ORS 652.145 to permit, under certain conditions, the payment of final wages to a seasonal farmworker by noon on the day after termination of employment. The amendments permit employers to make final payment of wages by direct deposit, unless an employee has requested to be paid by check, and to make payment

of wages at termination for seasonal farmworkers at noon on the day following termination if conditions established by S.B. 677 are met.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-001-0440
Special Provisions for Payment of Wages at Termination for Seasonal Farmworkers and Seasonal Reforestation Workers

(1) Unless the conditions described in ORS 652.145(1)(a) apply, when a seasonal farmworker or seasonal reforestation worker terminates employment because of discharge or mutual consent, all wages earned and unpaid become due and payable on the last day the employee works.

(2) When a seasonal farmworker or seasonal reforestation worker quits employment and gives the employer at least 48 hours notice of intent to quit, all wages earned and unpaid become due and payable on the last day the employee works.

(3) When a seasonal farmworker or seasonal reforestation worker quits employment and fails to give the employer at least 48 hours notice, all wages earned and unpaid become due and payable within 48 hours after the employee quits or on the next regularly scheduled payday, whichever comes first.

Stat. Auth.: ORS 651.060(4) & 652.165
Stats. Implemented: 2013 SB 677 & ORS 652.145
Hist.: BL 9-1996, f. & cert. ef. 10-8-96; BLI 6-2013, f. 12-18-13, cert. ef. 1-1-14

839-001-0450
Forwarding Wages and Direct Deposit of Wages at Termination of Employment

(1) All wages due and payable at termination of employment shall be forwarded by the employer to the employee to any address designated by the employee when the employee requests the employer to forward the wages.

(2) Unless an employee has made either a written or oral request that wages due be paid by check, all wages due and payable at termination of employment may be deposited, without discount, in the employee's account in a bank, national bank, mutual savings bank, credit union or savings and loan association located in Oregon.

Stat. Auth.: ORS 651.060(4) & 652.165
Stats. Implemented: 2013 HB 2683 & ORS 652.110
Hist.: BL 9-1996, f. & cert. ef. 10-8-96; BLI 6-2013, f. 12-18-13, cert. ef. 1-1-14

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Rule Caption: Removes references to the Wage and Hour Commission in rules governing child labor violations.
Adm. Order No.: BLI 7-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 839-019-0004, 839-019-0010, 839-019-0100
Subject: S.B. 135, 77th Leg., Reg. Session (Or. 2013) abolished the Wage and Hour Commission. The amendments to rules governing civil penalties for violations of child labor regulations are revised to remove references to the commission.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-019-0004
Definitions

As used in ORS 653.365 to 653.370 and in these rules, unless the context requires otherwise:

(1) "Bureau" means the Bureau of Labor and Industries of the State of Oregon.

(2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or the Commissioner's authorized deputies and officers.

(3) "Employ" shall have the same meaning as that which appears in ORS 653.010(2).

(4) "Employer" shall have the same meaning as that which appears in ORS 653.010(3).

(5) "Employment Certificate" means the employment certificate issued to employers for the employment of minors pursuant to ORS 653.307 and the employment permit referred to in ORS 653.360.

(6) "Minor" means any person under 18 years of age.

(7) "Person" includes the term "employer" as defined in section (4) of this rule and school districts required to comply with ORS 653.307(3).

(8) "Violation" means a transgression of any statute, rule or order, or any part thereof, and includes both acts and omissions.

(9) "Willful" means intentional and includes failure to act. A person commits a willful act when the person knows what she/he is doing, intends to do what she/he is doing and is a free agent.

(10) "Work Permit" means the employment certificate issued to minors pursuant to ORS 653.307.

Stat. Auth.: ORS 651.060(4) & 653.525
Stats. Implemented: 2013 SB 135, ORS 653.370
Hist.: BL 5-1988, f. & cert. ef. 4-12-88; BLI 7-2013 f. 12-18-13, cert. ef. 1-1-14

839-019-0010
Violations for Which a Penalty May Be Imposed

The Commissioner may impose a civil penalty for violations of any of the following statutes, administrative rules and orders:

(1) Violation of any provision of ORS 653.305 to 653.370.

(2) Violation of any provision of OAR 839-021-0001 to 839-021-0500.

(3) Violation of any term or condition of an Order issued pursuant to any violation of ORS 653.305 to 653.370 and OAR 839-021-0001 to 839-021-0500.

Stat. Auth.: ORS 651.060(4) & 653.525
Stats. Implemented: 2013 SB 135, ORS 653.370
Hist.: BL 5-1988, f. & cert. ef. 4-12-88; BLI 7-2013 f. 12-18-13, cert. ef. 1-1-14

839-019-0100
Exemptions

The provisions of OAR 839-019-0000 to 839-019-0025 do not apply when minors are employed under the following circumstances:

(1) The minor is employed by the parent of the minor;

(2) The minor is employed by a person standing in the place of the parent of the minor and who has custody of the minor. For minors employed in agriculture, "a person standing in the place of the parent of the minor" is defined by OAR 839-021-0297(2).

Stat. Auth. ORS 651.060(4) & 653.525
Stats. Implemented: 2013 SB 135, ORS 653
Hist.: BL 5-1988, f. & cert. ef. 4-12-88; BL 7-1997, f. & cert. ef. 11-13-97; BLI 7-2013 f. 12-18-13, cert. ef. 1-1-14

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Rule Caption: Removes references to the Wage and Hour Commission; clarifies timing of the meal period
Adm. Order No.: BLI 8-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 839-020-0004, 839-020-0025, 839-020-0040, 839-020-0050, 839-020-0070, 839-020-1010
Subject: S.B. 135, 77th Leg., Reg. Session (Or 2013) abolished the Wage and Hour Commission, which necessitates the removal of references to the commission from OAR 839, division 20. In addition, 839-020-0050 is amended to provide additional clarification concerning the timing of meal periods for employees subject to the provisions of the state's minimum wage law.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-020-0004
Definitions

As used in ORS 653.010 to 653.261 and these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Wage and Hour Division.

(2) "Adult" means an individual of 18 years of age or more.

(3) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

(4) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. "Agricultural employment" is employment in "Agriculture" as herein defined.

(5) "Bureau" means Bureau of Labor and Industries.

(6) "Casual basis" as used in ORS 653.020(2) and these rules means employment which is irregular and intermittent and which is not performed by an individual whose vocation is providing domestic services.

(7) "Child care service person" means an individual who performs child care services in the home of the individual or the child and who during any part of a 24 hour period provides custodial care and protection to infants or children.

(8) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(9) "Commissions" or "pay on a commission basis" means payment based on a percentage of total sales, or of sales in excess of a specified amount, or on a fixed allowance per unit agreed upon as a measure of accomplishment or on some other formula and may be the sole source of compensation or payment in addition to other compensation.

(10) "Companionship services", as used in ORS 653.020(14) and in these rules, means those services which provide fellowship, care and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the elderly or infirm person such as meal preparation, bed making, washing of clothes and other similar services. They may also include the performance of general household work: provided, however, that such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. Individuals employed in domestic service employment in or about a family home to provide companionship services are not required to be employed by the individual for whom they provide such services. The term "companionship services" does not include services relating to the care and protection of the elderly or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a family home.

(11) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.

(12) "Domestic service" means services of a household nature performed by an employee in or about a family home (permanent or temporary) of the person by whom the employee is employed. The term includes, but is not limited to, employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, nurses, janitors, gardeners, and companions to the elderly and infirm.

(13) "Domicile" means the permanent residence of a person or the place to which that person intends to return even though that person may actually reside elsewhere.

(14) "Employed on a seasonal basis at", as used in ORS 653.020(10) and in these rules, means employment that occurs during the time the organized camp provides services to campers at the camp site where campers are located. The term includes employment at the camp site in duties preparatory to the opening or closing of the camp site. The term includes employment during the camping season only and does not include full time, year around employment.

(15) "Employer" has the same meaning as that in ORS 653.010(3).

(16) "Fair market value" means an amount not to exceed the retail price customarily paid by the general public for the same or similar meals, lodging or other facilities or services provided to the employee by the employer. In determining the fair market value of meals, lodging and other facilities and services, the bureau will be guided by these rules and by Title 29, CFR Part 531 — Wage Payments under the Fair Labor Standards Act of 1938, where applicable.

(17) "Family home", as used in ORS 653.020(2) and this section, means a residence, the purpose of which is to provide an abode for the owner or renter of the residence and family members of the owner or renter. For example, a boarding house or an adult foster care home are not family homes for purposes of ORS 653.020(2) and these rules. However, when casual domestic service work is performed in structures where the owner or renter resides and operates a business, such work may qualify as exempt under ORS 653.020(2) depending upon all the facts of the particular arrangement.

(18) "Homeworker" means any employee suffered or permitted to produce goods or services for an employer in or about a home, apartment or room in a residence in which that employee or other employees of an employer resides, regardless of the source of the materials used by the homeworker in such production.

(19) "Hours worked" means all hours for which an employee is employed by and required to give to the employer and includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place and all time the employee is suffered or permitted to work. "Hours worked" includes "work time" as defined in ORS 653.010(11).

(20) "Immediate family" means grandfather, grandmother, father, mother, son, daughter, sister, brother, uncle or aunt.

(21) "Minimum wage" means the rate of pay prescribed in ORS 653.025 and 653.030.

(22) "Minor" means an individual of 17 years of age or less.

(23) "Organized camp" has the same meaning as that in ORS 653.010(6).

(24) "Primary duty" means, as a general rule, the major part, or over 50 percent, of an employee's time. However, a determination of whether an employee has management as the employee's primary duty must be based on all the facts of a particular case. Time alone is not the sole test and in situations where the employee does not spend over 50 percent of the employee's time in managerial duties, the employee might have management as a primary duty if other pertinent factors support such a conclusion. Factors to be considered include, but are not limited to, the relative importance of the managerial duties as compared with other duties, the frequency with which the employee exercises discretionary powers, the relative freedom from supervision and the relationship between the salary paid the employee and wages paid other employees for the kind of non-exempt work performed by the supervisor.

(25) "Primary school" means a learning institution containing any combination of grades Kindergarten - 8 or age level equivalent.

(26) "Reside" means a personal presence at some place of abode with no present intention of definite and early removal and with the intent to remain for an undetermined period, but not necessarily combined with the intent to stay permanently.

(27) "Resident manager" means an employee of an adult foster home who is domiciled at the home and who is directly responsible for the care of residents in the home on a day to day basis.

(28) "Salary" means a predetermined amount constituting all or part of the employee's compensation paid for each pay period of one week or longer (but not to exceed one month). The predetermined amount may not be any amount less than the equivalent of a monthly salary calculated by multiplying the wage set pursuant to ORS 653.025 by 2,080 hours per year, then dividing by 12 months.

(29) "Salary basis" means a salary as defined in section (28) of this rule, which is not subject to deduction because of lack of work for part of a work week, however, deductions for absences of one day or more may be made if the employee is absent for other reasons. Deductions may not be made for absences of less than one day, except as permitted for employers covered by the federal Family and Medical Leave Act of 1993, Public Law 103-3, for part-day absences due to leave pursuant to that law. Employees who are not paid for workweeks in which they performed no work are considered to be on a salary basis provided they are paid on a salary basis in workweeks when work is performed.

(a) Payment of additional compensation is not inconsistent with the salary basis of payment.

(b) Compensation paid in the form of fees is not inconsistent with the salary basis of payment, provided the fees paid in each pay period are not less than the amount required to be paid pursuant to ORS 653.025 and meet the requirements for fee payments under Title 29, Code of Federal Regulations, Part 541.605 and related regulations as amended April 23, 2004.

(30) "Secondary school" means a learning institution containing any combination of grades 9–12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(31) "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

(32) "Willfully" means knowingly. An action is done knowingly when it is undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person "should have known the thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts willfully if the person has the means to inform himself or herself but elects not to do so. For purposes of these rules, the employer is presumed to know the requirements of ORS 653.010 to 653.261 and these rules.

Stat. Auth.: ORS 651.060(4) & 653.040

Stats. Implemented: 2013 SB 135, ORS 653

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 3-1992, f. & cert. ef. 3-2-92; BL 5-1993(Temp), f. 5-7-93, cert. ef. 5-14-93; BL 12-1993, f. 10-29-93, cert. ef. 11-1-93; BL 9-1996, f. & cert. ef. 10-8-96; BL 9-1997, f. & cert. ef. 11-13-97; BLI 1-2002, f. & cert. ef. 1-9-02; TIC 3-2006, f. & cert. ef. 11-24-06; BLI 41-2006(Temp), f. & cert. ef. 11-27-06 thru 5-23-07; BLI 11-2007, f. 5-10-07, cert. ef. 5-15-07; BLI 15-2010, f. 5-25-10, cert. ef. 6-1-10; BLI 8-2013, f. 12-18-13, cert. ef. 1-1-14

839-020-0025
Deductions for Meals, Lodging, Facilities or Other Services

(1) The fair market value of meals, lodging and other facilities or services furnished by the employer to the employee for the private benefit of the employee may be deducted from the minimum wage. The employer has the burden of establishing the fair market value (See also OAR 839-020-0004(16)).

(2) "Fair market value" may be established in either of the following ways:

(a) The amount actually and customarily charged for comparable meals, lodging, facilities or services to consumers who are not employees of the employer; or

(b) The actual cost to the employer in purchasing, preparing or providing the meals, lodging or other facilities or services.

(3) The provisions of section (1) of this rule do not prohibit the payment of wages as meals, lodging and other facilities or services furnished to employees either as additions to wages or as items for which deductions from wages will be made. These provisions apply to all facilities or services furnished by the employer as compensation to the employee regardless of whether the employer calculates charges for such facilities or services as additions to or deductions from wages. In order for the employer to be able to claim credit toward the minimum wage for providing meals, lodging or other facilities or services furnished to an employee, the deduction of these costs from the employee's wages must have been authorized by the employee in writing, the deduction must have been for the private benefit of the employee, and the deduction must be recorded in the employer's books, or the deduction of these costs must be authorized by a collective bargaining agreement, in accordance with the provisions of ORS 652.610.

(4) Full settlement of sums owed to the employer by the employee because of meals, lodging and other facilities or services furnished by the employer shall be made on each regular payday.

(5) The provisions of section (1) of this rule apply only when the following conditions are continuously met:

(a) The employer has met the conditions of ORS 652.610(3); and

(b) The employee actually receives the meals, lodging or other facilities or services; and

(c) The meals, lodging or other facilities or services are furnished by the employer for the private benefit of the employee; and

(d) The meals, lodging or other facilities and services are provided in a lawful manner. No deduction from the minimum wage may be made for alcohol provided without applicable permits, for illegal substances or services, such as drugs or prostitution, or for any other substance, facility or service which is provided in a manner determined by a court or appropriate administrative agency to have been unlawful.

(6) As used in this rule, meals actually received by the employee and furnished by the employer are regarded as being for the private benefit of the employee except when meal expenses are incurred by an employee while traveling away from the employee's home on the employer's business.

(7) Lodging or other facilities or services are furnished for the private benefit of the employee when such lodging or other facilities or services are not required by the employer. For purposes of this rule, lodging or other facilities or services are required by the employer when:

(a) Acceptance of the lodging or other facilities or services is a condition of the employee's employment; or

(b) The expense is incurred by an employee who must travel away from the employee's home on the employer's business; or

(c) The acceptance of the lodging or other facilities or services is involuntary or coerced; or

(d) The provision of lodging or other facilities or services is necessary in order for the employer to maintain an adequate work force at the times and locations the employer needs them.

Stat. Auth.: ORS 651.060(4) & 653.040
Stats. Implemented: 2013 SB 135, ORS 653
Hist.: BL 1-1987, f. & ef. 1-12-87; BL 5-1991(Temp), f. 5-15-91, cert. ef. 5-17-91; BL 3-1992, f. & cert. ef. 3-2-92; BL 9-1996, f. & cert. ef. 10-8-96; BLI 15-1999, f. & cert. ef. 10-6-99; BLI 8-2013, f. 12-18-13, cert. ef. 1-1-14

839-020-0040
Hours Worked — Generally

(1) OAR 839-020-0040 to 839-020-0047 deals with hours worked as defined by OAR 839-020-0004(19) and discusses principles involved in determining what constitutes working time for purposes of ORS 653.010 to 653.261 and these rules.

(2) Work requested or required is considered work time. Work not requested, but suffered or permitted is considered work time.

(3) Work performed for the employer but away from the employer's premises or job site is considered work time. If the employer knows or has reason to believe that work is being performed, the time spent must be counted as hours worked.

(4) It is the duty of the employer to exercise control and see that the work is not performed if it does not want the work to be performed. The mere promulgation of a policy against such work is not enough.

Stat. Auth.: ORS 651.060(4) & 653.040
Stats. Implemented: 2013 SB 135, ORS 653.010 - 653.261
Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 8-2013, f. 12-18-13, cert. ef. 1-1-14

839-020-0050
Meal and Rest Periods

(1) The purpose of this rule is to prescribe minimum meal periods and rest periods for the preservation of the health of employees.

(2)(a) Except as otherwise provided in this rule, every employer shall provide to each employee, for each work period of not less than six or more than eight hours, a meal period of not less than 30 continuous minutes during which the employee is relieved of all duties.

(b) Except as otherwise provided in this rule, if an employee is not relieved of all duties for 30 continuous minutes during the meal period, the employer must pay the employee for the entire 30-minute meal period.

(c) An employer is not required to provide a meal period to an employee for a work period of less than six hours. When an employee's work period is more than eight hours, the employer shall provide the employee the number of meal periods listed in Appendix A of this rule.

(d) Timing of the meal period: If the work period is seven hours or less, the meal period is to be taken after the conclusion of the second hour worked and completed prior to the commencement of the fifth hour worked. If the work period is more than seven hours, the meal period is to be taken after the conclusion of the third hour worked and completed prior to the commencement of the sixth hour worked.

(3) If an employer does not provide a meal period to an employee under section (2) of this rule, the employer has the burden to show that:

(a) To do so would impose an undue hardship on the operation of the employer's business as provided in section (4), and that the employer has complied with section (5) of this rule;

(b) Industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which employees are relieved of all duty; or

(c) The failure to provide a meal period was caused by unforeseeable equipment failures, acts of nature or other exceptional and unanticipated circumstances that only rarely and temporarily preclude the provision of a meal period required under section (2) of this rule. If an employee is not relieved of all duties for 30 continuous minutes during the meal period, the employer must pay the employee for the entire 30-minute meal period.

(4) As used in section (3)(a) of this rule, "undue hardship" means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business. For the purpose of determining whether providing a meal period requires significant difficulty or expense, the following factors may be considered:

(a) The employer's cost of complying with the requirement to provide a meal period under section (2) of this rule.

(b) The overall financial resources of the employer.

(c) The number of persons employed at the particular worksite and their qualifications to relieve the employee; the total number of persons employed by the employer; and the number, type and geographic separateness of the employer's worksites.

(d) The effect of providing the meal period required under section (2) of this rule on worksite operations involving: the startup or shutdown of machinery in continuous-operation industrial processes; intermittent and unpredictable workflow not in the control of the employer or employee; the perishable nature of materials used on the job; and the safety and health of other employees, patients, clients or the public.

(5) When an employer does not provide a meal period to an employee under section (2) of this rule, and is able to make the required showing under section (3)(a) of this rule:

(a) The employer shall instead provide the employee adequate paid periods in which to rest, consume a meal, and use the restroom; and

(b) The employer shall first provide to each employee a notice provided by the commissioner of the Bureau of Labor and Industries regarding rest and meal periods in the language used by the employer to communicate with the employee. The employer shall retain and keep available to the commissioner a copy of the notice for the duration of the employee's employment and for no less than six months after the termination date of

the employee. Notices that comply with this subsection are available upon request from the bureau. This subsection takes effect on March 16, 2009.

(6)(a) Except as provided in subsection (b) of this section, every employer shall provide to each employee, for each segment of four hours or major part thereof worked in a work period, a rest period of not less than ten continuous minutes during which the employee is relieved of all duties, without deduction from the employee's pay.

(A) As the nature of the work allows, the employer shall provide the rest period approximately in the middle of each segment of four hours or major part thereof worked in a work period. When the employee's work period is more than eight hours, the employer shall provide the employee the number of rest periods listed in Appendix A of this rule.

(B) The employer shall provide rest periods in addition to and taken separately from the time provided for a meal period. An employer may not require or allow an employee to add the rest period to a meal period or deduct the rest period from the beginning or end of the employee's work period to reduce the overall length of the work period.

(C) An employer has the burden to show that the employer provided the rest periods required under this section.

(b) An employer is not required to provide a rest period to an employee when all of the following conditions are met:

(A) The employee is 18 years of age or older;

(B) The employee works less than five hours in any period of 16 continuous hours;

(C) The employee is working alone;

(D) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and

(E) The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.

(7) The provisions of this rule regarding meal periods and rest periods may be modified by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered into by the employees specifically prescribe rules concerning meal periods and rest periods.

(8)(a) Pursuant to the provisions of ORS 653.261(5), if an employer agrees, an employee may waive a meal period if all of the following conditions are met:

(A) The employee is employed to serve food or beverages, receives tips, and reports the tips to the employee's employer;

(B) The employee is at least 18 years of age;

(C) The employee voluntarily requests to waive the employee's meal periods no less than seven calendar days after beginning employment;

(D) The employee's request to waive the employee's meal periods is in writing in the language used by the employer to communicate with the employee, on a form provided by the commissioner, and is signed and dated by both the employee and employer;

(E) The employer retains and keeps available to the commissioner a copy of the employee's request to waive the employee's meal period during the duration of the employee's employment and for no less than six months after the termination date of the employee;

(F) The employee is provided with a reasonable opportunity to consume food during any work period of six hours or more while continuing to work;

(G) The employee is paid for any and all meal periods during which the employee is not completely relieved of all duties;

(H) The employee is not required to work longer than eight hours without receiving a 30-minute meal period during which the employee is relieved of all duties;

(I) The employer makes and keeps available to the commissioner accurate records of hours worked by each employee that clearly indicate whether or not the employee has received meal periods; and

(J) The employer posts a notice provided by the commissioner regarding rest and meal periods in a conspicuous and accessible place where all employees can view it.

(b) Either the employer or employee may revoke the agreement for the employee to waive the employee's meal periods by providing at least seven (7) calendar days written notice to the other.

(c) Notwithstanding subsection (b) of this section, an employee who has requested to waive meal periods under this section may request to take a meal period without revoking the agreement to waive such periods. The request to take a meal period must be submitted in writing to the employer no less than 24 hours prior to the meal period requested.

(d) An employer may not coerce an employee into waiving a meal period.

(e) An employer will be considered to have coerced an employee into waiving the employee's meal period under the following circumstances:

(A) The employer requests or requires an employee to sign a request to waive meal periods;

(B) An employee is required to waive meal periods as a condition of employment at the time of hire or at any time while employed;

(C) The employer requests or requires any person, including another employee, to request or require an employee to waive meal periods; or

(D) The employee signs a form requesting to waive meal periods prior to being employed for seven calendar days.

(f) Employee waiver forms and notices regarding rest and meal periods that comply with this section are available upon request from the bureau.

(9) Rest and meal period requirements specific to minors under 18 years of age are provided in OAR 839-021-0072.

(10) As used in this rule:

(a) "Work period" means the period between the time the employee begins work and the time the employee ends work.

(b) "Work period" includes a rest period as provided in section (6) of this rule, and any period of one hour or less (not designated as a meal period) during which the employee is relieved of all duties.

(c) "Work period" does not include a meal period unless the meal period is paid work time as provided in section (2) or (5) of this rule.

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

Stat. Auth.: ORS 651.060(4) & 653.040

Stats. Implemented: ORS 653

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90; BL 9-1996, f. & cert. ef. 10-8-96; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 21-2008, f. & cert. ef. 7-8-08; BLI 29-2008(Temp), f. 9-22-08, cert. ef. 9-23-08 thru 3-22-09; BLI 3-2009, f. & cert. ef. 1-12-09; BLI 15-2010, f. 5-25-10, cert. ef. 6-1-10; BLI 8-2013, f. 12-18-13, cert. ef. 1-1-14

839-020-0070

Homework — Generally

(1) Homeworkers as defined by OAR 839-020-0004(18) will be paid not less than the applicable minimum wage pursuant to ORS 653.025 for all hours suffered or permitted to work.

(2) Homeworkers will be paid no less than time and one-half their regular rate of pay for all hours worked in excess of 40 hours in a work week pursuant to OAR 839-020-0030.

(3) General record keeping requirements, as provided in these rules, OAR 839-020-0080(1) through (3), are applicable to homeworkers.

(4) Employer employing homeworkers are subject to the provisions of OAR 839-020-0083 and 839-020-0085 concerning record availability and posting requirements.

Stat. Auth.: ORS 651.060(4) & 653.040

Stats. Implemented: 2013 SB 135 & ORS 653

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 8-2013, f. 12-18-13, cert. ef. 1-1-14

839-020-1010

Violations for Which a Civil Penalty May Be Assessed

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

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

(b) Failure to pay overtime for all hours worked over forty (40) in a week in violation of OAR 839-020-0030.

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

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

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

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

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

(h) Failure to keep summaries of ORS 653.010 to 653.261 and rules promulgated thereto by the commissioner posted in a conspicuous and accessible place in or about the premises where such employees are employed in violation of ORS 653.050;

(i) Discharging or discriminating in any other manner against any employee in violation of ORS 653.060:

(A) Because the employee has made complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261;

(B) Because the employee has caused to be instituted or is about to cause to be instituted any proceedings under or relating to ORS 653.010 to 653.261; or

(C) Because the employee has testified or is about to testify in any such proceedings.

(j) Failure to provide to each employee appropriate meal periods in violation of OAR 839-020-0050;

(k) Coercing an employee into waiving a meal period in violation of ORS 653.261(5)(b);

(l) Failure to provide to each employee appropriate rest periods in violation of OAR 839-020-0050;

(m) Intentional failure to provide a reasonable rest period to accommodate an employee who needs to express breast milk in violation of ORS 653.077 and OAR 839-020-0051;

(n) Requiring any employee to lift excessive weights in violation of OAR 839-020-0060; or

(o) Employing any employee to work under any conditions in violation of OAR 839-020-0065.

(2) Except as provided in ORS 653.261(5)(c), the civil penalty for any one violation will not exceed $1000. The actual amount of the civil penalty will depend on all the facts and circumstances referred to in OAR 839-020-1020.

(3) The civil penalties set out in this rule will be in addition to any other penalty assessed or imposed by law or rule.

Stat. Auth.: ORS 651.060(4) & 653.040

Stats. Implemented: 2013 SB 135 & ORS 653

Hist.: BL 9-1997, f. & cert. ef. 11-13-97; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 15-2002, f. 10-17-02, cert. ef. 10-18-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 8-2013, f. 12-18-13, cert. ef. 1-1-14

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Rule Caption: Implements legislation related to prevailing wage law; clarifies fringe benefit contribution requirements

Adm. Order No.: BLI 9-2013

Filed with Sec. of State: 12-18-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013

Rules Amended: 839-025-0004, 839-025-0010, 839-025-0013, 839-025-0020, 839-025-0035, 839-025-0043, 839-025-0085, 839-025-0090, 839-025-0095, 839-025-0230, 839-025-0530

Subject: The 2013 Regular Session of the Oregon Legislature enacted two pieces of legislation which require amendments to be made to the administrative rules governing the payment of prevailing wage rates on public works projects. First, the rule amendments add any member or manager of a limited liability company who is responsible for certain violations of the prevailing wage rate regulations to those persons who may be made ineligible to receive a public works contract. Second, the definition of a public works is modified to include projects for the construction, reconstruction, major renovation or painting of a road, highway, building, structure, or improvement of any type that occurs, with or without using funds of a public agency, on real property that the Oregon University System or an institution of the Oregon University System owns. Additionally, revisions are made to rules addressing the frequency of payments to fringe benefit plans. Under existing rule, contributions made by contractors to a bona fide fringe benefit plan are required to be made on a regular basis and not less often than quarterly. 839-025-0043 is amended to define the terms "regular basis" and "not less often than quarterly;" 839-025-0530 makes clear that the failure to contribute fringe benefit wages timely to a plan on a "regular basis" and "not less often than quarterly" is a violation of the prevailing wage rate regulations for which a civil penalty may be assessed. 839-025-0035(8) clarifies that persons employed on a public works project for personal services, as that term is defined in ORS 279C.100(5), are not workers required to be paid the prevailing rate of wage.

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

839-025-0004

Definitions

As used in OAR chapter 839, division 025, unless the context requires otherwise:

(1) "Apprentice" means:

(a) A person who is individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Office of Apprenticeship (OA), or with any state apprenticeship agency recognized by OA, and who is employed by a registered training agent pursuant to ORS 660.010(10) and is working pursuant to the standards of the apprentice's apprenticeship program; or

(b) A person in probationary employment as an apprentice in such an apprenticeship program, but who is not individually registered in the program, but who has been certified by the OA or a state apprenticeship agency to be eligible for probationary employment as an apprentice, and who is employed by a registered training agent pursuant to ORS 660.010 (10) and is working pursuant to the standards of the apprentice's apprenticeship program.

(2) "The Basic Hourly Rate of Pay" or "Hourly Rate" means the rate of hourly wage, excluding fringe benefits, paid to the worker.

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

(4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee.

(5) "Construction" means the initial construction of buildings and other structures, or additions thereto, and of highways and roads. "Construction" does not include the transportation of material or supplies to or from the public works project by employees of a construction contractor or construction subcontractor.

(6) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.

(7) "Employ" includes to suffer or permit to work.

(8) "Fringe benefits" means the amount of:

(a) The rate of contribution irrevocably made on a "regular basis" and "not less often than quarterly," as those terms are defined in OAR 839-025-0043, by a contractor or subcontractor to a trustee or to a third person pursuant to a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits. Other bona fide fringe benefits do not include reimbursement to workers for meals, lodging or other travel expenses, nor contributions to industry advancement funds (CIAF for example).

(9)(a) "Funds of a public agency" includes any funds of a public agency that are directly or indirectly used, as described below.

(A) "Directly used funds of a public agency" means revenue, money, or that which can be valued in money collected for a public agency or derived from a public agency's immediate custody and control, and, except as provided in ORS 279C.810(1)(a)(H) and (J) and subsection (b) of this section, includes but is not limited to any money loaned by a public agency, including the loan of proceeds from the sale of conduit or pass-through revenue bonds for the specific purpose of financing a project, and public property or other assets used as payment for all or part of a project.

(B) "Indirectly used funds of a public agency" means, except as provided in subsection (b) of this section, that a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter. A public agency does not indirectly use funds of a public agency when it elects not to collect land rent that is due. Examples of when an agency "ultimately bears the cost" of all or part of a project include but are not limited to:

(i) Amortizing the costs of construction over the life of a lease and paying these costs with funds of a public agency during the course of the lease;

(ii) A public agency subsidizing the costs of construction that would normally be borne by the contractor;

(iii) Using insurance proceeds that belong to a public agency to pay for construction. Insurance proceeds represent "money collected for the

custody and control of a public agency" and therefore are funds of a public agency, whether the contractor obtains payment directly from the insurance company or the public agency; or

(iv) Using or creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the public agency.

(b) "Funds of a public agency" does not include:

(A) Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;

(B) Building and development permit fees paid or waived by the public agency;

(C) Tax credits or tax abatements;

(D) Land that a public agency sells to a private entity at fair market value;

(E) The difference between:

(i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and

(ii) The fair market value of the land if the land is not subject to the limitations described in subparagraph (i) of this paragraph;

(F) Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;

(G) Staff resources of the public agency used to design or inspect one or more components of a project;

(H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a public improvement;

(I) Value added to land as a consequence of a public agency's site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or

(J) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS Chapter 289 or 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.

(10) "Housing" has the meaning given that term in ORS 456.055.

(11) "Major renovation" means the remodeling or alteration of buildings and other structures within the framework of an existing building or structure and the alteration of existing highways and roads, the contract price of which exceeds $50,000.

(12) "Nonprofit organization," as used in section (9)(b)(A) of this rule, means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(13) "Normal business hours" means the hours during which the office of the contractor or subcontractor is normally open for business. In the absence of evidence to the contrary, the Division will consider the hours between 8:00 a.m. and 5:00 p.m., excluding the hours between 12:00 noon and 1:00 p.m., on weekdays as normal business hours.

(14) "Overtime" means all hours worked:

(a) On Saturdays;

(b) On the following legal holidays:

(A) Each Sunday;

(B) New Year's Day on January 1;

(C) Memorial Day on the last Monday in May;

(D) Independence Day on July 4;

(E) Labor Day on the first Monday in September;

(F) Thanksgiving Day on the fourth Thursday in November;

(G) Christmas Day on December 25.

(c) Over 40 hours in a week; and either

(d) Over eight (8) hours in a day; or

(e) Over 10 hours in a day provided:

(A) The employer has established a work schedule of four consecutive days (Monday through Thursday or Tuesday through Friday) pursuant to OAR 839-025-0034; and

(B) The employer operates in accordance with this established work schedule.

(15) "Overtime rate" means the basic hourly rate of pay multiplied by one and one-half.

(16) "Overtime wages" means the overtime hours worked multiplied by the overtime rate.

(17) "Person" includes a public or private corporation, a partnership, a sole proprietorship, a limited liability company, a government or governmental instrumentality.

(18) "Prevailing wage rate claim" means a claim for wages filed by a worker with the Division.

(19) "Public agency" means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any instrumentality thereof organized and existing under law or charter.

(20)(a) "Public work," "public works" or "public works project" includes but is not limited to:

(A) Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest;

(B) A project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and $750,000 or more of funds of a public agency; or

(C) A project for the construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency; or

(D) A device, structure, or mechanism, or a combination of devices, structures, or mechanisms that:

(i) Uses solar radiation as a source for generating heat, cooling, or electrical energy; and

(ii) Is constructed or installed, with or without using funds of a public agency, on land, premises, structures, or buildings that a public agency owns, regardless of the total project cost; or

(E) A project for the construction, reconstruction, major renovation or painting of a road, highway, building, structure, or improvement of any type that occurs, with or without using funds of a public agency, on real property that the Oregon University System or an institution in the Oregon University System owns.

(b) "Public works" does not include:

(A) The reconstruction or renovation of privately owned property that is leased by a public agency; or

(B) The renovation of publicly owned real property that is more than 75 years old by a private nonprofit entity if:

(i) The real property is leased to the private nonprofit entity for more than 25 years;

(ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost of the renovation; and

(iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 1, 2007.

(21) "Public works contract" or "contract" means any contract, agreement or understanding, written or oral, into which a public agency enters for any public work.

(22) "Reconstruction" means highway and road resurfacing and rebuilding, the restoration of existing highways and roads, and the restoration of buildings and other structures.

(23) "Reconstruction or renovation of privately owned property which is leased by a public agency" includes improvements of all types within the framework or footprint of an existing building or structure.

(24)(a) "Residential construction project" means a public works project for the construction, reconstruction, major renovation or painting of a single family house or apartment building of not more than four (4) stories in height and all incidental items such as site work, parking areas, utilities, streets and sidewalks pursuant to the U.S. Department of Labor's "All Agency Memorandum No. 130" -- "Application Of The Standard of Comparison 'Projects Of a Character Similar' Under the Davis-Bacon and Related Acts" dated March 17, 1978. (See Appendix 6.)

(b) Notwithstanding the provisions of subsection (a) of this section, where it is determined that a different definition of "residential construction" has been adopted by local ordinance or code, or that the prevailing practice of a particular trade or occupation regarding what is considered "residential construction" differs from the U.S. Department of Labor definition of residential construction, the commissioner may consider such information in determining a project to be a "residential construction project."

(25) "Site of work" is defined as follows:

(a) The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has

been completed, and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site.

(b) Except as provided in subsection (c) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, are part of the site of work provided they are dedicated exclusively, or nearly so, to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Such facilities which are established by a supplier of materials for the project after the opening of bids are deemed to be dedicated exclusively to the performance of the contract or project.

(c) Not included in the site of work are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, and similar facilities of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the site of work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract or project.

(26) "Special wage determination" means a wage determination made at the request of a public agency and which is applicable only to specific job classes. A special wage determination is issued in those cases where there is no current wage determination applicable to specific job classes and the use of such job classes is contemplated on a public works project.

(27) "Trade" or "occupation" is defined in accordance with the prevailing practices of the construction industry in Oregon.

(28) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Office of Apprenticeship (OA), as meeting its standards for on-the-job training programs, and which has been so certified by that office, and who is employed by a registered training agent pursuant to ORS 660.010(10) and is working pursuant to the standards of the trainee's program.

(29) "Training agent" means an employer that is registered with a local joint committee and the Apprenticeship and Training Division of the Bureau of Labor and Industries.

(30) "Wage determination" includes the original decision and any subsequent amendments made by the commissioner in accordance with ORS 279C.815.

(31) "Wages" or "Prevailing Wages" means the basic hourly rate of pay and fringe benefits as defined in sections (2) and (8) of this rule.

(32) "Worker" means a person employed on a public works project and whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental, professional or managerial. The term "worker" includes apprentices, trainees and any person employed or working on a public works project in a trade or occupation for which the commissioner has determined a prevailing rate of wage. (See OAR 839-025-0035.)

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

Stat. Auth.: Stat. Auth.: ORS 651.060(4), 279C.808

Stats. Implemented: H.B. 2646, 77th Leg., Reg. Ses. (Or2013), ORS 279C

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 15-2001, f. & cert. ef. 11-14-01; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0004, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f.12-28-07, cert. ef. 1-1-08; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 9-2011, f. 10-27-11, cert. ef. 11-1-11; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0010

Payroll and Certified Statement

(1) The form required by ORS 279C.845 is the Payroll and Certified Statement form, **WH-38**. This form must accurately and completely set out the contractor's or subcontractor's payroll records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked and the gross wages the worker earned each week during which the contractor or subcontractor employs a worker upon a public works project.

(2) The contractor or subcontractor may submit the weekly payroll on the **WH-38** form or may use a similar form providing such form contains all the elements of the **WH-38** form. When submitting the weekly payroll on a form other than **WH-38**, the contractor or subcontractor must attach the certified statement contained on the **WH-38** form to the payroll forms submitted.

(3) Each Payroll and Certified Statement form must be submitted by the contractor or subcontractor to the public agency by the fifth business day of each month following a month in which workers were employed upon a public works project.

(4) The Payroll and Certified Statement forms received by the public agency are public records subject to the provisions of ORS 192.410 to 192.505. As such, they must be made available upon request. Pursuant to ORS 279C.845(4), information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 through 279C.870.

(5) If the contractor fails to submit its payroll and certified statement forms to the public agency as required by subsection (3) of this rule, the public agency must retain 25 percent of any amount earned by the contractor until the contractor has submitted the required payroll and certified statements to the public agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the contractor at the time each payroll and certified statement are due. For example, if the contractor fails to submit its payroll and certified statement by the fifth of the month and the contractor earned $100,000 in the period since its last payroll and certified statement were submitted to the public agency, the public agency must retain 25 percent of $100,000 ($25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the contractor.

(c) Once the required payroll and certified statement have been submitted to the public agency, the public agency must pay the amount retained to the contractor within 14 days.

(6) If a first-tier subcontractor fails to submit a payroll and certified statement form to the public agency as required by subsection (3) of this rule, the contractor must retain 25 percent of any amount earned by the first-tier subcontractor until the first-tier subcontractor has submitted the required payroll and certified statements to the public agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the first-tier subcontractor at the time each payroll and certified statement are due. For example, if the first-tier subcontractor fails to submit the payroll and certified statement by the fifth of the month and the first-tier subcontractor earned $100,000 in the period since the last payroll and certified statement were submitted to the public agency, the contractor must retain 25 percent of $100,000 ($25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the first-tier subcontractor.

(c) The contractor must verify that the first-tier subcontractor has filed the required payroll and certified statement(s) with the public agency before the contractor may pay the first-tier subcontractor any amount retained under this section.

(d) Once the first-tier subcontractor has filed the required payroll and certified statement with the public agency, the contractor must pay the amount retained to the first-tier subcontractor within 14 days.

(7) Notwithstanding ORS 279C.555 or 279C.570(7), amounts retained pursuant to the provisions of this rule shall be in addition to any other amounts retained.

(8)(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(B), and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies providing funds for the project.

(b) When more than one public agency provides funds for a project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.

(9)(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(C), and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies that will occupy or use the completed project.

(b) When more than one public agency will occupy or use the completed project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.

(10) If a project is a public works of the type described in ORS 279C.800(6)(a)(D), and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency that owns the land, premise(s), structure(s) or building(s) on which the solar radiation device(s) will be constructed or installed.

(11) If a project is a public works of the type described in ORS 279C.800(6)(a)(E), and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the Oregon University System or an institution in the Oregon University System that owns the real property.

[ED. NOTE: Forms and Publications referenced are available from the agency.]

Stat. Auth.: ORS 651.060(4), 279C.808

Stats. Implemented: H.B. 2646, 77th Leg., Reg. Ses. (Or2013), ORS 279C

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 13-1992, f. & cert. ef. 12-14-9; BL 3-1996, f. & cert. ef. -1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0010, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 9-2011, f. 10-27-11, cert. ef. 11-1-11; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0013

Notice of Public Works Form

(1) The notification form required by ORS 279C.835 is the Notice of Public Works form, **WH-81**.

(2) Except as provided in sections (4), (5), and (6) of this rule, the public agency must file the Notice of Public Works form, WH-81, with the Prevailing Wage Rate Unit within 30 days after the date a public works contract is awarded.

(3) The Notice of Public Works form, **WH-81**, must be accompanied by:

(a) payment of the fee required pursuant to ORS 279C.825; and

(b) a copy of the disclosure of first-tier subcontractors submitted to the public agency by the contractor if required pursuant to ORS 279C.370 and if a public agency awards a contract to a contractor for a public works project.

(4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency providing public funds for the project at the time the public agency commits to the provision of funds for the project.

(5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency when the agency enters into an agreement to occupy or use the completed project.

(6) When a project is a public works project pursuant to ORS 279C.800(6)(a)(D) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency that owns the land, premise(s), structure(s) or building(s) on which the solar radiation device will be constructed or installed at the time the public agency enters into an agreement authorizing the construction or installation of the solar radiation device.

(7) When a project is a public works project pursuant to ORS 279C.800(6)(a)(E) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the Oregon University System or an institution in the Oregon University System that owns the real property on which the work takes place, at the time the public agency enters into an agreement authorizing the project.

(8) Public agencies are not required to file a Notice of Public Works form when the contract awarded is not regulated under the provisions of ORS 279C.800 to 279C.870.

[ED. NOTE: Forms and Publications referenced are available from the agency.]

Stat. Auth.: ORS 651.060(4), 279C.808

Stats. Implemented: H.B. 2646, 77th Leg., Reg. Ses. (Or2013), ORS 279C

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0013, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0020

Public Works Contracts and Contract Specifications; Required Conditions

(1) For purposes of this rule:

(a) "Construction Manager/General Contractor contract" (or "CM/GC contract") means a contract that typically results in a general contractor/construction manager initially undertaking various pre-construction tasks that may include, but are not limited to: design phase development, constructability reviews, value engineering, scheduling, and cost estimating, and in which a guaranteed maximum price for completion of construction-type work is typically established by amendment of the initial contract, after the pre-construction tasks are complete or substantially complete. "CM/GC" refers to the general contractor/construction manager under this form of contract. Following the design phase, the CM/GC may then act as a General Contractor and begin the subcontracting process. The CM/GC typically coordinates and manages the construction process, provides contractor expertise, and acts as a member of the project team.

(b) "Construction specifications" include the detailed description of physical characteristics of the improvement, design details, technical descriptions of the method and manner of doing the work, quantities or qualities of any materials required to be furnished, descriptions of dimensions, required units of measurement, composition or manufacturer, and descriptions of any quality, performance, or acceptance requirements.

(2) Every public works contract must contain the following:

(a) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515);

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week if four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540 (Reference: ORS 279C.520(1));

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work (Reference: ORS 279C.520(2)); and

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530); and

(e) A condition or clause that requires the contractor to:

(A) Have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

(B) Require, in every subcontract, that the subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

(3)(a) Every public works contract and subcontract must provide that each worker the contractor, subcontractor or other person who is a party to the contract uses in performing all or part of the contract, must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Commissioner of the Bureau of Labor and Industries in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon.

(b) If a public works project is subject to both ORS 279C.800 to ORS 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), every public works contract and subcontract must provide that the worker whom the contractor, subcontractor or other person who is a party to the contract uses in performing all or part of the contract, must be paid not less than the higher of the applicable state prevailing rate of wage for each trade or occupation as defined by the Commissioner of the Bureau of Labor and Industries

in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon or federal prevailing rate of wage.

(4)(a) The specifications for every public works contract must contain a provision that states the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.).

(b) Except as provided in subsection (d) of this section and sections (6) and (7) of this rule, the existing state prevailing rate of wage and the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon are those in effect at the time the initial specifications were first advertised for bid solicitations.

(c) If a public agency is required under subsection (a) of this section or section (6) of this rule to include the state and federal prevailing rates of wage in the specifications for a contract for public works, the public agency shall also include in the specifications the requirement that the contractor pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works project.

(d) Pursuant to ORS 279C.838(4) and notwithstanding ORS 279C.830(1), if the contract is subject to both ORS 279C.800 to 279C.870 and the Davis Bacon Act (40 U.S.C. 3141 et seq.), the public agency may provide in the specifications for the contract a single date to be used to establish the "existing state prevailing rate of wage," the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon, and the "applicable federal prevailing rate of wage" that is consistent with the federal requirements under 29 CFR 1.6.

(e) The specifications for a contract for public works must provide that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

(5)(a) The provisions described in sections (3) and (4), and sections (6) and (7) if applicable, must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is $50,000 or more (Reference: ORS 279C.830).

(b) A statement incorporating the applicable state prevailing wage rate publication and any amendments thereto into the specifications by reference will satisfy these requirements. Except as provided in subsection (c), such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(c) When the prevailing wage rates are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments. The reference requirements of this subsection will be satisfied if such reference includes Uniform Resource Locator (URL) information for a webpage or webpages showing the title of each applicable wage rates publication or determination and the date of each publication or determination as well as the date of any applicable amendments.

(6)(a) When a public agency is a party to a CM/GC contract, the CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first.

(b) For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement after the public agency and CM/GC commit to the guaranteed maximum price.

(c) For purposes of this rule, the CM/GC contract enters the construction phase when the agency first authorizes the performance of early construction, reconstruction, major renovation or painting work directly related to the improvement project.

(d) The publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon and the prevailing wage rate in effect at the time the CM/GC contract becomes a public works contract shall apply and the applicable prevailing wage rates must be included with the construction specifications for the CM/GC contract.

(7) A public works project described in ORS 279C.800(6)(a)(B), (C), (D), or (E) that is not a CM/GC contract subject to section (6) of this rule is subject to the publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon and the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that are in effect at the time a public agency enters into an agreement with a private entity for the project. (Note: The effective date of the applicable federal prevailing rate of wage may be different under federal law.) After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage.

(8) If a project is a public works of the type described in ORS 279C.800(6)(a)(B), (C), (D), or (E) a public agency will be deemed to have complied with the provisions of ORS 279C.830 if the public agency requires compliance with the provisions of section (5) of this rule in any agreement entered into by the public agency committing to provide funds for the project, to occupy or use the completed project, or authorizing the construction or installation of a solar radiation device.

(9) Public agencies may obtain, without cost, a copy of the existing state prevailing rate of wages for use in preparing the contract specifications by contacting the Prevailing Wage Rate Unit or any office of the bureau.

Stat. Auth.: ORS 651.060(4), 279C.808
Stats. Implemented: H.B. 2646, 77th Leg., Reg. Ses. (Or2013), ORS 279C
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0020, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06; BLI 2-2007, f. & cert. ef. 1-23-07; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 3-2011(Temp), f. & cert. ef. 6-8-11 thru 12-4-11; BLI 6-2011(Temp), f. & cert. ef. 7-22-11 thru 12-4-11; BLI 9-2011, f. 10-27-11, cert. ef. 11-1-11; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0035
Payment of Prevailing Rate of Wage

(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed. Additionally, all wages due and owing to the workers shall be paid on the regular payday established and maintained under ORS 652.120.

(2) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), if the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage as determined under ORS 279C.815.

(3) Every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(4) Persons employed on a public works project and who are spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.

(5) Persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the applicable prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of the public works project.

(6) Except as provided in ORS 279C.838, persons employed on a public works project who are employed by a commercial supplier of goods or materials must be paid no less than the applicable prevailing rate of wage when the work is performed at the "site of work" as that term is defined in OAR 839-025-0004(25) or when the work is performed in fabrication plants, batch plants, borrow pits, job headquarters, tool yards or other such places that are dedicated exclusively or nearly so to the public works project.

(7) Except as provided in ORS 279C.838, persons employed on a public works project by the construction contractor or construction subcontractor to transport materials or supplies to or from the public works project are required to be paid the applicable prevailing wage rate for work per-

formed in connection with the transportation of materials or supplies at the "site of work" as that term is defined in OAR 839-025-0004(25).

(8) Persons employed on a public works project for personal services, as that term is defined in ORS 279C.100(5), as opposed to construction work, are not workers required to be paid the prevailing rate of wage.

(9) Every apprentice, as defined in OAR 839-025-0004(1), must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870. Any worker on a public works project who is not an apprentice as defined in OAR 839-025-0004(1), or who is not employed by a registered training agent pursuant to ORS 660.010(10), or who is not working pursuant to the standards of the apprentice's apprenticeship program, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

(10) Every trainee, as defined in OAR 839-025-0004(28), must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker on a public works project who is not a trainee as defined in OAR 839-025-0004(28), or who is not employed by a registered training agent pursuant to ORS 660.010(10), or who is not working pursuant to the standards of the trainee's program, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

Stat. Auth.: Stat. Auth.: ORS 651.060(4), 279C.808
Stats. Implemented: ORS 279C
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0035, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0043
Frequency of Payment of Fringe Benefits

(1) Contributions made by a contractor or subcontractor to a bona fide fringe benefit plan, fund, or program must be made on a regular basis and not less often than quarterly.

(a) "Regular basis" means either the schedule of contribution as provided in writing in the plan, fund or program, or if none, the regular contribution schedule established by the contractor or subcontractor pursuant to subsection (b) of this section. For example, if the plan specifies that contributions to a bona fide fringe benefit fund be made by the fifteenth calendar day of each month following the month the wages were earned, then contributions to the fund must be made by that date.

(b) If the plan, fund or program does not specify a contribution date, or if the specified contribution date as written in the plan, fund or program does not meet the meaning of "not less often than quarterly," as defined below, the contractor or subcontractor must establish and maintain a contribution date by which payment to the plan, fund or program will be made on a regular basis and not less often than quarterly.

(c) "Not less often than quarterly" means that the fringe benefit portion of wages must be contributed to a bona fide fund, plan or program at least once every three months within an established consecutive twelve month period. The contribution must represent payment to the fund, plan or program for amounts earned in the three month period immediately prior to the contribution date.

(A) An established twelve month period may be a calendar year, fiscal year, plan year, or other consecutive twelve month period as determined by the employer. The beginning of the twelve month period may be changed only if the change is intended to be permanent, and is not designed to evade the timely payment of contributions into a bona fide fund, plan or program. If an employer does not determine a consecutive twelve month period, the default period shall be a calendar year; that is, from 12:00 midnight on January 1 to 11:59 p.m. December 31, each year.

(B) As an example, using the calendar year as the established consecutive twelve month period, a contractor or subcontractor establishes a contribution date of April 15 for the payment of fringe benefits earned between January 1 and March 31 into the plan, fund or program; consequently, amounts earned between April 1 and June 30 must be contributed into the plan, fund or program on or before July 15; amounts earned between July 1 and September 30 must be contributed into the plan, fund or program on or before October 15; and amounts earned between October 1 and December 31 must be contributed into the plan, fund or program on or before January 15.

(2) Payments of fringe benefits made directly to the worker in lieu of payment of fringe benefits to a plan, fund, or program must be paid to the worker as wages on the regularly scheduled pay date.

Stat. Auth.: Stat. Auth.: ORS 651.060(4), 279C.808
Stats. Implemented: ORS 279C
Hist.: BL 1-1998, f. & cert. ef. 1-5-98; Renumbered from 839-016-0043, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0085
Contract Ineligibility

(1) Under the following circumstances, the commissioner, in accordance with the Administrative Procedures Act, may determine that a contractor or a subcontractor or a firm, limited liability company, corporation, partnership or association in which the contractor or subcontractor has a financial interest may not receive a contract or subcontract for a public works for a period of three years:

(a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed on a public works project as required under ORS 279C.840;

(b) The subcontractor has failed to pay the prevailing rate of wage to workers employed on a public works project as required under ORS 279C.840 and the contractor has paid the amounts owed on the subcontractor's behalf;

(c) The contractor or subcontractor has intentionally failed or refused to post the prevailing wage rates as required under ORS 279C.840(4) and these rules; or

(d) The contractor or subcontractor has intentionally falsified information in the certified statements the contractor or subcontractor submitted under ORS 279C.845.

(2) If a contractor or subcontractor is a corporation or a limited liability company, the provisions of this rule will apply to any corporate officer or agent of the corporation or any member or manager of the limited liability company who is responsible for failing or refusing to pay or post the prevailing wage rates, failing to pay to a subcontractor's employees amounts required under ORS 279C.840 that the contractor pays on the subcontractor's behalf or intentionally falsifying information in the certified statements the contractor or subcontractor submits under ORS 279C.845.

(3) As used in section (2) of this rule, any corporate officer or agent of the corporation or any member or manager of the limited liability company responsible for failing or refusing to pay or post the prevailing wage rates, failing to pay to a subcontractor's employees amounts required under ORS 279C.840 that the contractor pays on the subcontractor's behalf or intentionally falsifying information in the certified statements the contractor or subcontractor submits under ORS 279C.845, includes, but is not limited to, the following individuals when the individuals knew or should have known the amount of the applicable prevailing wages or that such wages must be posted:

(a) The corporate president;

(b) The corporate vice president;

(c) The corporate secretary;

(d) The corporate treasurer;

(e) Any member or manager of the limited liability company;

(f) Any other person acting as an agent of a corporate officer, the corporation, limited liability member or manager, or limited liability company.

(4) The Wage and Hour Division will maintain a written list of the names of contractors, subcontractors and other persons who are ineligible to receive public works contracts and subcontracts. The list will contain the name of contractors, subcontractors and other persons and the name of any firms, corporations, limited liability companies, partnerships or associations in which the contractor, subcontractor or other persons have a financial interest. Except as provided in OAR 839-025-0095, such names will remain on the list for the duration of the period, as determined by the commissioner, in which no contract or subcontract for public works may be received.

(5) Before placing a name on the ineligible list referred to in section (4) of this rule, the commissioner will serve a notice of intended action upon the contractor or subcontractor in the same manner as service of summons or by certified mail, return receipt requested. The notice will include:

(a) A reference to ORS 279C.840;

(b) A short and concise statement of the matters which constitute intentional failure or refusal to pay or post the prevailing rate of wage or intentional falsification of information in the certified statements;

(c) A statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;

(d) A statement that the party's name will be published on a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing as provided in section (5)(c) of this rule;

(e) A statement that failure to make written request to the commissioner for a contested case hearing within the time specified will constitute a waiver of the right thereto; and

(f) A statement that if a hearing is requested, the contractor or subcontractor will be given information on procedures and rights as required by ORS 183.413(2).

(6) Upon the failure of the contractor or subcontractor to request a contested case hearing within the time specified, the commissioner or the commissioner's designee will enter an order supporting the bureau's action.

(7) If a contractor or subcontractor makes a timely request for a contested case hearing, a hearing will be held in accordance with the Attorney General's Model Rules of Procedure under the Administrative Procedure Act by the commissioner or the commissioner's designee.

Stat. Auth.: ORS 651.060(4), 279C.808
Stats. Implemented: H.B. 2646, 77th Leg., Reg. Ses. (Or2013), ORS 279C
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0085, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0090
List of Ineligibles

(1) The name of the contractor, subcontractor or other persons and the names of any firm, corporation, limited liability company, partnership or association in which the contractor or subcontractor has a financial interest whom the commissioner determines are ineligible to receive public works contracts shall be published on a list of persons ineligible to receive such contracts or subcontracts.

(2) The list of persons ineligible to receive contracts or subcontracts on public works shall be known as the List of Ineligibles. In addition to names referred to in section (1) of this rule, the list shall contain the date the name was placed on the list and the period of time for which the person is ineligible.

(3) The List of Ineligibles shall be published and amended as needed at any time. Such list shall be made available to the public as published or amended.

Stat. Auth.: ORS 651.060(4), 279C.808
Stats. Implemented: H.B. 2646, 77th Leg., Reg. Ses. (Or2013), ORS 279C
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; Renumbered from 839-016-0090, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07. cert. ef. 1-1-08; BLI 9-2011, f. 10-27-11, cert. ef. 11-1-11; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0095
Removal of Names from List

(1) The names of the contractor, subcontractor or other persons and the names of any firm, corporation, limited liability company, partnership or association in which the contractor, subcontractor or other persons have a financial interest shall remain on the list for the period of time for which the contractor, subcontractor or other person is ineligible.

(2) The names referred to in section (1) of this rule shall be removed from the list after the period of time for which the contractor, subcontractor or other person is ineligible has expired.

(3) The commissioner may, for good cause shown, remove a name from the list before the expiration of the period of ineligibility. If the commissioner determines good cause has been shown, the commissioner shall issue an order directing the removal of such name or names.

(4) Contractors, subcontractors or other persons, or any firm, corporation, limited liability company, partnership or association in which the contractor, subcontractor or other persons have a financial interest who desire to be removed from the list before the expiration of the period of ineligibility must show good cause for such removal. Such persons may petition the commissioner at any time during the period of ineligibility.

(5) In reviewing such petitions, the commissioner shall consider the following matters:

(a) The past history of the petitioner in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) Magnitude and seriousness of the violation;

(d) Other matters which indicate to the commissioner that the petitioner is not likely to violate ORS 279C.800 to 279C.870 and these rules in the future.

(6) The commissioner shall grant or deny the petition.

Stat. Auth.: ORS 651.060(4), 279C.808
Stats. Implemented: H.B. 2646, 77th Leg., Reg. Ses. (Or2013), ORS 279C
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; Renumbered from 839-016-0095, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0230
Special Circumstances

(1) When a public agency enters into an agreement for construction management services or chooses to act as its own general contractor or construction manager in connection with a public works project subject to ORS 279C.800 to 279C.870, the contract price for purposes of determining whether the project is regulated under the law shall be the sum of all contracts associated with the project or, if the actual sums are not known at the time work begins, the contract price shall be the guaranteed maximum amount for the project or the agency's good faith estimate of the contract price of the project if there is no guaranteed maximum amount.

(2) When a public agency contracts with a contractor to act as the general manager of a public works project, the contract for general manager services is a public works contract for purposes of these rules and a fee is required just as it is for any other public works contract, since the contract would not have been entered into but for the public works project.

(3) When a public agency acts as its own general contractor and enters into one or several contracts in connection with a public works project subject to ORS 279C.800 to 279C.870, the public agency is required to pay the fee in connection with each contract awarded to each contractor. The fee is required on all contracts, regardless of the contract price of any individual contract, so long as the combined price of all contracts awarded on the project is $50,000 or more.

(4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the public agency or agencies providing public funds for the project shall pay the required fee at the time the public agency or agencies commit(s) to the provision of funds for the project. The amount of the fee shall be based on the total project amount. When the amount of the project is not known by the public agency or agencies providing public funds for the project, the public agency or agencies shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the public agency or agencies that will occupy or use the completed project shall pay the required fee when the agency or agencies enter(s) into an agreement to occupy or use the completed project. The amount of the fee shall be based on the total project amount. When the amount of the project is not known by the public agency or agencies that will occupy or use the completed project, the public agency or agencies shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(6) When a project is a public works project pursuant to ORS 279C.800(6)(a)(D) and no public agency awards a contract to a contractor for the project, the public agency that owns the land, premise(s), structure(s), or building(s) on which the solar radiation device will be constructed or installed shall pay the required fee at the time the public agency enters into an agreement authorizing the construction or installation of the solar radiation device. The amount of the fee shall be based on the total project amount. When the amount of the project is not known by the public agency, the public agency shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(7) When a project is a public works project pursuant to ORS 279C.800(6)(a)(E) and no public agency awards a contract to a contractor for the project, the Oregon University System or institution in the Oregon University System that owns the land, premise(s), structure(s), or building(s) on which the construction, reconstruction, major renovation or painting takes place shall pay the required fee at the time the Oregon University System or institution in the Oregon University System enters into an agreement authorizing the construction, reconstruction, major renovation or painting. The amount of the fee shall be based on the total project amount. When the amount of the project is not known by the Oregon University System or institution in the Oregon University System, the Oregon University System or institution in the Oregon University System shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(8) When more than one public agency is required to pay a fee pursuant to section (4) or (5) of this rule, the amount of the fee owed by each public agency shall, if not otherwise previously agreed upon by the agen-

cies, be pro-rated proportionately based on the amount of public funds provided or space occupied or used by each agency.

Stat. Auth.: ORS 651.060(4), 279C.808
Stats. Implemented: H.B. 2646, 77th Leg., Reg. Ses. (Or2013), ORS 279C
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0230, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 9-2011, f. 10-27-11, cert. ef. 11-1-11; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

839-025-0530
Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.

(2) Civil penalties may be assessed against any contractor, subcontractor or public agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.

(3) The commissioner may assess a civil penalty against a contractor or subcontractor for any of the following violations:

(a) Failure to pay the applicable prevailing rate of wage in violation of ORS 279C.840;

(b) Failure to pay all wages due and owing to the contractor's or subcontractor's workers on the regular payday established and maintained under ORS 652.120 in violation of ORS 279C.840(1).

(c) Failure to post the applicable prevailing wage rates in violation of ORS 279C.840(4);

(d) Failure to post the notice describing the health and welfare or pension plans in violation of ORS 279C.840(5);

(e) Failure to include a provision in a subcontract that workers shall be paid not less than the specified minimum hourly rate of wage in violation of ORS 279C.830(1)(c);

(f) If a public works project is subject to both ORS 279C.800 to 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to include a provision in a subcontract that workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage in violation of ORS 279C.830(1)(d);

(g) Failure to include in a subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(2);

(h) Failure to file with the Construction Contractors Board a public works bond, as required under ORS 279C.836, before starting work on a contract or subcontract for a public works project subject to the provisions of ORS 279C.800 to 279C.870;

(i) Failure to verify that a subcontractor has filed a public works bond as required or has elected not to file a public works bond under ORS 279C.836 prior to permitting a subcontractor to start work on a public works project;

(j) Failure to file certified statements in violation of ORS 279C.845;

(k) Filing inaccurate or incomplete certified statements in violation of ORS 279C.845;

(l) Failure to retain 25 percent of the amount the first-tier subcontractor earned when the first-tier subcontractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;

(m) Paying the prevailing rate of wage in violation of ORS 279C.840(6);

(n) Reducing an employee's pay in violation of ORS 279C.840(7);

(o) Taking action to circumvent the payment of the prevailing wage, other than subsections (k) and (m) of this section, in violation of ORS 279C.840(7);

(p) Failure to submit reports and returns in violation of ORS 279C.815(3);

(q) Failure to certify the accuracy of reports and returns in violation of ORS 279C.815(3);

(r) Failure to timely pay the fee required by ORS 279C.825 on public works contracts first advertised or solicited prior to January 1, 2008;

(s) Receiving a public works contract or subcontract while on the list of ineligibles in violation of ORS 279C.860;

(t) Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860.

(u) Failure to contribute fringe benefit wages timely to a trustee or to a third person pursuant to a plan, fund or program on a "regular basis" and "not less often than quarterly," as those terms are defined in OAR 839-025-0043.

(4) The commissioner may assess a civil penalty against a public agency for any of the following violations:

(a) Failure to include in the specifications for a public works contract a provision stating the applicable existing prevailing wage rate in violation of ORS 279C.830(1)(a);

(b) If a public works project is subject to both ORS 279C.800 to 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to require the contractor to pay the higher of the applicable state prevailing rate of wage or federal prevailing rate of wage to all workers in violation of ORS 279C.830(1)(b);

(c) Failure to include a contract provision stating that workers must be paid the applicable prevailing rate of wage in violation of ORS 279C.830(1)(c);

(d) If a public works project is subject to both ORS 279C.800 to 279C.870 and to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), failure to include a contract provision stating that workers on public works must be paid not less than the higher of the applicable state prevailing rate of wage or federal prevailing rate of wage in violation of ORS 279C.830(1)(d);

(e) Failure to include in the specifications for a contract for a public works stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(2);

(f) Failure to include in a contract for a public works a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(2)(a);

(g) Failure to include in a contract for a public works a provision requiring the contractor to include in every subcontract a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(2)(b);

(h) Failure to notify the commissioner when a contract is awarded in violation of ORS 279C.835;

(i) Dividing a public works project in violation of ORS 279C.827;

(j) Failure to include a copy of the disclosure of first-tier subcontractors with the Notice of Award in violation of ORS 279C.835;

(k) Failure to retain 25 percent of the amount the contractor earned when the contractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;

(l) Failure to timely pay the fee required in violation of ORS 279C.825;

(m) Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860;

(n) Entering into an agreement with another state or a political subdivision or agency of another state agreeing that a contractor or subcontractor may pay less than the prevailing rate of wage determined in accordance with ORS 279C.815 under the terms of a contract for public works to which the contracting agency is a party or of which the contracting agency is a beneficiary in violation of ORS 279C.829.

Stat. Auth.: ORS 651.060(4), 279C.808
Stats. Implemented: ORS 279C
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0530, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 3-2011(Temp), f. & cert. ef. 6-8-11 thru 12-4-11; BLI 9-2011, f. 10-27-11, cert. ef. 11-1-11; BLI 9-2013, f. 12-18-13, cert. ef. 1-1-14

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Rule Caption: Implements legislation abolishing Wage and Hour Commission; modifies meal period requirement for minors
Adm. Order No.: BLI 10-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 839-021-0006, 839-021-0067, 839-021-0070, 839-021-0072, 839-021-0087, 839-021-0097, 839-021-0102, 839-021-0104, 839-021-0175, 839-021-0220, 839-021-0221, 839-021-0246, 839-021-0248, 839-021-0255, 839-021-0265, 839-021-0280, 839-021-0290, 839-021-0292, 839-021-0294, 839-021-0297, 839-021-0315, 839-021-0320, 839-021-0325, 839-021-0330, 839-021-0335, 839-021-0340, 839-021-0345, 839-021-0350, 839-021-0355, 839-021-0360, 839-021-0365, 839-021-0370, 839-021-0490
Subject: The 2013 Regular Session of the Oregon Legislature abolished the Wage and Hour Commission and transferred its duties, functions, and powers to the Bureau of Labor and Industries. The rule amendments replace references to the Wage and Hour Commission

with the Bureau of Labor and Industries. In addition, the rule amendments conform the meal period requirement for minor employees to that found in OAR 839-020-0050, which establishes the meal period requirement for adult employees.

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

839-021-0006

Definitions

As used in ORS 653.305 to 653.370 and in OAR 839-021-0001 to 839-021-0500, unless the context requires otherwise:

(1) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market. "Agricultural employment" is employment in "Agriculture" as herein defined.

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

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(4) "Employ" has the same meaning as that which appears in ORS 653.010(2).

(5) "Employer" has the same meaning as that which appears in ORS 653.010(3).

(6) "Employment Certificate" means the employment certificate issued to employers for the employment of minors pursuant to ORS 653.307, and the employment permit referred to in ORS 653.320(3).

(7) "Harvest Season" means a period of time during which the crop or crops of the agricultural employer for whom a minor is employed are harvested. Work performed during the harvest season includes work in connection with the gathering of the crop but does not include cultivation and tillage of the soil or cultivation and growing of agricultural commodities.

(8) "Minor" means any person under 18 years of age.

(9) "Workday" means any fixed period of 24 consecutive hours.

(10) "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 6-1988, f. & cert. ef. 4-12-88; BL 11-1991, f. & cert. ef. 10-31-91; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0067

Hours of Employment for Minors 16 and 17 Years of Age

(1) An employer may not employ a 16 or 17 year old to work more than 44 hours per week except those employed in organized youth camps or those employed in agricultural employment.

(2) An employer who wishes to employ a 16 or 17 year old to work more than 44 hours per week must be issued a Special Emergency Overtime Permit by the Bureau. This permit will not be issued unless:

(a) The number of hours do not exceed those provided by statute; and

(b) When the minor is not otherwise exempt from the overtime pay provisions of any law, the minor receives one and one half times the regular rate of pay for all hours worked over 40 in a workweek.

(3) The maximum number of hours for a 16 or 17 year old employed in a cannery is ten hours per day.

(4) An employer who wishes to employ a 16 or 17 year old in a cannery for time in excess of ten hours per day, may apply in writing to the Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180.

(a) The employer must set out the full and complete circumstances of the proposed employment in the written application.

(b) The Bureau will investigate the terms and conditions of the proposed employment and if the Bureau determines that the character of the employment is suitable and that the employment will not adversely affect the physical and moral well-being of the minor, the Bureau will issue a Special Emergency Overtime Permit to the employer.

(5) If, after the investigations referred to in section (4)(b) of this rule, the Bureau determines that the character of the employment is unsuitable and that such employment will adversely affect the physical and moral well-being of the minor or that there is no adverse effect on the employment opportunities of the minor, the Bureau will refuse to issue a Special Emergency Overtime Permit.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 3-1979(Temp), f. & ef. 3-21-79; BL 5-1979(Temp), f. & ef. 5-16-79; BL 12-1979, f. & ef. 9-6-79; BL 11-1981(Temp), f. & ef. 10-30-81; BL 4-1982, f. & ef. 3-5-82; BL 6-1988, f. & cert. ef. 4-12-88; BL 11-1990, f. 8-16-90, cert. ef. 9-1-90; BL 11-1991, f. & cert. ef. 10-31-91; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0070

Hours of Employment for Minors Under 16 Years of Age

(1) Except as otherwise provided in this rule, employment of minors under 16 years of age must be confined to the following periods:

(a) Outside school hours;

(b) Not more than 40 hours in any one week when school is not in session;

(c) Not more than 18 hours in any one week when school is in session;

(d) Not more than eight hours in any one day when school is not in session;

(e) Not more than three hours in any one day when school is in session;

(f) Between 7 a.m. and 7 p.m., except that during the summer (June 1 through Labor Day) the minor may work until 9:00 p.m.

(2) In the case of enrollees in work training programs conducted under Part B of Title I of the Economic Opportunity Act of 1964, there is an exception to the requirement of subsection (1)(a) of this rule if the employer has on file with the records kept pursuant to OAR 839-021-0170 an unrevoked written statement of the Regional Manpower Administrator of the U.S. Department of Labor or representative setting out the periods which the minor will work and certifying that the minor's employment confined to such periods will not interfere with the minor's health and well-being, countersigned by the principal of the school which the minor is attending with the principal's certificate that such employment will not interfere with the minor's schooling.

(3) In the case of students enrolled in a career exploration or other work experience program, there is an exception to subsection (1)(a) of this rule when:

(a) The minor is employed as a student learner pursuant to ORS 653.070; or

(b) The minor is enrolled in a school-supervised and school-administered work experience and career exploration program meeting the educational standards established and approved by the Oregon Department of Education.

(4) This rule does not apply when Title 29, CFR, Part 570, Subpart C, Section 570.35a would otherwise apply.

(5) Employment of minors enrolled in a program pursuant to sections (2), (3), and (4) of this rule must be confined to not more than 23 hours in any one week when school is in session and not more than three hours in any day when school is in session, any portion of which may be during school hours. Insofar as these provisions are inconsistent with the provisions of section (1) of this rule, this section will be controlling.

(6) The employment of a minor enrolled in a program pursuant to sections (2), (3), and (4) of this rule must not have the effect of displacing a worker employed in the establishment of the employer.

(7) The Bureau may waive the provisions of section (1)(f) of this rule and OAR 839-021-0246(4)(d) and authorize minors under 16 years of age employed by their parent(s) or person(s) standing in the place of their parent(s) to work as late as 9:00 p.m. when the Bureau determines that such hours of work will not be detrimental to the health, safety or education of the children so employed and the minor is supervised by the minor's parent(s) or person(s) standing in the place of their parent(s) during the extended hours employed. No minor may be employed to work in violation of the provisions of (1)(a), (b), (c), (d), and (e) of this rule or, in the case of minors under 14 years of age, in violation of OAR 839-021-0246(4)(a), (b), and (c).

(8) Pursuant to section (7) of this rule, a parent/employer desiring to employ a minor under 16 years of age later than the times permitted in section (1)(f) of this rule or OAR 839-021-0246(4)(d) may apply in writing to the Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180. The Bureau will investigate the employment and the facts and circumstances set out in the application. If the Bureau determines that the employment is suitable and will not adversely affect the well-being of the minor(s), the Bureau will issue a special permit to the parent/employer, setting out the terms and conditions of the permit.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653

Hist.: BL 11-1990, f. 8-16-90, cert. ef. 9-1-90; BL 15-1992, f. 12-14-92, cert. ef. 12-15-92; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 13-2000, f. 5-31-00, cert. ef. 6-1-00; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 27-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0072

Rest Periods and Meal Periods

(1) Every employer must provide to each minor employee a meal period of not less than 30 continuous minutes in the manner prescribed by OAR 839-020-0050. However, the exemption provided for by OAR 839-020-0050(3) does not apply to minor employees under the age of 16.

(2) Every employer must provide each minor employee a rest period of not less than 15 minutes in the manner prescribed by OAR 839-020-0050.

Stat. Auth.: ORS 651.060(4), 653.261

Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653

Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 13-1979, f. & ef. 9-6-79; BL 6-1988, f. & cert. ef. 4-12-88; BLI 4-1998, f. & cert. ef. 3-5-98; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0087

Working Conditions

(1) An employer may not employ any minor to work in the State of Oregon, except under the following conditions:

(a) Where a sanitary and safe work area is provided;

(b) Where adequate lighting is provided;

(c) Where adequate ventilation is provided;

(d) Where adequate washrooms are provided;

(e) Where adequate toilet facilities are provided;

(f) Where the employer is in full compliance with provisions of ORS Chapter 654 (The Oregon Safe Employment Act) and the rules and regulations promulgated thereunder. For the purposes of this rule, the compliance status of the employer is determined by the Occupational Safety and Health Division of the Department of Consumer and Business Services;

(g) Where the employer is in full compliance with the provisions of the following statutes relating to the payment of wages:

(A) ORS 652.110 to 652.190;

(B) ORS 652.610;

(C) ORS 653.010 to 653.265;

(D) ORS 279.348 to 279.365;

(E) Title 29, U.S.C., 201, et seq. (Federal Fair Labor Standards Act);

(F) Title 40, U.S.C., 276a. (Davis-Bacon Act);

(G) Title 41, U.S.C., 351, et seq. (Service Contract Act).

(2) When the following facilities are provided, an employer may not employ any minor to work in the State of Oregon unless:

(a) The rest rooms provided are adequate;

(b) The dressing rooms provided are adequate;

(c) The lunch rooms provided are adequate;

(d) The cot or stretcher provided for use in illnesses, accidents, or other emergencies is adequate.

(3) Upon expiration of ten days after receipt of notice and recommendations of the appropriate governmental agency with respect to temperature and humidity conditions or within such further time after receipt of the notice as may be prescribed by the Bureau, an employer may not employ any minor without complying with the recommendations.

(4) Every employer must provide to each minor when required by the nature of the work, "suitable seats," "suitable tables," and "suitable work benches":

(a) "Suitable seats" means convenient, comfortable and safe seats where the work is such that minors may sit while working. "Suitable seats" in cannery occupations means one for every three minors who work in or on inspection tables and inspection belts;

(b) "Suitable tables" and "suitable work benches" mean tables and work benches so constructed as to give the greatest possible comfort and convenience to minors where the nature of the work and the safety and convenience of the minor requires a bench or table.

(5) An employer may not require a minor to report for work without providing adequate work to earn a reasonable compensation, or paying to such minor a reasonable compensation in lieu thereof. As used in this paragraph:

(a) "Adequate work" means sufficient work to earn at least one-half the amount the minor would have earned at the minor's regular rate had the minor worked the hours that the minor and the employer previously agreed to;

(b) "Reasonable compensation" means the greater of:

(A) The amount the minor receives for one hour of work at the minor's regular rate of pay; or

(B) The amount determined by multiplying the minor's regular rate of pay by one-half the hours the minor and the employer agreed the minor would work.

(6) The provisions of section (5) of this rule do not apply when all the following conditions are met pertaining to the employer providing the minor notice not to report to work:

(a) The employer has a policy describing how notice not to report to work will be given minors; and

(b) The employer posts its notice policy in a conspicuous place frequented by employees at the worksite where the minor is employed; and

(c) The employer communicates this policy to the minor prior to the minor's first day of work; and

(d) The employer makes a good faith attempt to follow its policy so as to give the minor notice before the minor must leave home to travel to work; or

(7) When circumstances beyond the employer's control prevent the performance of the work the minor was to perform during the hours the minor had agreed to or was scheduled to work. Such circumstances include, but are not limited to, acts of nature (e.g., snowstorms, flooding), emergencies (e.g., fires, power outages), and unforeseeable equipment failures.

(8) The employer has the burden to maintain records sufficient to resolve any dispute arising under section (5) of this rule concerning the hours the minor agreed to or was scheduled to work.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 651.060(4), 653.261

Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653

Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 2-1987, f. & ef. 1-16-87; BL 6-1987, f. & ef. 3-19-87; BL 6-1988, f. & cert. ef. 4-12-88; BL 12-1990(Temp), f. 8-16-90, cert. ef. 8-17-90; BL 2-1991, f. 1-23-91, cert. ef. 2-14-91; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0097

Special Employment Situations

(1) No minor under 16 years of age:

(a) May be employed in an occupation or type of work declared hazardous by the Bureau (see OAR 839-021-0102);

(b) May be assigned any duties in connection with an organized youth camp prior to 6 a.m. or after 10 p.m., or more than eight hours per day;

(c) May be employed to act as a canvasser, peddler or "outside salesperson" as defined in ORS 653.010(7), from house to house.

(2) Except as provided in subsection (3) of this section, no minor may be employed at any work on or around any unenclosed commercial wharves or docks or in any unenclosed buildings extending over water, unless:

(a) There is located at the site of the work and conspicuously displayed at such site adequate safety equipment including, but not limited to:

(A) For every 30 linear feet of unenclosed area no less than one Type IV personal flotation device containing 16.5 pounds of buoyancy and one polypropylene line no less than 30 feet in length attached thereto;

(B) No less than one pole of not less than ten feet in length with a blunt hook attached thereto; and

(b) The minors so employed have been adequately instructed in the use of such equipment;

(c) There is provision made that no minor employee ever be required to work out of sight and hearing of another employee; and

(d) There is located at the site of the work and conspicuously displayed an alarm device adequate to alert all employees on the job site to the existence of a perilous situation.

(3) Minors may not be employed on or around fishing vessels except under the following conditions:

(a) Minors of 16 and 17 years of age may be employed as assistants on chartered fishing or pleasure boats;

(b) Minors of 14 and 15 years of age may be employed at dock areas used by chartered fishing or pleasure boats; and

(c) Minors may be employed on commercial fishing vessels without an employment certificate when employed and supervised by the minors' grandfather, grandmother, father, mother, brother, sister, uncle, or aunt.

Stat. Auth.: ORS 651.060(4), 653.261

Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653

Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 185, f. 1-30-76, ef. 2-1-76; BL 11-1978(Temp), f. 9-18-78, ef. 9-19-78; BL 14-1978, f. 12-13-78, ef. 1-17-79; BL 2-1979, f. & ef. 2-13-79; BL 1-1985, f. 2-21-85, ef. 3-1-85; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0102

Occupations and Types of Work Declared Hazardous for Minors Under 16 Years of Age

(1) Pursuant to OAR 839-021-0097(1)(a), the Bureau hereby declares the following occupations and types of work to be hazardous and any employment by minors under 16 years of age is hereby prohibited:

(a) Baking;
(b) Blast furnaces;
(c) Breweries;
(d) Bridge operations;
(e) Briquet plants;
(f) Building cleaning (exterior);
(g) Cattle handling;
(h) Coal plants or bunkers;
(i) Cold storage plants;
(j) Commercial docks;
(k) Construction (alteration, repair, painting, or demolition of buildings, bridges, and structures);
(l) Cooking (except: cooking with a gas or electric grill that does not have an open flame; using a microwave to warm food; or using a deep fryer that is equipped with a device that automatically raises and lowers the basket);
(m) Creosoting works;
(n) Distilleries;
(o) Electric power plants, lines;
(p) Electric light plants, lines;
(q) Engineering works (construction, improvement, alteration, or repair of steam plants, water power plants, telephone, telegraph, or electric plants or lines or railroads, streets, highways, sewers, harbors, docks, or canals);
(r) Firefighting;
(s) Foundries;
(t) Garbage works;
(u) Gas works;
(v) Grain elevators;
(w) Gravel or sand plant or bunker;
(x) Ice plants;
(y) Kitchen cleaning of equipment when the surface is hotter than 100 degrees Fahrenheit, or filtering or disposing of cooking oil or grease that is hotter than 100 degrees Fahrenheit;
(z) Railroads;
(aa) Land clearing (with blasting or presence of heavy equipment);
(bb) Logging operations;
(cc) Longshoring;
(dd) Lumber loading;
(ee) Mechanical amusements;
(ff) Milk condenseries;
(gg) Mines;
(hh) Moving buildings, bridges, and structures;
(ii) Peace officer work;
(jj) Powder works;
(kk) Quarries;
(ll) Reduction works;
(mm) Rock crusher;
(nn) Smelters;
(oo) Stockyards;
(pp) Surveying;
(qq) Tanneries;
(rr) Tree surgery;
(ss) Well digging and drilling;
(tt) Window cleaning (outside above ground);
(uu) Wineries;
(vv) Wood cutting, sawing.

(2) The following occupations and types of work are declared to be hazardous for any minor under 16 years of age when the work is performed in rooms or areas having power-driven machinery:

(a) Boat repair shops;
(b) Canneries;
(c) Chop mills;
(d) Creameries;
(e) Cycle repair shops;
(f) Electrotyping plants;
(g) Engraving plants;
(h) Factories (manufacturing, repair, alteration);
(i) Feed mills;
(j) Flour mills;
(k) Garages;
(l) Grain warehouses;
(m) Irrigation works;
(n) Laundries;
(o) Lithographing plants;
(p) Mills;
(q) Motor repair shops;
(r) Photoengraving plants;
(s) Printing plants;
(t) Shipbuilding operations;
(u) Stereotyping plants;
(v) All kinds of work in workshops or any premise, room, or place where power-driven machinery is used in or incidental to adapting articles or goods for sale.

(3) The following occupations or types of work are declared to be hazardous for any minor under 16 years of age and these minors are permitted to perform office work only in the following operations:

(a) Auto wrecking yards;
(b) Junk dealers;
(c) Motor vehicle (transportation);
(d) Lumbering;
(e) Water works.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 116, f. 10-20-71, ef. 11-1-71, Renumbered from 839-021-0045; BL 6-1988, f. & cert. ef. 4-12-88; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 17-2006, f. 5-12-06, cert. ef. 5-15-06; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0104

Occupations Particularly Hazardous or Detrimental to the Health or Well-Being of Minors Under the Age of 18

(1) Except as provided in OAR 839-021-0285, an employer may not employ a minor under 18 years of age in any occupation declared particularly hazardous or detrimental to their health or well-being, except under terms and conditions specifically set forth by rules of the Bureau.

(2) Those occupations set out in Title 29 CFR, Part 570.51 to and including Part 570.68 as amended July 19, 2010 are hereby adopted as occupations particularly hazardous or detrimental to the health and well-being of minors 16 and 17 years of age and the regulations pertaining to these occupations set out in Title 29 CFR, Part 570.51 to and including Part 570.68 as amended July 19, 2010 are hereby adopted and incorporated by reference herein and are attached as **Appendix 1**.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 182, f. & ef. 11-14-75; BL 6-1988, f. & cert. ef. 4-12-88; BLI 3-1999, f. & cert. ef. 6-16-99; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 17-2006, f. 5-12-06, cert. ef. 5-15-06; BLI 19-2010, f. 9-28-10, cert. ef. 10-1-10; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0175

Records Availability

(1) All records required to be preserved and maintained by OAR 839-021-0001 to 839-021-0500 shall be preserved and maintained for a period of at least two years.

(2) All employers shall keep the records required by OAR 839-021-0001 to 839-021-0500 in a safe and accessible place.

(3) All records required to be preserved and maintained by OAR 839-021-0001 to 839-021-0500 shall be made available for inspections and transcription by the Bureau.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 6-1988, f. & cert. ef. 4-12-88; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0220

Employment Certificates for the Employment of Minors 14 through 17 Years of Age

(1) Unless otherwise provided by rule, no minor 14 through 17 years of age may be employed or permitted to work unless the employer:

(a) Verifies the minor's age by requiring the minor to produce acceptable proof of age as prescribed by these rules; and

(b) Complies with the provisions of this rule.

(2) An employer may not employ a minor without having first obtained a validated employment certificate from the Bureau. Application forms for an employment certificate may be obtained from any office of the Bureau or by contacting the Child Labor Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street Suite 1045, Portland OR 97232, 971-673-0836, www.oregon.gov/BOLI.

(a) The Bureau will issue a validated employment certificate upon review and approval of the application. The validated employment certificate will be effective for one year from the date it was issued, unless it is suspended or revoked.

(b) If, after the issuance of a validated employment certificate, the duties of the minors are changed from those originally authorized under the employment certificate or the employer wishes to employ minors at an additional establishment, the employer must submit a "Notice of Change (to Annual Employment Certificate)" form to the Child Labor Unit, Wage and Hour Division of the Bureau of Labor and Industries. The "Notice of Change (to Annual Employment Certificate)" form must be submitted within 15 days of the change on a form provided by the Bureau. The Bureau will approve or deny any change(s) in duties and notify the employer. If the Bureau denies the changes, the employer must immediately reassign any affected minor to approved duties or terminate the minor's employment.

(3) The employer must post the validated employment certificate in a conspicuous place where all employees can readily see it. When the employer employs minors in more than one establishment, a copy of the validated employment certificate must be posted at each establishment. As used in this rule, "establishment" means a distinct physical place of business. If a minor is employed by one employer to perform work in more than one location, the minor will be considered employed in the establishment where the minor receives management direction and control.

(4) If the employer employs minors at more than one establishment, a copy of the Summary of Child Labor Laws provided to the employer by the Bureau pursuant to OAR 839-021-0221(4) must be provided by the employer to the manager of each establishment where minors will be employed.

(5) The employer must apply for a validated employment certificate once each year by filing a renewal application on a form provided by the Bureau. The renewal application must be received by any office of the Bureau no later than the expiration date of the validated employment certificate.

(6) If the Bureau's review of any application indicates a failure to comply with any law or rule pertaining to the employment of minors or any order of the commission, the Bureau may deny the application and inform the employer of the reason(s) for the denial.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 117, f. 10-20-71, ef. 11-1-71, Renumbered from 839-021-0115; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 4-1998, f. & cert. ef. 3-5-98; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 17-2006, f. 5-12-06, cert. ef. 5-15-06; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0221
Employment Certificates; Required Information

(1) The application form for an employment certificate must include:

(a) The name and address of the employer;

(b) The name and address of the company representative completing the application form;

(c) An estimate of the number of minors to be employed during the twelve month period covered by the application;

(d) A description of the duties to be performed by the minor(s);

(e) A description of the machinery or other equipment to be used by the minor(s);

(f) Whether 14 and 15 year-old minors are to be employed.

(2) The "Notice of Change (to Annual Employment Certificate)" must include:

(a) The name and address of the employer;

(b) The name and address of the company representative completing the notice;

(c) A description of the change in duties previously authorized;

(d) A description of any machinery or equipment to be used by any minor;

(e) Any address change(s) or additional establishments where minors are proposed to be employed. As used in this rule, "establishment" has the same meaning as defined in OAR 839-021-0220(3).

(3) The Renewal Application for an employment certificate must include:

(a) The name and address of the employer;

(b) The name and address of the company representative completing the application;

(c) The actual number of minors employed during the preceding 12 month period;

(d) An estimate of the number of minors to be employed during the 12-month period covered by the application;

(e) A description of the duties to be performed and the machinery and equipment to be used if different from the previous year or if there are no changes in duties, a statement to that effect;

(f) Any address change(s) or additional establishments where minors are proposed to be employed.

(4) The Bureau will send a summary of the child labor laws and rules to all employers applying for an employment certificate.

(5) The Bureau will provide upon request a "Notice of Change (to Annual Employment Certificate)" form with an explanation of its use.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 4-1998, f. & cert. ef. 3-5-98; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0246
Employment Permits for Minors Under 14 Years of Age

(1) No child under 14 years of age may be employed or permitted to work unless the employer has been issued a validated Employment Permit by the Bureau authorizing the child to work for that particular employer.

(2) A minor under 14 years of age and an employer who wishes to employ the minor under the provisions of ORS 653.320(4) which exempt the minor from the provisions of section (1), (2), or (3) of ORS 653.320, must make a joint application for an Employment Permit using a form supplied by the Wage and Hour Division and available at any office of the Bureau. The application must be delivered to the Child Labor Unit of the Wage and Hour Division, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180. Each application must include:

(a) Minor's name and residence address, and the name and address of parents or legal guardian;

(b) Minor's date of birth and proof of age, consisting of either a certified copy of a birth certificate, hospital certificate, baptismal certificate, or other acceptable proof of age;

(c) Last grade in school completed and the school currently attended and its address;

(d) Name and address of prospective employer and nature of such employer's business;

(e) Amount of compensation to be paid;

(f) The maximum number of hours proposed to be worked on any given day, the maximum number of hours to be worked in any work week, and the maximum number of days proposed to be worked in any work week;

(g) A complete description of the work proposed to be performed;

(h) A separate certification by the employer that the minor will be continuously supervised by a responsible adult.

(3) The Bureau will investigate the circumstances of the proposed employment and the information contained in the application. If the Bureau determines that the character of the employment is suitable and that the employment will not adversely affect the well-being of the minor, the Bureau will issue an Employment Permit, setting out limitations concerning the employment deemed appropriate by the Bureau, which limitations should be consistent with the provisions of section (4) of this rule.

(4) Except as provided in OAR 839-021-0070(7), employment permits for the employment of minors under 14 years of age may be issued only under the following circumstances:

(a) Hours of employment for minors under 14 years of age during the term when schools are in session will be limited to not more than two hours after school hours; not more than six hours on Saturdays and Sundays; and not more than 18 hours per week, not to exceed five work days in one week;

(b) During any vacation period extending over a period of two weeks or longer, minors under 14 years of age may not be employed more than eight hours in any one day and not more than 40 hours in one week and not more than five work days in one week;

(c) Minors under 14 years of age may not be employed in any enterprise subject to the Federal Fair Labor Standards Act, (29 U.S.C. 201, et seq.), in any establishment where alcoholic beverages are dispensed or served, in any theater or amusement park, in any work that involves the minor in canvassing door to door, or in any establishment catering to adults only;

(d) Except as provided in OAR 839-021-0070, minors under 14 years of age may not be employed before the hour of 8 a.m. or after the hour of 6 p.m.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 6-1978, f. & ef. 8-7-78; BL 6-1988, f. & cert. ef. 4-12-88; BLI 13-2000, f. 5-31-00, cert. ef. 6-1-00; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0248

Reports from Employers Employing Minors

Employers employing minors shall file reports that may be required by the Bureau.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 6-1988, f. & cert. ef. 4-12-88; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0255

Special Rules for Temporary Employment of Several Minors for a Short Duration

(1) As used in this rule, unless the context requires otherwise:

(a) "Temporary employment of a short duration" means employment which terminates on or by the tenth day from the date of hire.

(b) "Several minors" means 10 or more minors.

(2) In circumstances involving temporary employment of a short duration where the employment of several minors is proposed, the prospective employer may comply with the provisions of rules OAR 839-021-0220 to 839-021-0248 (Employment Certificates and Employment Permits) or may address a letter application to the Child Labor Unit of the Wage and Hour Division setting out the full and complete circumstances of the proposed employment. The Bureau will investigate the proposed employment and if the Bureau determines that the character of the employment is suitable and that such employment will not adversely affect the physical and moral well-being of the minors, the Bureau will issue a special permit to the employer.

(3) Notwithstanding the provisions of subsection (1)(a) of this rule, the Bureau, for good cause shown, may issue a special permit pursuant to section (2) of this rule for more than 10 days if the Bureau determines that the circumstances of the proposed employment otherwise satisfy section (2) of this rule.

(4) Notwithstanding the provisions of section (2) of this rule, the Bureau, for good cause shown, may issue a special permit in circumstances other than as prescribed in OAR 839-021-0246(4) when it appears to the Bureau that the employment opportunities of the minor would be impaired and the employment, as determined by the Bureau, will not adversely affect the physical and moral well-being of the minor.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 6-1988, f. & cert. ef. 4-12-88; BL 14-1988(Temp), f. 8-2-88, cert. ef. 8-12-88; BL 1-1989, f. & cert. ef. 2-6-89; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0265

Employment of Minors to Act as Canvassers, Peddlers or Outside Salespersons from House to House

(1) Minors 16 and 17 years of age may not be employed to act as a canvasser, a peddler, or an "outside salesman" as defined in ORS 653.010(7), from house to house, unless the employer obtains and maintains a validated registration certificate issued by the Bureau.

(2) To register, an employer may obtain an application form from any office of the Bureau. Upon completion, the application must be filed with the Child Labor Unit of the Wage and Hour Division, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180. The application form will be prescribed by the Bureau and must include, but not be limited to, space for:

(a) The employer's name, permanent address, and telephone number;

(b) The Oregon address and telephone number if different from permanent address and telephone number;

(c) A contact person's name, address and telephone number;

(d) A brief history of company;

(e) A complete description of the work to be performed by minors who are 16 and 17 years of age;

(f) An estimate of the ages and of the number of minors 16 and 17 years of age that may be employed during the period of certification;

(g) A statement that the employer agrees to comply with the provisions of ORS 653.010 to 653.545, OAR 839-021-0001 to 839-021-0265 and any terms and conditions specified by the Bureau;

(h) The name and address of the employer's workers' compensation insurer and policy or binder number;

(i) Other information which will assure the Bureau that employment of minors by the employer will be in compliance with any law or rule concerning the employment of minors; and

(j) The signature of the applicant.

(3) In the case of a renewal application, the employer must submit with the application, a report of minors employed during the previous year. The report must include, but not be limited to, the following information:

(a) The number of minors employed;

(b) Whether any workers' compensation insurance claims were filed by or for any minors while employed by the employer and the number of such claims; and

(c) Other information as may be deemed necessary by the Bureau.

(4) The Bureau will conduct an investigation of the facts and circumstances set out in the application for the registration certificate and may issue a certificate to the employer provided the provisions of OAR 839-021-0001 to 839-021-0265 have been met.

(a) The Bureau may set such terms and conditions upon the issuance of the certificate as the Bureau deems necessary or appropriate.

(b) The Bureau may refuse to issue or renew a certificate when it appears to the Bureau that the provisions of OAR 839-021-0001 to 839-021-0265 are not met or when the employer has violated any law or rule pertaining to the employment of minors.

(c) If the facts and circumstances or conditions under which the certificate is issued change, the employer must notify the Bureau of the change. The Bureau may modify the terms and conditions of the certificate, if any.

(d) Employers may apply for a registration certificate at any time and must apply to renew their registration by July 1 of each year. The registration will be effective through the following June 30.

(5) The Bureau may require the removal of minors from the employment of a registered employer when it appears to the Bureau that the employer has failed to comply with any law or rule pertaining to the employment of minors. Prior to the removal of minors from employment, the Bureau will consider the following factors:

(a) The past history of the employer in taking all necessary measures to prevent or correct violations of statutes and rules;

(b) Past violations, if any, of statutes and rules;

(c) The magnitude and seriousness of the violation; and

(d) Any other mitigating circumstances.

(6) When a registered employer is required by the Bureau to remove the minor employees from employment, the employer may request a hearing in accordance with OAR 839-022-0000 to 839-022-0060.

(7) The Bureau may revoke the registration certificate when it determines that the employer failed to comply with any rule or law covering the employment of minors. The employer must be accorded the opportunity of a hearing in accordance with OAR 839-022-0000 to 839-022-0060.

(8) In addition to all other rules, employers employing persons 16 and 17 years of age to act as a canvasser, peddler or "outside salesman" as defined in ORS 653.010(8) from house to house must provide each minor, before the minor begins work, with an identification card. The identification card must be shown to each customer or potential customer of the minor employed to act as a canvasser, peddler or "outside salesman" by the minor so employed. The identification card will be on a form prescribed by the Bureau. The identification card must include:

(a) A picture of the employee;

(b) The name of the employee;

(c) The name and local address of the employer;

(d) A statement to the effect that the employee is authorized to represent the employer as a canvasser, peddler or "outside salesman";

(e) A statement to the effect that the employer is registered with the Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180, 971-673-0836;

(f) A statement that the card is not valid for any other employer; and

(g) Other information as the Bureau may require to carry out the purpose of this subsection.

(9) Notwithstanding OAR 839-021-0067, minors 16 and 17 years of age employed to act as a canvasser, a peddler or an "outside salesman," as defined in ORS 653.010(8), from house to house may not be employed past the hour of 9:00 p.m.

(10) The transportation of a minor employed to act as a canvasser, peddler, or "outside salesman" to and from the job site must be provided by the employer and must occur no later than 9:00 p.m. In the case of a minor who wants to provide the minor's own transportation, the employer must obtain the written consent of the minor's parents or legal guardian and maintain such written consent in the employer's files.

(11) No minor employed to act as a canvasser, peddler, or "outside salesman" may be transported to another state without the express written consent of a parent or legal guardian of the minor.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 1-1985, f. 2-21-85, ef. 3-1-85; BL 6-1988, f. & cert. ef. 4-12-88; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0280

Operation or Assisting in the Operation of Power-Driven Farm Machinery

(1) As used in this rule, "assist(ing) in the operation of power-driven farm machinery," includes starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation of the machinery.

(2) Minors may not be employed to operate or assist in the operation of power-driven farm machinery unless:

(a) An Employment Certificate has been issued pursuant to OAR 839-021-0220; and

(b) The minor(s) has obtained a "Certificate of Training" on tractor operation or tractor and machinery operation issued by a 4-H Extension Service Program, or an approved secondary vocational agriculture program.

(A) The employer must obtain proof that the minor has a "Certificate of Training" on the operation of tractors or tractors and machinery operation; and

(B) The employer must retain a copy of such proof for two years from the date the minor was employed.

(3) In the event that neither a 4-H Extension Service nor vocational agricultural safety training program for the "Certificate of Training," as required in section (2)(b) of this rule, is available within 35 miles of a minor's residence, a 16 or 17 year-old minor may be employed to operate or assist in the operation of power-driven farm machinery otherwise prohibited if all of the following conditions are met:

(a) The minor is 16 or 17 years of age and the employer has verified the minor's age;

(b) The employer has obtained an Employment Certificate application pursuant to OAR 839-021-0220; and

(c) The minor, the minor's parent or guardian, and the employer of the minor sign a statement on a form prescribed by the commission certifying to all of the following:

(A) The training is not available within 35 miles of the minor's residence;

(B) The employer has provided to the minor not less than eight hours of instruction, four hours of which must be "hands-on" training under the supervision of an adult experienced in the safe and proper operation of the specific equipment the minor is to use before the minor begins work including, but not limited to, training related to the normal working hazards in agriculture, the equipment's instrument panel, equipment controls, daily maintenance and safety checks, starting and stopping the equipment, control of the equipment on different terrain, and the safe operation of hitches, power take-off and hydraulic controls, where applicable; and

(C) The employer agrees to supervise the minor continuously and closely while the minor operates the power-driven farm machinery, or, where such supervision is not feasible, agrees to check on the safety of the minor at intervals of no more than two hours during the operation of the equipment by the minor.

(4) The requirements for obtaining an Employment Certificate and a Certificate of Training do not apply to a minor employed by their parent(s) or person standing in the place of their parent as provided by OAR 839-021-0297.

Stat. Auth.: ORS 651.060(4), 653.261

Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653

Hist.: BL 5-1987, f. & ef. 2-20-87; BL 6-1988, f. 4-12-88, cert. ef. 1-1-89; BL 4-1990, f. & cert. ef. 3-12-90; BL 11-1991, f. & cert. ef. 10-31-91; BL 4-1995, f. & cert. ef. 11-3-95; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 27-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0290

Hours of Work of Minors Under 16 Years of Age in Agriculture

(1) Minors under 16 years of age may not be employed to work in agriculture while the school they attend is in session. As used in this rule, school is in session during the hours set by the school district in which the minor resides while employed in agriculture in accordance with the official school calendar of the district. A school week is any week in which school is in session for at least three days.

(2) The hours of work by minors in agriculture under 16 years of age may not exceed:

(a) Three hours a day on school days;

(b) Ten hours a day on non-school days;

(c) 25 hours a week during school weeks;

(d) From the last day of the most recently completed school year of the school district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture:

(A) Ten hours per day; and

(B) 60 hours per week.

(e) Six days in any week at any time.

(3) Notwithstanding section (2) of this rule, when a minor under 16 years of age is employed in agriculture to operate or assist in the operation of power-driven farm machinery or when such minor is employed to ride in or on power-driven farm machinery as provided in OAR 839-021-0276 to 839-021-0285, the maximum number of hours the minor may work may not exceed:

(a) Three hours a day on school days;

(b) Eight hours a day on non-school days;

(c) Eighteen hours a week during school weeks;

(d) From the last day of the most recently completed school year of the school district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture:

(A) Ten hours per day, 60 hours a week during the harvest season;

(B) Ten hours per day, 44 hours per week outside the harvest season;

(C) A greater number of weekly hours may be permitted when worked outside the harvest season pursuant to a Special Emergency Overtime Permit issued by the Bureau. However, even though a permit may be issued, the maximum number of hours worked in a week may not exceed 60.

(e) Six days in any week at any time.

(4) Notwithstanding sections (2) and (3) of this rule, the Bureau may issue special permits to employers for the employment of minors under 16 years of age in agriculture for more than the maximum number of hours provided in this rule when the Bureau determines that such hours of work will not be detrimental to the health and safety of the minors so employed.

(a) An employer desiring to employ a minor in agriculture for more than the maximum number of hours provided in this rule may apply in writing to the Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180.

(b) The Bureau will investigate the employment and the facts and circumstances set out in the application. If the Bureau determines that the character of the employment is suitable and that the employment will not adversely affect the physical and moral well-being of the minor(s), the Bureau will issue a Special Emergency Overtime Permit to the employer, setting out the terms and conditions of the permit and the period of time for which it will be effective.

(5) Nothing in this rule should be construed to regulate the daily starting and quitting times of minors under 16 years of age who are employed in agriculture.

Stat. Auth.: ORS 651.060(4), 653.261

Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653

Hist.: BL 11-1991, f. & cert. ef. 10-31-91; BL 2-1997(Temp), f. & cert. ef. 7-21-97; BL 10-1997, f. & cert. ef. 11-26-97; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 27-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0292

Hours of Work of Minors 16 and 17 Years of Age in Agriculture

(1) When a minor who is 16 or 17 years of age is employed to operate or assist in the operation of power-driven farm machinery or when such minor is employed to ride in or on power-driven farm machinery as provided in OAR 839-021-0276 to 839-021-0285, the maximum number of hours the minor may work may not exceed:

(a) 25 hours a week during school weeks;

(b) From the last day of the most recently completed school year of the district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture, 60 hours per week (notwithstanding OAR 839-021-0067(1));

(2) As used in this rule, the terms "school week" and "school is in session" have the same meaning as that provided in OAR 839-021-0290(1).

(3) Notwithstanding section (1) of this rule, the Bureau may issue special permits to employers for the employment of minors 16 and 17 years of age in agriculture for more than the maximum number of hours provided in this rule when the Bureau determines that such hours of work will not be detrimental to the health and safety of the children so employed.

(a) An employer who wishes to employ a minor 16 and 17 years of age in agriculture for more than the maximum number of hours provided in this rule may apply in writing to the Child Labor Unit of the Wage and Hour

Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232-2180.

(b) The Bureau will investigate the employment and the facts and circumstances set out in the application. If the Bureau determines that the character of the employment is suitable and that the employment will not adversely affect the physical and moral well-being of the minor(s), the Bureau will issue a Special Emergency Overtime Permit to the employer, setting out the terms and conditions of the permit and the period of time for which it will be effective.

(4) Nothing in this rule should be construed to regulate the daily starting and quitting times of minors who are 16 or 17 years of age who are employed in agriculture.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 11-1991, f. & cert. ef. 10-31-91; BL 2-1997(Temp), f. & cert. ef. 7-21-97; BL 10-1997, f. & cert. ef. 11-26-97; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0294
Voc-Ed and Cooperative Education Programs

When a student under 16 years of age is enrolled in a course of study and training in a cooperative vocational agricultural training program recognized by the State Board of Education, the Bureau may, upon consideration of the circumstances, issue a special permit authorizing the minor to work during the hours that school is in session. The permit will contain such conditions as the Bureau deems appropriate.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 11-1991, f. & cert. ef. 10-31-91; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0297
Parental Exemption

(1) Notwithstanding any other rule, minors of any age may be employed by their parent or person standing in the place of their parent at any time in any occupation on a farm owned or operated by their parent or person standing in the place of their parent.

(2) A person standing in the place of a parent includes the following persons:

(a) Grandfather, grandmother, uncle, aunt, brother or sister;

(b) A person who, having custody or control of the minor, is responsible for the minor's care and financial support;

(c) An agricultural employer who employs a minor in agriculture while the minor lives and works on a farm during any school vacation period of three weeks or more.

(A) The employment arrangement must be agreed to by the agricultural employer and the parents, or other persons having custody or control of the minor; and

(B) A copy of the agreement must be filed with the Bureau.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 11-1991, f. & cert. ef. 10-31-91; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0315
Special Hours Variance for Entertainment Employers

Employers, including registered employers, must apply for a special hours variance when the contemplated employment will exceed the maximum hours prescribed in OAR 839-021-0335. Employers must address a letter application to the Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232-2180 setting out the full and complete circumstances of the proposed employment and the reasons why a special hours variance is being requested.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0320
Registered Employers

(1) In circumstances involving the employment of minors in short term employment, employers may satisfy the requirements of OAR 839-021-0310 by obtaining a registration certificate.

(2) Employers may apply for a registration certificate at any time and may apply to renew their registration by July 1 of each year. The registration will be effective through the following June 30.

(3) To register, an employer may obtain an application form from any office of the Bureau. Upon completion, the application must be filed with the Child Labor Unit of the Wage and Hour Division, 800 NE Oregon St., Ste 1045, Portland OR 97232. The application form will be prescribed by the Bureau and will include, but not be limited to, space for:

(a) The employer's name, permanent address, and telephone number; and

(b) The Oregon address and telephone number if different from permanent address and telephone number; and

(c) A contact person's name, address and telephone number; and

(d) A brief history of company; and

(e) A description of the kinds of events, activities, or productions contemplated which may involve the employment of minors in short term employment; and

(f) An estimate of the ages and number of minors that may be employed in short term employment; and

(g) A brief description of the types of work expected of such minors; and

(h) A statement that the employer agrees to comply with the provisions of ORS 653.010 to 653.545, OAR 839-021-0001 to 839-021-0500 and any terms and conditions specified by the Bureau;

(i) Name and address of workers' compensation insurer and policy or binder number;

(j) Other information as will assure the Bureau that employment of minors by the employer will be in compliance with any law or rule concerning the employment of minors; and

(k) The signature of the applicant.

(4) No less than 24 hours prior to the employment of minors for a short duration, the registered employer must notify the Child Labor Unit of the Wage and Hour Division, which is located at 800 NE Oregon St., Ste 1045, Portland OR 97232. (Telephone Number 971-673-0836.) The notification may be accomplished by letter, in person or by telephone and must include:

(a) Approximate number of minors to be employed;

(b) Approximate ages of minors to be employed;

(c) Description of the duties to be performed by the minors;

(d) Approximate hours the minors will work;

(e) Dates the minors are to be employed;

(f) The physical location where the work is to be performed.

(5) In the case of a renewal application, the employer must submit with the application, a report of minors employed during the previous year. The report must include, but not be limited to, the following information:

(a) The number of minors employed in short term employment pursuant to OAR 839-021-0310(3);

(b) Whether any worker's compensation insurance claims were filed by or for any minors while employed by the employer and the number of such claims;

(c) Other information as may be deemed necessary by the Bureau.

(6) The Bureau will conduct an investigation of the facts and circumstances set out in the application for the registration certificate and may issue a certificate to the employer provided the provisions of OAR 839-021-0001 to 839-021-0500 have been met.

(a) The Bureau may set such terms and conditions upon the issuance of the certificate as the Bureau deems necessary or appropriate.

(b) The Bureau may refuse to issue or renew a certificate when it appears to the Bureau that the provisions of OAR 839-021-0001 to 839-021-0500 are not met or when the employer has violated any law or rule pertaining to the employment of minors.

(7) If the facts and circumstances or conditions under which the certificate is issued change, the employer must notify the Bureau of the change. The Bureau may modify the terms and conditions of the certificate, if any.

(8) The Bureau may require the removal of minors from the employment of a registered employer when it appears to the Bureau that the employer has failed to comply with any law or rule pertaining to the employment of minors.

(9) Prior to the removal of minors as indicated in section (8) of this rule, the Bureau will consider the following factors:

(a) The past history of the employer in taking all necessary measures to prevent or correct violations of statutes and rules; and

(b) Past violations, if any, of statutes and rules; and

(c) The magnitude and seriousness of the violation; and

(d) Any other mitigating circumstances.

(10) When a registered employer is required by the Bureau to remove the minor employees from employment, the employer may request a hearing in accordance with OAR 839-022-0000 to 839-022-0060.

(11) The Bureau may revoke the registration certificate when it determines that the employer failed to comply with any rule of the commission or law covering the employment of minors. The employer must be accorded the opportunity of a hearing in accordance with OAR 839-022-0000 to 839-022-0060.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BLI 4-1998, f. & cert. ef. 3-5-98; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0325
School Release/Instruction/Waiver

(1) The employer must obtain a release from the Superintendent, or designee, of the school district in which the minor's school is located, when the employment requires the minor's absence from school for more than five days.

(2) The employer must provide minors under 16 years of age with no less than three hours of instruction per day, excluding Saturday and Sunday. The instruction must be provided by a teacher certified to teach in Oregon or, when the minors travel to Oregon from another state, certified to teach such minors in the state where the minors normally attend school. The instruction must be provided under the following circumstances:

(a) When the school the minor is attending is in session; and

(b) When the employment requires the minor's absence from school for more than five days.

(3) The employer is responsible for ensuring that adequate instruction is provided to minors under 16 years of age. If adequate instruction is not available at the job site, the employer must provide the minors with relief from their duties for the purpose of attending a school. As used in this section, "adequate instruction" means educational instruction of no less than three hours per day which is provided by a teacher certified to teach as indicated in section (2) of this rule.

(4) The employer may apply to the Bureau for a special waiver from the provisions of sections (1) and (2) of this rule by submitting a letter application to the Bureau setting out the reasons for the waiver request. In the case of an emergency, the employer may make an application by telephone by calling the Child Labor Unit of the Wage and Hour Division at 971-673-0836 and setting out the reasons for the waiver request. The Bureau may temporarily grant or deny the application.

(5) As the Bureau does not have the authority to certify persons to teach minors, interested persons should contact the Oregon Teacher Standards and Practices Commission for information regarding the teaching certification requirements in Oregon.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BLI 4-1998, f. & cert. ef. 3-5-98; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0330
Supervision

(1) The employer must provide appropriate care and supervision of each minor at all times during the minor's employment.

(2) The employer must provide a sufficient number of supervisors to ensure the safety of the minors employed. The following number of supervisors is considered to be sufficient to ensure the safety of the minors:

(a) At least one supervisor for nine or fewer minors employed;

(b) At least one supervisor for each multiple of ten, or part thereof, minors employed;

(c) The Bureau may require a greater or lesser number of supervisors as individual circumstances warrant.

(3) Example of the minimum number of supervisors required by section (2) of this rule:

(a) At least one, not more than nine minors employed — Numbers of supervisors required: One;

(b) At least ten, not more than 19 minors employed — Number of supervisors required: Two;

(c) At least 20, not more than 29 minors employed — Number of supervisors required: Three;

(d) At least 30, not more than 39 minors employed — Number of supervisors required: Four.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0335
Working Hours

(1) No minor may be employed to work more than six consecutive days.

(2) For purposes of determining the number of consecutive days of work, the following days will be considered as work days:

(a) Days when the transportation of the minor is more than four hours duration;

(b) Days the minor attends school and does not work.

(3) Example of determining the number of days:

(a) Travel Days: Three hours on one day — School Days: Three — Work Days: Two — Total: Five;

(b) Travel Days: Five hours on one day — School Days: Two — Work Days: Three — Total: Six.

(4) The allowed time at the place of employment as used in this section includes transportation between the employer's studio (or location headquarters) and any location. This time also includes any makeup, hairdress, wardrobe and rehearsal time as required by the employer.

(5) When a school which the minor regularly attends is in session, the minor will be permitted at the place of employment according to the following schedule:

(a) Ages 14–17: 11 hours a day including rest and meal breaks and, when required, an average of three hours of instruction;

(b) Ages 10–13: Ten hours a day including rest and meal breaks and, when required, an average of three hours of instruction;

(c) Ages 6–9: Nine hours a day including rest and meal breaks and, when required, an average of three hours of instruction;

(d) Ages 4–5: Seven hours a day, or eight hours a day if the minor is transported, including meal breaks and an average of three hours of rest, recreation, and instruction when required. Where the minor is enrolled in the first grade or above, an average of three hours of instruction must be provided when required.

(6) When the school in which the minor is enrolled is not in session, the minor will be permitted at the place of employment according to the following schedule:

(a) Ages 14–17: 11 hours a day including rest and meal breaks;

(b) Ages 10–13: Ten hours a day including three hours of rest, recreation, and meal breaks;

(c) Ages 6–9: Nine hours a day including three hours of rest, recreation, and meal breaks;

(d) Ages 4–5: Seven hours a day including three hours of rest, recreation, and meal breaks, or up to eight hours a day if the minor is transported;

(e) Ages 2–3: Six hours a day including three hours of rest, recreation, and meal breaks;

(f) Ages 1–2: Five hours a day including 2-1/2 hours of rest and recreation and meal breaks;

(g) Ages over six months– one: Four hours a day including two hours of rest and recreation and meal breaks;

(h) Ages 15 days–six months: Two hours a day, no more than 20 minutes of which will be spent as work time.

(7) The minor's working day must end according to the following schedule:

(a) Ages over six months–5: 6:30 p.m.;

(b) Ages 6–8: 7:30 p.m.;

(c) Ages 9–10: 9:00 p.m.;

(d) Ages 11–14: 9:30 p.m.;

(e) Ages 15–17: 10:00 p.m. on evenings preceding a day in which the minor will attend the school in which he or she is enrolled; 12:30 a.m. in all other circumstances.

(8) Infants over the age of 15 days and up to and including six months may only work between the hours of 9:00 a.m. and 4:30 p.m.

(9) Minors over the age of six months and under 14 years may not commence their working days prior to 7:00 a.m. Minors between the ages of 14 and 18 years may not commence their working day prior to 5:30 a.m.

(10) A minor must receive a 12 hour rest break at the end of the minor's working day and prior to the commencement of the minor's next day of work or attendance at regular school.

(11) The employer may apply to the Bureau for a special waiver from the provisions of sections (1) through (9) of this rule by submitting a letter application to the Bureau setting out the reasons for the waiver request. In the case of an emergency, the employer may make an application by telephone by calling the Child Labor Unit of the Wage and Hour Division at 971-673-0836 and setting out the reasons for the waiver request. The Bureau may temporarily grant or deny the application.

Stat. Auth.: ORS 651.060(4), 653.261

Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f & cert. ef. 4-12-88; BL 3-1993(Temp), f. & cert. ef. 4-2-93; BL 13-1993, f. 10-29-93, cert. ef. 11-1-93; BLI 4-1998, f. & cert. ef. 3-5-98; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0340
Rest Periods

Employers shall provide minors with rest periods as prescribed by OAR 839-021-0072(2).

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84 ; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0345
Meal Periods

Employers shall provide minors with meal periods as prescribed by OAR 839-021-0072(1).

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0350
Other Working Conditions

(1) Employers shall, at any time, allow parents or legal guardians access to their minor children employed in the entertainment industry.

(2) Employers must provide the following:

(a) A safe and secure place for minors to rest and play; and

(b) Suitable nursery and rest facilities.

(3) Minors under six months of age may not be exposed to lights of greater than 100 foot candle-light intensity for more than thirty seconds at a time.

(4) Employers shall provide worker's compensation insurance coverage for all minors in accordance with the laws of the State of Oregon.

(5) Transportation to the closest medical facility providing emergency services must be available at all times while minors are present.

(6) On location, the employer shall provide return transportation for the minor promptly upon dismissal.

(7) Employers shall comply with all statutes and rules concerning the employment of minors.

(8) No employer shall expose a minor to undue emotional stress while employing a minor in the entertainment industry.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0355
Prohibited Performances

(1) No employer may employ a minor in the entertainment industry in any occupation declared particularly hazardous pursuant to OAR 839-021-0102 and 839-021-0104 or in employment prohibited by 839-021-0097 and 839-021-0276 to 839-021-0285. However, a safe simulation of such employment may be allowed.

(2) Minors under fifteen days of age may not be employed in the entertainment industry.

(3) Minors under one year of age may not be employed in the entertainment industry unless the employer can demonstrate a need for such minor. A separate letter of application must be submitted to the Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232-2180 setting forth the details of the needed employment. The letter must include:

(a) A complete description of the action in which the minor is expected to participate; and

(b) Certification that the minor will not be engaged for longer than the hours allowed by OAR 839-021-0335; and

(c) A signed statement from the minor's parent permitting the employment; and

(d) A signed statement from a physician licensed by the Oregon State Board of Health attesting that the minor is physically able to perform the expected duties. The physician's statement must be accompanied by the physician's complete address and the physician's agreement to furnish the Bureau of Labor and Industries with any or all of the information necessary to confirm the particulars of such statement.

(4) No employer may employ a minor under one year of age in the entertainment industry unless a registered nurse is present and available to the minor at all times while the minor is present.

(5) No employer may employ a minor in the entertainment industry when the employment would place the minor in a clear and present danger to life and limb. If the minor believes there exists such danger, the employer must, at the same time, discuss the matter with the minor and the minor's parent or guardian together. If the minor persists in the belief that a clear and present danger to life and limb exists, regardless of its validity, the employer must not require the minor to perform the activity the minor believes will present such danger.

(6) No employer may employ a minor to participate in a performance in the entertainment industry unless the minor has been trained to portray it safely.

(7) No employer may employ a minor to participate in, or be present during, an obscene performance or the depiction of an obscene performance in violation of ORS 163.665 to 163.695 or 167.060 to 167.095.

(8) No employer may employ a minor in a place of public amusement or entertainment in violation of ORS 167.830 to 167.840.

(9) No employer may employ a minor to be exhibited in a trance.

(10) Notwithstanding the provisions of OAR 839-021-0102 and this rule, upon written request, the Bureau may, for good cause shown, exempt the employment of a minor under 16 years of age in the entertainment industry from the provisions of OAR 839-021-0102 and this rule after determining that the exemption will not be detrimental to the health or safety of the minor affected. Such exemption will be granted only under circumstances including but not limited to the following:

(a) The employment is not in violation of federal child labor regulations;

(b) The minor employee is adequately trained to perform the duties requested;

(c) The minor employee will be adequately supervised in performing the duties of the position;

(d) The parent or person standing in the place of the minor's parent has given written consent for the employment of the minor to perform duties otherwise prohibited; and

(e) The employer complies with all other applicable provisions of laws and rules.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2004(Temp), 7-29-04 thru 1-24-05; BLI 1-2005, f. & cert. ef. 1-3-05; BLI 19-2010, f. 9-28-10, cert. ef. 10-1-10; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0360
Special Permit, Hours Variance or Employment Certificate May Be Refused

When it appears to the Bureau that the proposed employment would be prohibited by OAR 839-021-0355, the Bureau may refuse to issue any special permit, hours variance or employment certificate.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0365
Required Records

(1) Employers, including registered employers, employing minors in long-term employment and unregistered employers employing minors in short-term employment must maintain the following records for a period of two years from the date of initial employment:

(a) Name, address and telephone number of all minors employed;

(b) Total hours worked each day and each week;

(c) Daily starting and quitting time;

(d) Age of each minor;

(e) Date authorized to employ such minors by the Bureau;

(f) Rate of wage and total wages paid each week;

(g) Any deductions, rebates or refunds taken from an employee's total wages and the net amount of wages paid;

(h) Any payroll or other such records pertaining to the employment of minors.

(2) Registered employers employing minors in a single engagement in short term employment must comply with section (1) of this rule. When, in a single engagement, the number of minors employed is more than five, the registered employer must maintain the following records for a period of two years from the date employment began on the particular engagement:

(a) Total number of minors employed on the engagement;

(b) Dates the minors were employed;

(c) Approximate ages of the minors;

(d) Date notification made to the Child Labor Unit pursuant to OAR 839-021-0320(4).

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BLI 4-1998, f. & cert. ef. 3-5-98; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0370
Records Availability

All employers must make available to representatives of the Wage and Hour Division of the Bureau, records necessary to determine whether the employer is complying with OAR 839-021-0300 to 839-021-0375. Such records include, but are not limited to, the records described in OAR 839-021-0365. Such records must be made available to such representatives for inspection and transcription during normal business hours.

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

839-021-0490
Penalties

(1) In addition to any civil penalties which may be assessed by the Commissioner pursuant to ORS 653.370, the Bureau may, at its discretion, revoke the right of an employer to hire minors in the future if it is determined by the Bureau that the employer has failed to comply with the provisions of 653.305 to 653.340 or with OAR 839-021-0210 to 839-021-0248.

(2) Prior to the revocation of the right to employ minors in the future an employer may request a contested case hearing pursuant to the Administrative Procedures Act (ORS Chapter 183).

Stat. Auth.: ORS 651.060(4), 653.261
Stats. Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013), ORS 653
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88, Renumbered from 839-021-0380; BLI 10-2013, f. 12-18-13, cert. ef. 1-1-14

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Rule Caption: Repeals rules governing the Wage and Hour Commission's gathering of information through subpoenas or testimony
Adm. Order No.: BLI 11-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Repealed: 839-022-0000, 839-022-0010, 839-022-0100, 839-022-0105, 839-022-0110, 839-022-0115, 839-022-0120, 839-022-0125, 839-022-0130, 839-022-0135, 839-022-0140, 839-022-0145, 839-022-0150, 839-022-0155, 839-022-0160, 839-022-0165
Subject: S.B. 135, 77th Leg., Reg. Session (Or. 2013) abolished the Wage and Hour Commission and repealed ORS 653.530, which authorized the commission to conduct investigations, issue subpoenas, obtain evidence, and take testimony in matters related to the commission's duties. OAR 839, division 22, implemented ORS 653.530 by establishing procedures for the issuance of subpoenas and the gathering of testimony through the commission. With the abolition of the Wage and Hour Commission and repeal of its authority to issue subpoenas and gather testimony, repeal of the related administrative rules is necessary. The rule amendments repeal procedures for the issuance of subpoenas and the gathering of testimony through the commission.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

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Rule Caption: Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws
Adm. Order No.: BLI 12-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 12-30-13
Notice Publication Date: 11-1-2013
Rules Adopted: 839-010-0300, 839-010-0305, 839-010-0310
Rules Amended: 839-010-0000
Subject: Amendments clarify the purpose and scope of the rules in correctly stating the provisions of the Oregon Revised Statutes that are enforced. Newly adopted rules implement newly enacted legislation extending whistleblower protections to disclosures regarding violations of election laws.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-010-0000
Purpose and Scope

(1) The Civil Rights Division of the Oregon Bureau of Labor and Industries enforces the provisions of ORS 441.174, 652.355, 653.060, 659A.199, 659A.200 to 659A.233 and S.B. 148, 77th Leg., Reg. Session (Or. 2013), prohibiting discrimination based on whistleblowing disclosures or activities that are described in the statutes. These rules apply to all such complaints and inquiries received on or after the effective date of these rules.

(2) The purpose of these rules is to clarify the provisions of the statutes.

(3) In accordance with ORS 659A.820, an individual claiming a violation of 441.174, 652.355, 653.060, 659A.199, 659A.200 to 659A.233, or these rules, may file a complaint with the Civil Rights Division, as provided in OAR 839-003-0025.

Stat. Auth.: ORS 652.355, 653.060, 659A.221, 659A.805.
Stats. Implemented: ORS 441.174, 652.355, 653.060, 659A.199, 659A.200 - 659A.233, S.B. 148, 77th Leg., Reg. Session (Or. 2013)
Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 12-2013, f. & cert. ef. 12-30-13

839-010-0300
Application

These rules apply to a person who pays money or offers other valuable consideration for obtaining signatures of electors on a state initiative, referendum, or recall petition or on a prospective petition of a state measure to be initiated.

Stat. Auth.: ORS 659A.805
Stats. Implemented: S.B. 148, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 12-2013, f. & cert. ef. 12-30-13

839-010-0305
Unlawful Employment Practice

In addition to the conduct prohibited in ORS 659A.199, it is an unlawful employment practice for a person described in OAR 839-010-0300 to discriminate or retaliate against another person with respect to hire or tenure, compensation or other terms, conditions or privileges of employment for the reason that the person has in good faith reported information that the person believes is evidence of a violation of a state or federal election law, rule or regulation.

Stat. Auth.: ORS 659A.805
Stats. Implemented: S.B. 148, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 12-2013, f. & cert. ef. 12-30-13

839-010-0310
Inspection

(1) The Commissioner of the Bureau of Labor and Industries may inspect the accounts of a chief petitioner of an initiative or referendum petition relating to a state measure who pays any person money or other valuable consideration to obtain signatures on the petition or prospective petition, under reasonable circumstances at any time before the deadline for filing signatures on the petition or during the period specified for retention of the accounts, as provided in S.B. 148, 77th Leg., Reg. Session (Or. 2013) Section 5.

(2) The right of inspection may be enforced by a writ of mandamus issued by any court of competent jurisdiction.

Stat. Auth.: ORS 659A.805
Stats. Implemented: S.B. 148, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 12-2013, f. & cert. ef. 12-30-13

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Rule Caption: Amendments to Division 839-003 reflecting commissioner complaint process and conforming civil action terms to statutes
Adm. Order No.: BLI 13-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 12-30-13
Notice Publication Date: 11-1-2013
Rules Amended: 839-003-0005, 839-003-0020, 839-003-0031, 839-003-0090, 839-003-0100, 839-003-0235, 839-003-0245
Subject: OARs 839-003-0005, 839-003-0031, 839-003-0090, 839-003-0100, and 839-003-0245 include the term "complainant" but not the term "aggrieved person." Amendments to these rules add "aggrieved person" to clarify that the Commissioner or the Attorney General, acting as the complainant, may bring complaints on behalf of aggrieved persons.

OARs 839-003-0020 and 839-003-0235 use the term "civil suit" rather than "civil action" as used in the enabling statutes. Amendments conform the terminology of these rules with the statutes.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-003-0005
Definitions

For purposes of these rules:

(1) "Administrator" means the Administrator of the Civil Rights Division of the Bureau of Labor and Industries or a designee of the administrator.

(2) "Aggrieved Person" means either:

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

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

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

(4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the commissioner.

(5) "Complaint" means for the purpose of ORS Chapter 659A, except complaints under OSEA, ORS 659A.145 or 659A.421 or federal housing law, a written, verified statement that:

(a) Gives the name and address of the complainant and the respondent;

(b) Identifies the protected class basis of the complaint;

(c) Is signed by the complainant;

(d) Describes the actions complained of, including:

(A) The date(s) of occurrence;

(B) What the action was and how it harmed the complainant; and

(C) The causal connection between the complainant's protected class and the alleged harm.

(6) "Complainant" means a person filing a complaint personally or through an attorney.

(7) "Days," unless otherwise stated in the text of a document, means calendar days. "Work days" means Monday through Friday, except holidays officially recognized by the State of Oregon or the federal government.

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

(9) "EEOC" means the Equal Employment Opportunity Commission of the federal government.

(10) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development ("HUD") has jurisdiction.

(11) "Notice" means written information delivered personally or sent by mail to the person's last known personal or business address or business address of the person's designated representative.

(12) "OSEA" means the Oregon Safe Employment Act, ORS 654.001 et seq.

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

(14) "Person" has the meaning given in ORS 659A.001(9).

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

(16) "Formal Charges" are formal charges drafted and issued by the bureau's Hearings Unit.

(17) "Substantial evidence" means:

(a) Proof that a reasonable person would accept as sufficient to support the allegations of the complaint, except complaints under ORS 659A.145 or 659A.421 or federal housing law.

(b) Under ORS 659A.145 or 659A.421, reasonable cause for the Commissioner to believe the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in circuit court.

(18) "Substantial Evidence Determination" means the division's written findings of substantial evidence.

(19) "Written verified complaint" means a complaint that is:

(a) In writing; and

(b) Under oath or affirmation.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A
Hist.: BL 7-1981, f. & ef. 6-25-81; BL 7-1982, f. & ef. 4-22-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 6-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 5-2012(Temp), f. & cert. ef. 6-13-12 thru 12-10-12; BLI 7-2012, f. & cert. ef. 8-8-12; BLI 8-2012(Temp), f. & cert. ef. 8-8-12 thru 1-31-13; BLI 11-2012, f. & cert. ef. 10-10-12; BLI 13-2013, f. & cert. ef. 12-30-13

839-003-0020
Civil Action

As used in enforcing ORS Chapter 659A, including housing discrimination under 659A.145 or 659A.421 or federal housing law, except as provided below.

(1) A person alleging unlawful discrimination under state law may file a civil action as provided in ORS 659A.870 to 659A.885.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil action.

(b) A person filing a civil action in state or federal court waives the right to file a complaint with the division with respect to those matters alleged in the civil action. This subsection does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law.

(2) After filing a complaint with the division, a complainant may file a civil action in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil action. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a civil action has been filed, the division will dismiss the complaint. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action. This subsection does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law.

(3) The commissioner will notify the complainant in writing of the right to file a civil action in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division or on the one-year anniversary of the complaint filing, whichever occurs first. The complainant will have 90 days from the notice mailing date to file a civil action. A complainant filing a civil action against a public body must also file a tort claim notice as required by 30.275. This subsection does not apply to housing discrimination complaints under 659A.145 or 659A.421or federal housing law.

(4) A civil action under ORS 659A.885 against a public body, as defined in 30.260, or any officer, employee or agent of a public body as defined in 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under 659A.820.

(5) An action alleging breach of a division settlement agreement, entered into under ORS 659A.001 to 659A.030, 659A.233, 659A.303, 659A.145, 659A.409, 659A.420, 659A.421, 659A.150 to 659A.224 and 659A.800 to 659A.890, may be filed under 659A.860 in accordance with the applicable statute of limitations.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.800- 659A.890
Hist.: BL 7-1981, f. & ef. 6-25-81; BL 12-1982, f. & ef. 8-10-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 24-2006(Temp), f. 7-5-06, cert. ef. 7-7-06 thru 1-3-07; BLI 38-2006, f. 10-25-06, cert. ef. 10-27-06; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 13-2013, f. & cert. ef. 12-30-13

839-003-0031
Filing a Complaint Under the Oregon Safe Employment Act

(1) A person or the person's attorney may file a complaint under the Oregon Safe Employment Act (OSEA), in person or by mail, with the division at any bureau office in the state of Oregon. Complaint means a written statement signed by the complainant that:

(a) Gives the name and address of the complainant and the respondent;

(b) Identifies the protected class basis of the complaint;

(c) Is signed by the complainant;

(d) Describes the actions complained of, including:

(A) The date(s) of occurrence;

(B) What the action was and how it harmed the aggrieved person; and

(C) The causal connection between the aggrieved person's protected class and the alleged harm.

(2) A person alleging discrimination for reporting or opposing unsafe or unhealthy work conditions under ORS 654.062 must contact the division within 90 days of having reasonable cause to believe that such violation has occurred. An employee would have reasonable cause to believe a violation has occurred on the earliest date that the employee:

(a) Believed retaliation had occurred against the employee for opposing employee health and safety hazards; and

(b) Knew or should have known of the right to file a complaint with the division and of the requirement that the complaint be filed within 90 days of the alleged retaliation.

(A) If a notice required by OSEA, as provided in OAR 437-001-0275(2)(a), was properly posted in the employee's workplace, continuously on and following the date of the alleged retaliation, the division will find that the employee knew or should have known of the 90-day filing requirement.

(B) If the employer failed to post the required OSEA poster, the 90-day filing requirement will begin on the date the employee learned of the right to file a complaint and of the 90-day filing requirement. The employee may establish this date based on the employee's own statement or other evidence offered by the employee.

(C) If the employer disagrees with the employee's presented date as the date the employee learned of the right to file a complaint, the burden is on the employer to show that the employee knew or should have known on an earlier date.

(D) If extenuating circumstances exist, the division may extend the 90-day period as provided in 29 CFR §1977.15(3).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 654.062; ORS 659A.800 - 659A.865
Hist.: BLI 5-2012(Temp), f. & cert. ef. 6-13-12 thru 12-10-12; BLI 7-2012, f. & cert. ef. 8-8-12; BLI 13-2013, f. & cert. ef. 12-30-13

839-003-0090
Remedy

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law. Remedies in complaints of housing discrimination are addressed in OAR 839-003-0230.

(1) In cases of employment discrimination remedy includes, but is not limited to:

(a) Employment or reemployment;

(b) Wages or other benefits lost due to the practice;

(c) Out-of-pocket expenses attributable to the practice;

(d) Compensation for emotional distress and impaired personal dignity; and

(e) Interest.

(2) Consideration of all acts alleged to comprise a hostile work environment in a complaint, including alleged acts occurring outside the one year statute of limitations for filing a complaint, is permissible for the purposes of assessing liability, so long as any act contributing to that hostile work environment takes place within the statutory period.

(3) In order to recover damages for lost wages, the aggrieved person will generally be required to mitigate damages by seeking employment.

(a) Earned income from employment may be deducted from lost wage damages.

(b) In most cases, unearned income such as unemployment or public assistance benefits will not be deducted from lost wage damages.

(4) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) and (2) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the aggrieved person or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(5) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to:

(a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(6) When the respondent makes an offer of remedy, the division will inform the aggrieved person of the offer. If the aggrieved person does not accept an offer that the division has determined will eliminate the effects of the unlawful practice, the division may dismiss the complaint.

(7) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.800 - 659A.865
Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 20-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 8-2006, f. 3-16-06 cert. ef. 3-20-06; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 13-2013, f. & cert. ef. 12-30-13

839-003-0100
Commissioner's Complaint

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law. Commissioner's complaints of housing discrimination are addressed in OAR 839-003-0245.

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights due to an unlawful practice or employment practice. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0025.

(2) The commissioner is the "complainant" in a commissioner's complaint.

(3) The commissioner may identify an aggrieved person or persons in a commissioner's complaint, by name, pseudonym or by general description as being injured by an alleged unlawful practice or otherwise similarly situated to a person eligible to file a complaint under ORS 659A.820.

(4) Any cease and desist order issued in a proceeding in which the commissioner filed a complaint may, in addition to any other action authorized by law, include remedies for an aggrieved person or persons.

(5) In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(c) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(d) Alter or limit an individual's private right of action provided under ORS 659A.870 to 659A.885.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.800 - 659A.865
Hist.: BL 7-1985(Temp), f. & ef. 10-17-85; BL 11-1986, f. & ef. 10-29-86; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 13-2013, f. & cert. ef. 12-30-13

839-003-0235
Civil Action

(1) A person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may file a civil action as provided in 659A.870 to 659A.885, or 30.680. A person is not required to file a complaint of a violation of state law with the division before filing a civil action.

(2) A civil action alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, may be filed no later than two years after the occurrence or termination of an alleged discriminatory housing practice, or within two years after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs last. The two-year period may not include any time during which an administrative proceeding was pending with respect to the housing practice.

(3) After filing a complaint with the division, a complainant may file a civil action in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil action. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a civil action has been filed the division will not dismiss the complaint until the civil trial commences. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action.

(4) If Formal Charges have been issued with respect to a housing discrimination complaint, and an administrative law judge has commenced a

hearing on the record under ORS Chapter 659A, the complainant may not commence a civil action in court that alleges the same matters.

(5) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved individuals in the same manner as an individual or group of individuals may file a civil action under 659A.885.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.800 - 659A.890
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 13-2013, f. & cert. ef. 12-30-13

839-003-0245
Commissioner's Complaint

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights or is about to be denied rights due to an unlawful practice under ORS 659A.145 or 659A.421 or federal housing law. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0200.

(2) The commissioner is the "complainant" in a commissioner's complaint.

(3) The commissioner may identify an aggrieved person or persons in a commissioner's complaint, by name, pseudonym or by general description as being affected by an alleged unlawful practice or otherwise similarly situated to a person eligible to file a complaint under ORS 659A.820.

(4) Any cease and desist order issued in a proceeding in which the commissioner filed a complaint may, in addition to any other action authorized by law, include remedies for an aggrieved person or persons.

(5) In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(c) Alter or limit an individual's private right of action provided under ORS 659A.870 to 659A.885.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.800 - 659A.885
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 13-2013, f. & cert. ef. 12-30-13

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Rule Caption: Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints
Adm. Order No.: BLI 14-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 12-30-13
Notice Publication Date: 11-1-2013
Rules Adopted: 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400
Rules Amended: 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206
Subject: Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-005-0003
Definitions

As used in enforcing ORS Chapter 659A, including housing discrimination under 659A.145 or 659A.421 or federal housing law:

(1) "Aggrieved Person" means either:

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

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

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

(3) "Complainant" means an individual who files a complaint with the division, personally or through the individual's attorney, pursuant to the guidelines provided in OAR 839-003-0025 or 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

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

(5) "Employee" does not include any individual employed by that individual's parents, spouse or child or in the domestic service of any person.

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

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

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

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

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

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

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

(c) The work performed:

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

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

(C) Does not displace regular employees;

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

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

(d) An intern is considered to be in an employment relationship with an employer for the purposes of employee protections provided under ORS 659A.030, 659A.082, 659A.109, 659A.112, 659A.136, 659A.142, 659A.199, 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303, 659A.306, and 659A.315.

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

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

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

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

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

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

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

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0011
Constructive Discharge

Constructive discharge occurs when an individual leaves employment because of unlawful discrimination. The elements of a constructive discharge are:

(1) The employer intentionally created or intentionally maintained discriminatory working conditions related to the individual's protected class status;

(2) The working conditions were so intolerable that a reasonable person in the individual's circumstances would have resigned because of them;

(3) The employer desired to cause the individual to leave employment as a result of those working conditions, or knew or should have known that the individual was certain, or substantially certain, to leave employment as a result of the working conditions; and

(4) The individual left employment as a result of the working conditions.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A
Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; Renumbered from 839-005-0035, BLI 7-2010, f. & cert. ef. 2-24-10; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0030
Sexual Harassment

(1) Sexual harassment is unlawful discrimination on the basis of sex and includes the following types of conduct:

(a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex and:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

(2) The standard for determining whether harassment based on an individual's sex is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(3) Employer proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the respondent's president, owner, partner or corporate officer.

(4) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for sexual harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against that individual. A tangible employment action includes but is not limited to the following:

(a) Terminating employment, including constructive discharge;

(b) Failing to hire;

(c) Failing to promote; or

(d) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(5) Harassment by Supervisor, No Tangible Employment Action: When sexual harassment by a supervisor with immediate or successively higher authority over an individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(a) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(b) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(A) That the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and

(B) That the aggrieved person unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(6) Harassment by Co-Workers or Agents: An employer is liable for sexual harassment by the employer's employees or agents who do not have immediate or successively higher authority over the aggrieved person when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(7) Harassment by Non-Employees: An employer is liable for sexual harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(8) Withdrawn Consent: An employer is liable for sexual harassment of an individual by the employer's supervisory or non-supervisory employees, agents or non-employees, even if the acts complained of were of a kind previously consented to by the aggrieved person, if the employer knew or should have known that the aggrieved person had withdrawn consent to the offensive conduct.

(9) When employment opportunities or benefits are granted because of an individual's submission to an employer's sexual advances, requests for sexual favors, or other sexual harassment, the employer is liable for unlawful sex discrimination against other individuals who were qualified for but denied that opportunity or benefit.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.030
Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 46-2006, f. 12-29-06, cert. ef. 1-3-07; BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0060
Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including employment. Obtainment or use by an employer of information in an applicant's credit history impacts the individual's privacy, and must relate only to the position for which the individual is being considered or holds. The people of Oregon have the right to employment without unlawful discrimination on the basis of credit history.

(2) Prohibited discrimination is a basis of unlawful practices described in ORS Chapter 659A and other chapters of the Oregon statutes.

(3) Any individual claiming to be aggrieved by an unlawful practice including a violation of ORS 659A.320 may file a complaint under 659A.820 or may bring a civil action under 659A.885.

(4) The Civil Rights Division of the Bureau of Labor and Industries enforces ORS 659A.320. These rules implement and interpret.

Stat. Auth.: 659A.805
Stats. Implemented: ORS 659A.320
Hist.: BLI 16-2010, f. 6-1-10, cert. ef. 7-1-10; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0065
Definitions

(1) "Applicant" means an individual who has submitted information for the purpose of gaining employment.

(2) "Credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

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

(4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

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

(6) "Substantially job-related" is defined in OAR 839-005-0080.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.320
Hist.: BLI 16-2010, f. 6-1-10, cert. ef. 7-1-10; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0070
Unlawful Discrimination

(1) It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Obtainment or use of credit history information may not be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2, ORS 659A.030 and OAR 839-005-0010. A finding of adverse impact discrimination does not require establishment of intentional discrimination.

(3) ORS 659A.320 permits an employer to obtain or use for employment purposes information contained in the credit history of an applicant or employee under circumstances described at 659A.320(2). ORS 659A.320(2)(d) permits an employer to obtain or use information contained in the credit history of an applicant or employee if the credit history information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(4) The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.320
Hist.: BLI 16-2010, f. 6-1-10, cert. ef. 7-1-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0075
Exceptions

ORS 659A.320 does not apply to:

(1) Employers that are federally insured banks or credit unions;

(2) Employers that are required by state or federal law to use individual credit history for employment purposes;

(3) Employees in or applicants for positions responsible for enforcing the criminal laws of this state, including:

(a) A public safety officer who is a member of a law enforcement unit;

(b) A peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, or the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, the Governor; or

(c) Employees in positions responsible for enforcing the criminal laws of this state or laws or ordinances related to airport security; or

(4)(a) The obtainment or use by an employer of information in the credit history of an applicant or employee because the information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(b) The burden of proving the employer's disclosure to the employee rests with the employer.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.320
Hist.: BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0080
Substantially Job-Related

(1) The determination of whether credit history information is substantially job-related must be evaluated with respect to the position for which the individual is being considered or holds.

(2) Credit history information of an applicant or employee is substantially job-related if:

(a) An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit. Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or

(b) The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.320
Hist.: BLI 16-2010, f. 6-1-10, cert. ef. 7-1-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0085
Enforcement and Retaliation

(1) An employer's duties and obligations under ORS 659A.320 extend to an employer that is a successor in interest as defined in OAR 839-005-0014.

(2) An applicant or employee claiming a violation of ORS 659A.320 or these rules may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by 659A.820.

(3) An applicant or employee claiming a violation of ORS 659A.320 may bring a civil action under 659A.885.

(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with 659A.320.

(5) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of 659A.320 or to attempt to do so.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.320
Hist.: BLI 16-2010, f. 6-1-10, cert. ef. 7-1-10; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0160
Protection from Discrimination and Safety Accommodation for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) As provided in ORS 659A.290, it is an unlawful employment practice for an employer, because an individual is a victim of domestic violence, harassment, sexual assault or stalking, to:

(a) Refuse to hire an otherwise qualified individual; or

(b) Discharge, threaten to discharge, demote, suspend or in any way discriminate or retaliate against an individual with respect to promotion, compensation or any other terms, conditions or privileges of employment.

(2) ORS 659A.290 requires employers to provide safety accommodation for victims of domestic violence, harassment, sexual assault or stalking.

(3) The Civil Rights Division ("division") of the Bureau of Labor and Industries enforces ORS 659A.290.

(4) Leave from employment is available for victims of domestic violence, harassment, sexual assault or stalking for purposes including but not limited to: seeking legal or law enforcement remedies, seeking medical

care or counseling, and for relocating or other safety measures. The division enforces ORS 659A.270 to 659A.285, which require leave for victims of domestic violence, harassment, sexual assault or stalking. OAR 839-009-0321 to 839-009-0365 implement and interpret ORS 659A.270 to 659A.285.

(5) Paid leave is available for an eligible employee of a public employer as provided in OAR 839-009-0363 and HB 3263, 77th Leg., Reg. Session (Or. 2013).

(6) OAR 839-005-0160 to 839-005-0170 implement and interpret ORS 659A.290.

(7) Definitions for OAR 839-005-0160 to 839-005-0170:

(a) "Victim of domestic violence" means:

(A) An individual who has been threatened with abuse or is a victim of abuse, as defined in ORS 107.705; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(b) "Victim of harassment" means:

(A) An individual against whom harassment has been committed as described in Oregon's criminal code at ORS 166.065; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of harassment committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(C) In no event will the alleged perpetrator of the harassment be considered a victim for the purposes of these rules.

(c) "Victim of sexual assault" means:

(A) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(d) "Victim of Stalking" means:

(A) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in subsection (a), including a member of the victim's immediate family; or

(C) An individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(e) In no event will an alleged perpetrator of domestic violence, harassment, sexual assault or stalking be considered a victim for the purposes of ORS 659A.290 or these rules.

Stat. Auth.: ORS 659A.805 & 659A.270
Stats. Implemented: ORS 659A.290, HB 3263, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0170

Reasonable Safety Accommodation for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) It is an unlawful employment practice to refuse to make a reasonable safety accommodation requested by an individual who is a victim of or under threat of domestic violence, harassment, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(2) "Reasonable safety accommodation" may include, but is not limited to, a transfer, reassignment, modified schedule, use of available paid leave from employment, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, harassment, sexual assault or stalking.

(3) Undue hardship means a significant difficulty and expense to an employer's business and includes consideration of the size of the employer's business. Other factors to consider in determining whether granting a safety accommodation will cause an undue hardship on an employer's business include, but are not limited to:

(a) The safety accommodation requested and the relative cost to an employer's business;

(b) The overall financial resources of the employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the safety accommodation were granted;

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer's facilities;

(d) The type of operations conducted by the employer, including the composition, structure and functions of the employer's workforce.

(4) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, harassment, sexual assault, or stalking.

(a) An individual must provide a certification permitted under OAR 839-009-0362(5) within a reasonable time after receiving the employer's request for certification.

(b) Any of the following constitutes sufficient certification:

(A) A copy of a police report indicating that the individual was or is a victim of domestic violence, harassment, sexual assault or stalking.

(B) A copy of a protective order or other evidence from a court or attorney that the individual appeared in or is preparing for a civil or criminal proceeding related to domestic violence, harassment, sexual assault or stalking.

(C) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault or stalking.

(D) All records and information kept by an employer regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual, unless otherwise required by law.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.290, HB 3263, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0200

Definitions

(1) "Aggrieved person" includes a person who believes that the person:

(a) Has been injured by an unlawful practice or discriminatory housing practice; or

(b) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(2) "Complainant" means an individual who files a complaint with the division, personally or through the individual's attorney, pursuant to the guidelines provided under OAR 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

(3) "Disability" means:

(a) A physical or mental impairment that substantially limits one or more major life activities of the individual.

(b) A record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. An individual has a record of having a physical or mental impairment if the individual has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

(c) A physical or mental impairment that the individual is regarded as having.

(A) An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity of the individual.

(B) An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

(4) "Dwelling" means any building, structure, or portion of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location of any such building, structure, or portion of such a building or structure. "Family" includes a single individual.

(5) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and the individual with whom they are domiciled who is:

(a) A parent or another person having legal custody of the individual; or

(b) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(c) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(d) "Domiciled" includes but is not limited to part-time residence in a dwelling where an individual has a reasonable expectation of a continuing right to return.

(6) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development has jurisdiction.

(7) "Major life activity" includes, but is not limited to:

(a) Caring for oneself;

(b) Performing manual tasks;

(c) Seeing;

(d) Hearing;

(e) Eating;

(f) Drinking;

(g) Sleeping;

(h) Walking;

(i) Standing;

(j) Lifting;

(k) Bending;

(l) Twisting;

(m) Speaking;

(n) Breathing;

(o) Cognitive functioning;

(p) Learning;

(q) Education;

(r) Reading;

(s) Concentrating;

(t) Remembering;

(u) Thinking;

(v) Communicating;

(w) Working: To be substantially limited in the major life activity of working, an individual must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions;

(x) Socialization;

(y) Sitting;

(z) Reaching;

(aa) Interacting with others;

(bb) Sexual relations;

(cc) Employment;

(dd) Ambulation;

(ee) Transportation;

(ff) Operation of a major bodily function, including but not limited to:

(A) Functions of the immune system;

(B) Normal cell growth; and

(C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and

(gg) Ability to acquire, rent or maintain property.

(8) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(9) "Person" includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers, fiduciaries, mutual companies, trusts and unincorporated organizations and public bodies as defined in ORS 30.260 that have the primary purpose of serving, representing or otherwise benefiting the protected class.

(10) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(11) "Property" and "real property" means property used or intended for commercial, business or residential purposes including, but not limited to a dwelling.

(12) "Purchaser" includes an occupant, prospective occupant, renter, prospective renter, lessee, prospective lessee, buyer or prospective buyer.

(13) "Receipt or alleged receipt of treatment for a mental disorder," as used in ORS 659A.142(5), means actual treatment of an individual for a mental condition or an assertion that the person received such treatment.

(14) "Regarded as having an impairment," as used in ORS 659A.100(2)(c), means:

(a) An individual having a physical or mental impairment that does not substantially limit a major life activity but who has been treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson;

(b) An individual having a physical or mental impairment that substantially limits a major life activity only as a result of the attitude of others toward such impairment; or

(c) An individual having no physical or mental impairment but who is treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson.

(15) "Residential real estate related transaction" means any of the following:

(a) The making or purchasing of loans or providing other financial assistance:

(A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(B) Secured by residential real estate; or

(b) The selling, brokering or appraising of residential real property.

(16) "Substantially limits" means that an individual has an impairment, had an impairment or is perceived as having an impairment that restricts one or more major life activities of the individual as compared to most people in the general population.

(a) An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.

(b) An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual.

(c) To have a disability (or to have a record of a disability) an individual must be substantially limited in performing a major life activity as compared to most people in the general population.

(d) An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(e) The term "substantially limits" shall be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of ORS 659A.100 to 659A.145 and 659A.400 to 659A.425, and should not require extensive analysis.

(17) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(18) "Treatment" includes examination, evaluation, diagnosis and therapy by a health professional within the scope of the professional's applicable license.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 - 659A.142; 659A.145, 659A.421, HB 2111, 77th Leg., Reg. Session (Or. 2013)

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0206

Discrimination Theories: Housing

(1) For the purposes of housing discrimination complaints under ORS 659A.145 or 659A.421 or discrimination complaints under federal housing law, a complainant need not be a member of a protected class. An aggrieved person may file a complaint of housing discrimination.

(2) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals reasonable cause for the Commissioner to believe the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in circuit court under one of the following theories:

(a) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class.

(b) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(A) There must be substantial evidence that the individual was harmed or was about to be harmed by the action of the respondent under circumstances that make it appear that the respondent treated the individual differently than comparably situated individuals who were not members of the individual's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of discrimination exists.

(i) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(ii) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of unlawful discrimination.

(B) The complainant at all times has the burden of proving that the individual's protected class was the motivating factor for the respondent's unlawful action.

(3) Adverse Impact Discrimination in Housing:

(a) For the purposes of interpreting ORS 90.390, a court or the commissioner may find that a person has violated or is going to violate 659A.145 or 659A.421 if:

(A) The person applies a facially neutral housing policy to a member of a protected class;

(B) Application of the policy adversely impacts members of the protected class to a greater extent than the policy impacts persons generally.

(b) In determining under subsection (a) of this section whether a violation has occurred or will occur and, if it is determined that a violation has occurred or will occur, what relief should be granted, a court or the commissioner will consider:

(A) The significance of the adverse impact on the protected class;

(B) The importance and necessity of any business purpose for the facially neutral housing policy; and

(C) The availability of less discriminatory alternatives for achieving the business purpose for the facially neutral housing policy.

(4) As used in enforcing ORS 659A.145 or 659A.421 or federal housing law, harassment on the basis of a protected class is an unlawful practice in housing when:

(a) Conduct of a verbal or physical nature relating to protected classes is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (2) of this rule is shown; and

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of creating an intimidating, hostile, or offensive environment; or

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of housing; or

(C) Submission to or rejection of such conduct is used as the basis for housing decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the individual against whom the harassment is directed would so perceive it.

(5) Tenant-on-tenant harassment: A housing provider is liable for a resident's harassment of another resident when the housing provider knew or should have known of the conduct, unless the housing provider took immediate and appropriate corrective action.

(6) Harassment by Employees or Agents: A housing provider is liable for harassment of a resident by the housing provider's employees or agents when the housing provider knew or should have known of the conduct, unless the housing provider took immediate and appropriate corrective action.

(7) Discrimination based on disability may involve intentional discrimination, including harassment, or discrimination that need not be intentional, including adverse impact, or the failure to permit reasonable modifications, the refusal to make reasonable accommodations or the failure to design and construct covered buildings under applicable rules. To be protected from discrimination based on disability, an individual must have a disability, as described in ORS 659A.104 and the relevant rules. Reasonable accommodation in real property transactions is covered by 659A.145 and OAR 839-005-0220. Reasonable modifications in housing and the design and construction of covered buildings are covered by ORS 659A.145. Claims of disability discrimination brought under federal housing law are defined under that law.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - 659A.142; 659A.145, 659A.421
Hist.: BLI 8-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0300
Purpose and Scope

(1) ORS 345.240 prohibits unlawful discrimination by career schools licensed under 345.010 to 345.450.

(2) A violation of ORS 345.240 is an unlawful practice under ORS Chapter 659A. The provisions of ORS Chapter 659A that apply to unlawful practices, apply to alleged violations of 345.240, including but not limited to 659A.030(1)(f) and 659A.800 through 659A.865.

(3) Any individual claiming to be aggrieved by an unlawful practice including a violation of ORS 345.240 may file a complaint with the Commissioner of the Bureau of Labor and Industries under 659A.820.

(4) The Civil Rights Division of the Bureau of Labor and Industries enforces ORS 345.240. These rules implement and interpret 345.240.

Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240
Hist.: BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0305
Definitions

For purposes of ORS 345.240 and these rules:

(1) "Agent" means a person employed by or for a career school for the purpose of procuring students, enrollees or subscribers by solicitation in any form, made at a place or places other than the school office or place of business of such school.

(2) "Career school" includes any private proprietary professional, technical, home study, correspondence, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession. "Career school" includes those required to be licensed under ORS 345.010 to 345.450, and excludes entities described in 345.015. Entities excluded by 345.015 but receiving state funds, may be subject to 659.850, which is under the jurisdiction of the State Board of Higher Education.

(3) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex or sexual orientation.

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

Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240, 345.010 & 659.850
Hist.: BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0310
Unlawful Discrimination

(1) No career school or its agent may, based on the protected classes of age, disability, national origin, race, color, marital status, religion, sex or sexual orientation of an individual or any other individual with whom that individual associates:

(a) Refuse admission to any individual;

(b) Discriminate in any aspect of admission or enrollment against any individual;

(c) Discriminate in giving instruction to any individual;

(d) Discriminate in requirements for or the provision of aid, benefits, or services;

(e) Discriminate in application of rules of behavior, sanctions, or any other treatment; or

(f) Otherwise limit any individual in the enjoyment of any right, privilege, advantage, or opportunity.

(2) No career school may aid or perpetuate discrimination by joining or remaining a member of any organization that discriminates, based on the

protected classes in subsection (1) of this rule, in providing any aid, benefit, or service to students or employees.

Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240 & 659.850
Hist.: BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0315
Discrimination Theories for Career Schools

(1) Intentional Unlawful Discrimination: Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(12) of these rules;

(b) The complainant is a member of a protected class;

(c) The complainant was harmed by an action of the respondent; and

(d) The complainant's protected class was the motivating factor for the respondent's action. In determining whether the complainant's protected class was the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class, unless the respondent can show that a bona fide voluntary, court-ordered affirmative action plan (OAR 839-005-0013(3)) allows the action.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the complainant was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the complainant differently than comparably situated individuals who were not members of the complainant's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The complainant at all times has the burden of proving that the complainant's protected class was the reason for the respondent's unlawful action.

(2) Harassment based on an individual's protected class is a type of intentional unlawful discrimination.

(a) Conduct of a verbal or physical nature relating to protected classes other than sex is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (1) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offensive environment;

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of enrollment; or

(C) Submission to or rejection of such conduct is used as the basis for enrollment decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(3) Adverse Impact Discrimination: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (1) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(4) Reasonable Accommodation of Religion: A career school must reasonably accommodate a student's or applicant's religious belief, observance or practice unless the career school can demonstrate that such accommodation would cause it undue hardship.

Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240, 345.120 & 345.060
Hist.: BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0320
Authority of Superintendent of Public Instruction Related to Complaints Under ORS 345.240

(1) Pursuant to ORS 345.120, the Superintendent of Public Instruction of the State of Oregon has authority to suspend or revoke licenses of career schools violating 345.010 to 345.450 or any applicable rule. A certified copy of a finding by the Commissioner of the Bureau of Labor and Industries in a contested case proceeding under 659A.850 that the school has violated 345.240 is adequate proof of the violation.

(2) Pursuant to ORS 345.060, the Superintendent of Public Instruction may accept service of all actions or proceedings brought against a career school not domiciled in Oregon.

Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240, 345.120 & 345.060
Hist.: BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0325
Retaliation or Discrimination Prohibited

Pursuant to ORS 659A.030(1)(f), it is an unlawful practice for a career school or its agent to retaliate or discriminate against any individual because the individual has filed a complaint, testified or assisted in any proceeding in connection with 345.240 or ORS Chapter 659A.

Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240 & 659A.030
Hist.: BLI 14-2013, f. & cert. ef. 12-30-13

839-005-0400
Unlawful Employment Practice

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 659A.805
Stats. Implemented: HB 2654, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 14-2013, f. & cert. ef. 12-30-13

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Rule Caption: Amending, adopting and renumbering rules in Division 839-006 regarding disabilities
Adm. Order No.: BLI 15-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 12-30-13
Notice Publication Date: 11-1-2013
Rules Adopted: 839-006-0291, 839-006-0292, 839-006-0345
Rules Amended: 839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305
Rules Renumbered: 839-006-0332 to 839-006-0350
Rules Ren. & Amend: 839-006-0307 to 839-006-0340
Subject: Amendments to 839-006-0205 and 839-006-0212 make the rules consistent with newly enacted legislation regarding substantial limitations.

Amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Amendments to 839-006-0290 implement newly enacted legislation regarding places of public accommodation and state government.

Amendments to 839-006-0305 modify the definition of place of public accommodation consistent with newly enacted legislation.

Amendments and renumbering of 839-006-0307 to 839-006-0340 reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf on individuals with disabilities

Adoption of 839-006-0345 provides information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

Renumbering of 839-006-0332 to 839-006-0350 moves the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-006-0205
Definitions

(1) "Disability" means:

(a) A physical or mental impairment that substantially limits one or more major life activities of the individual.

(b) A record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. An individual has a record of having a physical or mental impairment if the individual has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

(c) A physical or mental impairment that the individual is regarded as having.

(A) An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity of the individual.

(B) An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

(2) "Employer" means any person that employs six or more persons and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard, as provided in ORS 659A.106. The "six or more persons" need not be employed within Oregon.

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

(4) "Essential functions" are the fundamental duties of a position an individual with a disability holds or desires.

(a) A job function may be essential for any of several reasons, including but not limited to, the following:

(A) The position exists to perform that function;

(B) A limited number of employees is available to carry out the essential function; or

(C) The function is highly specialized so that the position incumbent was hired for the expertise or ability required to perform the function.

(b) Evidence of whether a particular function is essential includes but is not limited to:

(A) The amount of time spent performing the function;

(B) The consequences of not performing the function;

(C) The terms of a collective bargaining agreement;

(D) The work experience of past incumbents in the job; and

(E) The current work experience of incumbents in similar jobs.

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

(6) "Major life activity" includes, but is not limited to:

(a) Caring for oneself;

(b) Performing manual tasks;

(c) Seeing;

(d) Hearing;

(e) Eating;

(f) Drinking;

(g) Sleeping;

(h) Walking;

(i) Standing;

(j) Lifting;

(k) Bending;

(l) Twisting;

(m) Speaking;

(n) Breathing;

(o) Cognitive functioning;

(p) Learning;

(q) Education;

(r) Reading;

(s) Concentrating;

(t) Remembering;

(u) Thinking;

(v) Communicating;

(w) Working: To be substantially limited in the major life activity of working, an individual must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions;

(x) Socialization;

(y) Sitting;

(z) Reaching;

(aa) Interacting with others;

(bb) Sexual relations;

(cc) Employment;

(dd) Ambulation;

(ee) Transportation;

(ff) Operation of a major bodily function, including but not limited to:

(A) Functions of the immune system;

(B) Normal cell growth; and

(C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and

(gg) Ability to acquire, rent or maintain property.

(7) "Medical," as used in ORS 659A.133 and 659A.136 and these rules, means any information, whether oral, written or electronic that:

(a) Is created or received by an employer; and

(b) Relates to the past, present, or future physical or mental health status or condition of an individual.

(8) "Misclassified," as used in ORS 659A.104(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(9) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(10) A "qualified individual with a disability" is an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of a position that the individual holds or desires, and who can, with or without reasonable accommodation, perform the position's essential functions.

(11) "Reasonable accommodation" is defined in OAR 839-006-0206.

(12) "Substantially limits" means that an individual has an impairment, had an impairment or is perceived as having an impairment that restricts one or more major life activities of the individual as compared to most people in the general population.

(a) An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.

(b) An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual.

(c) In determining whether an impairment substantially limits a major life activity, the ability of the individual with the impairment to perform that major life activity is compared to that of individuals in the general population.

(d) Factors that could affect whether an impairment "substantially limits a major life activity" include, but are not limited to, the presence of other impairments that combine to make the impairment disabling.

(e) An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 - 659A.142, H.B. 2111, 77th Leg., Reg. Session (Or. 2013)

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 15-1990, f. 10-29-90, cert. ef. 11-1-90; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 4-2007, f. 1-29-07, cert. ef. 2-1-07; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2013, f. & cert. ef 12-30-13

839-006-0212

Determining Whether an Impairment Substantially Limits a Major Life Activity

(1) When determining whether an impairment substantially limits a major life activity of an individual, the determination shall be made without regard to the ameliorative effects of mitigating measures, including:

(a) Medication;

(b) Medical supplies, equipment or appliances;

(c) Low vision devices or other devices that magnify, enhance or otherwise augment a visual image, except that ordinary eyeglasses or contact lenses or other similar lenses that are intended to fully correct visual acuity or eliminate refractive error may be considered when determining whether an impairment substantially limits a major life activity of an individual;

(d) Prosthetics, including limbs and devices;

(e) Hearing aids, cochlear implants or other implantable hearing devices;

(f) Mobility devices;

(g) Oxygen therapy equipment or supplies;

(h) Assistive technology;

(i) Reasonable accommodations or auxiliary aids or services; or

(j) Learned behavioral or adaptive neurological modifications.

(2) The non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(3) The determination of whether a person is substantially limited in a major life activity shall be made on a case-by-case basis.

Stat. Auth.: ORS 659A.805

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

Hist.: BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2013, f. & cert. ef 12-30-13

839-006-0270

Purpose and Scope: State Government

(1) ORS 659A.103 provides that it is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including participating in and receiving the benefits of the services, programs and activities of state government, without discrimination on the basis of disability.

(2) ORS 659A.142(5) provides that:

(a) It is an unlawful practice for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual has a disability.

(b) State government shall make reasonable modifications in services, programs or activities, including but not limited to policies and procedures, when the modifications are necessary for state government to comply with ORS 659A.142(5).

(c) State government shall provide auxiliary aids and services when necessary to ensure equal access to state government programs, services, and activities.

(3) Theories applied in cases of alleged discrimination under ORS 659A.142(5) are found in OAR 839-006-0340.

(4) An individual claiming a violation of ORS 659A.142(5) may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.142(5)

Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2013, f. & cert. ef 12-30-13

839-006-0290

Other Statutes, Regulations and Agencies Governing Access by or Discrimination Against Persons with Disabilities

(1) Public transportation services, programs, and activities of public entities are subject to Title II of the federal Americans with Disabilities Act and regulated by the U.S. Department of Transportation. See 42 USC 12141 § 221 and 49 CFR § 37. Public transportation is covered by ORS 659A.142(4).

(2) Accessibility of government facilities is subject to Title II of the Americans with Disabilities Act, 42 USC §12131. The U.S. Department of Justice regulates existing government facilities (28 CFR § 35.150) and new construction and alterations to government facilities (28 CFR § 35.151). The Oregon Department of Consumer and Business Services has jurisdiction over disability access to state and local government facilities in

Oregon. See ORS 447.210 to 447.310 and administrative rules and standards adopted pursuant thereto.

(3) The federal Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any federal executive agency or by the United States Postal Service. 29 USC § 794.

(4) Discrimination against individuals with disabilities in employment is subject to ORS 659A.103 to 659A.139 and OAR 839-006-0200 to 0265.

(5) Discrimination against individuals with disabilities by places of public accommodation is subject to ORS 659A.142(4) and OAR 839-006-0300 to 0335.

(6) Assistance animals in places of public accommodation or access to state government are subject to SB 610, 77th Leg., Reg. Session (Or. 2013) and OAR 839-006-0345.

(7) Discrimination against individuals with disabilities in real property transactions is subject to ORS 659A.142, 659A.145 and OAR 839-005-0195 to 839-005-0220.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - .142, HB 2668, 77th Leg., Reg. Session (Or. 2013) and SB 610, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2013, f. & cert. ef 12-30-13

839-006-0291
Reasonable Modifications: State Government

(1) State government shall make reasonable modifications in services, programs or activities, including but not limited to policies and procedures, when the modifications are necessary for state government to comply with ORS 659A.142(5) unless state government can demonstrate that making the modifications would result in a fundamental alteration in the nature of the service, program, or activity or would result in undue financial or administrative burdens on state government. This will be determined on a case by case basis.

(2) ORS 659A.142(5) and these rules are not intended to:

(a) Create an independent entitlement to any service, program or activity of state government; or

(b) Require state government to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or would result in undue financial or administrative burdens, as determined on a case-by-case basis.

(3) In determining whether financial and administrative burdens are undue for purposes of ORS 659A.142(5) and these rules, all resources available for use in the funding and operation of the service, program, or activity will be considered.

(4) Nothing in ORS 659A.142(5) or these rules prohibits state government from providing benefits, services, or advantages to individuals with disabilities beyond those required by 659A.142(5) or these rules.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.142(5)
Hist.: BLI 15-2013, f. & cert. ef 12-30-13

839-006-0292
Definitions — Auxiliary Aids and Services: State Government

(1) "Qualified interpreter" means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

(2) "Qualified reader" means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

(3) "Video remote interpreting (VRI) service" means an interpreting service that uses video conferencing technology over dedicated lines or wireless technology offering high-speed, wide- bandwidth video connection that delivers high-quality video images.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.142
Hist.: BLI 15-2013, f. & cert. ef 12-30-13

839-006-0295
Provision of Auxiliary Aids and Services: State Government

(1) Except as provided for in subsection (3) of this section, state government must provide auxiliary aids and services when necessary to ensure equal access for individuals with disabilities to state government programs, services, and activities.

(2) Auxiliary aids and services may include, but are not limited to:

(a) Qualified interpreters, note takers, real-time computer-aided transcription services, transcription services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning including real-time captioning, voice, text and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, telecommunications devices for deaf persons (TDDs), videotext displays, computer aided real time captioning (CART), accessible electronic and information technology, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(b) Qualified readers, taped texts, audio recordings, brailed materials and displays, screen reader software, magnification software, optical readers, secondary auditory programs (SAP), large print materials, accessible electronic and information technology including e-mail, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) Acquisition or modification of equipment or devices; and

(d) Other similar services and actions.

(3) State government is not required to provide auxiliary aids or services that state government can demonstrate would result in a fundamental alteration in the nature of a service, program or activity of state government or would result in undue financial or administrative burdens on state government. This will be determined on a case by case basis.

(4) State government may not place a surcharge to cover the costs of measures such as the provision of auxiliary aids or program accessibility, that are required to provide an individual with a disability with the nondiscriminatory treatment required by ORS 659A.142(5).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2013, f. & cert. ef 12-30-13

839-006-0305
Definitions

(1) "Disability" has the meaning given in OAR 839-006-0205.

(2) "Major life activity" has the meaning given in OAR 839-006-0205(6).

(3) "Physical or mental impairment" has the meaning given in OAR 839-006-0205 (9).

(4) "Place of public accommodation" means:

(a) Any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements, transportation or otherwise;

(b) Any place that is open to the public and owned or maintained by a public body, as defined in ORS 174.109, regardless of whether the place is commercial in nature; or

(c) Any service to the public that is provided by a public body, as defined in ORS 174.109, regardless of whether the service is commercial in nature.

(5) A place of public accommodation does not include:

(a) A Department of Corrections institution as defined in ORS 421.005;

(b) A state hospital as defined in ORS 162.135;

(c) A youth correction facility as defined in ORS 420.005;

(d) A local correction facility or lockup as defined in ORS 169.005; or

(e) An institution, bona fide club or place of accommodation that is in its nature distinctly private.

(6) "Substantially limits" has the meaning given in OAR 839-006-0205(12).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.142, HB 2668, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 15-2013, f. & cert. ef 12-30-13

839-006-0340
Discrimination Theories: Discrimination Against Individuals with Disabilities by State Government or Places of Public Accommodation

(1) A violation of discrimination laws against individuals with disabilities may involve either intentional or unintentional discrimination. Discrimination against individuals with disabilities need not be intentional to be unlawful. Unintentional discrimination may occur, for example, in situations involving adverse impact. To be protected from discrimination

based on disability, an individual must have a disability, as defined in ORS 659A.104 and the relevant rules.

(2) Substantial evidence of intentional unlawful discrimination against an individual exists if the investigation of the Civil Rights Division ("division") reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(12) of these rules;

(b) The individual has a disability;

(c) The individual was harmed by an action of the respondent; and

(d) The individual's disability was the motivating factor for the respondent's action. In determining whether the individual's disability was the motivating factor for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because that individual has a disability.

(B) Different or Unequal Treatment Theory: The respondent treats individuals with disabilities differently than others who do not have disabilities. When the respondent makes this differentiation because of the individual's disability and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the individual was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the individual differently than comparably situated individuals who do not have disabilities. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that an individual's disability was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's disability was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The individual with a disability at all times has the burden of proving that the individual's disability was the motivating factor for the respondent's unlawful action.

(3) Adverse impact by a place of public accommodation or by state government on the basis of disability: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (2) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(12) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(4) Harassment by a place of public accommodation or by state government on the basis of disability:

(a) Conduct of a verbal or physical nature on the basis of disability is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (2) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of creating an intimidating, hostile or offensive environment; or

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of receiving services, accommodations, advantages, facilities or privileges from a place of public accommodation or services, programs or activities of state government; or

(C) Submission to or rejection of such conduct is used as the basis for decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the individual against whom the harassment is directed would so perceive it.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 & 659A.142
Hist.: BLI 8-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; Renumbered from 839-006-0307 by BLI 15-2013, f. & cert. ef 12-30-13

839-006-0345

Assistance Animals in Places of Public Accommodation or Access to State Government

(1) "Assistance animal" means a dog or other animal designated by administrative rule that has been individually trained to do work or perform tasks for the benefit of an individual.

(2) "Assistance animal trainee" means an animal that is undergoing a course of development and training to do work or perform tasks for the benefit of an individual that directly relate to the disability of the individual.

(3) "Assistance animal trainer" means an individual exercising care, custody and control over an assistance animal trainee during a course of training designed to develop the trainee into an assistance animal.

(4) A place of public accommodation or of access to state government services, programs or activities may not:

(a) Ask an individual about the nature or extent of a disability that the individual has or may have;

(b) Require an individual to provide documentation proving that an animal is an assistance animal or an assistance animal trainee; or

(c) Notwithstanding any fee or admission charge imposed for pets, require that a person with a disability or an assistance animal trainer pay a fee or admission charge for an assistance animal or assistance animal trainee.

(5) A place of public accommodation or of access to state government services, programs or activities may:

(a) Ask whether an animal is required due to a disability; and

(b) Ask about the nature of the work or task that an animal is trained to do or perform or is being trained to do or perform, unless it is readily apparent that the animal performs or is being trained to perform work or a task for the benefit of a person with a disability.

(6) If a place of public accommodation or of access to state government services, programs or activities customarily charges a person for damages that the person causes to the place, the place may charge a person with a disability or an assistance animal trainer for damages that an assistance animal or assistance animal trainee causes to the place.

(7) A person with a disability or an assistance animal trainer must maintain control of an assistance animal or assistance animal trainee.

(a) Except as provided in this subsection, control shall be exerted by means of a harness, leash or other tether.

(b) If the use of a harness, leash or other tether would interfere with the ability of the animal to do the work or perform the tasks for which the animal is trained or is being trained, control may be exerted by the effective use of voice commands, signals or other means.

(c) If an animal is not under control as required in this subsection, a place of public accommodation or of access to state government services, programs or activities may consider the animal to be out of control for purposes of subsection (8) of this section.

(8)(a) Except as provided in this subsection, a place of public accommodation or of access to state government services, programs or activities may not deny a person with a disability or an assistance animal trainer the right to be accompanied by an assistance animal or assistance animal trainee in any area of the place that is open to the public or to business invitees.

(b) A place of public accommodation or of access to state government services, programs or activities may require a person with a disability or an assistance animal trainer to remove an assistance animal or assistance animal trainee if:

(A) The animal is not housebroken; or

(B) The animal is out of control and effective action is not taken to control the animal.

(c) A place of public accommodation or of access to state government services, programs or activities may impose legitimate requirements necessary for the safe operations of the place of public accommodation or the services, programs or activities. The place of public accommodation or of access to state government services, programs or activities shall ensure that the safety requirements are based on actual risks, not on speculation, stereotypes or generalizations about persons with disabilities.

(9) A place of public accommodation or of access to state government services, programs or activities shall make reasonable modifications as necessary to allow an opportunity for a person with a disability who is benefited by the use of an assistance animal to obtain goods, services and the use of the advantages, facilities and privileges of the place or the advantages, facilities and privileges of the state government services, programs or activities. For purposes of this subsection, except as provided in subsections (5) and (7) of this section, in addition to any other applicable accommodation requirement, allowing the presence of the assistance animal is a reasonable modification.

(10) If a place of public accommodation or of access to state government services, programs or activities requires a person with a disability to remove an assistance animal under subsection (8) of this section, the place or state government shall give the person with a disability a reasonable opportunity to obtain goods, services and the use of the advantages, facilities and privileges of the place or the advantages, facilities and privileges of the state government services, programs or activities without the assistance animal's presence.

(11) A place of public accommodation or of access to state government services, programs or activities is not required to provide care or supervision for an assistance animal or assistance animal trainee.

(12) The protection granted under this section to a person with a disability or an assistance animal trainer does not invalidate or limit the remedies, rights and procedures of any other federal, state or local laws that provide equal or greater protection of the rights of a person with a disability, an assistance animal trainer or individuals associated with a person with a disability.

Stat. Auth.: ORS 659A.805
Stats. Implemented: SB 610, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 15-2013, f. & cert. ef 12-30-13

839-006-0350
Lift Systems for Transient Lodging

(1) A transient lodging provider shall ensure that in transient lodging facilities of 175 or more rooms or suite of rooms that at least one room or suite of rooms has a lift system or multiple lift systems that enable an individual with a disability to access a bed, a toilet, and a shower or bathtub in the room or suite of rooms occupied by the individual with a disability.

(a) "Lift system" means a system that:

(A) Is used to transfer a person to a bed, toilet, shower or bathtub, but does not provide the individual with independent mobility;

(B) May be a manual lift, an electronic lift or a lift that uses a track system; and

(C) May require operation by an assistant.

(b) "Transient lodging" means a unit consisting of a room or suite of rooms that: (A) Is not occupied as a principal residence;

(B) Is typically occupied for a period of fewer than 30 consecutive days; and

(C) Includes services that are part of the regularly charged cost of occupancy, including maid and linen services.

(2) Additional information regarding the requirement described in section (3) of this rule is available at ORS 659A.144.

(3) Any violation of section (1) of this rule or of the authorizing statutes is an unlawful practice.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.144
Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; Renumbered from 839-006-0332 by BLI 15-2013, f. & cert. ef 12-30-13

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Rule Caption: Amending rules in Division 839-009 to add new statutory provisions, add leave form, housekeeping edits
Adm. Order No.: BLI 16-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 12-31-13
Notice Publication Date: 11-1-2013
Rules Amended: 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0270, 839-009-0280, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0362, 839-009-0363, 839-009-0380, 839-009-0390, 839-009-0430
Subject: Amendments to 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250 implement newly enacted legislation on OFLA.

Further amendments to 839-009-0210 are for housekeeping and to make the definition of health care provider consistent with the statutes.

Amendments to 839-009-0270 clarify that employer payment of health benefits is an employer option for OFLA-only leave.

Amendments to 839-009-0280 replace "available" paid leave with "accrued" paid leave for clarification.

Amendments to 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363 implement newly enacted legislation regarding public employers with respect to victims under this section.

Amendments to OAR 839-009-0325 and 839-009-0330 clarify what posting is required under newly enacted legislation. Currently 839-009-0325 and 839-009-0330 do not include a posting requirement for ORS 659A.170 to 659A.285. Newly amended legislation creates this requirement.

Amendments to 839-009-0340 reflect newly enacted legislation and create consistency among the definitions of victim. Currently OAR 839-009-0340 includes definitions which are no longer consistent with newly enacted legislation. It also currently contains a definition of Victim of Harassment that is not consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-009-0340 and 839-009-0380 remove the word "calendar" in reference to year to be consistent with the statutes.

Amendments to 839-009-0430 include an example request form for OMFLA which a covered employee may provide.

Amendments to 839-009-0210, 839-009-0340, and 839-009-0380 adding a definition of spouse.

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

839-009-0210
Definitions: OFLA

(1) "Alternate duty" means work assigned to an employee that may consist of:

(a) The employee's same duties worked on a different schedule; or

(b) Different duties worked on the same or different schedule.

(2) "Child," for the purposes of parental and sick child leave only (not for the purposes of serious health condition leave), means a biological, adopted, foster or stepchild, the child of an employee's same-gender domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. The child must be:

(a) Under the age of 18; or

(b) An adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4).

(3) "Covered employer" means any employer employing 25 or more persons in the state of Oregon for each working day during each of 20 or more calendar work weeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

(4) "Domestic partner" means an individual joined in a domestic partnership.

(5) "Domestic partnership" for the purposes of ORS Chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with 432.405(1) and rules adopted by the State Registrar of the Center for Health Statistics.

(6) "Eligible employee" means an employee employed in the state of Oregon on the date OFLA leave begins. For eligibility of employees reemployed following a period of uniformed service, see subsections (c) and (d) of this section.

(a) For the purpose of taking parental leave, an employee must be employed by a covered employer for at least 180 calendar days immediately preceding the date on which OFLA leave begins.

(b) For purposes of taking all other types of OFLA leave, including pregnancy disability leave, an employee must have worked for a covered employer for an average of at least 25 hours per week during the 180 calendar days immediately preceding the date OFLA leave begins.

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act (See 29 CFR § 785).

(c) The federal Uniformed Services Employment and Reemployment Act, 38 USC §43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR §1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OFLA.

NOTE: USERRA also applies to leave under the federal Family and Medical Leave Act of 1993, 29 USC §2601-2654 (FMLA).

(d) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OFLA prior to the date uniformed service began, OFLA's eligibility requirements are considered met.

(e) For the purpose of qualifying as an eligible employee, the employee need not work solely in the state of Oregon.

(7) "Family member" means the spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, parent-in-law, parent of same-gender domestic partner, grandparent or grandchild of the employee, or a person with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee or the child of an employee's same-gender domestic partner. For the purposes of OFLA, an employee's child in any of these categories may be either a minor or an adult at the time serious health condition leave is taken.

(8) "FMLA" is the federal Family and Medical Leave Act, 29 USC §2601.

(9) "Foreseeable leave" means leave taken for a purpose set out in ORS 659A.159 that is not "unforeseeable leave" as defined in OAR 839-009-0210(21).

(10) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(11) "Gender" means an individual's assigned sex at birth, gender identity, or gender expression.

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

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

(14) "Health care provider" means:

(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:

(A) A physician licensed to practice medicine under ORS 677.110, including a doctor of osteopathy;

(B) A podiatrist licensed under ORS 677.825;

(C) A dentist licensed under ORS 679.090;

(D) A psychologist licensed under ORS 675.030;

(E) An optometrist licensed under ORS 683.070;

(F) A naturopath licensed under ORS 685.080;

(G) A registered nurse licensed under ORS 678.050;

(H) A nurse practitioner certified under ORS 678.375;

(I) A direct entry midwife licensed under ORS 687.420;

(J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;

(K) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600;

(L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays;

(M) A physician's assistant licensed under ORS 677.512.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(15) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(16) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(17) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.

(18) "OFLA leave" means a leave of absence for purposes described in ORS 659A.159, HB 2950, 77th Leg., Reg. Session (Or. 2013) and OAR 839-009-0230(1) through (5). Except that "OFLA leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d). See 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

(19) "OFLA leave year," for calculating the OFLA leave year entitlement, means a calendar year (January to December), a fixed 12-month period such as a fiscal year, a 12-month period measured forward from the date of the employee's first OFLA leave, or a 12-month period measured backward from the date the employee uses any OFLA leave. The option selected must be applied to all employees. In the absence of an employer policy or collective bargaining agreement defining how an OFLA leave year will be measured, a calendar year will be used.

(20) "Serious health condition" means an illness, injury, impairment or physical or mental condition of an employee or family member:

(a) That requires inpatient care in a medical care facility such as a hospital, hospice or residential facility such as a nursing home. When a family member resides in a long-term residential care facility, leave applies only to:

(A) Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;

(B) Transportation or other assistance required for a family member to obtain care from a physician; or

(C) Serious health conditions as described in (b) through (h) of section (20) of this rule.

(b) That the treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) That requires constant or continuing care such as home care administered by a health care professional;

(d) That involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:

(A) Two or more treatments by a health care provider; or

(B) One treatment plus a regimen of continuing care.

(e) That results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes or epilepsy;

(f) That involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease. The employee or family

member must be under the continuing care of a health care provider, but need not be receiving active treatment;

(g) That involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or

(h) That involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

(21) "Unforeseeable leave" means leave taken as a result of:

(a) An unexpected serious health condition of an employee or family member of an employee; or

(b) An unexpected illness, injury or condition of a child of the employee that requires home care; or

(c) A premature birth or a placement for adoption or foster care the exact date of which cannot be previously determined with certainty.

(d) The death of a family member.

(22) "Spouse" includes individuals in same sex marriages validly performed in other jurisdictions.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150–659A.186, 659A.043, 659A.046, HB 2950, 77th Leg., Reg. Session (Or. 2013); OAR 105-010-0018

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 35-2006, f. 10-3-06, cert. ef. 10-4-06; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0230

Purposes for Taking OFLA Leave

Eligible employees may take OFLA leave for the purposes commonly referred to as parental leave, serious health condition leave, pregnancy disability leave, sick child leave, and the death of a family member.

(1) Parental leave is leave taken to care for the employee's newborn, newly adopted or newly placed foster child under 18 years of age or for a newly adopted or newly placed foster child 18 years of age or older who is incapable of self care because of a physical or mental impairment. It includes leave time to effectuate the legal process required for placement of a foster child or the adoption of a child.

(2) Serious health condition leave is leave taken:

(a) To provide care for a family member with a serious health condition as defined in 839-009-0210(20); or

(b) To recover from or seek treatment for a serious health condition that renders an employee unable to perform at least one essential function of the employee's regular position.

(3) Pregnancy disability leave is leave taken by a female employee for a disability related to pregnancy or childbirth, occurring before or after the birth of the child, or for prenatal care. Pregnancy disability leave is a form of serious health condition leave.

(4) Sick child leave is leave taken to care for an employee's child suffering from an illness or injury that requires home care but is not a serious health condition. An employer is not required to grant leave for routine medical or dental appointments.

(5) Leave to deal with the death of a family member is leave taken to attend the funeral or alternative to a funeral of the family member, to make arrangements necessitated by the death of the family member, or to grieve the death of the family member.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186, HB 2950, 77th Leg., Reg. Session (Or. 2013)

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0240

Length of Leave and Other Conditions of OFLA Leave

(1) An eligible employee is entitled to up to a total of 12 weeks of OFLA leave in any one-year period.

(2) In addition to the 12 weeks of leave authorized by ORS 659A.162 (1), a female eligible employee may take a total of 12 weeks of leave within the same leave year for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing any available job duties offered by the employer. The employee may use all or part of the 12 weeks of leave authorized by 659A.162(1) and all or part of the 12 weeks of pregnancy disability leave in any order. The employee need not exhaust either type of leave in order to use the other.

(3) An eligible employee taking the entire 12 weeks of OFLA leave authorized by ORS 659A.162 (1) for parental leave may take an additional 12 weeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except that the balance of the 12 weeks of OFLA leave authorized by 659A.162 may be used for sick child leave or for any OFLA leave purpose.

(4) A female eligible employee may take up to 36 weeks of OFLA leave in one leave year that includes up to 12 weeks of pregnancy disability leave, 12 weeks of parental leave, and up to 12 weeks of sick child leave.

(5) An eligible employee may take up to 24 weeks of OFLA leave in one leave year under the following circumstances:

(a) The employee takes 12 weeks of parental leave, followed by:

(b) Up to 12 weeks of sick child leave.

(6) An eligible employee taking leave under HB 2950, 77th Leg., Reg. Session (Or 2013) and OAR 839-009-0230(5) to deal with the death of a family member is entitled to take up to a total of two weeks of OFLA leave for that purpose.

(a) An eligible employee is entitled to take up to two weeks of OFLA leave upon the death of each family member of the employee within any one-year period, except that the leave taken to deal with the deaths of family members may not exceed the total in ORS 659A.159(1) and subsection (1) of this rule.

(b) A covered employer may not require an eligible employee to take multiple leave periods concurrently if more than one family member of the employee dies during the one year period. If multiple family members of an eligible employee die concurrently, an eligible employee may take up to two weeks of leave for the death of each family member.

(c) All leave taken under HB 2950, 77th Leg., Reg. Session (Or 2013) and OAR 839-009-0230(5) shall be counted toward the total period of OFLA leave authorized in ORS 659A.159(1) and subsection (1) of this rule.

(d) All leave taken for the death of a family member must be completed within 60 days of the date on which the eligible employee receives notice of the death of the family member. Notice of the death of a family member may be by any means and from any source.

(7) Two or more eligible employees who are family members of each other as defined in OAR 839-009-0210(7), working for the same covered employer, may take OFLA leave at the same time with that covered employer only under the following circumstances:

(a) One eligible family member needs to care for another eligible family member who is suffering from a serious health condition;

(b) One eligible family member needs to care for a child suffering from a serious or nonserious health condition while another eligible family member is suffering from a serious health condition;

(c) Two or more eligible family members are suffering from one or more serious health conditions;

(d) The employer allows family members to take concurrent leave; or

(e) The eligible family members are taking leave described in HB 2950, 77th Leg., Reg. Session (Or. 2013) and OAR 839-009-0230 (5).

(8) Unless the covered employer approves otherwise, parental leave shall be taken in one uninterrupted period, and shall be completed within 12 months of the birth, adoption or placement of the child. An exception shall be made to allow intermittent parental leave to effectuate adoption or foster placement of the child. Parental leave taken to effectuate adoption or foster placement of a child is part of the total amount of parental leave available to the employee, but need not be taken in one, uninterrupted period with any remaining parental leave taken after the actual placement of the child.

(9) The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.

(10) Sick child leave need not be provided to an eligible employee by a covered employer if another family member of the child, including a noncustodial biological parent, is willing and able to care for the child.

(11) A covered employer may not reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005.

(a) If an employee uses OFLA leave for a workplace injury pending acceptance of a workers' compensation claim, upon acceptance of the claim any OFLA leave used for the workplace injury must be restored to the employee. If the claim is denied, OFLA leave will be deducted from the employee's entitlement. If the employer uses a rolling forward leave year, a fixed leave year or a calendar leave year, and a worker's compensation claim is first denied and then accepted, the employer must restore any OFLA leave taken in the leave year in which the worker's compensation claim is accepted.

(b) An employee must be eligible under OAR 839-009-0210(6) in order to use OFLA leave following a period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005.

(12) Notwithstanding section (11) of this rule, the employer may reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005 after the employee has refused a suitable offer of light duty or modified employment under 659A.043(3)(a)(D) or 659A.046(3)(d). See 659A.043(4), 659A.046(5), 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

(13) For the purpose of intermittent leave, OFLA leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours OFLA leave.)

(a) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period must be used for calculating the employee's normal work week. (For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours OFLA leave.)

(b) If an employee takes intermittent or reduced work schedule OFLA leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of OFLA leave to which the employee is entitled.

(14) An employee who has previously qualified for and taken some portion of OFLA leave must requalify as an "eligible employee" as defined in OAR 839-009-0210(6) each time the employee begins additional OFLA leave within the same leave year. Exceptions:

(a) An employee who has been granted OFLA leave for a qualifying serious health condition of the employee or family member need not requalify under OAR 839-009-0210(6) each time the employee takes leave for the same individual and the same serious health condition during the same leave year.

(b) A female eligible employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify under OAR 839-009-0210(6) each time she takes OFLA leave within the same leave year.

(c) An employee who has taken 12 weeks of OFLA parental leave, need not requalify under OAR 839-009-0210(6) for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave.

(15) An exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act (see 29 CFR § 541 through 541.315) or the state minimum wage and overtime laws (ORS chapters 652 and 653).

(a) When OFLA leave is also covered by FMLA and the employee takes intermittent leave in blocks of less than one day, the employer may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(30)(a).

(b) When OFLA leave is not covered by FMLA (e.g., the employer has 25 to 49 employees, the leave is taken for a sick child, for the serious health condition of a parent-in-law, for the serious health condition of a registered domestic partner or for the serious health condition of a registered domestic partner's parents), and the employee takes intermittent leave in blocks of less than one day, an employer will jeopardize the employee's exempt status if the employer reduces the employee's salary for the part-day absence.

(16) The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, that provides as one of its options employee leave at least as generous as the leave required by OFLA.

(17) ORS 659A.150 to 659A.186 and these rules do not limit any right of an employee to any leave that is similar to the leave described in 695A.159(1) and OAR 839-009-0230 and to which the employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186, 659A.043, 659A.046, HB 2950, 77th Leg., Reg. Session (Or. 2013)
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0250

OFLA Leave: Notice by Employee; Designation by Employer; Notice by Employer Regarding Eligibility or Qualification

(1) Except in situations described in sections (2) and (3) of this rule, a covered employer may require an eligible employee to give 30 days written notice of the need for foreseeable leave, including an explanation of the need for leave, before starting OFLA leave. The employee is not required to specify that the request is for OFLA leave.

(a) An employee able to give advance notice of the need to take OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave, absent unusual circumstances.

(b) An employer may request additional information to determine that a requested leave qualifies for designation as OFLA leave, except in cases of parental leave.

(c) The employer may provisionally designate an absence as OFLA leave until sufficient information is received to make a determination. An employee who calls in sick without providing further information will not be considered to have provided sufficient notice to trigger an employer's obligations under OFLA.

(d) An employee on OFLA leave who needs to take more leave than originally authorized must give the employer reasonable notice prior to the end of the authorized leave, following the employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of OFLA leave has ended and an employee does not return to work, an employer having reason to believe the continuing absence may qualify as OFLA leave must request additional information, and may not treat a continuing absence as unauthorized unless requested information is not provided or does not support OFLA qualification.

(2) When an employee is unable to give the employer 30 days notice but has some advance notice of the need for leave, the employee must give the employer as much advance notice as is practicable.

(3) When taking OFLA leave in an unforeseeable situation, an employee must give verbal or written notice within 24 hours before or after commencement of the leave. This notice may be given by any other person on behalf of an employee taking unforeseeable OFLA leave. The employer may require written notice by the employee within three days of the employee's return to work.

(4) If an employee fails to give notice as required by sections (1), (2), and (3) of this rule or the employer's policies:

(a) The employer may reduce the total period of unused OFLA leave by an amount no greater than the number of days of leave the employee has taken without providing timely notice of leave. This reduction of leave may not exceed three weeks in a one-year leave period (see ORS 659A.165(4); and

(b) The employee may also be subject to disciplinary action under an employer's uniformly applied policy or practice. This practice must be consistent with the employer's discipline for similar violations of comparable rules.

(c) A reduction of OFLA leave under this rule may not limit leave under HB 2950, 77th Leg., Reg. Session (Or. 2013) and OAR 839-009-0230(5) for the death of a family member.

(5) Except in the case of sick child leave and leave for the death of a family member, when an employee requests OFLA leave, or when the employer acquires knowledge that an employee's leave may be for an OFLA-qualifying reason, the employer must provide the employee within five business days a written request for information to verify whether the leave is OFLA-qualifying. Within five business days of receiving the requested information, the employer must notify the employee whether or not the employee is eligible and qualifies to take OFLA leave absent extenuating circumstances. All OFLA absences for the same qualifying reason are considered a single leave event and employee qualification as to that reason for leave does not change during the applicable 12-month period unless the reason is no longer qualifying. If an employer determines that an employee does not qualify for OFLA leave for the reason requested, the employer must notify the employee in writing that the employee does not qualify.

(a) The written notice that the employee does not qualify must state that the employee is ineligible or the reason for requested leave does not qualify for OFLA leave and at least one reason why the employee is not eligible or the reason does not qualify for leave.

(b) If an employer determines that an employee does not qualify for OFLA leave for the reason requested because a medical verification is incomplete or insufficient, the written notice that the employee does not qualify must state what additional information is required to make the verification complete or sufficient, and the employee must be afforded a reasonable period of time to correct the deficiency.

(6) An employer may not request medical verification of the need for sick child leave until after an employee's third occurrence of sick child leave in the same OFLA leave year.

(7) When an employee fails to respond to reasonable employer requests for medical verification of the employee's requested reason for leave to determine whether the leave is OFLA qualifying, the employer may deny use of OFLA leave until medical verification is received.

(8) An employer may not request medical verification of the need for OFLA leave under HB 2950, 77th Leg., Reg. Session (Or. 2013) and OAR 839-009-0230(5) for the death of a family member.

(9) An employer may not reduce an employee's available OFLA leave or take disciplinary action unless the employer has posted the required Bureau of Labor and Industries Family Leave Act notice or the employer can otherwise establish that the employee had actual knowledge of the notice requirement.

(10) Federal regulations prohibit reducing the leave period under FMLA, but allow an employer to delay the start of leave because of improper notice (see 29 CFR Section 825.304).

(11) When an employee is subject to both FMLA and OFLA, the employer must apply the discipline available under (4)(a), (b) or (6) of this rule that is most beneficial to the employee's individual circumstances.

(12) An employee who refuses an offer of employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d) and who otherwise is entitled to OFLA leave under 659A.150 to 659A.186:

(a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and

(b) Need not give notice to the employer that would otherwise be required by this rule that the employee is commencing a period of leave. See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150–659A.186, 659A.043, 659A.046, H.B. 2950, 77th Leg., Reg. Session (Or. 2013)

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150–659A.186, 659A.043, 659A.046
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 1-2007, f. 1-16-07, cert. ef. 1-17-07; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0270
Job Protection

(1) An employer must restore an employee returning from OFLA leave, including intermittent and alternative duty leave, to the employee's former position if the job still exists, even if it has been filled during the employee's OFLA leave. The former position is the position held by the employee at the time OFLA leave began, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same truck, delivering the same goods, on the same shift and working from the same location as when the driver started OFLA leave.)

(2) Any worker hired during an eligible employee's leave to perform the same work that the eligible employee performed before the leave was taken is a replacement worker. When the eligible employee notifies the employer that the employee is ready to return to work, the employer must give that employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work.

(3) The employee is not entitled to return to the former position if the employee would have been bumped if OFLA leave had not been taken.

(4) If the position held by the employee at the time OFLA leave began has in fact been eliminated and not merely renamed or reclassified, the employer must restore the employee to any available, equivalent position.

(a) An available position is a position that is vacant or not permanently filled.

(b) An equivalent position is a position that is the same as the former position in as many aspects as possible. If an equivalent position is not available at the employee's former job site, the employee may be restored to an equivalent position within 20 miles of the former job site.

(5) Unless the terms of a collective bargaining agreement, other agreement or the employer's policy provide otherwise:

(a) An employee on OFLA leave does not accrue seniority, production bonuses or other benefits that would accrue while the employee is working;

(b) An employee has no greater right to a job or other employment benefits than if the employee had not taken OFLA leave; and

(c) An employee is subject to layoff the same as similarly situated employees not taking OFLA leave.

(6) Except for benefits used while on OFLA leave, benefits an employee was entitled to prior to starting OFLA leave must be restored in full upon the employee's return to work. (For example, an employer's medical insurance requires a three-month waiting period for health insurance coverage. An employee works seven months, takes OFLA leave for 12 weeks and returns to work with health problems. The employee must be covered immediately at the same level of coverage, with the same benefits as before the commencement of the OFLA leave.) The benefits do not have to be restored, however, if such benefits have been eliminated or changed for similarly situated employees. This applies to all benefit provisions.

(a) An employer electing to continue health or other insurance coverage for an employee on OFLA leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave.

(b) If an employee cannot or will not pay such costs, the employer may elect to discontinue benefit coverage, unless to do so would render the employer unable to restore the employee to full benefit coverage as required in section (6) of this rule.

(c) If an employer pays any portion of any employee's benefit coverage for employees on non-OFLA leave, the employer electing to continue benefits during OFLA leave must pay that portion during OFLA leave.

(d) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on OFLA leave, the employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

(e) If an employee fails to return to work — unless the failure to return to work is because of a serious health condition for which the employee would be entitled to OFLA leave or another circumstance beyond the employee's control — the employer may recover the employee's share of benefits paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of benefits paid by the employer, including deducting the amount from the employee's final paycheck.

(7) An employer may require an employee to follow the employer's established leave policy regarding periodic reporting to the employer of the employee's current status. Before restoring the employee to work after taking OFLA leave for the employee's own serious health condition, the employer may require the employee to present verification from the employee's health care provider that the employee is able to resume work, provided such requirement is applied pursuant to a uniformly applied practice or policy of the employer.

(a) Pursuant to ORS 659A.168(1), the employer is responsible for any co-pay or other out-of-pocket costs incurred by the employee in providing the verification.

(b) The employer may not require the employee to obtain a second opinion.

(8)(a) If an employee gives unequivocal notice of intent not to return to work from OFLA leave:

(b) The employee is entitled to complete the approved OFLA leave, providing that the original need for OFLA leave still exists. The employee remains entitled to all the rights and protections under OFLA, including but not limited to, the use of vacation, sick leave and health benefits pursuant to OAR 839-009-0270 and 839-009-0280, except that:

(A) The employer's obligations under OFLA to restore the employee's position and to restore benefits upon the completion of leave cease, except as required by federal COBRA law, 29 USC 1161 et seq.; and

(B) The employer is not required to hold a position vacant or available for the employee who gives unequivocal notice of intent not to return.

(9) An employer may not use the provisions of this section as a subterfuge to avoid the employer's responsibilities under OFLA.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0280
Use of Paid Leave: OFLA

(1) Except as provided in this rule or the terms of a collective bargaining agreement, an agreement between the eligible employee and the covered employer, or an employer policy, OFLA leave is not required to be granted with pay.

(2) An employee eligible to take OFLA leave is entitled to use accrued paid sick leave, personal leave, vacation leave or any other paid leave that is offered in lieu of vacation leave, during the period of OFLA leave. As used in this rule, accrued paid sick leave does not include disability insurance or disability benefits.

(3) An employer may require an employee to use accrued paid leave during OFLA leave that would otherwise be unpaid, and may determine the order in which paid leave is to be used if to do so is consistent with a collective bargaining agreement or other written agreement between the eligi-

ble employee and the covered employer or an employer policy. The employer may exercise these prerogatives only if:

(a) Prior to the commencement of OFLA leave, the employer provides written notice to the employee that accrued paid leave is to be used during OFLA leave; or

(b) Within five business days of the employee's notice of unforeseeable leave, the employer provides written notice to the employee.

(4) An eligible employee or covered employer may choose to have the employee's OFLA leave run concurrently with a type of paid or unpaid leave not referenced in these rules, as provided or allowed under an employer policy, except that a covered employer may not reduce the amount of OFLA leave available to an eligible employee by any period the employee is unable to work because of a disabling compensable injury which entitles the employee to compensation from the covered employer. See 659A.162(6) and ORS 656.005.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 – 659A.186
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 47-2006, f. 12-29-06, cert. ef. 1-3-07; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0325
Purpose and Scope

(1) The Civil Rights Division of the Bureau of Labor and Industries ("division") enforces ORS 659A.270 to 659A.285 which require certain employers to grant leave for victims of domestic violence, harassment, sexual assault or stalking. These rules implement and interpret 659A.270 to 659A285.

(2) The division enforces ORS 659A.290, requiring all employers to provide reasonable safety accommodation (including use of available paid leave from employment) for, and prohibiting discrimination or retaliation against, victims of domestic violence, harassment, sexual assault or stalking. The rules implementing and interpreting 659A.290 are found at OAR 839-005-0160 and 839-005-0170.

(3) ORS 659A.190 to 659A.198 provide for leave for crime victims to attend criminal proceedings. The division does not have authority to enforce ORS 659A.190 to 659A.198.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0330
Prohibited Discrimination under ORS 659A.270-.290; Employer Notice Obligations

(1) It is an unlawful employment practice for an employer covered under ORS 659A.270 to 659A.285 to deny leave for victims of domestic violence, harassment, sexual assault or stalking to an eligible employee or to discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee inquires about, applies for, or takes leave as provided under 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking.

(2) It is an unlawful employment practice under ORS 659A.290 for any employer to discriminate against an individual because an individual is a victim of domestic violence, harassment, sexual assault or stalking. See OAR 839-005-0160 and 839-005-0170.

(3) Every employer covered under ORS 659A.270 to 659A.285 shall keep summaries of 659A.270 to 695A.285 and summaries of all rules promulgated for the enforcement of these statutes posted in a conspicuous and accessible place in or about the premises where the employees of the covered employer are employed. Employers may download any number of summaries from the website of the Bureau of Labor and Industries at no charge, or upon request of a printed copy from the bureau, the first copy shall be furnished without charge.

(4) Upon request, the bureau shall furnish the complete text of all rules promulgated pursuant to ORS 659A.270 to 659A.285 to any employer without charge.

(5) A public employer, defined by HB 3263, 77th Leg., Reg. Session (Or. 2013) as the State of Oregon, shall annually inform all employees of the provisions of 659A.290, regarding reasonable safety accommodations.

(6) If a public employer defined by HB 3263, 77th Leg., Reg. Session (Or. 2013) as the State of Oregon, has knowledge, or reasonably should have knowledge, that an employee is a victim of domestic violence, harassment, or stalking and that any direct or indirect communication related to this victimization is made or attempted to be made in the workplace to the eligible employee, the public employer shall immediately inform the employee and offer to report the communication to law enforcement.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285, HB 3263, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0340
Definitions: Leave under ORS 659A.270–.285

(1) "Covered employer" means an employer who employs 6 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking or in the year immediately preceding the year in which an eligible employee takes the leave.

(2) "Eligible employee" means an employee who is employed in the state of Oregon on the date leave begins under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking and is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking.

(3) "Dependent" includes an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4) or any adult of whom the employee has guardianship.

(4) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(5) "Health care professional" means a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services.

(6) "Immediate family" means spouse, domestic partner, father, mother, sibling, child, stepchild, grandparent, or any person who had the same primary residence as the victim at the time of the domestic violence, harassment, sexual assault or stalking.

(7) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(8) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(9) "Law enforcement officer" means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651.

(10) "Minor child," means a biological, adopted, foster or stepchild, or a child with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee's registered domestic partner. The minor child must be under the age of 18.

(11) "Parent or guardian" means a custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent or an employee who is or was in relationship of in loco parentis with a minor child or a dependent with whom the employee is or was in a relationship of in loco parentis.

(12) "Protective order" means an order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(13) "Public employer" for purposes of HB 3263, 77th Leg., Reg. Session (Or.2013) and these rules means the State of Oregon.

(14) "Reasonable leave" means any amount of leave that does not cause an undue hardship on a covered employer's business.

(15) "Spouse" includes individuals in same sex marriages validly performed in other jurisdictions.

(16) "Victim of domestic violence" means:

(a) An individual who has been threatened with abuse or who is a victim of abuse, as defined in ORS 107.705; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the domestic violence be considered a victim for the purposes of these rules.

(17) "Victim of harassment" means:

(a) An individual against whom harassment has been committed as described in Oregon's criminal code at ORS 166.065; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of harassment committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the harassment be considered a victim for the purposes of these rules.

(18) "Victim services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

(19) "Victim of sexual assault" means:

(a) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the sexual offense be considered a victim for the purposes of these rules.

(20) "Victim of stalking" means:

(a) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in (a), including a member of the victim's immediate family; or

(c) An individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(d) In no event will the alleged perpetrator of the stalking be considered a victim for the purposes of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285, HB 3263 77th Leg., Reg. Session (Or. 2013) & OAR 105-010-0018

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0345

Purposes for Taking Leave under ORS 659A.270-.285

A covered employer shall allow an eligible employee to take reasonable leave from employment for any of the following purposes:

(1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking.

(2) To seek medical treatment for or to recover from injuries caused by domestic violence or harassment or sexual assault or stalking of the eligible employee or the eligible employee's minor child or dependent.

(3) To obtain, or to assist the eligible employee's minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking.

(4) To obtain services from a victim services provider for the eligible employee or the eligible employee's minor child or dependent.

(5) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent. Relocate includes:

(a) Transition periods spent moving the eligible employee or the eligible employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangements for such transitions related to domestic violence, harassment, sexual assault or stalking;

(b) Transportation or other assistance required for an eligible employee or the eligible employee's minor child or dependent related to the domestic violence, harassment, sexual assault or stalking.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0362

Notice by Employee: Leave under ORS 659A.270-.285

(1) An eligible employee seeking leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking will give the covered employer reasonable advance notice of the employee's intention to take leave unless giving the advance notice is not feasible.

(2) When taking leave in an unanticipated or emergency situation, an eligible employee must give oral or written notice as soon as is practicable. This notice may be given by any other person on behalf of an eligible employee taking unanticipated leave.

(3) An eligible employee able to give advance notice of the need to take leave must follow the covered employer's known, reasonable and customary procedures for requesting any kind of leave;

(4) The covered employer may require the eligible employee to provide certification that:

(a) The eligible employee or the eligible employee's minor child or dependent is a victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); and

(b) The leave taken is for one of the purposes identified in OAR 839-009-0345.

(5) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the eligible employee's minor child or dependent was a victim or alleged victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); or

(b) A copy of a protective order or other evidence from a court or attorney that the eligible employee appeared in or is preparing for a civil or criminal proceeding related to domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); or

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the eligible employee's minor child or dependent is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17).

(6) Consistent with ORS 659A.306, the covered employer must pay the cost of any medical verification related to OAR 839-009-0345(1)(b) and (c) not covered by insurance or other benefit plan.

(7) The eligible employee will provide the certification within a reasonable time after receiving the covered employer's written request for the certification.

(8) The covered employer may provisionally designate an absence as leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking until sufficient certification is received, if requested, to make a determination.

(9) An eligible employee on leave who needs to take more leave than originally authorized should give the covered employer notice as soon as is practicable prior to the end of the authorized leave, following the covered employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of leave has ended and an eligible employee does not return to work, a covered employer having reason to believe the continuing absence may qualify as leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking may request additional information. If the covered employer requests additional information the eligible employee will provide the requested information as soon as is practicable. The covered employer may not treat a continuing absence as unauthorized unless requested information is not provided or does not support leave qualification.

(10) All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking, including the fact that the eligible employee has requested or obtained such leave, are confidential and may not be released without the express permission of the eligible employee, unless otherwise required by law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0363

Use of Paid Leave: ORS 659A.270-659A.285

(1) Leave is unpaid leave unless otherwise provided by:

(a) A collective bargaining agreement;

(b) The terms of an agreement between the eligible employee and the covered employer; or

(c) A covered employer's policy.

(2) An eligible employee taking leave pursuant to an agreement between the eligible employee and the covered employer, a collective bargaining agreement or a covered employer policy may use any paid accrued

vacation leave or may use any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or a covered employer policy, the covered employer may determine the order in which paid accrued leave is to be used when more than one type of paid accrued leave is available to the employee.

(4) An eligible employee of a public employer shall be granted leave with pay for the purposes in ORS 659A.272 and OAR 839-009-0345.

(a) "Public employer" for purposes of H.B.3263, 77th Leg., Reg. Session (Or.2013) and this rule means the State of Oregon.

(b) Leave with pay taken under this subsection is in addition to any vacation, sick, personal business, or other forms of paid or unpaid leave available to the eligible employee.

(c) The eligible employee must exhaust all other forms of paid leave before the employee may use the paid leave under this section.

(d) An eligible employee may take up to 160 hours of leave with pay authorized by HB 3263, 77th Leg., Reg. Session (Or. 2013) in each calendar year.

(e) A covered employer shall allow an eligible employee who has exhausted the 160 hours of leave with pay authorized by HB 3263, 77th Leg., Reg. Session to take reasonable additional unpaid leave for the purposes in ORS 659A.272 and OAR 839-009-0345.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285, H.B. 3263, 77th Leg., Reg. Session (Or. 2013)
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0380
Definitions: OMFLA

(1) "Active duty or call to active duty status" means duty under a call or order to active duty, or notification of an impending call or order to active duty, during a contingency operation, pursuant to Title 10 of the United States Code. "Contingency operation" means a military operation that:

(A) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See 10 U.S.C. 101(a)(13))

(2) "Covered employer" means:

(a) The state, and a department, agency, board or commission of the state; and

(b) A local government, including but not limited to a county, city, town, municipal corporation, independent public corporation or political subdivision of the state.

(c) A person, firm, corporation, partnership, legal representative, or other business entity that engages in any business, industry, profession, or activity in the state of Oregon and that employs 25 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes OMFLA leave or in the year immediately preceding the year in which an eligible employee takes OMFLA leave;

(3) "Domestic partner" means an individual joined in a domestic partnership.

(4) "Domestic partnership" for the purposes of ORS chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with ORS 432.405(1) and rules adopted by the State Registrar of the Center for Health Statistics.

(5) "Eligible employee" means an individual who performs services for compensation for an employer for an average of at least 20 hours per week and includes all individuals employed at any site owned or operated in Oregon by an employer, but does not include independent contractors.

(a) In determining an average of at least 20 hours per week, the employer must count actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act. (See 29 CFR § 785)

(b) For the purpose of qualifying as an eligible employee, the employee need not perform services solely in the state of Oregon.

(c) Eligibility of employees reemployed following a period of uniformed service: The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for OMFLA leave if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet the eligibility requirements of these rules. In the event that a service member is denied OMFLA leave for failing to satisfy the days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OMFLA.

(d) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OMFLA prior to the date uniformed service began, OMFLA's eligibility requirements are considered met.

(6) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(7) "Period of Military Conflict" means a period of war:

(a) Declared by the United States Congress;

(b) Declared by executive order of the President of the United States; or

(c) In which a reserve component of the Armed Forces of the United States is ordered to active duty pursuant to Title 32 of the United States Code or section 12301 or 12302 of Title 10 of the United States Code.

(8) "Spouse" includes individuals in same sex marriages validly performed in other jurisdictions.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 - 659A.099 & OAR 105-010-0018
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0390
Length of Leave: OMFLA

(1) During a period of military conflict, an employee who is a spouse or domestic partner of a member of the Armed Forces of the United States, the National Guard or the military reserve forces of the United States who has been notified of an impending call or order to active duty or who has been deployed, is entitled to a total of 14 days of unpaid leave per deployment that may be taken:

(a) After the military spouse or domestic partner has been notified of an impending call or order to active duty and before deployment; and/or

(b) When the military spouse or domestic partner is on leave from deployment.

(2) The 14 day entitlement is per deployment. If multiple deployments occur in an employee's leave year, the employee is entitled to use 14 days of Oregon Military Family Leave Act ("OMFLA") leave for each deployment.

(3) The 14 days of unpaid leave to which the employee is entitled are individual days on which the employee, if working their normal schedule, would otherwise perform services for compensation for the employer. (Example: Employee normally works Monday through Friday. Employee is entitled to 14 days of leave, which if taken consecutively would be Monday through Friday on two consecutive weeks plus Monday through Thursday of the third week.)

(4) OMFLA leave need not be taken in one, uninterrupted period, but may be taken intermittently.

(a) For the purpose of intermittent leave, OMFLA leave is calculated for an employee by multiplying the number of hours the employee normally works per day by 14. (For example, an employee normally employed to

work eight hours per day is entitled to 14 times eight hours, or a total of 112 hours of OMFLA leave.)

(b) If an employee's schedule varies from day to day, a daily average of the employee's hours must be used for calculating the employee's normal work day. For example, an employee working an average of six hours per day is entitled to 14 times six hours, or a total of 84 hours of OMFLA leave. An employee working an average of 10 hours per day is entitled to 14 times 10 hours, or 140 hours.

(c) If an employee takes intermittent OMFLA leave, only the actual number of hours of leave taken may be counted toward the hours of OMFLA leave to which the employee is entitled.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 - 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 12-2012, f. & cert. ef. 11-21-12; BLI 16-2013, f. & cert. ef. 12-31-13

839-009-0430
Notice by Employee: OMFLA

(1) An eligible employee seeking Oregon Military Family Leave must provide the employer with notice of the intention to take leave within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, or as soon as is practicable when official notice is provided fewer than five days before commencement of the leave.

(2) The active duty orders of a covered military member will generally specify if the service member is serving in support of a period of military conflict by citation to the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the military conflict (see OAR 839-009-0380(7)).

(3) An eligible employee's notice of intention to take OMFLA leave must follow the covered employer's known, customary, and uniformly applied procedures for requesting any kind of leave. A covered employer may provide an OMFLA leave request form. An example is found at Appendix A of this rule.

(a) The covered employer may require in writing that the eligible employee provide a photocopy of the service member's orders to verify that the leave is for the purpose defined in OAR 839-009-0380(7).

(b) The eligible employee will provide any required photocopy of the service member's orders within a reasonable time after receiving the covered employer's written request.

(c) The covered employer may provisionally designate an absence as OMFLA leave until any requested photocopy of the service member's orders is received.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10; BLI 16-2013, f. & cert. ef. 12-31-13

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Construction Contractors Board
Chapter 812

Rule Caption: Implement 2013 Legislation, Housekeeping, New Endorsements, Contract Requirements, Home Energy Assessors, Worker Leasing Companies, EEAST
Adm. Order No.: CCB 6-2013
Filed with Sec. of State: 12-19-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 812-032-0000, 812-032-0100, 812-032-0110, 812-032-0120, 812-032-0123, 812-032-0130, 812-032-0135, 812-032-0140, 812-032-0150
Rules Amended: 812-002-0120, 812-003-0131, 812-003-0152, 812-003-0153, 812-003-0171, 812-003-0175, 812-003-0180, 812-003-0221, 812-003-0240, 812-003-0250, 812-003-0260, 812-003-0290, 812-003-0310, 812-003-0320, 812-003-0390, 812-003-0400, 812-003-0430, 812-003-0440, 812-008-0030, 812-008-0040, 812-012-0110, 812-021-0005, 812-021-0021, 812-021-0045, 812-021-0047, 812-025-0000, 812-025-0005, 812-025-0010, 812-030-0000, 812-030-0240
Rules Repealed: 812-003-0130, 812-003-0140, 812-003-0141, 812-003-0150, 812-003-0170, 812-003-0220
Subject: Amend rules to implement 2013 legislative changes.

812-002-0120 is amended to implement OR Laws Ch. 378 (HB 2524) (2013) that increase the casual, minor or inconsequential work from $500 to $1,000.

812-003-0131 is amended to remove the reference to July 1, 2008, and to add the new endorsements Residential Locksmith Services Contractor, Home Inspector Services Contractor, Home Service Contractor, and Home Energy Performance Score Contractor to implement SB 207 and HB 2801.

812-003-0152 is amended to remove unnecessary references and to replace the reference to "ordered" with "determined" by the agency to reflect 2011 statute changes regarding the dispute resolution process.

812-003-0153 is amended to remove unnecessary references and to replace the reference to "ordered" with "determined" by the agency to reflect 2011 statute changes regarding the dispute resolution process.

812-003-0171 is amended to remove the reference to July 1, 2008, and to add the bond amounts for the new endorsements Residential Locksmith Services Contractor, Home Inspector Services Contractor, and Home Service Contractor to implement SB 207.

812-003-0175 is amended to remove a reference that has been repealed and to add reference to "determination" by the agency to reflect 2011 statute changes regarding the dispute resolution process, and updates cite references.

812-003-0180 is amended to add reference to "determination" by the agency to reflect changes made in 2011 to the statutes regarding the dispute resolution process.

812-003-221 is amended to remove the reference to July 1, 2008, and to add the new endorsements Residential Locksmith Services Contractor, Home Inspector Services Contractor, and Home Service Contractor to implement SB 207.

812-003-0240, 812-021-0021 are amended to implement OR Laws Ch. 196 (HB 2268) (2013) that changes the term "licensed" architect to "registered".

812-003-0250 is amended to add reference to business entities that "utilize one or more workers supplied by a worker leasing company to implement SB 207.

812-003-0260 is amended to add information required in new license applications for new contractor license endorsements created by SB 207 and HB 2801 (2013), and updates cite references.

812-003-0290 is amended to remove the reference to licenses renewing on or before July 1, 2008 since no such licenses remain.

812-003-0310 is amended to add reference to limited partnerships and conditions for entity to remain unchanged, hence qualifying for a valid license card. Implements SB 207 (2013).

812-003-0320 is amended to add reference to limited partnerships, which are a business entity that may operate as a contractor. Implements SB 207 (2013).

812-003-0390 is amended to add reference to "determination" by the agency to reflect changes made in 2011 to statutes regarding dispute resolution process.

812-003-0400 is amended to remove reference to ORS 701.085 which was renumbered to ORS 701.068.

812-003-0430 is amended to change the word "claim" to "complaint" and remove reference to commenced on or after January 1, 1998 since there are no longer any liens perfected or complaints subject to CCB jurisdiction that occurred before that date, and correct cite references.

812-003-0440 is amended to correct cite references.

812-008-0030 is amended to add reference to the new "home inspection services contractor" endorsement created by SB 207 (2013), adds provisions to clarify that persons who assign home energy performance scores are exempt from the rules governing home inspectors (SB 207 - 2013), and adds provisions that home inspection services contractors are not required to complete continuing education (HB 2801 - 2013).

812-008-0040 is amended to add the reference to the new "home inspection services contractor" endorsement created by SB 207 (2013), and adds the term "individual" before the word "applicant" to clarify that education is required of the individual, not the business.

812-012-0110 is amended to implement OR Laws Ch. 168 (SB 205) (2013) the agency, by rule, adopts the mandatory contract terms.

812-021-0005 is amended to add definition that employee includes leased workers from a licensed worker leasing company.

812-021-0045 is amended to allow contractor to claim continuing education complete by leased worker only if the leased worker completed the courses while leased to the contractor.

812-021-0047 is amended to allow only one contractor to claim continuing education credits earned by a leased worker.

812-025-0000 is amended to implement OR Laws Ch. 8 (HB 2436) (2013) changes that limit certification to primary contractors for EEAST certification.

812-25-0005 is amended to implement OR Laws Ch. 8 (HB 2436) (2013) by adding a definition for primary contractors in regard to EEAST certification.

812-025-0010 is amended provide that a licensed contractor may apply to CCB for certification to participate "as a primary contractor" in the construction of small scale local energy projects financed by the EEAST program. (HB 2436 - 2013).

812-030-0000 and 812-030-0240 is amended to remove reference to July 1, 2010 that is no longer necessary and to add reference to the new endorsement "residential locksmith contractor" created by SB 207 (2013).

Adopt rules to implement Ch. 383 OR Laws 2013 (HB 2801):

812-032-0000 is adopted to create definitions relating to home energy performance scores.

812-032-0100 is adopted to establish the application requirements to implement HB 2801.

812-032-0110 is adopted to establish the certificate requirements to implement HB 2801.

812-032-0120 is adopted to establish the requirements to issue certificates to individuals applying to renew a home energy assessor's certificate.

812-032-0123 is adopted to establish that CCB will issue a certificate and pocket card to qualified home energy assessors and establish a fee for replacement cards.

812-032-0130 is adopted to establish requirements for renewal of the home energy assessor certificates.

812-032-0135 is adopted to establish requirements for home energy assessors to keep CCB informed of their mailing and email address.

812-032-0140 is adopted to establish home energy assessor must be an owner or worker for a licensed contractor, and includes home energy performance score contractors.

812-032-0150 is adopted to establish fees for the initial application, initial issuance and renewal of home energy assessor certificates.

Repeal the following rules:

812-003-0130 is repealed because the rule is outdated CCB no longer has license categories.

812-003-0140 is repealed because it is no longer necessary as it applied to license applications, renewals and reissuance until June 30, 2010.

812-003-0141 is repealed because it is no longer necessary as it applied to four year licenses issued on or before July 1, 2008 and no such license exists.

812-003-0150 and 812-003-0170 are repealed because they are outdated and no longer necessary as it relates to bonds issued before July 1, 2008.

812-003-0220 is repealed because it is outdated, it relates to insurance amounts for licenses issued before July 1, 2008.

NOTE: In order to save postage and printing costs in these difficult times, CCB is only providing a copy of the notice. To view the language of each individual rule change, please go to our web site at http://www.oregon.gov/CCB/Laws_Rules.shtml#Administrative_Rule_Notices. If you don't have web access, contact Cathy Dixon at (503) 934-2185 for assistance in receiving a copy.

Rules Coordinator: Catherine Dixon—(503) 934-2185

812-002-0120

Casual, Minor or Inconsequential

"Casual, minor or inconsequential" as used in ORS 701.010(4) means work not of a structural nature which cannot affect the health or safety of the owner or occupant of the structure, the value of which is less than 1,000 and does not include work done as a subcontractor to a licensee.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 656.027 & 701.010
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0131

License Endorsements

The following are license endorsements for new and renewal licenses:

(1) Residential General Contractor. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on residential or small commercial structures.

(2) Residential Specialty Contractor. A licensee holding this endorsement may:

(a) Bid or perform work involving two or less unrelated building trades or crafts on residential or small commercial structures.

(b) If three or more unrelated trades or crafts are performed or subcontracted out, the entire contract price cannot exceed $2,500.

(3) Residential Limited Contractor. A licensee holding this endorsement may bid or perform work involving residential or small commercial structures, as long as all of the following conditions are met:

(a) The licensee's annual gross business sales do not exceed $40,000.

(b) The licensee does not enter into a contract in which the contract price exceeds $5,000.

(c) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed $5,000.

(d) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with paragraph (3)(a) of this rule.

(e) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(4) Residential Developer. A licensee holding this endorsement may develop property zoned for or intended for use compatible with a residential or small commercial structure as long as the licensee meets the conditions in ORS 701.042.

(5) Residential Locksmith Services Contractor. A licensee holding this endorsement may operate a business that provides the services of locksmiths for residential or small commercial structures. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified locksmith.

(6) Home Inspector Services Contractor. A licensee holding this endorsement may operate a business that provides the services of home inspectors. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified home inspector.

(7) Home Services Contractor. A licensee holding this endorsement may operate a business that provides service, repair or replacement pursuant to the terms of a home service agreement. The licensee may not, however, engage in any other contractor activities.

(8) Home Energy Performance Score Contractor. A licensee holding this endorsement may operate a business that assigns home energy performance scores. The licensee may not, however, engage in any other contractor activities. The licensee must have at least one owner or employee who is a certified home energy assessor.

(9) Commercial General Contractor — Level 1. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on small or large commercial structures.

(10) Commercial Specialty Contractor — Level 1. A licensee holding this endorsement may bid or perform work involving two or less unrelated building trades or crafts on small or large commercial structures.

(11) Commercial General Contractor — Level 2. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on small or large commercial structures.

(12) Commercial Specialty Contractor — Level 2. A licensee holding this endorsement may bid or perform work involving two or less unrelated building trades or crafts on small or large commercial structures.

(13) Commercial Developer. A licensee holding this endorsement may develop property zoned for or intended for use compatible with a small or large commercial structure as long as the licensee meets the conditions in ORS 701.042.

(14) A contractor's license may contain:

(a) One residential endorsement;

(b) One commercial endorsement; or

(c) One residential endorsement and one commercial endorsement.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.042, 701.081 & 701.084
Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0152
Residential Bonds Generally

(1) A properly executed residential bond must:

(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond.

(b) Be in the form adopted by the Construction Contractors Board as the "Construction Contractors Board Residential Surety Bond" dated November 1, 2007.

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.068 or 701.088 is in effect, the security must be held until final disposition of the complaint.

(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile or as a PDF file transmitted by e-mail or electronically may be accepted as original documents. The surety must provide the original bond document to the agency upon request.

(4) A residential bond is available only for payments determined by the agency involving residential or small commercial structures or for the development of property zoned or intended for use compatible with residential or small commercial structures.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.068, & 701.081
Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 11-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0153
Commercial Bonds Generally

(1) A properly executed commercial bond must:

(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond.

(b) Be in the form adopted by the Construction Contractors Board as the "Construction Contractors Board Commercial Surety Bond" dated November 1, 2007.

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.068 is in effect, the security must be held until final disposition of the complaint.

(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile or as a PDF file transmitted by e-mail or electronically may be accepted as original documents. The surety must provide the original bond document to the agency upon request.

(4) A commercial bond is available only for payments determined by the agency involving small or large commercial structures or for the development of property zoned or intended for use compatible with large or small commercial structures.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.068 & 701.084
Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 11-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0171
Bond, Letter of Credit or Cash Deposit

For all new and renewal license applications, a surety bond as required under ORS 701.068, or a surety bond, letter of credit or cash deposit as required under 701.088, must be in one of the following amounts:

(1) Residential General Contractor — $20,000.
(2) Residential Specialty Contractor — $15,000.
(3) Residential Limited Contractor — $10,000.
(4) Residential Developer — $20,000.
(5) Residential Locksmith Services Contractor — $10,000.
(6) Home Inspector Services Contractor — $10,000.
(7) Home Services Contractor — $10,000.
(8) Home Energy Performance Score Contractor — $10,000.
(9) Commercial General Contractor Level 1 — $75,000.
(10) Commercial Specialty Contractor Level 1 — $50,000.
(11) Commercial General Contractor Level 2 — $20,000.
(12) Commercial Specialty Contractor Level 2 — $20,000.
(13) Commercial Developer — $20,000.

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.068 & 701.088
Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0175
Increased Bond, Letter of Credit or Cash Deposit Requirement, Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond, letter of credit or cash deposit in an amount up to five times the amount required for the category of license under OAR 812-003-0171, if:

(a) The business has unpaid debts under a final order, arbitration award or determination of the board;

(b) An owner or officer of the business has unpaid debts under a final order, arbitration award or determination of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order, arbitration award or determination of the board and such debt remains unpaid.

(2) A business, including an individual person, licensed as a residential general contractor or residential specialty contractor that applies to be licensed as, or seeks to change its endorsement to, a residential limited contractor must file a bond, letter or credit or cash deposit in an amount of five times the amount of the residential limited contractor bond, namely $50,000, if:

(a) The business has unpaid debts under a final order, arbitration award or determination of the board;

(b) An owner or officer of the business has unpaid debts under a final order, arbitration award or determination of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order, arbitration award or determination of the board and such debt remains unpaid.

(3) For purposes of this rule, "owner" means an "owner" as defined in ORS 701.094 and OAR 812-002-0537.

(4) For purposes of this rule, "officer" means an "officer" as defined in ORS 701.005(12).

(5) Debts due under a final order or arbitration award of the board include amounts not paid by a surety or financial institution on complaints.

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.068 & 701.088
Hist.: CCB 4-2006(Temp), f. & cert. ef. 3-9-06 thru 9-5-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 14-2010, f. 8-24-10, cert. ef. 9-1-10; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0180
Effective and Cancellation Dates of the Bond, Letter of Credit or Cash Deposit

(1) The surety bond, letter of credit or cash deposits effective date is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency.

(2) The bond shall remain in effect and be continuous until cancelled by the surety or until the licensee no longer meets the requirements for licensing as determined by the agency, whichever comes first.

(3) A surety bond may be cancelled by the surety only after the surety has given 30 days' notice to the agency. Cancellation will be effective no less than 30 days after receipt of the cancellation notice.

(4) The letter of credit or cash deposit shall remain in effect and be continuous until released by the agency.

(5) Immediately upon cancellation of the bond, or cancellation without an authorized release by the agency of a letter of credit or cash deposit the agency may send an emergency suspension notice to the contractor as provided for in ORS 701.098(4)(a)(A), informing the contractor that the license has been suspended.

(6) The bond, letter of credit or cash deposit shall be subject to final orders or arbitration awards as described in OAR 812-004-0600 or determinations as described in OAR 812-004-1600.

(7) The surety or financial institution will be responsible for ascertaining the bond, letter of credit or cash deposit's effective date.

Stat. Auth.: ORS 670.310, 701.068, 701.088 & 701.235
Stats. Implemented: ORS 701.068, 701.088 & 701.098

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0221
Insurance Amounts

For all new and renewal license applications, insurance amounts as required under ORS 701.073, 701.081, and 701.084, must be in one of the following amounts:

(1) Residential General Contractor — $500,000 per occurrence.

(2) Residential Specialty Contractor — $300,000 per occurrence.

(3) Residential Limited Contractor — $100,000 per occurrence.

(4) Residential Developer — $500,000 per occurrence.

(5) Residential Locksmith Services Contractor — $100,000 per occurrence.

(6) Home Inspector Services Contractor — $100,000 per occurrence.

(7) Home Services Contractor — $100, 000 per occurrence.

(8) Home Energy Performance Score Contractor — $100,000 per occurrence.

(9) Commercial General Contractor Level 1 — $2,000,000 aggregate.

(10) Commercial Specialty Contractor Level 1 — $1,000,000 aggregate.

(11) Commercial General Contractor Level 2 — $1,000,000 aggregate.

(12) Commercial Specialty Contractor Level 2 — $500,000 per occurrence.

(13) Commercial Developer — $500,000 per occurrence.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.073, 701.081 & 701.084
Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0240
Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines "independent contractor" for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret 670.600 in a consistent manner; to clarify the meaning of terms used in 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for "independent contractors". One requirement is that an "independent contractor" must be engaged in an "independently established business." Another requirement is related to licenses and certificates that are required for an "independent contractor" to provide services. A third requirement is that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others.

(b) The specific focus of this rule is the "direction and control" requirement. See ORS 670.600 for the requirements of the "independently established business" test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the "direction and control" test:

(A) "Means" are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) "Manner" is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) "Free from direction and control" means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor's services does not constitute direction and control over the means or manner of providing those services.

(4) Application of "direction and control" test in construction and landscape industries.

(a) The provisions of this section apply to:

(A) Architects registered under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscape contracting businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor's services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor's services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee's customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor's services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or forklifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(5) As used in ORS Chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of 670.600 are met.

(6) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Workers Compensation Division, and Department of Revenue of the State of Oregon, under authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of 670.600.

(7) The Board adopts the form "Independent Contractor Certification Statement" as revised January 17, 2006. An applicant must use this form to meet the requirements of ORS 701.046(1)(k).

Stat. Auth.: ORS 670.310, 670.605 & 701.235
Stats. Implemented: ORS 670.600, 670.605, 701.005 & 701.046
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06; CCB 1-2007, f. 1-25-07, cert. ef. 2-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0250
Exempt and Nonexempt Class of Independent Contractor Licenses

Contractors shall license as either nonexempt or exempt as provided in ORS 701.035.

(1) The nonexempt class is composed of the following entities:

(a) Sole proprietorships with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(b) Partnerships or limited liability partnerships with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(c) Partnerships or limited liability partnerships with more than two partners if any of the partners are not family members;

(d) Joint ventures with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(e) Joint ventures with more than two joint venturers if any of the joint venturers are not family members;

(f) Limited partnerships with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(g) Limited partnerships with more than two general partners if any of the general partners are not family members;

(h) Corporations with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(i) Corporations with more than two corporate officers if any of the corporate officers are not family members;

(j) Trusts with one or more employees or that utilize one or more workers supplied by a worker leasing company;

(k) Trusts with more than two trustees if any of the trustees are not family members.

(l) Limited liability companies with one or more employees or that utilize one or more workers supplied by a worker leasing company; or

(m) Limited liability companies with more than two members if any of the members are not family members.

(2) The exempt class is composed of sole proprietors, partnerships, joint ventures, limited liability partnerships, limited partnerships, corporations, trusts, and limited liability companies that do not qualify as nonexempt.

(3) An exempt contractor may work with the assistance of individuals who are employees of or workers supplied by a worker leasing company to a nonexempt contractor as long as the nonexempt contractor or the nonexempt contractor's worker leasing company:

(a) Is in compliance with ORS Chapters 316, 656, and 657 and is providing the employees with workers' compensation insurance; and

(b) Does the payroll and pays all its employees, including those employees who assist an exempt contractor.

(4) Except as provided in sections (5) through (8) of this rule, entities shall supply the following employer account numbers as required under ORS 701.046:

(a) Workers' Compensation Division 7-digit compliance number or workers' compensation insurance carrier name and policy or binder number;

(b) Oregon Employment Department and Oregon Department of Revenue combined business identification number; and

(c) Internal Revenue Service employer identification number or federal identification number.

(5) Exempt entities are not required to supply employer account numbers under section (4) of this rule except as follows:

(a) Partnerships, joint ventures, limited liability partnerships, and limited partnerships that have no employees and are not directly involved in construction work may be classed as exempt when the entity certifies that all partners or joint venturers qualify as nonsubject workers under ORS 656.027. Such partnerships or joint ventures must supply the Internal Revenue Service employer identification number or federal identification number.

(b) Corporations qualifying as exempt under ORS 656.027(10) must supply the Oregon Employment Department and Oregon Department of Revenue combined business identification number unless the corporation certifies that corporate officers receive no compensation (salary or profit) from the corporation.

(c) Corporations qualifying as exempt must supply the Internal Revenue Service employer identification number or federal identification number.

(d) Limited liability companies must supply the Internal Revenue Service employer identification number or federal identification number unless the limited liability company has only one member and has no employees.

(6) Nonexempt entities that utilize volunteers that qualify under ORS 656.027 (20) or that utilize one or more workers supplied by a worker leasing company need not supply an Oregon workers' compensation account number or workers' compensation insurance carrier name and policy or binder number.

(7) Nonexempt entities that utilize one or more workers supplied by a worker leasing company and have no other applicable tax reporting obligations need not supply:

(a) An Internal Revenue Service employer identification number or federal identification number; or

(b) An Oregon Employment Department and Oregon Department of Revenue combined business identification number.

(8) Out-of-state applicants with no Oregon subject workers as provided in ORS 656.126 and OAR 436-050-0055 must supply their home state account numbers, and need not supply an Oregon workers' compensation account number.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235 & 701.992
Stats. Implemented: ORS 701.035 & 701.098
Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0002; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0260
Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name and address (which may be the business address) of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust;

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph; or

(I) The responsible managing individual designated by the applicant.

(d) Except for a public company, the date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust;

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph; or

(I) The responsible managing individual designated by the applicant.

(J) For purposes of this subsection, a "public company" means any business entity that offers securities registered for sale by the federal Securities and Exchange Commission to the general public.

(e) Social security number of the owner of a sole proprietorship or partners, if partners are human beings, in a general partnership;

(f) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(g) License endorsement sought, as provided for under OAR 812-003-0131;

(h) The identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.122 or is otherwise exempt under division 6 of these rules;

(i) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(j) Names and certification numbers of all certified locksmiths if the entity is a Residential Locksmith Services Contractor or will do work providing locksmith services under ORS 701.475 to 701.490;

(k) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(l) Names and certification numbers of all certified home energy assessors if the entity is a Home Energy Performance Contractor providing home energy performance scores under Oregon Laws 2013, chapter 383, sections 3 through 7 or will do work providing home energy performance scores.

(m) For each person described in subsection (1)(c) of this section, the following information if related to construction activities:

(A) If unsatisfied on the date of application, a copy of a final judgment by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body;

(B) If unsatisfied on the date of application, a copy of a final order by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or public body;

(C) If pending on the date of application, a copy of a court complaint filed in any state that alleges that the person owes money to another person or public body; or

(D) If pending on the date of application, a copy of an administrative notice of action issued in any state that alleges that the person owes money to another person or public body.

(n) For each person described in subsection (1)(c) of this section, the following information if related to construction activities;

(A) A copy of a judgment of conviction for a crime listed in ORS 701.098(1)(i), entered within five years preceding the application date; or

(B) A copy of an indictment for a crime listed in ORS 701.098(1)(i), entered within five years preceding the application date.

(C) In addition to documents required in paragraphs (1)(l)(A) and (B) of this section, copies of police reports, parole or probation reports indicating parole or probation officer's name and phone number, and letters of reference.

(o) Independent contractor certification statement and a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee;

(p) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct; and

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0140;

(c) A properly executed bond, letter of credit or assignment of savings as required under OAR 812-003-0152, 812-003-0153, or 812-003-0155; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.050, 701.056, 701.068, 701.073, 701.081, 701.088 & 701.122
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2008, f. & cert .ef. 3-24-08; CCB 8-2008, f. 4-28-08, cert. ef. 7-1-08; CCB 12-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 16-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0290
License Renewal, Reissue, New Issue; Effective Dates; Term

(1) Except as provided in section (3) of this rule, a completed renewal or reissue application required under OAR 812-003-0260 shall be on file with the agency before a license may be renewed or reissued.

(2) In order to obtain a renewed or reissued license, a contractor must provide the following:

(a) A completed application form;

(b) Proof of insurance;

(c) A commercial or residential bond, or both (as indicated by the contractor's endorsement(s));

(d) Where authorized by ORS 701.088, a letter of credit or cash deposit in lieu of the bond; and

(e) An application fee.

(3) If agency error causes the delayed receipt of the required documents or fee, the agency may renew or reissue the license with an effective date before the date on which all requirements were satisfied. Otherwise, all documents and fees must be received by the agency before the agency may renew or reissue the license.

(4) If a contractor satisfies all requirements for license renewal before the expiration date:

(a) The license is renewed; and

(b) The effective date of the license is the expiration date.

(5) If a contractor continuously maintains a bond and insurance and satisfies all requirements for renewal within two years after the expiration date:

(a) The license is renewed and backdated; and

(b) The effective date of the license is the expiration date.

(6) If a contractor fails to continuously maintain a bond or insurance but satisfies all requirements for renewal within two years after the expiration date:

(a) The license is reissued; and

(b) The effective date of the license is the date when all requirements for reissue are met.

(7) If a contractor satisfies all requirements for renewal more than two years after the expiration date, the license cannot be renewed or reissued. The contractor must apply for a new license under OAR 812-030-0260.

(8) Licenses will be reissued or renewed for a period of two years.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04, CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 11-2010(Temp), f. & cert. ef. 6-4-10 thru 11-30-10; CCB 14-2010, f. 8-24-10, cert. ef. 9-1-10; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0310
License Cards

(1) The agency shall issue a license and pocket card effective on the date on which the license becomes effective under OAR 812-003-0270 or 812-003-0290.

(2) A license and pocket card is valid for the term for which it is issued only if all of the following conditions are met throughout the license period:

(a) The surety bond, letter of credit or cash deposit remains in effect and undiminished by payment of Construction Contractors Board final orders.

(b) The insurance required by ORS 701.073 remains in effect.

(c) If the licensee is a sole proprietorship, the sole proprietorship survives.

(d) If the licensee is a partnership or limited liability partnership, the composition of the partnership remains unchanged, by death or otherwise.

(e) If the licensee is a limited partnership, the composition of the general partners remains unchanged, by death or otherwise.

(f) If the licensee is a corporation, trust, or limited liability company, the corporation, trust or limited liability company survives and complies with all applicable laws governing corporations, trusts or limited liability companies.

(3) If the licensee's bond is cancelled, the license will lapse 30 days from the date the cancellation is received by the agency.

(4) If a license becomes invalid, the agency may require the return of the license and pocket card.

(5) There is no charge for the original license and pocket card issued by the agency.

(6) There is a $10 fee to replace a license and pocket card.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063 & 701.088

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 2-2011, f. 4-28-11, cert. ef. 5-1-11; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0320

Record Changes

(1) Every licensed entity that changes its name, including any assumed business name under which it may operate, must notify the agency within 30 days of assuming, filing or registering the new name. This section also applies to sole proprietors that change their surname.

(2) Except as provided in OAR 812-003-0190, requests for business name amendments of a partnership, joint venture, corporation, limited liability company, limited partnership or limited liability partnership shall be accompanied by a rider from the surety and a new Certificate of Insurance to reflect the amended name.

(3) With the exception of record changes due to agency error, a record change request shall be submitted in writing or, if the agency permits, electronically.

(4) Except as provided in sections (5) and (6) of this rule, requests for record changes that require a new license card shall be accompanied by a $20 fee.

(5) No charge will be made for an address change.

(6) No charge will be made for changing independent contractor license class under ORS 701.035 if the licensed entity makes the change electronically.

Stat. Auth.: ORS 670.310, 701.235 & 701.238

Stats. Implemented: ORS 701.056, 701.068, 701.088 & 701.238

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0015; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 10-2000, f. & cert. ef. 8-24-00; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0005; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 4-2009, f. 5-6-09, cert. ef. 6-1-09; CCB 2-2011, f. 4-28-11, cert. ef. 5-1-11; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0390

Revocation or Suspension of License

(1) Except as provided in section (2) of this rule, if the agency issues a final order, arbitration award, or determination directing a licensee to pay monetary damages and the licensee or the licensee's surety fails to pay the order, award or determination in full, the agency will revoke, suspend, or refuse to issue or reissue a license.

(2) Section (1) of this rule shall not apply if the licensee submits proof to the agency that:

(a) A United States Bankruptcy Court issued an automatic stay under Title 11 of the United States Bankruptcy Code and that stay is currently in force; or

(b) The order, award or determination described in section (1) of this rule arises from a debt that:

(A) Is included in an order of discharge issued by a United States Bankruptcy Court; or

(B) Is included in a chapter 11 plan and order conforming the plan issued by a United States Bankruptcy Court that prohibits the agency from revoking, suspending, or refusing to issue or reissue the licensee's contractor's license and the licensee is in compliance with the terms of the plan and order.

(3) The agency shall revoke, suspend, or refuse to issue or reissue a license under section (1) of this rule if:

(a) The agency previously was prevented from revoking or suspending a license or was required to issue or reissue a license under section (2) of this rule; and

(b) The licensee's bankruptcy discharge is revoked or the bankruptcy stay is lifted.

Stat. Auth.: ORS 183.310 - 183.545, 670.310, 701.235 & 701.280

Stats. Implemented: ORS 701.100 & 701.098

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 5-1981(Temp), f. 12-30-81, ef. 1-1-82; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0040; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0030; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0400

Restoration of Bond, Letter of Credit or Cash Deposit after Payment on Complaint

If a surety company or financial institution pays all or part of a complaint against a licensed contractor from the contractor's surety bond, letter of credit or cash deposit, the agency must suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:

(1) A properly executed bond, letter of credit or cash deposit in the amount required under ORS 701.068 or 701.088 unless the agency requires a higher amount under 701.068; or

(2) A certificate from the contractor's surety company or financial institution that the surety company or financial institution remains liable for the full original penal sum of the bond, letter of credit or cash deposit, notwithstanding the payment from the surety bond letter of credit or cash deposit.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.068, 701.088

Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0040; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0430

Time Period for Perfecting a Lien or Complaint

For liens perfected and complaints:

(1) The time period under ORS 701.131(2)(a)(A) and 701.131(2)(b)(C) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

(2) The time period under ORS 701.131(2)(b)(A) for a completed application for license renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-003-0440

Notification of Conviction of a Crime

A licensee or applicant, or an owner or officer of the licensee or applicant who has been convicted of a crime listed in ORS 701.098(1)(i) must notify the agency in writing within 30 days from the date of the entry of the judgment of conviction.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.098

Hist.: CCB 8-2006, f. & cert. ef. 9-5-06; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-008-0030

Certification and License Required

(1) Except as provided in section (3) of this rule, no individual shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first receiving certification to do same from the agency and without being an owner or employee of a business that is licensed with the agency.

(2) Except as provided in section (3) of this rule, no business shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first becoming licensed with the agency as a residential general contractor, a residential specialty contractor, or a home inspection services contractor and without having an owner or employee who is an Oregon certified home inspector by the agency.

(3) The following persons are exempt from the requirements of this rule.

(a) Persons registered each year as a general contractor under ORS Chapter 701 during the period from January 1, 1991, though August 11, 1997, as provided in section (3)(b) of Chapter 814, 1997 Oregon Laws.

(b) Persons performing an energy audit or issuing a report on an energy audit.

(c) Persons performing a forensic evaluation or issuing a report on a forensic evaluation.

(d) Persons performing home performance testing or issuing a report on a home performance testing.

(e) Persons who assign home energy performance scores for residential buildings.

(4) No person, including persons covered by section (3) of this rule, shall use the title Oregon certified home inspector without receiving such certification from the agency.

(5) Certified individuals and licensed business undertaking certified home inspections shall comply with the standards of practice for undertaking certified home inspections as prescribed in these rules.

(6) All certificates for individuals to undertake home inspections are renewable upon meeting all requirements, including continuing education, as established by OAR chapter 812.

(7) Home inspection service contractors are not required to complete continuing education.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355
Stats. Implemented: ORS 701.081, 701.084, 701.350 & 701.355
Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 17-2011, f. 12-13-11, cert. ef. 1-1-12; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-008-0040
Application Requirements and Eligibility Requirements

(1) An individual must submit the following to qualify for certification:

(a) An application on a form provided by the agency;

(b) The fee established in OAR 812-008-0110;

(c) If applicable, CCB number and name of employing licensee;

(d) Proof of minimum of 20 education points as set forth in sections (3) and (4) of this rule; and

(e) Evidence of successful passage of agency's test.

(2) A business must do the following to qualify for a license:

(a) Become licensed with the agency as a residential general contractor, a residential specialty contractor or a home inspection services contractor;

(b) Have as an owner or employee one or more individuals who have obtained a certificate from the agency to undertake certified home inspections;

(c) Submit an application on a form prescribed by the agency; and

(d) Submit the fee as prescribed in OAR chapter 812.

(3) In order to qualify to take the test, an individual applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Ten points for a completed, 3-credit hour minimum class with a passing grade in home inspection at an accredited college or university, (10 points maximum).

(b) One point for each completed 3-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university, (10 points maximum).

(c) One point for each completed "ride-along" inspection performed under the direct supervision of an Oregon certified home inspector, (10 points maximum).

(d) One point for each completed 3-hour minimum class with a passing grade in approved subject areas in OAR 812-008-0074(1) by approved education providers under 812-008-0074(2) that are not colleges or universities, (10 points maximum).

(4) The individual applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Four points for each completed 12 months legally working as a home inspector in Oregon or another state or country (16 points maximum).

(b) Two points for each completed 12 months working or teaching at an accredited college or university, trade school or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or building inspections (16 points maximum).

(c) One-half point for each letter of recommendation from an Oregon-certified home inspector (4 points maximum).

(d) One point for each building codes certification issued by a government agency (5 points maximum).

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355
Stats. Implemented: ORS 701.081, 701.084, 701.350 & 701.355
Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 2-1999, f. & cert. ef. 5-4-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 12-2000(Temp), f. & cert. ef 10-16-00 thru 4-13-01; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 2-2001, f. & cert. ef 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 7-2001(Temp), f. & cert. ef. 10-31-01 thru 4-29-02; CCB 3-2002, f. & cert. ef. 3-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 14-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-012-0110
Terms of Written Contract

(1) If a contractor is required to have a written contract under ORS 701.305, the written contract or attached addendum to the written contract must contain the following:

(a) The contractor's name, address, phone number and license number issued by the board as shown on board records.

(b) An acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320, and indication of the acceptance or rejection of the offered warranty;

(c) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule;

(d) Customer's name and address;

(e) Address where the work is to be performed;

(f) A description of the work to be performed; and

(g) Price and payment terms.

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310, 701.235, 701.305, 701.315, 701.320, 701.330 & 701.335
Stats. Implemented: ORS 701.305, 701.330 & 701.335
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 8-2009, f. 12-28-09, cert. ef. 1-1-10; CCB 7-2010, f. & cert. ef. 4-28-10; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-021-0005
Definitions — Continuing Education for Residential Contractors

The following definitions apply to OAR 812-021-0000 to 812-021-0047:

(1) "BEST" means Building Exterior Shell Training.

(2) "Building code" means a specialty code as defined in ORS 455.010(7).

(3) "Employee" means:

(a) Any individual employed by a contractor; or

(b) A leased worker provided to a contractor by contract with a worker leasing company licensed under ORS 656.850(2).

(c) "Employee" does not include a subcontractor, which is an independent contractor, or a temporary employee.

(4) "'Green' or sustainable building practices" means the practice of increasing the efficiency with which buildings use resources such as energy, water, and materials, while reducing building impacts on human health or the environment.

(5) "License period" means the two-year period from the date a contractor's license is first issued or last renewed until the date the license is next scheduled to expire.

(6) "Officer" means an individual person as defined in OAR 812-002-0533.

(7) "Owner" means an individual person as defined in OAR 812-002-0537.

(8) "Residential contractor" means a licensed contractor as defined in ORS 701.005(12).

(9) "Responsible managing individual (RMI)" means an individual person as defined in ORS 701.005(15).

Stat. Auth.: ORS 670.310, 701.126 & 701.235
Stats. Implemented: ORS 701.126
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-11-12; CCB 7-2012, f. 4-25-12, cert. ef. 5-1-12; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-021-0021
Exemptions from Continuing Education

(1) For purposes of this rule, "dwelling" means a shelter in which people live, such as buildings used exclusively for residential occupancy, including single-family, two-family (e.g. duplex) and multi-family (e.g. apartment) buildings.

(2) For purposes of this rule, "outbuilding" means a building accessory to a dwelling that is used by the persons who occupy the dwelling, including detached garages, shops, sheds and barns.

(3) The following persons are exempt from obtaining BEST education as required under OAR 812-021-0015(2) or (3)(a)(A):

(a) Contractors that are licensed as:

(A) Plumbing contractors under ORS 447.010 to 447.156; or

(B) Electrical contractors under ORS 479.630.

(b) Contractors that have an owner or officer who is licensed as:

(A) An architect under ORS 671.010 to 671.220, whether or not operating within the scope of that registration; or

(B) A professional engineer under ORS 672.002 to 672.325, whether or not operating within the scope of that license.

(c) Unless provided otherwise, contractors that do not perform work on a residential structure that is a dwelling or an outbuilding, including but not limited to:

(A) Contractors that only perform tree pruning, tree and stump removal, or tree and limb guying;

(B) Contractors that only forge, weld or fabricate ornamental iron, so long as the contractor does not attach or install the ornamental iron in or on a residential structure that is a dwelling or outbuilding;

(d) The following contractors are not exempt under subsection (c) of this section:

(A) Contractors that perform excavation for residential construction;

(B) Contractors that perform grading for residential construction;

(C) Contractors that perform concrete work for residential construction; and

(D) Contractors that perform paving for residential construction.

(4) The following persons are exempt from obtaining education in building codes as required under OAR 812-021-0015(2), (3)(a)(B) or (4)(a)(A):

(a) Contractors that are licensed as:

(A) Plumbing contractors under ORS 447.010 to 447.156; or

(B) Electrical contractors under ORS 479.630.

(b) Contractors that have an owner or officer who is licensed as:

(A) An architect under ORS 671.010 to 671.220, whether or not operating within the scope of that registration; or

(B) A professional engineer under ORS 672.002 to 672.325, whether or not operating within the scope of that license.

(c) Unless provided otherwise, contractors that do not perform work on a residential structure that is a dwelling or outbuilding, including but not limited to:

(A) Contractors that only perform tree pruning, tree and stump removal, or tree and limb guying;

(B) Contractors that only forge, weld or fabricate ornamental iron, so long as the contractor does not attach or install the ornamental iron in or on a residential structure that is a dwelling or an outbuilding;

(d) The following contractors are not exempt under subsection (c) of this section:

(A) Contractors that perform excavation for residential construction;

(B) Contractors that perform grading for residential construction;

(C) Contractors that perform concrete work for residential construction; and

(D) Contractors that perform paving for residential construction.

(5) Contractors that are exempt from the continuing education requirements under sections (3) or (4) of this rule must complete additional elective continuing education, as provided in OAR 812-021-0019, in an amount totaling the number of core hours that the contractor would otherwise be required to complete under 812-021-0015 but for the exemption.

Stat. Auth.: ORS 670.310, 701.126 & 701.235
Stats. Implemented: ORS 701.126
Hist.: CCB 6-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; CCB 8-2011(Temp), f. & cert. ef. 9-2-11 thru 12-28-11; CCB 13-2011, f. 9-29-11, cert. ef. 10-1-11; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-021-0045

Claiming Continuing Education Credits — Continuing Education for Residential Contractors

(1) A contractor may claim continuing education hours for courses completed during the time an employee is employed by the contractor. If the employee is a leased worker, the employee must complete the continuing education hours while leased to the contractor.

(2) If an employee completed continuing education before being hired by a contractor, the contractor may not claim those hours to satisfy its continuing education requirement.

(3) A contractor may claim continuing education hours for courses completed at the time the owner, officer or RMI is associated with the contractor.

(4) If an owner, officer or RMI completed continuing education before associating with a contractor, the contractor may not claim those hours to satisfy the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.126 & 701.235
Stats. Implemented: ORS 701.126
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-021-0047

Personnel of More than One Contractor — Continuing Education for Residential Contractors

(1) If an employee who completes a continuing education course is employed by more than one contractor at the time the employee completes the course, each employing contractor may claim the continuing education hours. For purposes of this rule, "employed by more than one contractor" does not include leased workers leased by more than one contractor. For leased workers, only one contractor may claim the continuing education credits.

(2) If an owner, officer or RMI who completes a continuing education course is associated with more than one contractor at the time the owner, officer or RMI completes the course, each affiliated contractor may claim the continuing education hours.

Stat. Auth.: ORS 670.310, 701.126 & 701.235
Stats. Implemented: ORS 701.126
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-025-0000

Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with, and under the authority of, ORS 470.560, 670.310, 701.108, 701.119 and Oregon Laws 2009, chapter 753, section 48.

(2) Purpose. These rules establish a certification system for primary contractors that participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program created by ORS chapter 470 and Oregon Laws 2009.

(3) Scope. These rules:

(a) Establish the requirements for, and the manner of, certifying applicants.

(b) Establish fees.

(c) Prescribe actions that constitute grounds to deny, suspend, or revoke a certification.

(d) Outline requirements for notifying other agencies.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 470.560, 670.310, 701.108, 701.119 & 2009 OL Ch. 753, Sec. 42 – 46a, 48 & 49
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-025-0005

Definitions

The following definitions apply to division 25 of OAR chapter 812.

(1) "BOLI" means Bureau of Labor and Industries.

(2) "BPI" means Building Performance Institute.

(3) "Certification" means certification provided to contractors that participate in the construction of small scale local energy projects financed through the EEAST program.

(4) "Disadvantaged business enterprise" means that term as defined in ORS 200.005(1). A "disadvantaged business enterprise" is a small business concern:

(a) That is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or

(b) If a corporation, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals, and of which the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(5) "EEAST" means energy efficiency and sustainable technology.

(6) "Equal opportunity employer" means an employer that follows the principle of equal opportunity in regards to its hiring and promotion practices. An equal opportunity employer does not discriminate based on race, color, national origin, religion, gender, age, or physical or mental disability.

(7) "Minority or women business enterprise" means that term as defined in ORS 200.005(5). A "minority or women business enterprise" is a small business concern:

(a) That is at least 51 percent owned by one or more minority individuals or women; or

(b) If a corporation, at least 51 percent of the stock is owned by one or more individuals who are minority individuals or women, and of which the management and daily business operations are controlled by one or more of the minority individuals or women who own it.

(8) "ODOE" means the Oregon Department of Energy.

(9) "Primary contractor" means a contractor that:

(a) Has entered or will enter into a contract with an owner of real property for which a proposed small scale local energy project will be located;

(b) Is or will be responsible for the completion of the small scale local energy project;

(c) Undertakes or will undertake to complete the small scale local energy project; and

(d) Is or will be responsible for any subcontractors performing work on the small scale local energy project.

(10) "Program" or "EEAST program" means the energy efficiency and sustainable technology loan program.

(11) "Project" means a small scale local energy project, as defined by ORS 470.050(27), being funded by the EEAST program.

(12) "REAP" means Residential Energy Analyst Program offered through the Oregon Energy Coordinators Association.

(13) "Small business" means:

(a) An Oregon business that is:

(A) A retail or service business employing 50 or fewer persons at the time the loan is made; or

(B) An industrial or manufacturing business employing 200 or fewer persons at the time the loan is made; or

(b) An Oregon subsidiary of a sole proprietorship, partnership, company, cooperative, corporation or other form of business entity for which the total number of employees for both the subsidiary and the parent sole proprietorship, partnership, company, cooperative, corporation or other form of business entity at the time the loan is made is:

(A) Fifty or fewer persons if the subsidiary is a retail or service business; and

(B) Two hundred or fewer if the subsidiary is an industrial or manufacturing business.

(14) "Small business concern," for purposes of subsections (4) and (7) of this rule, is defined by the United States Small Business Administration (SBA). 13 C.F.R. part 121. A contractor is a "small business concern" if:

(a) It engages in the construction or remodeling of new or existing buildings and receives no more than $33.5 million in average annual receipts;

(b) It engages in dredging or surface cleanup activities and receives no more than $20.0 million in average annual receipts;

(c) It primarily engages in the following construction trades and receives no more than $14.0 million in average annual receipts:

(A) Poured concrete foundation and structure;

(B) Structural steel and precast concrete;

(C) Framing;

(D) Masonry;

(E) Glass and glazing;

(F) Roofing;

(G) Siding;

(H) Foundation, structure and building (other than concrete);

(I) Electrical;

(J) Plumbing;

(K) Heating and air-conditioning;

(L) Building equipment other than (I), (J) or (K);

(M) Drywall and insulation;

(N) Painting and wall covering;

(O) Flooring;

(P) Tile and terrazzo;

(Q) Finish carpentry;

(R) Building finishing other than carpentry;

(S) Site preparation.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-025-0010
Application and Eligibility to Participate in Construction of Projects Financed by the EEAST Program

An applicant for certification must submit the following:

(1) A completed application on a form provided by the board;

(2) Proof that the applicant is licensed by the board as a residential or commercial contractor;

(3) A statement that the applicant is or will be the primary contractor

(4) A copy of a BPI or REAP certificate, referred to in OAR 812-025-0015;

(5) The fee established in OAR 812-025-0040.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-030-0000
General Definitions

The following definitions apply to OAR 812-030-0000 to 812-030-0300:

(1) "Certificate" means the authorization issued by the board to an individual locksmith.

(2) "Conviction" means a final judgment on a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere (no contest), or any other determination of guilt entered by a court against an individual in a criminal case unless the final judgment has been reversed or set aside by a subsequent court decision.

(3) "False statement" means a statement whereby an individual applying for a locksmith certificate:

(a) Provides the board with materially false information; or

(b) Fails to provide the board with information material to determining his or her qualifications.

(4) "License" means the construction contractor license issued by the board under ORS 701.046 to a business offering to or providing locksmith services, including, but not limited to, a residential locksmith services contractor.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.475 - 701.490
Hist.: CCB 3-2010, f. & cert. ef. 2-1-10; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-030-0240
Requirement that Locksmith Own or Work for a Licensed Contractor

(1) In order to work as a locksmith, a certified locksmith must:

(a) Be an owner or employee of a licensed construction contractor, including, but not limited to, a residential locksmith services contractor; or

(b) Be otherwise exempt under ORS 701.490.

(2) If the board refuses to issue, refuses to reissue, suspends or revokes the contractor's license, or if the construction contractor' license expires or becomes inactive, the certified locksmith, not otherwise exempt under ORS 701.490, may not:

(a) Undertake, offer to undertake or submit to do work as a locksmith for compensation; or

(b) Use the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith."

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.480 & 701.490
Hist.: CCB 3-2010, f. & cert. ef. 2-1-10; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0000
General Definitions

The following definitions apply to OAR 812-032-0000 to 812-032-0150:

(1) "Certificate" means the authorization issued by the board to an individual home energy assessor.

(2) "License" means the construction contractor license issued by the board under ORS 701.046 to a business offering or providing home energy performance scores, including, but not limited to, a home energy performance score contractor.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0100
General Application Requirements

An individual must submit the following to qualify for a home energy assessor certificate:

(1) An application on a form provided by the board;

(2) Proof of passing a training program designated by the Department of Energy;

(3) If applicable, the CCB license number of the business owned by or employing the applicant; and

(4) The fee established in OAR 812-032-0150.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0110
Certificate Issuance

(1) The effective date of the certificate will be the date that the applicant meets all board requirements, including paying the fee required under OAR 812-032-0150.

(2) A unique number will be assigned to each certificate.

(3) If the board issues a certificate, it will mail the certificate to the applicant.

(4) If the board denies a certificate, it will state, in writing, the reasons for denial.

(5) A certificate shall be non-transferable.

(6) A certificate shall be effective for one year from the date of issue.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0120
Requirements for Certificate Renewal

A certified home energy assessor shall submit the following to the board for renewal of the home energy assessor's certificate:

(1) Renewal application information as required by the board;

(2) If applicable the CCB license number of the business owned by or employing the applicant; and

(3) The fee established in OAR 812-032-0150.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0123
Certificate Cards

(1) The agency shall issue a certificate and pocket card effective on the date on which the certificate becomes effective under OAR 812-032-0110 or 812-032-0120.

(2) A certificate and pocket card is valid for the term for which it is issued.

(3) If a certificate becomes invalid, the agency may require the return of the certificate and pocket card.

(4) There is no charge for the original certificate and pocket card issued by the agency.

(5) There is a $10 fee to replace a certificate and pocket card.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0130
Certificate Renewal — Effective Date; Effect of Lapse

(1) A renewed certificate shall be effective on the day following the expiration date for which the renewal is sought if the certified home energy assessor fulfills all of the requirements in OAR 812-030-0120 on or before the expiration date.

(2) Except as provided in subsection (4), if a certified home energy assessor fails to fulfill all of the requirements in OAR 812-032-0120 on or before the expiration date, but fulfills the requirements at a future date, the renewal shall be effective on the date that all the requirements for renewal have been fulfilled. During the period from the expiration date to the effective date, the certificate is deemed to have lapsed.

(a) A home energy assessor may not offer to assign, or assign, home energy scores while the certificate is lapsed.

(b) A home energy assessor may not use the title of home energy assessor or similar other title while the certificate is lapsed.

(3) If the certificate lapses for one year or less, the applicant may renew its certification by renewing the certificate as provided for in OAR 812-032-0120.

(4) If the certificate lapses for more than one year, the applicant must apply for a new certificate as provided for in OAR 812-032-0100.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0135
Mailing and E-mail Address Changes

(1) Certified home energy assessors shall notify the board of any change in mailing or e-mail addresses while certified and for one year following the certification expiration date. Such persons must notify the board within 10 days after changing an address.

(2) No charge will be made for a mailing or e-mail address change to the board's records.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0140
Requirement that Home Energy Assessor Own or Work for a Licensed Contractor

(1) In order to work as a home energy assessor, a certified home energy assessor must be an owner or employee of a licensed construction contractor, including, but not limited to, a home energy performance score contractor.

(2) If the board refuses to issue, refuses to reissue, suspends or revokes the contractor's license, or if the construction contractor' license expires or becomes inactive, the certified home energy assessor may not:

(a) Undertake, offer to assign or assign home energy performance scores; or

(b) Use the title of home energy assessor or similar other title.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

812-032-0150
Application, Renewal and Certificate Fees

(1) The application fee for a home energy assessor certificate is $100.

(2) The fee for issuance of an initial one-year certificate is $100.

(3) The fee for renewal of a one-year certificate is $100.

(4) All fees are non-refundable and non-transferrable.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: 2013 OL Ch. 383 (HB 2801)
Hist.: CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14

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Department of Administrative Services
Chapter 125

Rule Caption: Amends Department of Administrative Services Public Contracting Rules
Adm. Order No.: DAS 4-2013
Filed with Sec. of State: 12-17-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 125-055-0100, 125-055-0105, 125-055-0115, 125-055-0120, 125-055-0125, 125-055-0130, 125-246-0100, 125-246-0110, 125-246-0130, 125-246-0165, 125-246-0170, 125-246-0350, 125-246-0360, 125-246-0400, 125-246-0500, 125-246-0556, 125-246-0570, 125-246-0900, 125-247-0170, 125-247-0200, 125-247-0265, 125-247-0270, 125-247-0805, 125-248-0130
Subject: Since 2005, the Department of Administrative Services (DAS) has developed and amended rules (Rules) to put into practice the Public Contracting Code, ORS 279ABC (Code). The Rules apply to state agencies subject to DAS procurement authority (Agencies). In 2013, the Legislature made changes to select sections of the Code. In addition to the legislative changes to the Code, the Department of Justice and Agencies requested select Rule changes to streamline or reduce duplications. Now, in response to the legislative changes and requests for change from stakeholders, DAS needs to amend the select Rules listed above.
Rules Coordinator: Janet Chambers—(503) 378-5522

125-055-0100
Purpose — HIPAA Privacy and Security Rule Implementation; HITECH Act Implementation.

(1) The purpose of these rules is to set forth the requirements that a contractor who is a Business Associate of an Agency must abide by in order to comply with the Business Associate provisions of HIPAA and the implementing Privacy Rule and Security Rule and of the HITECH Act. The Privacy Rule and Security Rule, as amended by the HITECH Act, require an Agency, to obtain certain written assurances from a Business Associate, that the Business Associate will comply with the Business Associate requirements set forth in 45 CFR 164.502(e) and 164.504(e). The Privacy Rule requires that a Covered Entity obtain certain written assurances before the Business Associate may create, receive, maintain or transmit Protected Health Information. The requirements contained in this Rule apply both to Contracts for trade services and personal services, as defined in OAR 125-246-0110.

(2) This Rule will be interpreted as broadly as necessary to implement and comply with HIPAA, the Privacy Rule and the Security Rule, and the HITECH Act. Any ambiguity in this Rule shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the Privacy Rule and the Security Rule, and the HITECH Act.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05,

cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0105
Definitions

For purposes of rules 125-055-0100 through 125-055-0130 the following terms shall have the meanings set forth below. Capitalized terms not defined herein shall have the same meaning as those terms in the Privacy Rule and the Security Rule and the HITECH Act, including, but not limited to, 42 USC Section 17938 and 45 CFR Section 160.103.

(1) "Agency" means an agency of the State of Oregon subject to the procurement authority of DAS pursuant to ORS 279A.140 and that is:

(a) A Covered Entity; or

(b) A Business Associate of an Agency that is a Covered entity.

(2) "Business Associate" has the meaning given that term in 45 CFR 160.103.

(3) "Contract" means the written agreement between an Agency and a Contractor setting forth the rights and obligations of the parties.

(4) "Covered Entity" has the meaning given that term in 45 CFR 160.103.

(5) "Electronic Media" means:

(a) Electronic storage media; and

(b) Transmission media used to exchange information already in electronic storage media.

(6) "Electronic Protected Health Information" has the meaning given that term in 45 CFR 160.103.

(7) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d – 1320d-8, Public Law 104-191, sec. 262 and sec. 264.

(8) "HITECH Act" means the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), Public Law 111-5, including any implementing regulations.

(9) "Health Care Provider" means the persons or entities that furnish, bill for or are paid for Health Care in the normal course of business, as more fully defined in ORS 192.519.

(10) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(11) "Protected Health Information" has the meaning given that term in 45 CFR 160.103.

(12) "Required by Law" has the meaning given that term in 45 CFR section 164.103.

(13) "Rule" means this Oregon Administrative rule 125-055-0100 through 125-055-0130.

(14) "Secretary" means the Secretary of Health and Human Services (HHS) or any other officer or employee of HHS to whom the authority involved has been delegated.

(15) "Security Rule" means the security standards for Electronic Protected Health Information found at 45 CFR Parts 160, 162, and 164.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 192.519; ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0115
Business Associate Contract Provisions

(1) A Contractor that is a Business Associate of an Agency must:

(a) Not use or disclose Protected Health Information or Electronic Protected Health Information other than as permitted or required by this Rule and the Contract, or as Required By Law.

(b) Use appropriate safeguards to prevent use or disclosure of the Protected Health Information and Electronic Protected Health Information other than as provided for by this Rule and the Contract.

(c) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information or Electronic Protected Health Information by Business Associate in violation of the requirements of this Rule and the Contract.

(d) Report to Agency, as promptly as possible, any use or disclosure of the Protected Health Information or Electronic Protected Health Information not provided for by this Rule and the Contract of which it becomes aware.

(e) Ensure that any agent, including a subcontractor, to whom it provides Protected Health Information or Electronic Protected Health Information created, received, maintained or transmitted by it on behalf of Agency agrees to the same restrictions and conditions that apply through this Rule and the Contract to Business Associate with respect to such information.

(f) Provide access, at the request of Agency, and in the time and manner designated by Agency, to Protected Health Information or Electronic Protected Health Information in a Designated Record Set, to Agency or, as directed by Agency, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Make any amendment(s) to Protected Health Information or Electronic Protected Health Information in a Designated Record Set that the Agency directs or agrees to pursuant to 45 CFR 164.526 at the request of Agency or an Individual, and in the time and manner designated by Agency.

(h) Make internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information and Electronic Protected Health Information created, received, maintained or transmitted by Business Associate on behalf of, Agency available to Agency and to the Secretary, in a time and manner designated by Agency or the Secretary, for purposes of the Secretary determining Agency's compliance with the Privacy Rule or Security Rule.

(i) Document disclosures of Protected Health Information and Electronic Protected Health Information and information related to such disclosures as would be required for Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 CFR 164.528.

(j) Provide to Agency or an Individual, in a time and manner to be designated by Agency, information collected in accordance with subsection (i) of this section to permit Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 CFR 164.528.

(2) A Contractor that is a Business Associate of an Agency may, except as otherwise limited or prohibited by this Rule:

(a) Use or disclose Protected Health Information and Electronic Protected Health Information to perform functions, activities, or services for, or on behalf of, Agency as specified in the Contract and this Rule, provided that such use or disclosure would not violate the Privacy Rule, Security Rule, the HITECH Act, or other applicable federal or state laws or regulations if done by Agency or the minimum necessary policies and procedures of the Agency. All other uses of Protected Health Information and Electronic Protected Health Information are prohibited.

(b) Use Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Disclose Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law.

(d) Disclose Protected Health Information and Electronic Protected Health Information to a subcontractor if the Business Associate enters into a business associate agreement with that subcontractor that complies with this Rule.

(e) Use Protected Health Information and Electronic Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

(3) A Contractor that is a Business Associate of an Agency may not aggregate or compile Agency's Protected Health Information or Electronic Protected Health Information with the Protected Health Information or Electronic Protected Health Information of other Covered Entities unless the Contract permits Business Associate to perform Data Aggregation services. If the Contract permits Business Associate to provide Data Aggregation services, Business Associate may use Protected Health Information to provide Data Aggregation services requested by Agency as permitted by 45 CFR 164.504(e)(2)(i)(B) and subject to any limitations contained in this Rule. If Data Aggregation services are requested by Agency, Business Associate is authorized to aggregate Agency's Protected Health Information with Protected Heath Information of other Covered Entities that the Business Associate has in its possession through its capacity as a business associate to such other Covered Entities provided that the purpose of such aggregation is to provide Agency with data analysis relating to the Health Care Operations of Agency. Under no circumstances may Business Associate disclose Protected Health Information of Agency to another Covered Entity absent the express authorization of Agency.

(4) Obligations of Agency:

(a) An Agency that has entered into a Contract with a Business Associate shall notify Business Associate of any:

(A) Limitation(s) in its notice of privacy practices of Agency in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information and Electronic Protected Health Information. Agency may satisfy this obligation by providing Business Associate with Agency's most current Notice of Privacy Practices.

(B) Changes in, or revocation of, permission by Individual to use or disclose Protected Health Information or Electronic Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information and Electronic Protected Health Information.

(C) Restriction to the use or disclosure of Protected Health Information or Electronic Protected Health Information that Agency has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information or Electronic Protected Health Information.

(b) Agency shall not request Business Associate to use or disclose Protected Health Information or Electronic Protected Health Information in any manner that would not be permissible under the Privacy Rule or Security Rule if done by Agency, except as permitted by section (1)(b)(B) above.

(5) Security Requirements. A Business Associate of an Agency is subject to the Security Rule's Business Associate requirements for Electronic Protected Health Information and must comply with both the Privacy Rule and the Security Rule requirements applicable to a Business Associate. In addition to the Privacy Rule requirements set forth in this Rule, the Contractor must:

(a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Agency, and develop and enforce related policies, procedure, and documentation standards (including designation of a security official).

(b) Ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it by entering into a business associate agreement; and

(6) Breach.

(a) In the event of Discovery of a Breach of Unsecured Protected Health Information a Business Associate of an Agency must:

(A) Notify the Agency of such Breach. The notification of a Breach to the Agency must be made as soon as possible and Business Associate shall confer with the Agency as soon as practicable thereafter, but in no event, shall notification to the Agency be later than 30 calendar days after the Discovery of a Breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by the Agency necessary for the Agency to meet its notification obligations;

(B) Confer with the Agency as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired or disclosed as a result of such Breach;

(C) Where the Breach involves more than 500 individuals, confer with the Agency as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,

(D) Confer with the Agency as to the preparation and issuance of an appropriate notice to the Secretary of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. If the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log must be provided to the Secretary annually documenting such Breaches occurring during the year involved.

(b) Except as set forth in (c) below, notifications required by this section must be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Breach. Any notice must be provided in the manner and content required by the HITECH Act, sections 13402(e) and (f), and 45 CFR 164.404–164.410.

(c) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, section 13402(g).

(d) For purposes of this section, the terms "Breach" and "Unsecured Protected Health Information" have the meaning set forth in 45 CFR 164.402. A Breach will be considered as "Discovered" in accordance with the HITECH Act, section13402(c), 45 CFR 164.404(a)(2), and 45 CFR 164.410(a)(2).

(7) Violations of this Rule.

(a) Upon Agency's knowledge of a material breach by Business Associate of the requirements of this Rule, Agency shall:

(A) Notify Business Associate of the breach and specify a reasonable opportunity in the notice for Business Associate to cure the breach or end the violation, and terminate the Contract if Business Associate does not cure the breach of the requirements of this Rule or end the violation within the time specified by Agency;

(B) Immediately terminate the Contract if Business Associate has breached a material term of this Rule and cure is not possible in Agency's reasonable judgment; or

(C) If neither termination nor cure is feasible, Agency shall report the violation to the Secretary.

(b) The rights and remedies provided in this Rule are in addition to the rights and remedies provided in the Contract.

(c) Effect of Termination.

(A) Except as provided in subsection (c)(B) below upon termination of the Contract, for any reason, Business Associate shall, at Agency's option, return or destroy all Protected Health Information and Electronic Protected Health Information received from Agency, or created or received by Business Associate on behalf of Agency. This provision shall apply to Protected Health Information and Electronic Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information and Electronic Protected Health Information.

(B) In the event that Business Associate determines that returning or destroying the Protected Health Information or Electronic Protected Health Information is infeasible, Business Associate shall provide to Agency notification of the conditions that make return or destruction infeasible. Upon Agency's written acknowledgement that return or destruction of Protected Health Information or Electronic Protected Health Information is infeasible, Business Associate shall extend the protections of this Rule to such Protected Health Information and Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information and Electronic Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information and Electronic Protected Health Information.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0120

Order of Precedence

In the event of a conflict between this Rule and the provisions of the Contract, this Rule shall control. In the event of a conflict between this Rule and the Privacy Rule or the Security Rule or the HITECH Act, or the provisions of the Contract and the Privacy Rule or the Security Rule or the HITECH Act, the Privacy Rule and the Security Rule and the HITECH Act shall control. The requirements set forth in this Rule are in addition to any other provisions of law applicable to the Contract. Provided, however, this Rule shall not supercede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA and the HITECH Act preempt those laws or regulations. Any ambiguity in the Contract shall be resolved to permit Agency and Business Associate to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0125
Methods of Compliance

In addition to referencing compliance with this Rule in a Contract with a Business Associate, Agency may comply with this Rule in any of the following ways:

(1) Memorandum of Understanding. If a Business Associate is a government entity, the parties may comply with the requirements of this Rule by entering into a memorandum of understanding that accomplishes the objectives of this Rule and meets the Business Associate requirements of the Privacy Rule and the Security Rule.

(2) Amendment. Agency may comply with the requirements of this Rule by executing an amendment or rider that amends Agency's Contract and that contains the contract provisions required by this Rule.

(3) Required by Law. If a Business Associate is Required by Law to perform a function or activity on behalf of an Agency or to provide a service described in the definition of Business Associate to an Agency, such Agency may disclose Protected Health Information to the Business Associate to the extent necessary to comply with the legal mandate without meeting the requirements of this Rule, provided that the Agency attempts in good faith to obtain satisfactory assurances required by OAR 125-055-0115, and, if such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-055-0130
Standards in Individual Contracts

(1) Agency and Business Associate may enter into a Contract that contains more stringent standards than those set forth in this Rule as long as such standards do not violate the requirements of the Privacy Rule or the Security Rule or the HITECH Act.

(2) Agencies shall use one of the forms provided or approved by the Department of Administrative Services when entering into personal services contracts as defined in OAR 125-246-0110. For revised forms up to a cumulative value of $150,000 and before an Agency may use a revised form, it must obtain its Designated Procurement Officer's approval of any revisions to the form's terms and conditions. For revised forms exceeding a cumulative value of $150,000 and before an Agency may use a revised form, it must obtain Department of Justice approval of any revisions to the revised form's terms and conditions.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140
Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264
Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05; DAS 12-2005, f. 10-21-05, cert. ef. 10-22-05; DAS 2-2010(Temp), f. & cert. ef. 7-26-10 thru 1-17-11; DAS 4-2010, f. & cert. ef. 11-15-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0100
Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) are policy and procedure for the Public Contracting of Agencies subject to these Rules and all state agencies that are subject to the DAS rules adopted under ORS 279A.140(2)(h) to regulate personal services contracts (see OAR 125-246-0335 through 125-246-0353). According to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. Except for those Public Contract Model Rules expressly adopted by the Department in OAR 125-246-0100, 125-247-0100, 125-248-0100 and 125-249-0100, the Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

(a) Division 246, which applies to all Public Contracting;

(b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services;

(c) Division 248, which applies only to Public Contracting for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and

(d) Division 249, which applies only to Public Contracting for construction services.

(2) If a conflict arises between these division 246 rules and rules in division 247, 248 or 249, the rules in divisions 247, 248 or 249 take precedence over these division 246 rules.

(3) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(4) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and despite other provisions of the Public Contracting Code, under the following conditions:

(a) Federal funds are involved; and

(b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, or ORS 279C.005 through 279C.670.

(5) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in OAR 125-246-0110:

(a) "Contracting agency(ies)" is replaced by "Authorized Agency(ies)."

(b) "Goods or services" is replaced by "Supplies and Services."

(c) "Agreements to agree" and "price agreement" are replaced by "Price Agreement."

(6) Capitalization of Defined Terms. Uncapitalized terms in those Model Rules expressly adopted by the Department have the same meaning as the same terms that are capitalized and defined in OAR 125-246-0110.

(7) Department Policy. Agencies must comply with Department policies, if applicable.

(8) For purposes of these Division 246 Rules, the Department adopts the following Model Public Contract Rules: OAR 137-046-0300, 137-046-0330, 137-046-0400, 137-046-0410, 137-046-0420, 137-046-0430, 137-046-0440, 137-046-0450, 137-046-0460, 137-046-0470, 137-046-0480.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0110
Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) "Advocate for Minority, Women and Emerging Small Business", (also known as the Director of Economic & Business Equity), means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses, (also known as the Office of Economic & Business Equity), according to ORS 200.025.

(5) An "Administrator" or "Administering Contracting Agency" is defined in OAR 125-246-0400.

(6) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(7) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business

for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department according to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority according to OAR 125-246-0170.

(9) "Agreement to Agree" means a Price Agreement as defined in Subsection (109).

(10) "Amendment" means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements of 125-247-0805, 125-248-0340, 125-249-0160, and 125-249-0910. For the purposes of these Rules, Amendments are included within the definitions of "Procurements" and "Contract Administration."

(11) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect."

(12) "Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services" is defined in ORS 279C.100(2).

(13) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they may be in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

(14) "Authorized Agency" means any Person authorized according to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency's behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see OAR 125-246-0170 only.

(15) "Award" means the Agency's identification of the Person(s) with whom the Agency intends to enter into a Contract.

(16) "Bid" means a Written response to an Invitation to Bid.

(17) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(18) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(19) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(20) "Business Day" means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding State of Oregon holidays.

(21) "Chief Procurement Officer" means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules.

(22) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Goods or Services.

(23) "Client" means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(24) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription;

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses services;

(n) Religious practices, traditions and services, separately or in any combination thereof; and

(o) Educational services.

(p) The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(25) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(26) "Code" is the "Public Contracting Code," defined in ORS 279A.010(1)(bb), and "Code" means ORS Chapters 279A, 279B and 279C.

(27) "Competitive Quotes" means the sourcing method according to OAR 125-249-0160.

(28) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0260 or 125-249-0650.

(29) "Competitive Sealed Bidding" means the sourcing method according to ORS 279B.055.

(30) "Competitive Sealed Proposals" means the sourcing method according to ORS 279B.060.

(31) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.

(32) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.

(33) "Contract Administration" means all functions related to a given Contract, including Amendments, between an Agency and a Contractor from:

(a) The time the Contract is signed by all parties until;

(b) The Work is completed and accepted or the Contract is terminated, final payment has been made, and any disputes have been resolved.

(34) "Contract Administrator" means the officer, employee, or other individual designated in Writing by an Authorized Agency, by name or position description, to conduct the Contract Administration of a Contract or class of Contracts.

(35) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."

(36) "Contract Price" means, as the context requires, the maximum monetary obligation that an Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(37) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(38) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the proce-

dures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(39) "Contracting Agency."

(a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf according to ORS 279A.140.

(b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.

(40) "Cooperative Procurement" is defined in OAR 125-246-0400.

(41) "Cooperative Procurement Group" is defined in OAR 125-246-0400.

(42) "Days" means calendar days.

(43) "Department" means the Oregon Department of Administrative Services. The procurement authority of the Department is described in OAR 125-246-0170. When a Rule refers to any action of the Department, any individual acting on behalf of the Department must be authorized to take such action in accordance with OAR 125-246-0170.

(44) "Department Price Agreement" means a Price Agreement issued by the Department on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. According to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a mandatory Department Price Agreement for those authorized Supplies and Services exists.

(45) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(46) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.

(47) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(48) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.

(49) "Disqualification" means a disqualification, suspension or debarment of a Person according to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).

(50) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(51) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Agency's Procurements made available over the Internet via:

(a) The World Wide Web;

(b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the Chief Procurement Officer. An Electronic Advertisement may or may not include a Solicitation Document.

(52) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

(a) The World Wide Web or some other Internet protocol; or

(b) ORPIN.

(53) "Electronic Procurement System" means ORPIN or other system approved by the Chief Procurement Officer, constituting an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(54) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(55) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a Contract to remedy the condition. An "Emergency Procurement" means a sourcing method according to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(56) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(57) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in 672.002(2).

(58) "Established Catalog Price" means the price included in a catalog, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer or Contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(59) "Executive Department" is defined in ORS 174.112.

(a) Subject to ORS 174.108, "Executive Department" means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in Section 1, Article III of the Oregon Constitution, and that are not:

(A) In the judicial department or the legislative department;

(B) Local governments; or

(C) Special government bodies.

(b) Subject to ORS 174.108, as used in the statutes of this State, "Executive Department" includes:

(A) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(B) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by the Executive Department other than an entity described in Subsection (B), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(60) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

(a) Operational, budget and financial data;

(b) Public benefits;

(c) Value engineering;

(d) Specialized expertise required;

(e) Public safety;

(f) Market conditions;

(g) Technical complexity; and

(h) Funding sources.

(61) "Fire Protection Equipment" is defined in ORS 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(62) "Flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(63) "Formal Selection Procedure" means the procedure according to OAR 125-248-0220.

(64) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers according to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(65) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305. This definition does not apply to OAR 125-247-0255 and 125-247-0260.

(66) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

(a) Unsatisfactory job progress;

(b) Defective work not remedied;

(c) Third-party claims filed or reasonable evidence that claims will be filed;

(d) Failure to make timely payments for labor, equipment and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(67) "Goods" means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(68) "Goods and Services" or "Goods or Services" is defined in ORS 279B.005 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies and Services" in this Rule). "Goods and Services" or "Goods or Services" does not include Personal Services. "Supplies and Services" includes Personal Services.

(69) "Grant" is defined in ORS 279A.010(1)(k)(A) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(70) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(71) "Informal Selection" means the procedure according to OAR 125-248-0210.

(72) "Intermediate Procurement" means a sourcing method according to ORS 279B.070 or OAR 125-249-0160.

(73) "Interstate Cooperative Procurement" is defined in OAR 125-246-0400.

(74) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with ORS 279B.055, 279B.070 or 279C.335.

(75) "Joint Cooperative Procurement" is defined in OAR 125-246-0400.

(76) "Judicial Department" is defined in ORS 174.113 and means the Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. The Judicial Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(b) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Judicial Department other than an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(77) "Labor Dispute" is defined in ORS 662.010 and includes any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(78) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in 672.002(5).

(79) "Legally Flawed" is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(80) "Legislative Department" is defined in ORS 174.114 and, subject to 174.108, means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. The Legislative Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(81) "Locality" is defined in ORS 279C.800(3) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(82) "Lowest Responsible Bidder" is defined in ORS 279A.010(1)(r) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(83) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(84) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(85) "Multistepped" means more than one step, phase, tier, or round in a process used in Competitive Sealed Bidding or Competitive Sealed Proposals according to ORS 279B and OAR Division 247.

(86) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

(87) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in Section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under Section 501(a) of the Internal Revenue Code.

(88) "Nonresident Offeror" means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of "Resident Offeror."

(89) "Not-for-Profit Organization" means a Nonprofit Corporation as defined in ORS 307.130(1)(c).

(90) "OAR" means the Oregon Administrative Rules.

(91) "Offer" means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(92) "Offeror" means a Person who submits an Offer

(93) "Offering" means a Bid, Proposal, or Quote.

(94) "Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(95) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the Chief Procurement Officer.

(96) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(97) "Ordering Instrument" or "Order" means a document used by an Authorized Agency in compliance with the Public Contracting Code, these Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency's appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider's responsive and appropriate acceptance of the Offer creates a Public Contract.

(98) "Ordinary Construction Services" means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(99) "Original Contract" means the initial Contract or Price Agreement of the Department or an Authorized Agency. See OAR 125-246-0400 for the definition of "Original Contract" that the Public Contracting Code and Rules use for Cooperative Procurements only.

(100) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the Department, as further described in OAR 125-246-0500.

(101) "ORS" means the Oregon Revised Statutes.

(102) "Participant" is defined in OAR 125-246-0400.

(103) "Permissive Cooperative Procurement" is defined in OAR 125-246-0400.

(104) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and means the State Accident Insurance Fund Corporation and the Department of Revenue. "Person" is defined in ORS 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(105) "Personal Services" under ORS 279B means services that require specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, the services of an accountant, physician or dentist, educator, information technology professional, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor). "Personal Services" under ORS 279C includes the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services.

(106) "Personal Services Contract" means a Contract or a member of a class of Contracts for Personal Services. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(107) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(108) "Price Agreement."

(a) "Price Agreement" is defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A "Price Agreement" as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule's definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(109) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring or selling: Supplies and Services; Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(110) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods according to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 2729C.450.

(111) "Procurement File" means any of the following files maintained by an Authorized Agency: a solicitation, Contract, Amendment, Work Order, or contract administration file, separately or collectively.

(112) "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(113) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(114) "Property" is defined in ORS 279A.250 and means personal property.

(115) "Proposal" means a Written response to a Request for Proposals.

(116) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services according to OAR 125-248-0110, whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(117) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(118) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(119) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(120) "Public Body" is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(121) "Public Contract" is defined in ORS 279A.010(1)(z) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants. For the purposes of these Rules, "Public Contract" means Contract.

(122) "Public Contracting" is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(123) "Public Contracting Code" or "Code" is defined in ORS 279A.010(1)(bb) and means 279A, 279B and 279C.

(124) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(125) "Public Improvement" is defined in ORS 279A.010(1)(cc) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(126) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for or by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(127) "Purchase Order" means an Ordering Instrument or Order, as defined in this Rule.

(128) "Qualifications Based Selection (QBS)" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Surveying Services, and Related Services Contracts.

(129) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement according to either OAR 125-247-0270 or 125-249-0160.

(130) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(131) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(132) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(133) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(134) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(135) "Related Services" is defined in ORS 279C.100(8).

(136) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS.279B.060 or 279C.405 and related rules.

(137) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency and describing: the Authorized Agency's circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-0645.

(138) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(139) "Resident Bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "Resident Bidder."

(140) "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a "resident Offeror."

(141) "Responsible" means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under OAR 125-247-0575 or 125-249-0370.

(142) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(143) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively.

(144) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(145) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(146) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(147) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable Solicitation requirements.

(148) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(149) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(150) "Rules" means these Public Contracting Rules of the Department including divisions 246 through 249, unless otherwise indicated.

(151) "Scope" means the extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the Contract.

(152) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(153) "Serial Negotiation" means a Negotiation that is sequential, ongoing, consecutive, alternating, or repetitive.

(154) "Services" or "services," for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

(155) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(156) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(157) "Small Procurement" means a sourcing method according to ORS 279B.065.

(158) "Sole-Source Procurement" means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(159) "Solicitation" means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself.

(160) "Solicitation Document" means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. "Solicitation Document" includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency's participation in a Procurement. The following examples are not Solicitation Documents because they do not invite offers from prospective Contractors: Request for Qualifications, a prequalification of Bidders, a request for information, and a request for product prequalification.

(161) "Special Government Body" is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS Chapter 338.

(D) An education service district.

(E) A community college district or community college service district established under ORS Chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this Section that is:

(i) Not part of state government or local government;

(ii) Created according to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, "Special Government Body" includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this Section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(162) "Special Procurement" means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(163) "Specification" is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics, or of the nature of the Supplies and Services to be procured by an Agency. "Specification" includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(164) "State" means the State of Oregon.

(165) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(166) "Substantial Completion" is defined in ORS 12.135 and means the date when the contractee accepts in Writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(167) "Supplies and Services" includes "Supplies or Services" and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, governed under ORS 279C.

(168) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof. See OAR 125-050.

(169) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(170) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of $10,000 to $150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(171) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(172) "Unnecessarily Restrictive" is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(173) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(174) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(175) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(176) "Work Order" means an Ordering Instrument related to Services, including any incidental Supplies.

(177) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(178) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0130
Application of the Code and Rules; Exceptions

(1) Code, Rules and Policies. Except as set forth in this Section and ORS 279A.025, an Agency must exercise all rights, powers and authority related to Public Contracting in accordance with the Public Contracting Code, Rules, and applicable Department policies (Policies).

(2) Exceptions for Contracts and Grants. These Rules do not apply to the following:

(a) Contracts between Agencies;

(b) Contracts between Agencies and Public Bodies;

(c) Contracts between Agencies and the federal government;

(d) For Cooperative Procurements, any contractual relationship described in Subsections (2)(a) through (c) of this Rule. The Code, Rules, and policies apply to the contractual relationships between the Agencies and Providers, other states, tribes, other nations, and any of their public entities; and

(e) Grants.

(A) Agency as Recipient. If an Agency is a recipient in an agreement with a grantor, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the grantor has substantial involvement in the program or activity of the Agency, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

(B) Agency as Grantor. If an Agency is a grantor in an agreement with a recipient, the definition of Grant in ORS 279A.010 and OAR 125-246-0110 determines if the agreement is subject to the Code and these Rules. If the Agency has substantial involvement in the program or activity of the Agency's recipient, the agreement is not a Grant. The agreement is subject to the Code and these Rules.

(3) Exception for a Federal Program. Authorized Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program described in ORS 279A.180 and according to OAR 125-246-0360, without following the procedures set forth in ORS 279B.050 through 279B.085 and 125-247-0250 through 125-247-0690.

(4) Exception when Procuring from Qualified Rehabilitation Facilities (QRFs). Agencies subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services according to ORS 279.835 through 279.855 and OAR 125-055-0010(1) (Acquisition of Supplies and Services from QRFs). Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

(5) Exception for Correctional Industries. Agencies otherwise subject to the Code and these Rules may enter into Contracts with correctional industries according to the Oregon Constitution, Article 1, Subsection 11, without being subject to the source selection procedures set forth in either ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and their respective rules.

(6) Exception for Price Agreements. Agencies otherwise subject to the Code and these Rules are not subject to the methods set forth in ORS 279A.200 through 279A.225 (Cooperative Purchasing) or 279B.050 through 279B.085 (Sourcing Methods) and related Rules when the Agencies procure Supplies and Services from a Department Price Agreement or other Price Agreement. Agencies are subject to the remainder of the Code and these Rules, including but not limited to delegation of authority in accordance with OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.025, 279A.050, 279A.055 & 279A.180
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0165
Delegation Policy and Procedures

(1) Generally.

(a) Purpose. This Rule describes the policy and procedures related to the delegation of authority under OAR 125-246-0170, including but not limited to:

(A) Policy of the Code;

(B) Individual Representation;

(C) Forms of Delegations and Revocations of Authority;

(D) Changes in Individual Representation;

(E) Procedural Requirements;

(F) Signature; and

(G) Commitment of Funds.

(b) This Rule applies to all delegations and sub-delegations of Authority (collectively, Delegations), modifications of Delegations, and revocations of Delegations under OAR 125-246-0170. This Rule does not delegate authority. All delegations by authority under the Rules are found solely in OAR 125-246-0170.

(2) Policy of the Code. The policy of the Code is to clarify responsibilities, instill public confidence, promote efficient use of resources, implement socioeconomic programs, allow meaningful competition, and provide a structure that supports evolving procurement methods, according to ORS 279A.015. These Rules support this policy of the Code.

(3) Individual Representation. Public Contracting may be delegated only to an individual, representing the State's interests. Authority under these Rules may be delegated only to individuals acting on behalf of the Agencies and in accordance with this Rule. All individual delegatees must hold and use this Authority within the scope of their employment by the Agency and act on behalf of the Agency as the Agency's representative. Sub-delegations may be in whole or in part according to ORS 279A.075. Any individual may decline a sub-delegation in whole or in part. A delegator or delegatee may also be referred to in this Rule as an "Authorized Individual."

(4) Forms of Delegations and Revocations of Authority. ORS 279A.075 provides that the exercise of all authorities in the Code may be delegated and sub-delegated in whole or in part. The form of a Delegation or revocation of Authority by an Authorized Individual may be by:

(a) OAR 125-246-0170 by the Director of the Department;

(b) A Written external or internal policy by an authorized delegator or revoker;

(c) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or

(d) A letter or memorandum signed by an authorized delegator or revoker.

(5) Changes in Individual Representation. If an Agency determines that an Authorized Individual has ceased to represent that Agency for Procurement (Absent Individual), then:

(a) The Authority of the Absent Individual automatically reverts back to the individual who originally delegated the Authority to the Absent Individual. The Agency must determine who receives the reverted Authority in accordance with this Rule. If the Absent Individual is a head of an Agency or Designated Procurement Officer, the delegator of authority to that individual must notify the Chief Procurement Officer within thirty (30) days after the change in representation.

(b) Sub-delegations, if any, by an Absent Individual remain in effect unless and until the Authority of any sub-delegatees is modified or revoked by an Authorized Individual.

(6) Procedural Requirements.

(a) Compliance. Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code, related Rules and policies of the Department. Delegation of Authority does not exempt anyone from the requirements of the Public Contracting Code, related Rules, and policies of the Department. Any individual receiving delegated Authority is responsible for following the Public Contracting Code, related Rules, and policies of the Department.

(b) Modifications or Revocations.

(A) Authority. Subject to the conditions of Subsection (ii) below, a Delegation may be modified or revoked by:

(i) The Director of the Department,

(ii) The Chief Procurement Officer in accordance with OAR 125-246-0170(3)(b)(D) and 125-246-0170(3)(d)(J), or

(iii) The original authorized delegator or successor of this delegator who made this Delegation being modified or revoked.

(B) Conditions.

(i) This modification or revocation of a Delegation must be Writing;

(ii) The delegatee must receive reasonable notice of the modification or revocation of the Delegation; and

(iii) This modification or revocation of a Delegation must be based upon a determination, as set forth in the related policy of the Department.

(c) Maintenance of Documents. The Authorized Agency must maintain copies of letters, memoranda, or agreements granting a Delegation.

(7) Signature. When an Authorized Agency has delegated Authority according to OAR 125-246-0170, the Authorized Agency's signature constitutes both the execution and approval of the Contract, except as described in subsections (1)(h), (2)(a)(B), and (2)(b)(F).

(8) Commitment of Funds. ORS 291 and 293, together with the policies of the State Controller's Division of the Department, provide for public financial administration, including: appropriations, allotments by the Department, and an individual's authority to commit or encumber funds, financially obligate the Agency, and decide to expend funds. This type of authority may be referred to as commitment, expenditure, obligation, expenditure decision or signature authority (collectively, Commitment of Funds).

(9) Requests for Delegations. Any Agency may submit a delegation request through ORPIN to the Chief Procurement Officer for authority in accordance with the Public Contracting Code, this Rule, and any related policy of the Department. All requested Delegations must be approved in Writing by the Chief Procurement Officer and based upon a consideration of relevant criteria as follows:

(a) The nature of the Supplies and Services to be provided;

(b) Resources of the Agency requesting the delegation, including trained and qualified contract officers and staff, the Agency's experience and expertise, staff time available, and the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated;

(c) The Agency's Procurement and public contracting past performance;

(d) Department's resources to exercise the authority if it is not delegated; and

(e) Value added by the Agency if the authority is delegated.

(10) Revocation of Delegations. The Chief Procurement Officer may revoke any delegation issued under Section (9) of this Rule at any time by written notice to the Designated Procurement Officer of the Agency, as defined in OAR 125-246-0170, based upon, but not limited to any of the following:

(a) Failure to comply with the requirements of the delegation;

(b) Deficiencies evidenced by performance audits performed by the Department , the Secretary of State, or the Legislative Assembly.

(c) Failure to comply with the Department training requirements to obtain an Oregon Basic Procurement Certification, Advanced Certification, or specific training described in the delegation;

(d) Lack of adequate experience in terms of procurement knowledge and any specialized knowledge pertinent to the authority delegated;

(e) The available resources of the Department to conduct the purchasing activities if authority is revoked; and

(f) The degree of economy and efficiency to be achieved in meeting the state's requirements if authority is revoked.

(11) Return of Delegations from Agencies to the Chief Procurement Officer. If an Agency needs assistance, an Agency may request that the Chief Procurement Officer reclaim the authority previously delegated to the Agency. With sole discretion, the Chief Procurement Officer may accept the reclamation request for assistance according to the responsibilities, resources, and needs of the Department and the Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stat. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0170

Delegation of Authority

(1) Generally.

(a) Purpose. This Rule delegates the procurement authority of the Department (Authority). Only this Rule delegates this Authority.

(b) Authority of Agencies. The Director of the Department delegates Authority to the Designated Procurement Officers of the Authorized Agencies in Section (2) of this Rule.

(c) Authority of the Chief Procurement Officer. The Director of the Department delegates Authority to the Chief Procurement Officer in Section (3) of this Rule.

(d) Authority of the Director. According to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Agencies. Other Sections of the Code authorize specific actions by the Director of the Department. According to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Agencies.

(2) Delegation to Individuals in Agencies.

(a) Chain of Delegation and Responsibilities.

(A) Head and Designated Procurement Officer of the Agency.

(i) Conditional Delegation. The Director delegates Authority, only as set forth in this Section (2), to the heads of Authorized Agencies, on the condition that the heads of Authorized Agencies subdelegate such Authority to their Agencies' Designated Procurement Officers, who may further subdelegate such Authority in accordance with policies of their Agencies (Chain of Delegation). Every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency; if none is appointed, the head of the Agency is deemed to be the Designated Procurement Officer and assumes the Authority, duties and responsibilities of the Designated Procurement Officer (collectively, "Designated Procurement Officer"). The heads of the Agencies may not subdelegate Authority outside this Chain of Delegation, except as provided in Subsection (2)(a)(B).

(ii) Manner of Appointment. The Authorized Agency determines its procedure for appointing its Designated Procurement Officer, and this Rule does not require or imply any inherent Authority in individual(s) or the Agency in order to make this appointment. The Agency must send a Written notice of its appointment of the Designated Procurement Officer to the Chief Procurement Officer.

(B) Exceptions: Head and Other Individuals of the Agency.

(i) Execution of Contracts. Heads of Authorized Agencies may subdelegate the Authority to execute Contracts, as described in Subsection (2)(b)(F), to other individuals within their respective Agency, provided this subdelegation is in accordance with a Written alternative subdelegation plan, maintained on file with the Agency's Designated Procurement Officer.

(ii) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295. Heads of Authorized Agencies may subdelegate the Authority to procure general or special counsel authorized by the Attorney General, as described in Subsection (2)(d)(L), to other individuals within their respective Agency, provided the head of the Authorized Agency has determined that the individual receiving the subdelegation has the requisite skills and knowledge to carry out the subdelegation. Such subdelegations may be further subdelegated within that Authorized Agency, provided the subdelegator has determined that each individual receiving the Delegation has the requisite skills and knowledge to carry out the subdelegation.

(iii) Chain of Delegation. Authorized Individuals in accordance with Subsections (2)(a)(B)(i) and (ii) are included in the Chain of Delegation.

(C) Responsibilities. Each individual in the Chain of Delegation remains responsible for the exercise of Authority by that individual's subdelegatees, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, is responsible for all delegated procurement activity on behalf of the Authorized Agency, as described in this Section (2), except as provided in Subsection (2)(a)(B).

(b) Duties and Responsibilities of Designated Procurement Officers. The Authority, duties and responsibilities of the Designated Procurement Officer, according to (2)(a)(A), are as follows:

(A) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated Authority;

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Authorized Agency;

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Authorized Agency in accordance with the Code and these Rules;

(E) Award Contracts only as authorized in accordance with this Rule;

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their final, legally enforceable forms. If the Designated Procurement Officer is unable to make a Commitment of Funds as described in OAR 125-246-0165(8), then the head of the Authorized Agency may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).

(G) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon the monitoring described in Subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing; and

(J) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110.

(c) Delegation by Rule Based Upon Thresholds. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services up to and including the Threshold of $10,000, according to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than $10,000 and not exceeding $150,000, and Amendments of Contracts resulting from Intermediate Procurements, according to ORS 279B.070, OAR 125-247-0270, and any related policy;

(D) Informal Selection Procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Competitive Quotes for Public Improvements estimated not to exceed $100,000, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding $150,000 and according to OAR 125-247-0255;

(G) Competitively Sealed Proposals not exceeding $150,000 and according to OAR 125-247-0260;

(H) Sole-Source Procurements not exceeding $150,000 and according to ORS 279B.075 and OAR 125-247-0275;

(I) Special Procurements in accordance with OAR 125-247-0287 not exceeding $150,000.

(J) Purchase of Used Personal Property Special Procurements not exceeding $150,000 and according to OAR 125-247-0288(9);

(K) Reverse Auctions Special Procurements not exceeding $150,000 and according to OAR 125-247-0288(10); and

(L) Contract Administration as follows:

(i) For Contracts and Ordering Instruments authorized according to this Section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;

(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department Price Agreements and Contracts procured by the Department on behalf of Agencies. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s);

(iii) Activities specified in Writing by the Chief Procurement Officer or delegatee;

(iv) Activities specified in a related policy of the Department; and

(v) Despite Subsection (2)(c)(L)(i) through (iv) above, this Delegation by Subsection (2)(c)(L) does not include:

(I) The Contract Administration of Department Price Agreements; or

(II) For Contracts procured by the Department on behalf of Agencies, Amendments when the amended value of Contract exceeds $150,000; and terminations of such Contracts when the amended value of such Contract exceeds $150,000.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies, subject to Section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0400, provided that:

(i) No such Procurement results in a Permissive Cooperative Procurement that is open to any Agency outside of those Agencies jointly named in the original Procurement;

(ii) No such Procurement of Supplies and Services exceeds the Threshold of $150,000, including all Amendments, according to OAR 125-247-0805;

(iii) No such Procurement of Public Improvements exceeds $100,000, including Amendments according to OAR 125-249-0160 and 125-249-0910; and

(iv) The Authorized Agency must follow any related policy of the Department.

(C) Federal program Procurements not exceeding $150,000 or according to a delegation agreement with the Chief Procurement Officer , and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements according to OAR 125-247-0288(1) and (2);

(E) Client Services procured under ORS 279B.055 through ORS 279B.085 and related Rules, including all amendments according to OAR 125-247-0805;

(F) Renegotiations of Existing Contracts with Incumbent Contractors Special Procurements according to OAR 125-247-0288(3) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and any Amendments and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer;

(G) Advertising Contracts Special Procurements according to OAR 125-247-0288(4);

(H) Equipment Repair and Overhaul Special Procurements according to OAR 125-247-0288(5);

(I) Contracts for Price Regulated Items Special Procurements according to OAR 125-247-0288(6);

(J) Investment Contracts Special Procurements according to OAR 125-247-0288(7);

(K) Food Contracts Special Procurements according to OAR 125-247-0288(8);

(L) Special Procurements of General or Special Counsel Authorized by the Attorney General, according to OAR 125-247-0295;

(M) Special Procurement(s) related to disaster response, according to OAR 125-247-0287;

(N) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(O) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691; and

(P) Brand Name Specification Determinations for Sole Source Procurements not exceeding $150,000 and according to OAR 125-247-0691.

(Q) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800.

(R) Buy Decision in accordance with OAR 125-247-0200(1) and (2).

(3) Delegation to the Chief Procurement Officer.

(a) Powers and Authorities. The Director of the Department delegates to the Chief Procurement Officer the rights, powers and authority vested in the Director of the Department to:

(A) Delegate and subdelegate these authorities in whole or in part according to ORS 279A.075;

(B) Approve Special Procurement requests, according to ORS 279B.085 and related Rules, and receive filed protests of approvals of Special Procurements, according to ORS 279B.400(1);

(C) Conduct hearings, approve Agency findings, approve exemption requests, and issue exemption orders, according to ORS 279C.335, ORS 279C.345, 279C.390, and related Rules;

(D) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(E) Receive, maintain, and act upon information contained in reports, including but not limited to ORS 279A.140(h) and 279C.355, as required by the Public Contracting Code and these Rules;

(F) Receive and resolve protests according to ORS 279B.400 to 279B.420 and Division 247 Rules, except for appeals from a decision of the Chief Procurement Officer or delegatee;

(G) Receive notices, conduct hearings, and make decisions regarding prequalifications, debarments, and Disqualifications according to ORS 279A.110, 279B.425, 279C.450, 200.065(5), and 200.075(1), except for appeals from a decision of the Chief Procurement Officer or delegatee;

(H) Approve expedited notices for Sole-Source Procurements according to OAR 125-247-0275;

(I) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, according to ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(J) Approve General Service Administration federal programs or federal Contracts in accordance with OAR 125-246-0360;

(K) Authorize public notice of bids, proposals, and public improvement Contracts to be published electronically and according to ORS 279B.055(4)(c) and 279C.360(1);

(L) Approve the manner and character of retainage according to ORS 279C.560(1) and (5);

(M) Approve exemptions waiving or reducing the bid security or bonds for Public Improvement projects in accordance with ORS 279C.390(1);

(N) Approve electronic-filing (e-filing) in accordance with ORS 84.049, 84.052 and 84.064;

(O) Approve procurement-related activities required by other law;

(P) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with OAR 125-247-0110; and

(Q) Other procurement actions of the Department specifically required by these Rules.

(b) Duties and Responsibilities of the Chief Procurement Officer. The authority, duties and responsibilities of the Chief Procurement Officer are as follows:

(A) Conduct Procurements, including administration of Contracts, for Agencies.

(B) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(C) Subdelegate authority in whole or part, in accordance with OAR 125-246-0165(9);

(D) Revoke authority delegated by the Chief Procurement Officer or in accordance with OAR 125-246-0165(10);

(E) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(F) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(G) Provide training and instruction opportunities to assure Department staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contract, Contract compliance, spend, Delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;

(I) Based upon monitoring described in Subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(J) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition according to ORS 279A.015.

(c) Delegation by Rule Based Upon Threshold. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies not to exceed $10,000 according to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than $10,000 and not exceeding $150,000, and Amendments of Contracts resulting from Intermediate Procurements, on behalf of Agencies and according to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, on behalf of Agencies and according to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed $100,000, according to ORS 279C.410 notes and OAR 125-249-0160; and

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, according to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services); and ORS 279C.410 and OAR 125-249-0210 (Public Improvements), respectively.

(d) Delegation by Rule Based Upon Type. By this Rule, the Director of the Department delegates authority to the Chief Procurement Officer for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400;

(B) Special Procurements according to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360;

(F) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services (A&E) Procurement according to OAR 125-248-0200 through 125-248-0340;

(G) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691;

(H) Brand Name Specification Determinations for Sole Source Procurements according to OAR 125-247-0691;

(I) Selling or leasing of Supplies and Services in accordance with OAR 125-246-0800;

(J) All Procurements otherwise delegated to an Authorized Agency according to Section (2) if the Chief Procurement Officer, at her or his own discretion, revokes and assumes this delegated authority, based upon a determination that any Authorized Agency refuses or fails to comply with any Delegation described in Section (2); and

(K) Buy Decision in accordance with OAR 125-247-0200(1) and (2).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0350

Approval of Personal Services Contracts

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services.

(2) Chief Procurement Officer Approval. Except as provided in OAR 125-246-0170, the Chief Procurement Officer must approve all Personal Services Contracts exceeding $150,000 before the Authorized Agency executes the Contract.

(3) Requisite Approvals First. All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Services Contract entered into by an Authorized Agency becomes binding upon the State and before any service may be performed or payment made under the Contract, unless the Contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under ORS 291.047(6).

(4) Approval after Legal Sufficiency Review. The Chief Procurement Officer may not approve a Personal Services Contract before the Attorney General approves this Personal Services Contract under ORS 291.047.

(5) Types of Approvals.

(a) When Attorney General legal sufficiency approval is required under ORS 291.047, the Authorized Agency must seek legal approval;

(b) When an Authorized Agency contracts for services normally provided by another Authorized Agency or for services for which another Authorized Agency has statutory responsibilities, the Authorized Agency is required to seek the other Authorized Agency's approvals, prior to final approval by the Chief Procurement Officer. Examples of these special approvals include, but are not limited to:

(A) Department, Risk Management Services, for providing tort liability coverage.

(B) Department, Enterprise Goods and Services Division, Publishing and Distribution, for printing services;

(C) Department, Enterprise Goods and Services Division, for accounting services;

(D) Office of the Treasurer, Debt Management Division, for financial and bond counsel services (bond counsel services also require the approval of the Attorney General); and

(E) Department, Chief Information Office, for information-system related and telecommunications services. The Authorized Agency is also encouraged to use the Chief Information Office as a resource in carrying out information system-related projects. This may include:

(i) Assistance to the Authorized Agency in developing Statements of Work related to information system projects;

(ii) Reviews to assure consistency with State standards and direction; and

(iii) A listing of vendors that provide information system-related services.

(c) The Authorized Agency's and Contractor's execution must be obtained;

(d) The Chief Procurement Officer approval, when required, is last.

(6) Attorney or Financial Auditing Services.

(a) The Attorney General has sole authority to contract for attorney services. Only the Attorney General may grant exceptions in Writing on a case-by-case basis;

(b) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Only the Secretary of State Audits Division may grant exceptions in Writing on a case-by-case basis.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140(2)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0360
Purchases Through Federal Programs

(1) Exemption. An Authorized Agency may purchase certain authorized Supplies and Services through General Service Administration (GSA) federal programs or federal Contracts (Federal Programs) without Competitive Sealed Bidding, Competitive Sealed Proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Authorized Agency has federal authorization to purchase through the Federal Program and follows the procedures set forth in this rule.

(2) Federal Authorization.

(a) The Federal Programs named in ORS 279A.180 are accessible to Authorized Agencies for purchasing Supplies and Services. In addition, by this Rule, the Director of the Department (Director) hereby makes the determination according to ORS 279A.180, that the GSA Order of 2000 and any subsequent revisions or updating of this GSA Order of 2000 (GSA Orders) describe other Federal Programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies; therefore, Authorized Agencies may purchase through those Federal Programs described in a GSA Order without making individual requests for determination to the Director.

(b) If an Authorized Agency desires to purchase through another Federal Program that is not expressly named in ORS 279A.180 or a GSA Order, the Authorized Agency must request in Writing a determination from the Director or the Director's designated representative. In the request, the Authorized Agency must document that the federal government has authorized states, including the Authorized Agency, to purchase through the proposed Federal Program. The request of the Authorized Agency and the determination by the Director or representative must be limited to those other Federal Programs described in ORS 279A.180 that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to Authorized Agencies.

(c) If no federal authorization exists as described in Sections (2)(a) and (b) of the Rule, then an Authorized Agency is not permitted to purchase through any Federal Program.

(3) Procedures. To purchase through a Federal Program, an Authorized Agency must document in its Procurement File that:

(a) The federal authority for the Authorized Agency to purchase through the Federal Program, referring to ORS 279A.180, a GSA Order, or the Chief Procurement Officer's approval of an Authorized Agency's request.

(b) The acquisition meets the Authorized Agency's needs;

(c) The price and other terms of the acquisition are Advantageous to the State;

(d) No mandatory Department Price Agreement for the authorized Supplies and Services exists, based upon the Authorized Agency's inquiry through ORPIN;

(e) The Authorized Agency has considered the acquisition's impact upon local business as follows:

(A) If the Procurement is in excess of $5,000, the Authorized Agency has given timely notice through ORPIN of its needs, reasons, and intent to procure through a Federal Program;

(B) The Authorized Agency has provided a reasonable time period under the circumstances for individuals to respond to the notice and send Written comments to the Authorized Agency; and

(C) The Authorized Agency has considered any comments and replied, if appropriate, before proceeding with its Procurement through a Federal Program. This Rule provides for an informal opportunity to comment to and be considered by the Authorized Agency, instead of the formal notice requirements for Solicitations in excess of $5,000 according to ORS 200.035.

(f) State and local preference programs, including but not limited to Inmate Labor in accordance with the Oregon Constitution, Article I, Section 41, Products of Disabled Individuals Program of ORS 279.835 to 850, and state requirements Contracts under OAR 125-247-0296, are not waived or otherwise adversely affected by an acquisition through a Federal Program;

(g) The Authorized Agency has complied with OAR 137-045-0010 to 137-045-0090, and if it is required, obtained a legal sufficiency review or exemption from the Department of Justice; and

(h) The Authorized Agency is informed of its Federal Program's Procurement Process, including:

(A) Voluntary and Direct Contract. The Authorized Agency and Contractors participate voluntarily. The Contractors make direct deliveries to the Authorized Agency and retain the right to decline orders on a case-by-case basis, for any reason, within a five-Day period of receipt of that order;

(B) Funding Fee. The price of a Federal Program Contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the Federal Program;

(C) New Contract. When a Contractor accepts an order from an Authorized Agency, a new Contract is formed. The Contract's terms and conditions are incorporated by reference; and

(D) Additional Terms and Conditions. The Authorized Agency may add to its Contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the Federal Program's Contract terms and conditions. Examples of such terms and conditions include, but are not limited to:

(i) Prompt Payment. The Authorized Agency may apply the terms and conditions of Oregon's prompt payment law to its Contracts, but if the Authorized Agency fails to make this addition, then the Authorized Agency may be subject to the Federal Prompt Payment Act, 31 U.S.C. sec. 3901 et seq., as implemented at subpart 32.9 of the Federal Acquisition Regulation (FAR);

(ii) Commercial Terms. Patent indemnity and other commercial terms and conditions may be added if they do not conflict with the Federal Program's terms and conditions; and

(iii) Conflict Resolution. The Authorized Agency may revise the Contract's dispute resolution provision to use Alternative Dispute Resolution (ADR) to the extent authorized by law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070 & Sec.335, Ch. 794, OL 2003 (HB 2341)
Stats. Implemented: ORS 279A.180
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0400
Cooperative Procurement; Purpose, Policy, and Definitions

(1) See OAR 137-046-0400 through 137-046-0480.

(2) Regardless of OAR 137-046-0400 through 137-046-0480, Authorized Agencies must comply with the following provisions:

(a) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in this subsection (2)(a):

(A) "Administering Contracting Agency" is replaced by "Administrator."

(B) "Purchasing Contracting Agency" is replaced by "Participant."

(b) Definitions. For the purposes of these Cooperative Procurement Rules only, the following definitions apply to Cooperative Procurement:

(A) An "Administrator" means a governmental body that solicits and establishes the Original Contract for Supplies and Services or Public Improvements in a Cooperative Procurement. "Administrator" means the Chief Procurement Officer or subject to the approval of the Chief Procurement Officer: an Agency, another Public Body within the state of Oregon, or a governmental body outside the state of Oregon. An Administrator has the same rights and responsibilities as an Administering Contracting Agency under ORS 279A.200 through 279A.225.

(B) "Contract" means a Public Contract or Price Agreement resulting from a Cooperative Procurement by an Administrator.

(C) "Cooperative Procurement" means a Procurement conducted by an Administrator or on behalf of one or more Participants. Cooperative Procurement includes but is not limited to multiparty Contracts and Price Agreements.

(D) "Cooperative Procurement Group" means:

(i) A group of Agencies, Public Bodies within the state of Oregon or any governmental body outside the state of Oregon, separately or in any combination;

(ii) Approved by the Chief Procurement Officer; and

(iii) Joined through an intergovernmental agreement for the purposes of facilitating a Cooperative Procurement.

(E) "Interstate Cooperative Procurement" means a Permissive Cooperative Procurement in which the Administrator is authorized under that governmental body's laws, rules, or regulations to enter into Public Contracts and in which one or more of the Participants are located outside the State of Oregon.

(F) "Joint Cooperative Procurement" means a Cooperative Procurement that identifies:

(i) The Participants or the Cooperative Procurement Group; and

(ii) The contract requirements or estimated contract requirements for the Original Contract.

(G) "Original Contract" means the initial Contract or Price Agreement awarded under a Cooperative Procurement by an Administrator.

(H) A "Participant" means a governmental body that procures Goods, Services, or Public Improvements from a Provider based on the Original Contract established by an Administrator in a Cooperative Procurement. For the purpose of the Cooperative Procurement Rules, the procured Services include Architectural, Engineering and Land Surveying Services, and Related Services. A Participant may be the Chief Procurement Officer or, subject to the approval of the Chief Procurement Officer: an Authorized Agency, a local Public Body, a state agency with independence under ORS 279A.050, or a governmental body located outside the State of Oregon. A Participant has the same rights and responsibilities as a Participating or Purchasing Contracting Agency under ORS 279A.200 through 279A.225.

(I) "Permissive Cooperative Procurement" means a Cooperative Procurement in which the Participants are not identified.

(c) Authority for Cooperative Procurements.

(A) The Chief Procurement Officer will enter into Cooperative Procurements on behalf of Agencies, unless an Authorized Agency receives a delegation of authority according to OAR 125-246-0170 to act as an Administrator or Participant.

(B) Subject to a delegation of authority described in subsection (2)(c)(A) of this Rule, an Administrator or Participant may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and these Rules.

(C) For Permissive Cooperative Procurements, each Participant that participates after the Award of the Original Contract must determine, in Writing, whether the Solicitation and award process for the Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085, consistent with 279A.200(2). The Participant must maintain this Written determination in the Participant's Procurement File.

(d) Responsibilities.

(A) The Administrator of a Cooperative Procurement may establish any terms and conditions necessary to allow other Participating Authorized Agencies or Cooperative Procurement Groups of which the Participant is a member (collectively, "Participant") to participate in a Cooperative Procurement. The Administrator may require Participants to enter into a Written agreement that establishes the terms and conditions for participation in a Cooperative Procurement. These terms and conditions may include, but are not limited to: the establishment of any administrative fees for the Administrator, whether each Person must enter into a Written agreement with the Administrator, and any other matters related to the administration of the Cooperative Procurement source selection and the resulting Original Contract. The Administrator may include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Participants' compliance with the Code and these Rules.

(B) In administering or applying these Rules, the Administrator must collaboratively review and compare the procurement needs and requirements of both the Administrator and the respective Participant(s) for the purpose of using a Cooperative Procurement to achieve cost savings (for examples: lowest total cost of acquisition, least time to procure, process streamlining, Return on Investment calculation based on a comparison of the total costs of individual Authorized Agency Procurements versus a Cooperative Procurement).

(C) If a Participant enters into a Contract based on a Cooperative Procurement, the Participant must comply with the Code, these Rules, and any terms and conditions set out by the Administrator, including:

(i) The extent to which the Participant may participate in the Cooperative Procurement;

(ii) The advertisement of the Solicitation Document for the Cooperative Procurement; and

(iii) Public notice of the Participant's intent to establish Contracts based on a Cooperative Procurement.

(D) Joint, Permissive, and Interstate Cooperative Procurement Solicitations must comply with OAR 125-247-0305.

(e) Amendments of Cooperative Procurements must comply with OAR 125-247-0805.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140, 279A.205, 279A.210, 279A.215, 279A.220, 279A.225
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0500
Oregon Procurement Information Network (ORPIN)

(1) The Oregon Procurement Information Network, known as ORPIN, an Internet-based, on-line system, is the official publication forum for state Procurement notices and advertisements, as functionality allows, by the Department and all Agencies.

(2) All state Agencies must use ORPIN to comply with the reporting requirements for:

(a) Personal Services Contracts in accordance with OAR 125-246-0353;

(b) Agreements under ORS 190 in accordance with OAR 125-246-0365; and

(c) Special Procurements in accordance with OAR 125-247-0287(12).

(3) Authorized Agencies must use ORPIN in accordance with the Department's ORPIN Policy no. 107-009-020, the Department's MWESB Procurement Policy no. 107-009-030, and the Governor's Executive Order No. 12-03.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065, 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0556
Procurement Files

(1) Application. This Rule applies to Procurement Files, as defined in OAR 125-246-0110.

(2) Required Documentation. All Procurement Files must contain:

(a) All Written documents delivered to an Agency from the Department, whether the documents relate to approvals, revocations, orders, modifications, or other actions (Actions), related to the documents' subject matter and Action;

(b) An executed Contract, if awarded, and any Ordering Instruments and Amendments (collectively, Contract);

(c) The record of the actions used to develop and administer the Contract;

(d) A copy of the Solicitation, if any;

(e) The Contract Administrator and any delegates;

(f) Any required findings or statement of justification for the selection of the Provider and sourcing method according to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 085 (seven methods for Supplies and Services); 279C.100 through 279C.125 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services); or ORS 279C.300 through 279C.450 (Public Improvements);

(g) Documentation of Contract Administration according to OAR 125-246-0555 and if required by the selected procurement method:

(A) A list of prospective Providers notified of any Solicitation;

(B) The method used to advertise or notify prospective Providers;

(C) A copy of each Offer that resulted in the Award of a Contract;

(D) The record of any Negotiation of the Statement of Work and results;

(E) A record of all material Communications regarding the Solicitation by interested Providers according to OAR 125-246-0635;

(F) All information describing how the Provider was selected, including the method and basis for awarding the Contract;

(G) A copy of the Request for Special Procurement, if any;

(H) Documentation for a Federal Program purchase according to OAR 125-246-0360; and

(I) Documentation related to Cooperative Procurements according to OAR 125-246-0400.

(3) Time Period. The Agency must maintain Procurement Files, including all documentation, for a period in compliance with OAR 166-300-0015(8) and any other applicable laws. Procurement Files must be made immediately available for review upon the request of the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0570

Reinstatement of Expired Contract; Retroactive Approval of Existing Contract

(1) Application. This Rule applies to the reinstatement of expired or terminated Contracts (expired Contracts) and the retroactive approval of existing Contracts procured by Authorized Agencies for Supplies and Services and for Architectural, Engineering and Land Surveying Services or Related Services ("Contracts"). This Rule does not apply to mistakes that may occur in the solicitation process (see OAR 125-247-0470).

(2) Requirements to Reinstate an Expired Contract.

(a) Before expiration, the Contract was properly signed by all parties;

(b) Then the signed Contract expired;

(c) The Agency reinstates the Contract:

(A) To fulfill its term, up to the maximum time period provided in the Contract; or

(B) To complete one or more deliverable(s) included within the Contract's Scope at the time of its expiration;

(d) The Agency documents in the Procurement File the deliverable(s) to be completed at the time of the expired Contract's reinstatement; and

(e) If the Contractor has performed work under the Contract, the reinstatement does not apply to payments made for work performed between the expiration of the Contract and the date of any reinstatement.

(3) Requirements to Retroactively Approve an Existing Contract.

(a) The Contract exists and has not expired;

(b) The Contract was signed by all parties except that the required approval of the DPO or CPO was lacking;

(c) If the Contractor has performed work under the Contract, the retroactive approval does not apply to payments made for work performed between the start of the Contract and the date of any retroactive approval.

(4) Process. For either a reinstatement of an expired Contract or retroactive approval of an existing Contract, the requesting Agency must meet the following conditions:

(a) The Agency must submit a Written request to the Agency's Designated Procurement Officer (DPO) if the Agency is authorized under OAR 125-246-0170, or if not, to the Chief Procurement Officer (CPO) with authority under 125-246-0170 (Request). If the Request is submitted to the DPO, the Agency must also follow its internal procedures.

(b) The Request must explain the following:

(A) The proposed reinstatement of the expired Contract or retroactive approval of the existing Contract.

(B) The background facts that led to the Request;

(C) The good faith basis for making the Request;

(D) The need for reinstatement of an expired Contract or retroactive approval of an existing Contract due to unforeseen or unavoidable conditions;

(E) The steps to prevent a reoccurrence. For examples:

(i) Improvement of Agency's internal policies and procedures; and

(ii) Provision of new training or retraining; and

(F) Acknowledgement that the Request is in the best interest of the Agency.

(c) Obtain all other approvals required for the Contract, including but not limited to: Attorney General's approval of legal sufficiency under ORS 291.047 or ratification under 291.049. The Authorized Agency must obtain all other approvals required for the Contract before any reinstatement, extension of time under Subsection (6), or retroactive approval becomes binding.

(d) The DPO or CPO, as described in Subsection (3)(a), must approve the Request.

(5) Effect of Approval.

(a) An approved reinstatement of an expired Contract makes the Contract in full force and effect, as if it had not expired.

(b) An approved retroactive approval of an existing Contract makes the Contract in full force and effect, as if it had been approved by the DPO or CPO when the Contract was formed.

(c) The DPO or CPO, as appropriate, may create any related Contract documents to implement the reinstatement or retroactive approval.

(d) The Agency may make an approved payment after any related Contract documents are signed by the necessary parties.

(6) Amendments of a Reinstated Contract.

(a) If the Agency requests reinstatement of an expired Contract, the Request of the Agency may also include a request to amend the reinstated Contract for time only. The DPO or CPO, as appropriate, may approve this Request, including the amendment.

(b) The Agency may amend a reinstated or retroactively approved Contract for purposes other than time in accordance with OAR 125-247-0805.

(7) An Authorized Agency may combine in one document a Reinstatement of a Contract in accordance with this Rule, Retroactive Approvals of that Contract in accordance with OAR 125-246-0570, and its Amendment in accordance with 125-247-0805, as needed.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-246-0900

Penalties

(1) Any violation of ORS 279A.140, 279A.280, or 279B.270 must be punished as described in 291.990, pursuant to 279A.990(1).

(2) Upon notice to the Department of an alleged violation pursuant to ORS 279A.990(1), the Department, at its own discretion, may provide to an individual of an Agency or an Agency an optional administrative process with an opportunity for remedy prior or parallel to a legal process leading to conviction or a Department certification leading to other penalties provided by ORS 291.990. This Rule and administrative process may address related considerations, including but not limited to:

(a) What specific actions are interpreted as violations giving rise to penalties;

(b) Applicability to individuals of Agencies and Agencies, regardless of whether delegated authority existed pursuant to OAR 125-246-0170; and

(c) The placement of responsibility for violations along the chain of delegated responsibility.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.990

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-247-0170

Life Cycle Costing

(1) Policy.

(a) Analysis. Life Cycle Costing provides a method of analysis, considering Sustainability and analyzing total cost of ownership as part of the best value of the purchased Goods (Products). The method applies to the development of Life Cycle Costing criteria for a Solicitation, collection of Product information about Life Cycle, evaluation of Offers, selection of Contractor(s), and award of Contract(s). Using this method, Agency does not award a Contract based solely on the lowest price, and a low Bid would include Life Cycle Costing.

(b) Planning. Agency must consider using Life Cycle Costing during planning for Competitive Sealed Bidding or Proposals. Life Cycle Costing is optional for other sourcing methods under this Division 247.

(c) Services Related to the Product. Agency may also consider the costs of Services related to a Product, including other Sustainability criteria.

(2) Definitions:

(a) "Life Cycle" means the life cycle of a Product, including conception, design, manufacture, service, and disposal. The design of the Product may allow for a repetitive lifecycle: material extraction, manufacturing/production, transportation, utilization/reuse, and disposal/recycling, which leads to the beginning of a new cycle.

(b) "Life Cycle Cost" means the total cost of acquiring, operating, supporting and (if applicable) disposing of the Product being acquired.

(c) "Life Cycle Costing" means an analysis method that quantifies Life Cycle Costs, including the costs of acquiring, operating, supporting and disposing of a Product. The method may also include any additional Costs that relate to adverse impacts of a Product, for example, impacts to the environment or public health.

(d) "Products" means goods, supplies, equipment, or materials.

(3) Life Cycle Costs. Life Cycle Costing considers the acquisition costs of a Product, and includes all associated costs of ownership, such as purchase price, shipping, maintenance and repair, longevity, and disposition costs at the end of life. For complex Products, several Contracts may be required and acquisition costs may involve research and development as well as production, delivery, and installation of the Product. Other costs expected to occur over the anticipated life of the Product may be added to the acquisition costs, based upon a reasonable determination by the Agency. Examples of other typical Life Cycle Costs include the following:

(a) Switching costs associated with changing from the current Product to another model or brand of the Product. Typically, such costs may include: removal, shipping, training, and replacement of peripheral equipment and consumables that support the Product. The Agency may also consider increased project management or additional transition time.

(b) Operating and support costs, including third party contract costs, associated with equipment, supplies, utilities, fuel, and services needed to operate and maintain an operational system.

(c) Disposal costs, including third party contract costs, associated with removing equipment from service and disposing of it. Evaluations that consider Life Cycle Cost should also consider any significant salvage, reuse, or resale value at the time of disposal.

(4) Solicitation Requirements. The Solicitation must:

(a) Describe to prospective Offerors how Life Cycle Costing will be considered and applied in the evaluation process and award decision.

(A) If the Agency plans to make an Award based solely on the lowest evaluated cost resulting from Life Cycle Costing, the Solicitation must describe an evaluation process that includes Life Cycle Costing. For example, an Invitation to Bid must include quantifiable total Life Cycle Costs as a part of the bid evaluation methodology and award, and the lowest total Life Cycle Cost would be considered the low Bid.

(B) If the Agency plans to make an Award based on an evaluation of other factors than the lowest cost, the Solicitation for Proposals or Quotes must describe an evaluation process that includes Life Cycle Costing.

For example: (i) A Request for Proposals may include Life Cycle Costs as a part of the total points awarded for costs. All Life Cycle Costs will be calculated, and the lowest total Life Cycle Cost is awarded the maximum points allocated for cost in the Solicitation; or (ii) A Request for Proposals may separate Life Cycle Costs and assign to them a weight or points in addition to other defined costs and non-cost criteria in the evaluation process.

(b) Provide relevant information for the evaluation of the Offer; for example, projected Product usage, operating environment, and operating period.

(c) Describe the information that an Offeror must provide in the Offer, including relevant Life Cycle Costs and supporting information. Examples include:

(A) Average unit price, including production and operational costs,

(B) Delivery, shipping and transportation costs,

(C) Any response to switching costs identified in the Solicitation,

(D) Unit operating and support costs (for example, staffing and technical assistance, energy, parts requirements, scheduled maintenance, and training),

(E) Unit disposal costs (for example, the cost of removing equipment from the State facility),

(F) Unit salvage, reuse, or residual value,

(G) Any information related to testing, demonstrations, or interviews, and

(H) Other Product information related to Life Cycle and Sustainability.

(5) Solicitation Options. The Solicitation may:

(a) Provide for adjustments to the Life Cycle Costs if the costs continue over a period of years, for example, inflation or cost uncertainty, and

(b) Include third party estimates of a Product's Life Cycle.

(6) Award Decision.

(a) If Agency uses Life Cycle Costing, an Award resulting from Competitive Sealed Bidding must be made to the Responsible Offeror whose Responsive Offer provides the lowest overall cost of ownership in accordance with the Life Cycle Costing described in the Solicitation.

(b) If Agency uses Life Cycle Costing, an Award resulting from Competitive Sealed Proposals with Life Cycle Costing must be made to the Responsible Offeror whose Responsive Offer is determined to be the most Advantageous or best Proposal in accordance with the Life Cycle Costing described in the Solicitation.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-247-0200
Buy Decision and Methods of Source Selection

(1) Buy Decision. The Buy Decision means the decision to buy Supplies and Services through socio-economic programs, agreements, or the open market (Source). Agency is not required to make a Buy Decision based on the lowest price. See the specific Statute or Rules for the authority to use each Source.

(2) Priority. Agencies must make their Buy Decision in the priority order set forth in Subsections (a) through (d) (Priority). If a higher Priority Source satisfies a Procurement, the Agency must procure through that higher Priority Source and may not elect to procure through a lower Priority Source.

(a) Surplus Property. Procuring from surplus property promotes the efficient use of existing resources (see OAR 125-050-0100 through 125-050-0400).

(b) Qualified Rehabilitation Facilities (QRFs). Assists individuals with disabilities through gainful employment (see ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045).

(c) Inmate Labor. See the Oregon Constitution, Article I, Section 41.

(d) Statewide DAS Price Agreement. Promotes economy and efficiency through volume and strategic purchases (see OAR 125-247-0296). To determine if a price agreement exists go to ORPIN and perform a "Statewide Contract Search" or an "Award Search" for "active" Contracts. Under ORS 279A.140, DAS has the procurement authority to establish and administer statewide Price Agreements, and according to the terms of each Price Agreement, DAS delegates the procurement authority to the Agencies to use these Price Agreements.

(3) ORS 190 Agreement. Section (2) does not apply to ORS 190 Agreements that promote the use of existing state resources, including an Interagency Agreement, Intergovernmental Agreement, Interstate Agreement, International Agreement, or Tribal Agreement (see OAR 125-246-0365). An Agency may elect to use an ORS 190 Agreement at any time.

(4) Open Market. If Sections (2) and (3) do not apply, the Agency may procure Supplies and Services through the open market, using the methods provided under the Public Contracting Code, related Rules, and policies. See ORS 279AB, OAR 125-246 and 247.

(5) Methods of Source Selection. An Authorized Agency must award a Contract for Supplies and Services by one of the following seven sourcing methods in accordance with the Code and related Rules:

(a) Competitive Sealed Bidding according to ORS 279B.055;

(b) Competitive Sealed Proposals according to ORS 279B.060;

(c) Small Procurement according to ORS 279B.065;

(d) Intermediate Procurement according to ORS 279B.070;

(e) Sole-Source Procurement according to ORS 279B.075;

(f) Emergency Procurement according to ORS 279B.080; or

(g) Special Procurement according to ORS 279B.085.

(6) A Cooperative Procurement in accordance with OAR 125-246-0400 through 125-246-0470 substantially uses a Competitive Sealed Bidding or Competitive Sealed Proposals method.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-247-0265
Small Procurements

(1) Generally. For Procurements of Goods or Services less than or equal to $10,000 an Authorized Agency may Award a Contract as a Small Procurement pursuant to ORS 279B.065.

(2) Amendments. An Authorized Agency may amend:

(a) A Contract Awarded as a Small Procurement before January 1, 2014 in accordance with OAR 125-247-0805, but the cumulative amendments must not increase the total Contract Price to a sum greater than $6,000; and

(b) A Contract Awarded as a Small Procurement on or after January 1, 2014 in accordance with OAR 125-247-0805, but the cumulative amendments must not increase the total Contract Price to a sum greater than $12,500.

(3) An Authorized Agency must comply with ORS 200.035.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-247-0270
Intermediate Procurements

(1) See OAR 137-047-0270.

(2) Regardless of OAR 137-047-0270, Authorized Agencies must comply with the following provisions:

(a) Amendments. If the cumulative value of the original Contract Price and all Amendments exceeds $150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater, then the Authorized Agency must request and obtain prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(b) Written Solicitation. Authorized Agencies are not required to use a Written Solicitation, unless an Agency's Designated Procurement Officer requires a Written Solicitation. This Written Solicitation may allow revisions to the Solicitation and opportunity for protests, at the discretion of the Agency.

(c) Documentation. Authorized Agencies must document:

(A) The method used by the Agency; and

(B) Communications between the Agency and prospective Offerors.

(d) Borderline Procurements. If an Authorized Agency's Designated Procurement Officer in good faith estimated that the Procurement would be equal to or less than $150,000, and learned thereafter that all of the Offers were minimally exceeding $150,000, this Procurement complies with ORS 279B.070 and this Rule upon the following conditions:

(A) The Designated Procurement Officer must document in the Procurement File the basis for the original estimate under $150,000 and the process used; and

(B) The Agency must comply with the remainder of ORS 279B.070 and this Rule.

(e) Notice on ORPIN. The Agency must post on ORPIN a notice that it is seeking at least three Offers.

(A) The Notice must provide:

(i) A general description of the Supplies and Services to be acquired;

(ii) Contact information;

(iii) An adequate time period in accordance with the DAS MWESB Policy; and

(iv) For Intermediate Procurements exceeding $100,000, the Time Period must be a reasonable interval of at least seven (7) calendar Days. Despite this Time Period, Authorized Agencies may determine that a shorter Time Period is in the public's interest and that a shorter Time Period will not substantially affect competition. The Authorized Agency must document the specific reason for the shorter Time Period in the Procurement File in accordance with OAR 125-246-0556.

(B) OAR 125-247-0305 (Public Notice of Solicitation Documents) does not apply to Intermediate Procurements.

(f) Negotiations. An Authorized Agency may negotiate with an Offeror.

(g) Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.070
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-247-0805
Amendments to Contracts and Price Agreements

(1) See OAR 137-047-0800.

(2) Regardless of OAR 137-047-0800, Authorized Agencies must comply with the following provisions:

(a) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Ordering Instruments may be accepted by the action of the Provider in accordance with the terms and conditions of the Ordering Instruments. All Amendments must receive all required approvals before the Amendments become binding on the Authorized Agency and before any service may be performed or payment made, including but not limited to the Department of Justice legal sufficiency review according to ORS 291.047.

(b) Approval.

(A) Authorized Agencies must obtain prior Written approval of the Amendment by the Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, if the cumulative value of the original Contract Price and all Amendments exceeds $150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

(B) The approval in subsection (b)(A) is not required if the Authorized Agency disclosed in the Solicitation Document its plans for future Amendments, like phases or other expected developments. The approval in subsection (b)(A) is not required if the Authorized Agency disclosed in the Contract its plans for future Amendments, like phases or other expected developments. Standard language used commonly in documents without variation (boilerplate) does not disclose the Agency's plans and expectations for future Amendments.

(C) The Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, must determine and document that the proposed Amendment:

(i) Is not a material change of the essential identity or main purpose of the Original Contract; and

(ii) Does not constitute a new undertaking that should result in a new Procurement. The determination and approval must be included in the Procurement File.

(c) Price Agreements. The Department or its delegate may amend a Price Agreement as permitted by the Price Agreement or applicable law.

(d) Intermediate Procurement. See OAR 125-247-0270.

(e) Emergency Procurement. See OAR 125-247-0280.

(f) Small Procurement. See OAR 125-247-0265.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

125-248-0130
Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) See OAR 137-048-0130.

(2) OAR 137-048-0130(2)(b) and (c) are clarified as follows:

(a) Authorized Agencies must follow ORS 279C.120 and may not select a Consultant pursuant to 279B and related OAR 137-047.

(b) When selecting a Consultant, Authorized Agencies must follow the applicable selection procedure under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure).

(c) Authorized Agencies may incorporate into the selection procedure described in subsection (2)(b) one or more specific procedures found in competitive sealed bidding and competitive sealed proposals as described in ORS 279B.055, 279B.060, OAR 125-247-0255, and 125-247-0260. Non-procedural requirements of ORS 279B and OAR 125-247, like highest standards and good cause, do not apply to the selection procedure.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065, 279C.100 - 279C.125 & 279C.307
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14

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Rule Caption: Amends rule to implement 2009 legislation removing deposit requirement to purchase state real property.
Adm. Order No.: DAS 5-2013
Filed with Sec. of State: 12-24-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Amended: 125-045-0235
Subject: Amendments update the rule to respond to changes in ORS 270.135 made by SB 970 during the 2009 Legislative Assembly, which removes the requirement that proposals for purchase of real

property from the state be accompanied by certified check or bond furnished by a surety company in the amount not less than 10 percent of total value of proposal. Clarifying language was also incorporated requiring that proposals be in writing and signed by a person authorized to enter into a real estate transaction on behalf of purchaser and be received by the close of the proposal period. A proposing entity is expected to enter into a Pre-purchase Agreement or Memorandum of Understanding within 60 days of acceptance of proposal.

Rules Coordinator: Janet Chambers—(503) 378-5522

125-045-0235

Terminal Dispositions of State Real Property Interests (Offers to Other Individuals or Entities)

(1) This rule applies to sales and leases of State Real Property Interests only.

(2) If a Disposing Agency does not sell or transfer a State Real Property Interest to either an Agency or a Political Subdivision or to a party that has been granted a Right of First Refusal, then the Disposing Agency may dispose of the State Real Property Interest to any other party subject to the rules and procedures described in this rule.

(3) The Disposing Agency shall publish notice of the proposed Terminal Disposition of the State Real Property Interest. The notice must be published not less than once a week for three successive weeks in one or more newspapers of general circulation in the county or counties in which the State Real Property Interest is located. In addition, the Disposing Agency may provide notice on its website. The published notice must include the following:

(a) A general description of the State Real Property Interest, including a legal description, if any;

(b) The asking price;

(c) The name and address of the person to contact to obtain any additional information concerning the State Real Property Interest;

(d) A Request for Proposals, including the address to which the Proposal must be delivered and the date and time the Proposal is due, which may not be less than 30 days from the date of the first notice;

(e) If applicable, a notice that the Terminal Disposition of the State Real Property Interest may be subject to a Right of First Refusal;

(f) If not previously published, an invitation for public comment on the State Real Property Interest values defined in OAR 125 045-0215(7) if the Appraised Fair Market Value is more than $100,000;

(g) A reservation of the right of the Disposing Agency or the Division to accept or reject any Proposal; and

(h) Any other information the Disposing Agency elects to include.

(4) The Disposing Agency may use a multi-stage process, which may include, but need not be limited to, a Solicitation of Interest (SOI), a Request for Qualifications (RFQ), a Request for Proposals (RFP), a straight offer to purchase, or a combination of these. These documents must describe the process by which the Disposing Agency shall market the property, and may direct interested parties to the Disposing Agency's website for information.

(5) The Division may post the current status of Surplus State Real Property Interests available for Terminal Disposition on its website.

(6) All Proposals submitted in response to the published notice described in this rule must be in writing and signed by a person authorized to enter into a real estate transaction on behalf of the purchaser and be received by the close of the proposal period. A proposing entity is expected to enter into a Pre-purchase Agreement or Memorandum of Understanding within 60 days of acceptance of proposal.

(7) Each Proposal must clearly identify the amount offered for the purchase of the State Real Property Interest, and must include the following additional information:

(a) Any conditions upon the Proposer's offer to acquire the State Real Property Interest;

(b) A detailed statement explaining the Proposer's proposed use for the State Real Property Interest; and

(c) Any other information the Proposer believes is relevant to its Proposal.

(8) After the date and time for submitting Proposals has passed, the Disposing Agency shall open all Proposals that have been timely delivered. The Disposing Agency shall evaluate all responsive Proposals to determine the Proposal most advantageous to the State. The determination of the most advantageous Proposal will be final and conclusive and is not subject to review by any court.

(9) The Disposing Agency shall notify the apparent successful Proposer and shall negotiate to determine if the transfer can be consummated and a final agreement reached. If negotiations are unsuccessful, the Disposing Agency may:

(a) Notify the next highest ranking acceptable Proposal and shall similarly attempt to negotiate the Terminal Disposition of the State Real Property Interest; and

(b) Continue the negotiation process until the Disposing Agency has exhausted the field of all Proposers; or

(c) Reject remaining Proposals.

(10) If the Disposing Agency and a Proposer reach a final agreement on the Terminal Disposition of the State Real Property Interest and this agreement, where required, is approved by the Attorney General pursuant to ORS 291.047, the Disposing Agency must transfer the State Real Property Interest to the successful Proposer in accordance with the terms of the agreement.

(11) The Disposing Agency, in its sole discretion, may reject any or all Proposals.

(12) If all Proposals are rejected, the Disposing Agency may market and sell the Real Property Interest in any manner the Disposing Agency deems appropriate, including but not limited to auction, direct negotiation with potential buyers, announcing a new RFQ or RFP process, and acting through a real estate licensee, provided that:

(a) If required by ORS 291.047, any resulting agreement of sale must be approved by the Attorney General;

(b) If no agreement of sale is executed within 18 months of the publication of the first public notice of sale described in this rule, no agreement of sale may be accepted without again first publishing a public notice of sale and complying with the provisions of this rule; and

(c) The Disposing Agency shall publish the process selected in this subsection on its website.

Stat. Auth.: ORS 270.015(2), 270.100(1)(d)
Stats. Implemented: ORS 270.010, 270.110, 270.130, 270.135, 270.140
Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 2-2009(Temp), f. & cert. ef. 1-23-09 thru 7-17-09; DAS 8-2009, f. & cert. ef. 7-21-09; DAS 5-2013, f. 12-24-13, cert. ef. 1-1-14

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Department of Administrative Services, Chief Human Resources Office
Chapter 105

Rule Caption: Recognition by state agencies of same-sex marriages that were validly performed in other jurisdictions.
Adm. Order No.: HRSD 1-2013(Temp)
Filed with Sec. of State: 12-24-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Adopted: 105-010-0018
Subject: In the administration of all state laws, state agencies must recognize the marriages of same-sex couples validly performed in other jurisdictions to the same extent that they recognize other marriages validly performed in other jurisdictions. The Department of Administrative Services is adopting this temporary rule to ensure consistent application of statewide policy by agencies and to comply with the federal constitution.
Rules Coordinator: Janet Chambers—(503) 378-5522

105-010-0018

Recognition by State Agencies of Marriages Between Same-Sex Couples Validly Performed in Other Jurisdictions

Effective January 1, 2014, state agencies, in the administration of all state laws, must recognize the marriages of same-sex couples validly performed in other jurisdictions to the same extent that they recognize other marriages validly performed in other jurisdictions.

Stat. Auth.: ORS 184.340
Stat. Implemented: ORS.305(4)
Other Auth.: SCOTUS Decision in United States v. Windsor; Letter of Advice from Oregon Attorney General.
Hist.: HRSD 1-2013(Temp), f. 12-24-13, cert. ef. 1-1-14 thru 6-30-14

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Department of Agriculture
Chapter 603

Rule Caption: Adopts quarantine for Rathayibacter Toxicus including methods for exclusion and for eradication if found.
Adm. Order No.: DOA 1-2014
Filed with Sec. of State: 1-15-2014

Certified to be Effective: 1-15-14
Notice Publication Date: 11-1-2013
Rules Adopted: 603-052-1241
Subject: This rule establishes a quarantine against Rathayibacter Toxicus , the cause of bacterial Gummosis of seed heads. This Bacterium causes a disease that infects ryegrass and other grass species, severely limiting seed production. The bacterium also produces a toxin that can contaminate grass seeds, hay, and other plant parts; the toxin can be fatal to mammals. Methods for exclusion of commodities potentially infected with this bacterium and procedures for eradication of incipient infections are prescribed in this quarantine.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1241
Quarantine: Rathayibacter toxicus

(1) Establishing a quarantine. A quarantine is established against *Rathayibacter toxicus*, the cause of bacterial gummosis of seed heads. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon's agricultural industries and natural resources from the artificial spread of *R. toxicus*. This bacterium causes a disease that infects ryegrass and other grass species, severely limiting seed production. *Rathayibacter toxicus* also produces a toxin that can contaminate grass seeds, hay, and other plant parts; this toxin can be fatal to mammals. Methods for exclusion of commodities potentially infected with this disease and procedures for eradication of incipient infections are prescribed in this quarantine.

(2) Area under quarantine. All areas outside of the State of Oregon where *R. toxicus* is known to occur and any property within the State of Oregon where *R. toxicus* is detected;

(3) Commodities regulated. All plants and plant parts including seed of the following regulated commodities: species of grass known to be hosts for *Anguina* seed gall nematodes, including *Lolium* species, *Dactylis* species, and *Agrostis* species, and all known hosts of *R. toxicus*, including *Phalaris* species, *Vulpia myuros* (Rat's tail fescue), *Austrodanthonia caespitosa (=Danthonia caespitosa*, common wallaby-grass), *Avena sativa* (common oat), and *A. caespitosa* (= *Deschampia cespitosa*, tufted hairgrass). All life stages of *R. toxicus*.

(4) Provisions of the quarantine. Regulated commodities originating from the area under quarantine, and any other area found to be infested with *R. toxicus* during the life of this quarantine, are prohibited unless one of the following requirements has been met:

(a) The regulated commodity originates from an area that is free from *R. toxicus* based on official surveys conducted by an official entity recognized by a National Plant Protection Organization. The regulated commodity must be accompanied by an official certificate that includes the following additional declaration: "The shipment originates from an area known to be free from *Rathayibacter toxicus* based on official survey." Official survey data supporting this statement must be presented to the Oregon Department of Agriculture upon request.

(b) The regulated commodity has been tested in an official laboratory recognized by a National Plant Protection Organization using a protocol approved by the Department and has tested free from *R. toxicus*. The regulated commodity must be accompanied by an official certificate that includes the following additional declaration: "The shipment is free from *Rathayibacter toxicus* based on official laboratory testing." An official laboratory test report must be presented to the Oregon Department of Agriculture upon request.

(**NOTE**: A list of laboratory testing protocols approved by the Department is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4620.)

(5) The Oregon Department of Agriculture may require additional sampling and testing of covered commodities imported from an area or areas where *R. toxicus* is known to occur, including all areas described in Section (2). The party in possession of said seed lot(s) while in the State of Oregon shall be responsible for all fees for sample collection and testing. Fees shall be applied as described in OAR 603-052-1150 and 603-056-0305.

(6) Infested properties in Oregon: Confirmation of a *R. toxicus* infection must be made by the Department or an official cooperator. Affected property owners will be issued treatment requirements for the known infested area in the form of an Administrative Directive. The treatment requirements may include, but not be limited to, the following activities:

(a) Mandatory crop rotation;

(b) Herbicide treatments;

(c) Field burning;

(d) Field inspections, including testing;

(e) Planting of certified seed;

(f) Equipment sanitation;

(g) Mandatory official sampling and testing of grass seed lots from future production within infected properties.

(7) Special permits: The Department, upon receipt of an application in writing, may issue a Special Permit allowing movement into this state, or movement within this state, of regulated commodities not otherwise eligible for movement under the provisions of this quarantine order. Movement of such commodities will be subject to any conditions or restrictions stipulated in the Special Permit, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of *R. toxicus*.

(8) Violation of quarantine: Violation of this quarantine may result in a fine, if convicted, of not less than $500 no more than $5,000, as provided by ORS 561.990. In addition, violators may be subject to civil penalties of up to $10,000 as provided by ORS 561.995. Any seed lots found to contain *R. toxicus* must be treated, destroyed or returned to their point of origin at the owner's expense without expense or indemnity paid by the state.

(9) Review of quarantine: The Department and other interested parties shall review the quarantine requirements biennially for accuracy and effectiveness.

Stat. Auth.: ORS 561.190, 561.510–561.540, 561.990–561.995
Stats. Implemented: ORS 561.510–561.540
Hist.: DOA 1-2014, f. & cert. ef. 1-15-14

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Department of Community Colleges and Workforce Development
Chapter 589

Rule Caption: Allows timely payment of state allocation to community colleges providing Contracted-Out-of-District services
Adm. Order No.: DCCWD 6-2013(Temp)
Filed with Sec. of State: 12-16-2013
Certified to be Effective: 12-16-13 thru 6-13-14
Notice Publication Date:
Rules Amended: 589-002-0120
Subject: Authority for distribution of the Community College Support Fund (CCSF) is granted by OAR 589-002-0120. This rule amendment allows the allocation provided to community college districts for Contracted-Out-of-District programs to be paid in the same fiscal year as the year the Contracted-Out-of-District services are provided.
Rules Coordinator: Linda Hutchins—(503) 947-2456

589-002-0120
Community College Support Fund Distribution Methodology

(1) The Community College Support Fund shall be distributed in equal payments as follows:

(a) For the first year of the biennium, August 15, October 15, January 15, and April 15;

(b) For the second year of the biennium, August 15, October 15, and January 15;

(c) The final payment of each biennium is deferred until July 15 of the following biennium as directed by the 71st Oregon Legislative Assembly.

(d) Should any of the dates set forth above occur on a weekend, payment shall be made on the next business day.

(e) All payments, made before actual property taxes imposed by each district are certified by the Oregon Department of Revenue, shall be based on the department's best estimate of quarterly entitlement using property tax revenue projections. Payments shall be recalculated each year as actual property tax revenues become available from the Oregon Department of Revenue and any adjustments will be made in the final payment(s) of the fiscal year.

(2) Community college districts shall be required to submit enrollment reports in the format specified by the Commissioner, including numbers of clock hours realized for all coursework, in a term-end enrollment report by the Friday of the sixth week following the close of each term. If reports are outstanding at the time of the quarterly payments, payment to the district(s) not reporting may be delayed at the discretion of the Commissioner.

(a) All payments, made before actual Full-Time Equivalent student enrollment data are available shall be based on the department's best estimate of quarterly entitlement using student enrollment data from previous years.

(b) Payments shall be recalculated each year as Full-Time Equivalent student enrollment data become available and any adjustments will be made in the fiscal year.

(3) Reimbursement from the Community College Support Fund shall be made for career technical, lower-division collegiate, developmental education and other courses approved by the State Board in accordance with OAR 589-006-0100 through 589-006-0400. State reimbursement is not available for hobby and recreation courses as defined in 589-006-0400.

(4) Residents of the State of Oregon and the states of Idaho, Washington, Nevada, and California shall be counted as part of each community college district's CCSF reimbursable FTE, but only for those students who take part in coursework offered within Oregon's boundaries.

(5) State funding for community college district operations is appropriated by the legislature on a biennial basis to the Community College Support Fund. The amount of state funds available for each biennium and for distribution through the funding formula shall be calculated based on the following:

(a) Funds to support services provided to inmates of state penitentiary and correctional institutions by community college districts shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for services provided to inmates shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation. The distribution method of CCSF funding for individual state penitentiary and correction institution programs provided by community college districts will be determined in consultation between the agency and the Department of Corrections.

(b) Funds to support contracted out-of-district (COD) programs described in OAR 589-002-0600 shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated.

(A) A community college district providing contracted out-of-district services will receive an allocation equal to the college's number of reimbursable COD FTE multiplied by the statewide average of non-base community college support funds per total funded FTE. The average funds per total funded FTE is based on the same year COD services are provided.

(B) The allocation is distributed after the reimbursable COD FTE has been reported to CCWD for the full academic year. An adjustment to the allocation may be made if the final audited FTE is significantly different than the COD FTE from which the allocation was made.

(C) Beginning July 1, 2014, to be eligible for a COD allocation, each participating community college district must:

(i) Provide the department with a copy of the agreement between the community college district and the local participating entity by October 1st of each service year.

(ii) Enter into a contract with the department by January 1st of the service year for a COD allocation payment.

(iii) Follow all requirements found in OAR 589-002-0600.

(D) Section (5)(b)(A) and (B) of this rule applies to COD contracts that were in effect starting with the 2012–13 fiscal year.

(c) Funds to support targeted investments such as distributed learning shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for these investments shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage change to the current biennium's total Community College Support Fund appropriation.

(d) Funds remaining in the Community College Support Fund shall be distributed through the formula as described in Section 6.

(e) State general fund and local property taxes for territories annexed or formed effective June 1, 1996 or later shall not be included in the funding formula for the first three years of service. Additionally, the FTE generated in newly annexed territories shall not impact the funding formula during the first three years of service. Beginning in the fourth year, funding will be distributed through the formula as outlined in this rule.

(6) Distribution of funds to community college districts from the Community College Support Fund shall be accomplished through a formula, based on the following factors:

(a) Base Payment: Each community college district shall receive a base payment of $720 for each Weighted Reimbursable FTE up to 1,100 and $360 per FTE for unrealized enrollments between actual Weighted Reimbursable FTE and 1,100 FTE. The base payment for each community college district will be adjusted according to the size of the district. Community college district size for purposes of this adjustment will be determined each year by the FTE set forth in section (8)(b) of this rule. The base payment adjustments shall be:

(A) 0 – 750 FTE 1.3513;
(B) 751 – 1,250 FTE 1.2784;
(C) 1,251 – 1,750 FTE 1.2062;
(D) 1,751 – 2,250 FTE 1.1347;
(E) 2,251 – 2,750 FTE 1.0641;
(F) 2,751 – 3,250 FTE 1.0108;
(G) 3,251 – 3,750 FTE 1.0081;
(H) 3,751 – 4,250 FTE 1.0054;
(I) 4,251 – 4,999 FTE 1.0027;
(J) 5,000 or more FTE 1.000.

(b) Student-Centered Funding: The formula is designed to distribute the Community College Support Fund based on each community college district's FTE.

(A) The equalized amount per FTE is determined by dividing Total Public Resources — excluding base payments, contracted out-of-district payments, and any other payments directed by the State Board or the legislature — by funded FTE. The department shall make the calculation based on submission of FTE reports by community college districts and in accordance with established FTE principles.

(B) To determine the number of funded FTE for each community college district, a three-year weighted average of fundable FTE for each community college district will be used with the first year prior to current fundable FTE weighted at 40%, second year prior to current fundable FTE weighted at 30%, and third year prior to current fundable FTE weighted at 30%.

(c) Beginning with the 2011-13 biennium, a Biennial Growth Management Component is added to the calculation of each community college district's funded FTE. The purpose of the Biennial Growth Management Component is to manage the level of total public resource available per FTE within the total public resources available.

(A) The methodology for calculating the base year and subsequent biennial growth management component is displayed in Table 1 "Community College Support Fund Growth Management Calculation Tables" and is available through the following hyperlink. [Table not included. See ED. NOTE.]

(B) The calculations that will implement the Growth Management Component in the CCSF Distribution Formula Model are available in Table 2. Formula Calculation of Fundable FTE by Community College District." [Table not included. See ED. NOTE.]

(C) The State Board of Education (SBE) has authority, on a biennial basis to, set the "quality growth factor" that may increase or decrease the number of FTE that will be counted for funding purposes above or below the Biennial Growth Management Component. The SBE will consider the following principles as guidelines for setting the "quality growth factor":

(i) Balance the desire to support growth beyond that which is funded through the funding formula distribution model with the desire to enhance quality by increasing the level of funding provided on a per-student FTE basis.

(ii) The Total Public Resources (TPR) per FTE should not erode by more than 5% on an annual basis.

(iii) Where current TPR per FTE is determined to be insufficient to support the "quality of education" desired, a growth factor could be established that would increase the TPR per FTE.

(iv) If revenue is significantly reduced during a biennium, the Board may reduce the "quality growth factor."

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

Stat. Auth.: ORS 326.051, 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Stats. Implemented: ORS 341.626

Hist.: DCCWD 1-2012(Temp), f. & cert. ef. 7-17-12 thru 1-10-13; DCCWD 3-2012, f. & cert. ef. 12-26-12; DCCWD 3-2013, f. & cert. ef. 6-11-13; DCCWD 6-2013(Temp), f. & cert. ef. 12-16-13 thru 6-13-14

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

Rule Caption: Exempts certain permit applications from plan review by a certified individual.
Adm. Order No.: BCD 9-2013
Filed with Sec. of State: 12-16-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 10-1-2013
Rules Amended: 918-020-0090, 918-098-1010

Subject: This rule allows individuals employed by a municipality administering and enforcing a building inspection program to review and approve certain "simple permit" applications related to one- and two-family dwellings and plans made available under Senate Bill 582 (2013). These employees must utilize a division-approved checklist when reviewing a "simple permit" application. This rule does not create any new exemptions from review.
Rules Coordinator: Holly A. Tucker—(503) 378-5331

918-020-0090
Program Standards

The division and every municipality that administers and enforces a building inspection program must establish and maintain the minimum standards, policies, and procedures set forth in this section.

(1) Administrative Standards. A building inspection program must:

(a) Provide adequate funds, equipment, and other resources necessary to administer and enforce the building inspection program in conformance with an approved operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers, and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, and account for the electrical program revenues and expenditures separately when administered by the municipality.

(A) Prepare income and expense projections for each code program it will administer and enforce during the reporting period; and

(B) Describe how general administrative overhead costs and losses or surpluses, if any, will be allocated.

(e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;

(f) Make its operating plan available to the public;

(g) Establish a process to receive public inquiries, comments, and complaints;

(h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review, and inspections;

(i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;

(j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates; and

(k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent.

(2) Permitting Standards. A building inspection program must:

(a) Provide at least one office within its jurisdictional boundary where permits may be purchased;

(b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;

(c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;

(d) Set reasonable time periods within which the municipality will:

(A) Advise permit applicants whether an application is complete or requires additional information; and

(B) Generally issue a permit after an application has been submitted and approved.

(e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits, and minor labels;

(f) Provide a means to receive permit applications via facsimile; and

(g) Require proof of licensing, registration, and certification of any person who proposes to engage in any activity regulated by ORS chapters 446, 447, 455, 479, 693, and 701 prior to issuing any permit.

(3) Plan Review Standards. A building inspection program must:

(a) Establish policies and procedures for its plan review process to:

(A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;

(B) Make available checklists or other materials at each permitting office it operates that reasonably apprises persons of the information required to constitute a complete permit application or set of plans;

(C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" is defined by the division, taking into consideration the regional procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction must also inform the applicant of the time period in which the plan review will generally be completed;

(D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the regional procedures in OAR chapter 918, division 50. The process may not allow a project to proceed beyond the level of approval authorized by the building official. The process must:

(i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell, or any other part of a building or structure.

(ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and

(iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.

(E) Verify that all plans have been stamped by a registered design professional and licensed plan reviewer where required;

(F) Verify for those architects and engineers requesting the use of alternative one and two family dwelling plan review program that all plans have been stamped by a registered professional who is also a residential plans examiner. This process must require the building official to:

(i) Establish policies and procedures in their operating plan for this process;

(ii) Waive building inspection program plan review requirements for conventional light frame construction for detached one and two family dwellings; and

(iii) Establish an appropriate fee for processing plans submitted under this rule.

(G) Establish a process for plan review if non-certified individuals review permit applications under OAR 918-098-1010.

(b) Employ or contract with a person licensed, registered, or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;

(c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations, and certifications held by each plan reviewer and evidence of compliance with all applicable statutory or professional continuing education requirements;

(d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and

(e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds 10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" must:

(a) Comply with the requirements for prescriptive construction under the Oregon Residential Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling Installation Specialty Code and the requirements in OAR chapter 918, division 500; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by

state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following are considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the division or municipality or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule is deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program must:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations, and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance program, the municipality's inspectors must require proof of compliance with the licensing, permitting, registration, and certification requirements of persons engaged in any activity regulated by ORS Chapters 446, 447, 455, 479, 693, and 701. Inspectors must report any violation of a licensing, permitting, registration, or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program must establish in its operating plan:

(a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;

(b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.

(c) Policies and procedures to implement their compliance program;

(d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and

(e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in 455.156 and 455.895.

(10) Electrical Programs. Municipalities that administer and enforce an electrical program must demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.030, 455.467, 455.469, 455.156 & 2013 OL Ch. 528

Stats. Implemented: ORS 455.150, 455.467, 455.469, 455.156 & 2013 OL Ch. 528

Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 27-2002, f. & cert. ef. 10-1-02; BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 11-2004, f. 8-13-04, cert. ef. 10-1-04; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 7-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; BCD 9-2013, f. 12-16-13, cert. ef. 1-1-14

918-098-1010

Certification Requirements

(1) Unless otherwise stated in this rule, every person who performs building official duties, building code inspections, or plan reviews must possess a valid Oregon Inspector Certification and either:

(a) A valid appropriate Oregon Code Certification for the work being performed, or

(b) A valid appropriate International Code Council certification for the work being performed and the minimum level of experience as follows:

(A) Two years of construction or inspection-related experience or its equivalent;

(B) An approved one year inspection-related education program and one year of construction or inspection-related experience;

(C) A degree from an approved two year inspection-related education program or its equivalent; or

(D) Be a registered Oregon architect, a certified Oregon professional engineer, or have a Bachelor's or Master's degree in architecture or civil or structural engineering.

(2) Notwithstanding section (1)(b) of this rule, a person may perform the duties of a building official with only the Oregon Inspector Certification providing it is valid and the person passes the International Code Council Certified Building Official Legal Management examination within six months of hire.

(3) Plan review certification is not required for individuals reviewing one- and two-family dwelling permit applications for the following:

(a) First floor decks attached to a dwelling that:

(A) Extend not more than 12 feet from the dwelling but not closer than three feet to a property line;

(B) Are not more than 8 feet above grade;

(C) Will not exceed a 70 PSF live load and not a combined live and dead load of 80 PSF; and

(D) Are not in excess of a 2 horizontal 1 vertical ground slope.

(b) Car ports with a single slope that:

(A) Have a rafter span extending not more than 12 feet from a dwelling;

(B) Are attached to the dwelling for the full length not to exceed 30 feet;

(C) Have a maximum overhang of two feet that is not closer than three feet to a property line; and

(D) Will not exceed a combined 80 PSF live and dead load.

(c) Patio covers that:

(A) Have a single slope roof;

(B) Have a rafter span extending not more than 12 feet from the dwelling;

(C) Are attached to the dwelling the full length not to exceed 30 feet;

(D) Have a maximum overhang of two feet that is not closer than three feet to a property line; and

(E) Will not exceed a combined 80 PSF live and dead load.

(d) Fences not greater than 8 feet in height.

(e) Garage conversions as an accessory to a one- or two-family dwelling with no new cut openings in the existing wall.

(f) Window, door, or bathroom remodels where there are no load-bearing or lateral-bracing wall penetrations.

(g) Pole or manufactured steel structures with a maximum of 3,000 square feet that:

(A) Have a maximum 14-foot eave height;

(B) Are not closer than three feet to the property line and at least 6 feet from all other buildings on the same lot; and

(C) Fully engineered, including foundation where applicable.

(h) Mechanical equipment for the purposes of determining setback requirements have been met.

(4) Plan review certification is not required for individuals reviewing permit applications for buildings or structures that have plans and specifications provided by the department or a municipality under 2013 Oregon Laws Chapter 528 (2013 SB 582 Section 4).

(5) The building official is responsible for ensuring that persons performing permit reviews under this section utilize a division-approved checklist to perform reviews.

(6) The building official may determine based on unusual features, characteristics or other complicating circumstances that a certified individual must review a permit application.

(7) Where a jurisdiction routinely performs permit reviews for a type of project determined by the building official to be similar in complexity to

the types of projects listed in sections (3) and (4) of this rule, the building official may submit a checklist to the division for approval. If approved, the jurisdiction may utilize the checklist in the same manner as section (5).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 455.030, 455.055, 455.110, 455.720, 455.730 & 2013 OL Ch. 528
Stats. Implemented: ORS 455.030, 455.055, 455.110, 455.720, 455.730 & 2013 OL Ch. 528
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 18-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11; BCD 24-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 7-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; BCD 9-2013, f. 12-16-13, cert. ef. 1-1-14

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Rule Caption: Creates additional requirements for municipality submitting a local amendment request.
Adm. Order No.: BCD 10-2013
Filed with Sec. of State: 12-16-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 918-020-0370
Rules Repealed: 918-020-0370(T)
Subject: Under the current rule, the division may approve requests from municipalities for ordinances that represent local amendments to the state building code. This rule creates new provisions for a local amendment request when a municipality submits their request to the Building Codes Division.
Rules Coordinator: Holly A. Tucker—(503) 378-5331

918-020-0370
Local Amendment Requests

(1) A local municipality may request under ORS 455.040 a local amendment relating to matters covered under the building code, by submitting to the division, in writing, a local amendment application. The application must include:

(a) The reason for the request;

(b) The name of, and contact information for, the building official responsible for submitting the request and enforcing and interpreting the local amendment if approved;

(c) A copy of the municipality's proposed local ordinance or administrative rule; and

(d) A copy of the report required by section (2)(b) of this rule.

(2) Prior to submitting a request for a local amendment under ORS 455.040, a municipality must:

(a) Provide for a public hearing or public meeting in the manner required by applicable municipal or state law; and

(b) Submit a report to the division. The report must:

(A) Summarize comments received;

(B) Outline the impacts of the local amendment;

(C) Explain how the municipality responded to the substantive concerns and issues raised during the public input period;

(D) Identify the financial or regulatory incentives provided by the municipality to businesses or contractors impacted by the local amendment request;

(E) Estimate the fiscal impact of the local amendment.

(i) If the proposed amendment impacts residential construction, identify the additional construction cost per square foot to develop a 6,000 square foot parcel and to construct a 1,200 square foot detached single family dwelling on that parcel; or

(ii) If the proposed amendment impacts commercial construction, identify the additional construction cost per square foot to develop a 20,000 square foot parcel and to construct a 10,000 square foot B or M occupancy type. If the proposed amendment does not impact B or M occupancy structures, then the local jurisdiction shall identify the structure type and provide similar construction cost information for the impacted type of structure to the extent it applies to the above parameters.

(F) Describe the stakeholder outreach, summarize groups communicated with and the result of that communication; and

(G) Identify any other communities the municipality discussed the proposed amendment with and whether a regional solution was considered.

(3) Local amendments shall not contain a severance clause. The content of the local amendment as interpreted and approved by the division represents the terms and conditions of the approval. Where one or more provisions are deemed invalid, the entire local amendment is invalidated.

(4) Once the local amendment request is received, the division will review the request and the municipality's proposed amendment, and either approve the proposed local amendment in whole or in part, or deny the request. The division may approve the local amendment with conditions.

(5) Once the local amendment's provisions are approved by the division they cannot be changed. If a municipality wishes to change the provisions, they must submit a new amendment request for the division's approval.

(6) The building official for the municipality, identified in subsection (1)(b) of this rule, requesting the local amendment will be responsible for enforcing and interpreting the amendment once it is approved.

(7) The division may, upon written request, issue a directive to the building official to ensure that the local amendment is being administered according to the terms and conditions of the approval.

(8) A local amendment may be reviewed occasionally by the division to determine if it continues to be viable.

(9) The division reserves the right to terminate approval of the local amendment based on new information, including but not limited to, changes in technology, conflicts with model codes, changes in accepted practices under the applicable model codes, and failure of the building official to uphold the terms, conditions, or any directives related to the local amendment.

Stat. Auth. ORS 455.030
Stats. Implemented: ORS 455.040
Hist.: BCD 28-2008, f. 12-31-08, cert. ef. 1-1-09; BCD 8-2013(Temp), f. 9-27-13, cert. ef. 10-1-13 thru 3-30-14; BCD 10-2013, f. 12-16-13, cert. ef. 1-1-14

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

Rule Caption: Establishes the process for accepting consumer finance licensing applications, renewals, and administrative actions via NMLS
Adm. Order No.: FCS 7-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Amended: 441-730-0010, 441-730-0025, 441-730-0030
Subject: This temporary rule establishes the process by which licensees and prospective applicants must submit applications, renewals, and other administrative actions through the Nationwide Mortgage Licensing System and Registry (NMLS). At present, consumer finance lending licensees and prospective applicants submit licensing materials via paper documentation or by the state's own online system. This rule modifies the present licensing and application procedures and makes mandatory the transition of all licensing activity for consumer finance lenders to NMLS. A temporary rule is necessary to avoid missing key mandatory deadlines with NMLS that would allow for implementation and result in greater costs to the state and industry.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-730-0010
Definitions

(1) "Annual percentage rate" or "APR" means the annual percentage rate that every licensee is required by Regulation Z of the Federal Truth in Lending Act (Title I of the Consumer Credit Protection Act) to disclose to each of its credit customers.

(2) "Borrower" means a natural person.

(3) "Charges" means any one or more of the fees, premiums or other charges described by ORS 725.340(2)(a), (3) and (4), and other items charged to a borrower's account; but the term does not include interest or deferral charges.

(4) "Deferral charges" means the additional charge assessed by a licensee made for deferring all unpaid installments as provided by ORS 725.340(2)(b). Deferral charges do not apply to loans with a single payment payback feature.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6) "Finance charge" means the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(7) "Formalized grading system" means a formula or computer program that determines the creditworthiness of individual borrowers based on information regarding the borrower's financial condition, such as the bor-

rower's income, assets, debts and financial obligations, and the nature and value of any collateral used to secure the loan.

(8) "Fully amortized" means characterized by periodic payments, that if made as scheduled, result in full repayment of the principal and interest owed on a loan by the end of the loan term.

(9) "License" means a consumer finance license issued under ORS 725.140.

(10) "Legally qualified in this state" means a business is qualified to conduct business in this state, having made the appropriate filings with the Secretary of State.

(11) "Licensee" means a person in the business of making loans for periods of more than 60 days that have periodic payments.

(12) "Loan" means a loan that is subject to the Oregon Consumer Finance Act.

(13) "Loan underwriting" means a written or otherwise documented evaluation of the assumption of risk preceding the granting of a loan to a specific borrower, and may be fulfilled through use of a formalized grading system. Loan underwriting may be based on one or more of the following:

(a) Credit information furnished by the borrower, such as employment history, income, and outstanding obligations;

(b) A financial statement that includes income, assets and debts;

(c) Publicly available information concerning the borrower, that may include the borrower's credit report;

(d) The borrower's credit needs and willingness and ability to pay, including the nature and value of any collateral used to secure the loan.

(14) "Nationwide Mortgage Licensing System and Registry", or "NMLS" means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and successors maintain to register and license mortgage loan originators and nondepository companies and made available at www.nationwidelicensingsystem.org.

(15) "Periodic payments" means loan repayments scheduled for monthly or more frequent periods of time.

(16) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company, or cooperative.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.110, 725.140, 725.340, & 725.360

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0007; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10; FCS 7-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

441-730-0025

License Applications

(1) For purposes of the investigation described in ORS 725.140(1), an applicant for a license must submit the application via the Nationwide Mortgage Licensing System and Registry, attested to by an authorized owner or officer of the applicant.

(2)(a) An applicant, including a person that currently has a license, must provide the employment history for the proposed manager of the licensed office for the five years immediately preceding the date of the application. A licensee employing a new manager may be required to submit a resume to meet the requirements of this section.

(b) The employment history for a license applicant's proposed manager must demonstrate verifiable recent experience in traditional lending, including but not limited to, experience obtained in banking, consumer finance, or mortgage lending. For purposes of this rule, "recent" means no less than three years out of the five years immediately preceding the date of application. Short-term lending experience alone is not a sufficient substitute for the required experience.

(c) At the request of the applicant and in the sole discretion of the director, education, extensive training, or other business experience may be substituted for the three out of five years of traditional lending experience. Factors that the director may consider include relevance of the education, or the number, complexity and types of transactions handled in the substituted business experience. Short-term lending experience alone is not a sufficient substitute for the required experience.

(3) A person that is not currently licensed with the director to make loans must submit:

(a) The employment history for all executive officers, owners, directors, or managing partners. A resume may be required to meet this requirement. At least one-half of the executive officers, owners, directors, or managing partners must have verifiable recent lending experience in banking, consumer finance, or mortgage lending;

(b) A business plan, including but not limited to:

(A) Financial and operational history of the applicant, if any;

(B) Copies of any loan documents that are proposed to be used;

(C) A description of the types of loans and the percentage of the different types of loans the applicant proposes to make, the length of the loans the applicant proposes to make, the interest rates or range of rates the applicant proposes to charge, and any other business activities the licensee will engage in at the location;

(D) The process by which the applicant will determine that loans to be made comply with requirements in OAR 441-730-0015(1); and

(E) Funding sources for the loans, including third-party financial institutions.

(4) Applicants and licensees must comply with the application and licensing process set forth through NMLS.

(5) A consumer finance lending license shall expire on December 31 of each calendar year. At least 30 days prior to the expiration of the license, the licensee shall submit a complete renewal request and all prescribed renewal fees at OAR 441-730-0030 via NMLS. The renewal is not deemed effective until approved by the Director.

(6) In the event a licensee does not receive renewal approval from the Director by December 31, the license is deemed to have lapsed in NMLS. In order to reinstate the license, the licensee must apply for a license reinstatement using NMLS. Reinstatement is available through NMLS through the last day of February of the renewal year.

(7) For purposes of ORS 725.140 and this rule, the filing date of an application is the date the application is complete. An application is deemed complete on the date:

(a) All required fees have been paid; and

(b) All fully completed documents that are part of an application or required to be submitted by this rule have been received.

(8) An initial application for licensing is deemed abandoned if:

(a) The director has had one or more incomplete documents as part of an application for a minimum of 60 days; and

(b) The applicant has not responded within 30 days following a written notice from the director requesting submission of all fees, documents, or information necessary to make the application complete.

(9) An applicant whose initial application has been abandoned may reapply by submitting a new application including new fees.

(10) Conducting consumer finance activity in the state after an annual license expires and before the license approved for renewal by the Director constitutes unlicensed consumer finance activity in violation of ORS 725.045.

(11) The Director may refuse to renew a license if a reason exists under ORS 725.230.

(12) NMLS shall collect any fees on behalf of the Director that are required to be paid to the Director by applicants and licensees as authorized by ORS 725.185(1). NMLS is required to forward to the Department of Consumer and Business Services, pursuant to the terms of the written agreement between the Department of Consumer and Business Services and the Conference of State Bank Supervisors and its subsidiaries.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.120 & 725.140

Hist.: FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10; FCS 7-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

441-730-0030

Fees, Charges Licensees Pay the Director

(1) In addition to any fees required to participate in NMLS, an applicant or licensee shall pay:

(a) $600 for an initial application for each location to be licensed; and

(b) $600 for renewal for each licensed location, due and payable on January 1 of each calendar year.

(2) The rate of charge payable by a licensee is $75 an hour per person payable by the licensee for the director and each examiner and other division employee used in an examination conducted under ORS 725.312 and for extra services provided a licensee under 725.185(2).

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the director is required to travel out of state to conduct the examination or provide extra services, the rate of charge payable by the licensee is $75 an hour per person, plus actual cost of travel. Actual travel costs include air fare, lodging, food, car usage out of state, mileage to the Oregon airport and return, and travel time beginning from the departure time and ending at the departure time at the destination city;

(b) If the extra services or examination is performed by a consultant hired by contract for the particular service or examination, the charge

payable by the licensee is the actual cost to the division of the contract consultant.

(4) As used in this rule, "extra services" means any attention other than an examination given under ORS 725.310.

(5) In addition to the charges fixed by sections (2) and (3) of this rule, the director will collect from a licensee any additional costs directly attributable to extra services given the licensee under ORS 725.185 or a special examination given the licensee under 725.310.

(6) The director may by order reduce the fees assessed for any specific year.

Stat. Auth.: ORS 725.185
Stats. Implemented: ORS 725.185
Hist.: FID 8-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-075-0015; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-2001, f. 1-22-01, cert. ef. 2-1-01; FCS 4-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 4-2004, f. 11-1-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 1-2008, f.& cert. ef. 1-28-08; FCS 2-2009, f. & cert. ef. 2-3-09; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 6-2010, f. & cert. ef. 6-4-10; FCS 7-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Update of Holding Company Rules Including Enterprise Report and Prior Notice of Acquisitions
Adm. Order No.: ID 7-2013
Filed with Sec. of State: 12-26-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 836-027-0125, 836-027-0140
Rules Amended: 836-027-0005, 836-027-0010, 836-027-0030, 836-027-0035, 836-027-0045, 836-027-0050, 836-027-0100
Subject: These new and amended rules related to holding companies incorporate changes necessary as a result of legislation passed by the 2013 Legislative Assembly. The major changes are to adopt the forms and requirements for an annual enterprise report for holding companies and the pre-acquisition notification required to be filed by a domestic insurer that is proposing a merger or acquisition or by a non-domiciliary insurer licensed to do business in this state. The rules are based on the National Conference of Insurance Commissioners' Model Regulation #450, Insurance Holding Company System Model Regulation with Reporting Forms and Instructions. The proposed rules include the two new forms as exhibits.
Rules Coordinator: Victor Garcia—(503) 947-7260

836-027-0005
Definitions

(1) Unless the context otherwise requires, as used in OAR 836-027-0005 to 836-027-0180:

(a) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(b) "Foreign insurer" includes an alien insurer except where specifically noted otherwise.

(c) "Form A" means the form prescribed by OAR 836-027-0100, Exhibit 1, Form A.

(d) "Form B" means the form prescribed by OAR 836-027-0010, Exhibit 2, Form B.

(e) "Form C" means the form prescribed by OAR 836-027-0012, Exhibit 3, Form C.

(f) "Form D" means the form prescribed by OAR 836-027-0160, Exhibit 4, Form D.

(g) "Form E" means the form prescribed by OAR 836-027-0125, Exhibit 5, Form E.

(h) "Form F" means the form prescribed by OAR 836-027-0140, Exhibit 6, Form F.

(I) "Ultimate controlling person" means the person who is not controlled by any other person.

(2) Unless the context requires otherwise, other terms used in OAR 836-027-0005 to 836-027-0180 are used as defined in ORS 732.548.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 732.572
Stats. Implemented: ORS 732.517 - 732.592
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

836-027-0010
Registration of Insurers — Statement Filing

An insurer required to file an annual registration statement pursuant to ORS 732.517 to 732.592 shall:

(1) Furnish the required information on Form B, which is incorporated in and made a part of this rule as Exhibit 2.

(2) Include a statement that the insurer's board of directors oversees corporate governance and internal controls.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 732.572
Stats. Implemented: ORS 732.517 - 732.592
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 13-1993, f. & cert. ef. 12-1-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

836-027-0030
Forms; General Requirements

(1) Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by ORS 732.517 to 732.592, including but not limited to the registration provisions thereof. The forms are not intended to be blank forms that are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers to the items are prepared so as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer to any item is in the negative, an appropriate statement to that effect shall be made.

(2) One complete copy of each statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the Director of the Department of Consumer and Business Services by personal delivery or mail. A copy of Form C shall be filed in each state in which an insurer is authorized to do business if the Commissioner of that state has notified the insurer of its request in writing. An insurer who has been so notified shall file the form not later than the 30th day after the date of receipt of the notice. At least one of the copies shall be manually signed and certified in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(3) If an applicant requests a hearing on a consolidated basis under section 4, chapter 370, Oregon Laws 2013, in addition to filing the Form A with the director, the applicant must file electronically a copy of Form A with the National Association of Insurance Commissioners.

(3) Statements must be prepared on paper 8-1/2" X 11" or 8-1/2" X 13" in size and bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements or exhibits shall be clear, easily readable, and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 732.572
Stats. Implemented: ORS 732.517 - 732.592
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 19-2006, f. & cert. ef. 9-26-06; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

836-027-0035
Forms; Incorporation by Reference, Summaries, and Omissions

(1) Information required by any item of Form A, B, D, E or F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority or any other document may be incorporated by reference in answer or partial answer to any item of Form A, B, D, E or F if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be attached as exhibits if the documents are extensive. Documents currently on file with the Director that were filed within three years need not be filed as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case in which the incorporation would render the statement incomplete, unclear, or confusing.

(2) If an item requires a summary or outline of the provisions of any document, only a brief statement of the pertinent provisions of the docu-

ment shall be made. The summary or outline may in addition incorporate by reference particular parts of any exhibit or document currently on file with the Director that was filed within three years and may be qualified in its entirety by such reference. If two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution or other details, a copy of only one of such documents need be filed, but it shall have attached a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents of which a copy is filed.

Stat. Auth.: ORS 731 & 732.705
Stats. Implemented: ORS 732.523, 732.552 & 732.574
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

836-027-0045
Forms; Additional Information and Exhibits

In addition to the information expressly required to be included in Forms A, B, C, D, E and F there shall be included further material information, if any, as may be necessary to make the information contained in the form not misleading. The person filing may also file exhibits in addition to those expressly required by the statement. Such exhibits shall be marked to indicate clearly the subject matters to which they refer.

Stat. Auth.: ORS 731 & 732.705
Stats. Implemented: ORS 732.523, 732.552, 732.553 & 732.574
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

836-027-0050
Instructions; Amendments

A change to Form A, B, C, D, E and F shall include on the top of the cover page the phrase: "Change No. _____ to" and shall indicate the date of the change and not the date of the original filing.

Stat. Auth.: ORS 731 & 732.705
Stats. Implemented: ORS 732.523, 732.552, 732.554 & 732.574
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-24-93; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

836-027-0100
Acquisition of Control — Statement Filing

A person required to file a statement pursuant to ORS 732.517 to 732.592 shall furnish the required information on Form A, which is incorporated in and made a part of this rule as Exhibit 1. The person also shall furnish the required information on Form E, which is incorporated in and made a part of this rule as Exhibit 5 and described in OAR 836-027-0125.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 732.705
Stats. Implemented: ORS 732.517 - 732.592
Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

836-027-0125
Pre-Acquisition Notification

(1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition under ORS 732.523, the person must file a pre-acquisition notification form, Form E, as required under section 6, chapter 370, Oregon Laws 2013.

(2) If a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to sections 4 to 8, chapter 370, Oregon Laws 2013, that person shall file a pre-acquisition notification form, Form E. A pre acquisition notification form need not be filed if the acquisition is beyond the scope of sections 5 to 8, chapter 370, Oregon Laws 2013.

(3) In addition to the information required by Form E, the director may require an opinion from an economist as to the competitive impact of the proposed acquisition.

Stat. Auth.: ORS 732.705
Stats. Implemented: ORS 732.517–732.592
Hist.: ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

836-027-0140
Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report under section 10, chapter 370, Oregon Laws 2013shall furnish the required information on Form F, which is incorporated in and made a part of this rule as Exhibit 6.

Stat. Auth.: ORS 732.705
Stats. Implemented: ORS 732.517–732.592
Hist.: ID 7-2013, f. 12-26-13, cert. ef. 1-1-14

Rule Caption: Defining Terms and Clarifying when Director will seek restitution on behalf of a consumer
Adm. Order No.: ID 8-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 12-31-13 thru 6-20-14
Notice Publication Date:
Rules Adopted: 836-007-0001
Subject: Enrolled Senate Bill 414 (2013 Legislative Session) gives the Director of the Department of Consumer and Business Services the authority to seek restitution on a consumer's behalf for actual damages the consumer suffers as a result of an insurer's violation of a provision of the Insurance Code or applicable federal law or the insurer's breach of an insurance contract or policy. The bill also gives the director authority to seek other equitable relief on behalf of consumers. This rule defines applicable terms and clarifies when the director will or will not seek restitution.
Rules Coordinator: Victor Garcia—(503) 947-7260

836-007-0001
Actions by Director for Restitution or Other Equitable Relief

(1) As used in this rule:

(a) "Consumer" means an insured under a policy that is the subject of the enforcement action.

(b) "Actual damages" means reasonably foreseeable monetary losses.

(c) "Equitable relief" means injunctive relief, specific performance of a contract provision or specific performance of a provision of the Insurance Code or rules implementing the Insurance Code or applicable federal law.

(2) The Director of the Department of Consumer and Business Services:

(a) May seek restitution of actual damages or other equitable relief on a consumer's behalf only when the director takes an action against an insurer under ORS 731.256(1).

(b) Will not seek relief under subsection (a) of this section for any consumer who is entitled to a remedy under ORS Chapter 656; and

(c) May reduce actual damages upon a showing that the consumer has failed to reasonably mitigate damages.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 731.256
Hist.: ID 8-2013(Temp), f. & cert. ef. 12-31-13 thru 6-20-14

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Rule Caption: Limited License to Allow Owner of Self-Service Storage Facility to Sell Insurance to Occupants
Adm. Order No.: ID 9-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 836-071-0405, 836-071-0410, 836-071-0415, 836-071-0420, 836-071-0425, 836-071-0430
Subject: These rules establish the application materials and requirements for a self-service storage owner to obtain a limited lines insurance license. The rules also establish requirements for the maintenance of employee information and the required training program; and the limited license renewal process applicable to self-service storage facilities. The proposed rules are necessary to implement recent legislation enacted by the 2013 Legislative Assembly, House Bill 2845.
Rules Coordinator: Victor Garcia—(503) 947-7260

836-071-0405
Statutory Purpose and Authority

(1) OAR 836-071-0405 to 836-071-0425 apply to an owner who issues, sells or offers for sale insurance coverage to occupants at a self-service storage facility.

(2) OAR 836-071-0405 to 836-071-0425 are adopted pursuant to the authority in section 8, chapter 280, Oregon Laws 2013 and ORS Chapter 744, for the purpose of implementing sections 2 to 8, Chapter 280, Oregon Laws 2013.

Stat. Auth.: ORS 731.244; sect. 8, ch. 280, OL 2013
Stats. Implemented: Sects. 2 to 8, ch. 280, OL 2013
Hist.: ID 9-2013, f. 12-31-13, cert. ef. 1-1-14

836-071-0410

Limited License Application, Self-Service Storage Facility; Required Information

(1) An applicant for a self-service storage facility limited license shall submit electronically to the Director of the Department of Consumer and Business Services a self-service storage limited license application in accordance with instructions located on the Insurance Division Website at www.insurance.oregon.gov .

(2) The applicant shall include all of the following information in the limited license application:

(a) The applicant's corporate, firm or other business entity name, the business address, electronic mail address and telephone number of the principal place of business and the business address and telephone number of each self-service storage facility at which the applicant will transact business under the limited license;

(b) All assumed business names and other names under which the applicant will engage in business under the limited license;

(c) Certification that the applicant is the owner of all locations included on the application;

(d) Whether the applicant or any agent or authorized representative of the applicant has:

(A) Been convicted of or indicted for a crime, including a felony involving dishonesty or a breach of trust to which 18 U.S.C. 1033 applies;

(B) Had a judgment entered against the applicant or person designated by the applicant as being responsible for the applicant's compliance, for fraud;

(C) A claim of indebtedness by an insurer or agent, and the details of any such indebtedness; or

(D) Had any license to act in any occupational or professional capacity in this or any other state refused, revoked or suspended;

(E) Filed for bankruptcy or been adjudged bankrupt;

(e) All states and provinces of Canada in which the applicant currently holds a license to engage in the transaction of insurance, or has held such a license within ten years prior to the date of the application

(f) Any other information requested by the director.

(3) Each application shall be accompanied by a $200 fee.

Stat. Auth.: ORS 731.244 & 744.001; sect. 8, ch. 280, OL 2013
Stats. Implemented: Sects. 2 to 8, ch. 280, OL 2013
Hist.: ID 9-2013, f. 12-31-13, cert. ef. 1-1-14

836-071-0415

Materials and Requirements of Application

(1) Prior to selling any insurance to an occupant of a self-service storage facility, an applicant shall provide written material to the Director of the Department of Consumer and Business Services for approval as required by section 4, chapter 280, Oregon Laws 2013.

(2) In addition to providing written material at the time of initial licensing, the licensee must provide the director with any materials that change during the term of the license.

(3) The written material provided must:

(a) Comply with the requirements of section 4, chapter 280, Oregon Laws 2013; and

(b) Provide an assurance that the enrolled customer may cancel the storage unit insurance coverage at any time and that the person paying the premium shall receive a refund of the unused portion of any amount that has been paid for coverage. A reasonable administrative fee may be charged in an amount not to exceed 10 percent of the refund due.

Stat. Auth.: ORS 731.244; sect. 8, ch. 280, OL 2013
Stats. Implemented: Sects. 2 to 8, ch. 280, OL 2013
Hist.: ID 9-2013, f. 12-31-13, cert. ef. 1-1-14

836-071-0420

Requirements for Limited Licensee, List of Employees Selling Coverage; Training Program

(1) A limited licensee shall maintain at all times standard operating procedures to assure that all employees, agents and authorized representatives are authorized to issue, sell or offer for self-service storage unit property insurance coverage to a customer. The training program must instruct the employees or agents about the coverage the insurance provides and about the provisions of sections 2 to 8, chapter 280, Oregon Laws 2013. The limited licensee must provide a description of these procedures to the director at anytime that a change is made, at the time that the limited license is renewed or at any time at the request of the director.

(2) A limited licensee must ensure that the information required under section 280 chapter 280 Oregon Laws 2013, is included in any training program for the limited licensee's employees, agents and authorized representatives who will be issuing, selling or offering for sale self-service storage insurance coverage. The licensee must maintain a list of all employees trained to sell coverage. The licensee must provide the list to the director upon request, within 21 calendar days.

(3) A limited licensee must provide certification by the entity or the applicant that the written disclosure materials made available to prospective customers will be maintained by the entity or the applicant for a period of seven years and must be made available to the Department of Consumer and Business Services director upon request within 21 calendar days.

Stat. Auth.: ORS 731.244; sect. 8, ch. 280, OL 2013
Stats. Implemented: Sects. 2 to 8, ch. 280, OL 2013
Hist.: ID 9-2013, f. 12-31-13, cert. ef. 1-1-14

836-071-0425

Limited License Renewal

(1) A limited license expires on the last day of the month in which the second anniversary of the initial issuance date occurs. Thereafter, the limited license shall expire on the second anniversary following each renewal.

(2) A limited licensee applying for renewal must submit the following to the director electronically as set forth on the website of the National Insurance Producer Registry in accordance with instructions located on the Insurance Division website at www.insurance.oregon.gov. The renewal application must include:

(a) A completed renewal application on the form entitled "Renewal Notice for Self-Service Storage Insurance Vendors." must be returned to the director electronically in accordance with instructions set forth on Insurance Division website not later than the limited license expiration date.

(b) An updated certification by the supervising entity or the limited licensee that all employees, agents and authorized representatives involved in the issuance, sale or offering for sale of self-service storage coverage to customers have completed or will complete the training program outlined in section (2)(c) of this rule, prior to issuing, selling or offering for sale self -service storage insurance coverage.

(c) An outline of and copies of materials the licensee uses in the training program. The director may request copies of materials annually or at renewal and at the time of any change in materials. The entity must present a complete copy of materials at renewal. In addition, materials the entity must present the materials at the time of any change and at any time upon the request of the director.

(d) A renewal fee of $200.

(3) The director may allow a limited licensee not more than 30 days after the limited license expiration date to submit missing information on the renewal application form if the renewal application, fees, certification and disclosure materials have been submitted on or before the expiration date.

(4) The director may request on the renewal application any information requested on the original application for a limited license.

(5) An expired limited license may be renewed up to one year after the limited license expiration date. The fee to renew an expired limited license is $250.

Stat. Auth.: ORS 731.244 & 744.001; Sect. 8, ch. 280, OL 2013
Stats. Implemented: Sects. 2 to 8, ch. 280, OL 2013
Hist.: ID 9-2013, f. 12-31-13, cert. ef. 1-1-14

836-071-0430

Remission to Insurer; Funds Held in Trust; Compensation

(1) If authorized by an insurer the limited licensee that bills and collects the cost of self-service storage insurance coverage from an enrolled customer is not required to deposit the amount paid in a segregated account but shall remit the amount collected to the insurer or the supervising entity within 60 days of receipt from the enrolled customer.

(2) Moneys collected by a limited licensee from the enrolled customer for the cost of the self-service storage insurance are considered funds held by the licensee in trust for the benefit of the insurer.

(3) A limited licensee may receive compensation from an insurer for billing and collecting the cost of self-service storage insurance coverage purchased by enrolled customers.

(4) Limited licensees and insurers operating under a self-service storage limited license are not subject to ORS 744.083 and 744.084 for purposes of premium collected for self-service storage insurance.

Stat. Auth.: ORS 731.244, 744.001 & 744.083; Sec. 8, ch. 280, OL 2013
Stats. Implemented: Sec. 2 to 8, ch. 280, OL 2013
Hist.: ID 9-2013, f. 12-31-13, cert. ef. 1-1-14

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Rule Caption: Temporary Rules Establishing Procedures, Fee and Application for Pharmacy Benefit Managers' Registration and Renewal

Adm. Order No.: ID 10-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-2-14 thru 6-30-14
Notice Publication Date:
Rules Adopted: 836-200-0400, 836-200-0405, 836-200-0410, 836-200-0415, 836-200-0420
Subject: Beginning January 1, 2014, individuals or business entities that contract with pharmacies on behalf of an insurer, a third-party administrator or the Oregon Prescription Drug Program (established in ORS 414.312) to process claims, pay pharmacies or negotiate rebates for prescription drugs or medical supplies, must register annually with the Department of Consumer and Business Services (DCBS). These temporary rules establish the procedures for registration and renewal of registration necessary to allow pharmacy benefit managers to comply with the requirements of the new law.
Rules Coordinator: Victor Garcia—(503) 947-7260

836-200-0400
Statement of Purpose; Authority; Applicability

(1) OAR 836-200-00400 to 836-200-0420 are adopted under the authority of section 3, chapter 570, Oregon Laws 2013 for the purpose of implementing sections 2 and 3, chapter 570, Oregon Laws 2013.

(2) For any registration completed between January 2, 2014 and August 31, 2015 the first annual renewal of the registration shall be September 1, 2015.

Stat. Auth.: ORS 731.244 & sect. 3, ch. 570, OL 2013
Stats. Implemented: Sect. 2 & 3, ch. 570, OL 2013
Hist.: ID 10-2013(Temp), f. 12-31-13, cert. ef. 1-2-14 thru 6-30-14

836-200-0405
Application Requirements for Pharmacy Benefit Manager

(1) Each pharmacy benefit manager conducting business in Oregon must register with the Department of Consumer and Business Services. To register as a pharmacy benefit manager, the entity must complete a Pharmacy Benefit Manager Application, Exhibit 1 of this rule.

(2) An applicant for registration as a pharmacy benefit manager shall include in the application:

(a) The identity of the pharmacy benefit manager;

(b) The name, business address and contact person for the pharmacy benefit manager: and

(c) Where applicable, the FEIN number for the entity.

(3) A pharmacy benefit manager shall provide information on any material modification to the information provided by the pharmacy benefit manager in its application for registration not later than 30 days after the modification.

(4) The application for registration as a pharmacy benefit manager must include a fee of $50. The fee under this section must be submitted with the filing.

Stat. Auth.: ORS 731.244 & sect. 3, ch. 570, OL 2013
Stats. Implemented: Sect. 2 & 3, ch. 570, OL 2013
Hist.: ID 10-2013(Temp), f. 12-31-13, cert. ef. 1-2-14 thru 6-30-14

836-200-0410
Renewal of Pharmacy Benefit Registration

(1) All pharmacy benefit registrations expire on September 1 unless renewed on or before that date. A registrant must renew the registration by submitting a renewal application and renewal fee to the Director of the Department of Consumer and Business Services. The application to renew a registration as a pharmacy benefit manager must include a renewal fee of $50.

(2) A registered pharmacy benefit manager shall include with the renewal application any change in the information submitted since the registrant initially registered or last renewed the pharmacy benefit manager registration.

Stat. Auth.: ORS 731.244 & sect. 3, ch. 570, OL 2013
Stats. Implemented: Sect. 2 & 3, ch. 570, OL 2013
Hist.: ID 10-2013(Temp), f. 12-31-13, cert. ef. 1-2-14 thru 6-30-14

836-200-0415
Registration Requirements Not Exclusive

Compliance with the filing requirements of OAR 836-200-0400 to 836-200-0420 are additional to and not in lieu of filing and other requirements established by law for the purpose of doing business in this state, including but not limited to compliance with filing requirements of the Secretary of State applicable to assumed business names and applicable to the business structure of an applicant.

Stat. Auth.: ORS 731.244 & sect. 3, ch. 570, OL 2013
Stats. Implemented: Sect. 2 & 3, ch. 570, OL 2013
Hist.: ID 10-2013(Temp), f. 12-31-13, cert. ef. 1-2-14 thru 6-30-14

836-200-0420
Service on Registrant

The Director of the Department of Consumer and Business Services may make service on a registered pharmacy benefit manager at the address shown on the current registration of the pharmacy benefit manager on file with the director, in the manner provided in ORS 183.310 to 183.550.

Stat. Auth.: ORS 731.244 & sect. 3, ch. 570, OL 2013
Stats. Implemented: Sect. 2 & 3, ch. 570, OL 2013
Hist.: ID 10-2013(Temp), f. 12-31-13, cert. ef. 1-2-14 thru 6-30-14

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Rule Caption: Revisions to Administrative Streamlining and Simplification Rules
Adm. Order No.: ID 11-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 836-100-0100, 836-100-0105, 836-100-0110, 836-100-0115
Subject: These rules adopt two newly developed Oregon Companion Guides X12N/005010X221 Health Care Payment/Advice (835) and X12N/005010X212 Claim Status Request and Response (276/277). The Oregon Health Authority recommends adoption of these Companion Guides in furtherance of the state's goal of administrative streamlining in health care transactions as required under ORS 743.062. In addition to adding these new Companion Guides, these rules eliminate a waiver provision that becomes obsolete on January 1, 2014. The requirement to comply now specifies that use of the companion guides is required to the extent possible, thus eliminating the need for the waiver provision. The rules also make minor, technical corrections to the rules.

The amendments to these rules will apply on and after January 1, 2014.
Rules Coordinator: Victor Garcia—(503) 947-7260

836-100-0100
Authority; Purpose; Scope

(1) OAR 836-100-0100 to 836-100-0120 are adopted by the Director of the Department of Consumer and Business Services pursuant to ORS 743.061. The purpose of OAR 836-100-0100 to 836-100-0120 is to establish the uniform administrative standards that health insurers and health care entities are required to comply with under ORS 743.061. The uniform standards have been developed by the Office for Oregon Health Policy and Research in consultation with stakeholders pursuant to ORS 743.062.

(2) The uniform standards adopted under OAR 836-100-0100 to 836-100-0120 apply to all health insurers and health care entities in Oregon as specified in each companion guide.

Stat. Auth.: ORS 731.244 & 743.061
Stats. Implemented: ORS 743.061
Hist.: ID 12-2011, f. & cert. ef. 7-15-11; ID 11-2013, f. 12-31-13, cert. ef. 1-1-14

836-100-0105
Definitions

(1) "Electronic transaction" means to conduct a transaction:

(a) Through the use of a computer program or an electronic or other automated means independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual; or

(b) Through the use of a web portal or the internet.

(2)(a) "Health care entity" includes:

(A) A health care service contractor as required under ORS 750.055;

(B) A multiple employer welfare arrangement as required under ORS 750.333;

(C) A prepaid managed care health services organization as defined in ORS 414.736;

(D) Any entity licensed as a third party administrator under ORS 744.702;

(E) Any person or public body that either individually or jointly established a self-insurance plan, program or contract, including but not limited to persons and public bodies that are otherwise exempt from the Insurance Code under ORS 731.036;

(F) A health care clearinghouse or other entity that processes or facilitates the processing of health care financial and administrative transactions from a nonstandard format to a standard format; and

(G) Any other person identified by the department that processes health care financial and administrative transactions between a health care provider and an entity described in this subsection.

(b) "Health care entity" does not include a pharmacy or a pharmacy benefits manager.

(3) "Health insurer" means any insurer authorized to transact health insurance in Oregon.

(4) "Oregon Companion Guide" means one of the compilations of uniform standards adopted by the Department of Consumer and Business Services and posted on the Oregon Insurance Division's website that provide standards for health care financial and administrative transactions. The following Oregon Companion Guides are applicable to respective transactions with health insurers and health care entities in Oregon:

(a) Oregon Companion Guide for the Implementation of the ASC X12N/005010X279 Health Care Eligibility Benefit Inquiry and Response (270/271).

(b) Oregon Companion Guide for the Implementation of the ASC X12/005010X212: Claim Status Request and Response (276/277).

(c) The Oregon Companion Guide for the Implementation of the EDI Transaction: ASC X12N/005010X221 Health Care Claim Payment/Advice (835).

(d) The Oregon Companion Guide for the Implementation of the EDI Transaction: ASC X12/005010X222 Health Care Claim: Professional (837).

(e) The Oregon Companion Guide for the Implementation of the EDI Transaction: ASC X12/005010X223 Health Care Claim: Institutional (837).

(f) The Oregon Companion Guide for the Implementation of the EDI Transaction: ASC X12/005010X224 Health Care Claim: Dental (837).

(5) "Oregon Companion Guide Oversight Committee" means the committee appointed jointly by the Department of Consumer and Business Services and the Oregon Health Authority to carry out the responsibilities under OAR 836-100-0120.

(6) "Provider" means a health care provider that provides health care or medical services within Oregon for a fee and is eligible for reimbursement for these services.

Stat. Auth.: ORS 731.244 & 743.061
Stats. Implemented: ORS 743.061
Hist.: ID 12-2011, f. & cert. ef. 7-15-11; ID 16-2011, f. & cert. ef. 10-31-11; ID 11-2013, f. 12-31-13, cert. ef. 1-1-14

836-100-0110
Adoption of Standards

(1) On or after October 1, 2012, to the extent possible, all health insurers and health care entities must conduct eligibility benefit inquiry and response transactions with health care providers as electronic transactions that conform to the uniform standards developed by the Office for Oregon Health Policy and Research pursuant to ORS 743.062 as set forth in the Oregon Companion Guide for Health Care Eligibility Benefit Inquiry and Response in accordance with the following schedule:

(2) On and after October 1, 2012, to the extent possible, all health insurers and health care entities must conduct claims or encounter transactions with health care providers in conformance with the uniform standards developed by the Office for Oregon Health Policy and Research pursuant to ORS 743.062 as set forth in the Oregon Companion Guide for Health Care Claim: Professional, Oregon Companion Guide for Health Care Claim: Institutional and Oregon Companion Guide for Health Care Claim: Dental in accordance with the following schedule:

(3) On and after January 1, 2014, to the extent possible, all health insurers and health care entities must conduct claims payment or advice transactions with health care providers as electronic transactions that conform to the uniform standards developed by the Office for Oregon Health Policy and Research pursuant to ORS 743.062 as set forth in the Oregon Companion Guide for Health Care Claim Payment or Advice.

(4) On and after January 1, 2014, to the extent possible, all health insurers and health care entities must conduct claims status request and response transactions with health care providers as electronic transactions that conform to the uniform standards developed by the Office for Oregon Health Policy and Research pursuant to ORS 743.062 as set forth in the Oregon Companion Guide for Claim Status Request and Response.

Stat. Auth.: ORS 731.244 & 743.061
Stats. Implemented: ORS 743.061
Hist.: ID 12-2011, f. & cert. ef. 7-15-11; ID 16-2011, f. & cert. ef. 10-31-11; ID 11-2013, f. 12-31-13, cert. ef. 1-1-14

836-100-0115
Waiver

If the director has granted a waiver before January 1, 2014, upon expiration of the waiver, the health insurer or health care entity shall comply with the requirements of OAR 836-100-0100.

Stat. Auth.: ORS 731.244 & 743.061
Stats. Implemented: ORS 743.061
Hist.: ID 12-2011, f. & cert. ef. 7-15-11; ID 16-2011, f. & cert. ef. 10-31-11; ID 11-2013, f. 12-31-13, cert. ef. 1-1-14

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Rule Caption: Implementing State and Federal Health Insurance Reforms, Revise Reporting Mechanisms and Correct Obsolete Rule Language
Adm. Order No.: ID 12-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 836-010-0051, 836-053-0002, 836-053-0008, 836-053-0009, 836-053-0063, 836-053-0211, 836-053-0221, 836-053-0431, 836-053-0472, 836-053-0473, 836-053-0835, 836-053-1180, 836-075-0045
Rules Amended: 836-010-0011, 836-020-0770, 836-020-0775, 836-020-0780, 836-020-0785, 836-020-0806, 836-052-0676, 836-052-0800, 836-052-0860, 836-053-0000, 836-053-0001, 836-053-0003, 836-053-0005, 836-053-0007, 836-053-0021, 836-053-0030, 836-053-0050, 836-053-0065, 836-053-0070, 836-053-0410, 836-053-0415, 836-053-0465, 836-053-0475, 836-053-0510, 836-053-0825, 836-053-0830, 836-053-0851, 836-053-0900, 836-053-0910, 836-053-1000, 836-053-1020, 836-053-1030, 836-053-1035, 836-053-1070, 836-053-1080, 836-053-1100, 836-053-1110, 836-053-1130, 836-053-1140, 836-053-1170, 836-053-1190, 836-053-1200, 836-053-1315, 836-053-1320, 836-053-1325, 836-053-1330, 836-053-1335, 836-053-1340, 836-053-1342, 836-053-1345, 836-053-1350, 836-053-1355, 836-053-1360, 836-053-1365, 836-053-1400, 836-053-1410, 836-053-1415, 836-080-0050, 836-080-0055, 836-080-0080, 836-081-0005, 836-082-0050, 836-082-0055, 836-085-0001, 836-085-0005, 836-085-0010, 836-085-0025, 836-085-0035, 836-085-0045, 836-085-0050
Rules Repealed: 836-052-0830, 836-053-0040, 836-053-0060, 836-053-0081, 836-053-0210, 836-053-0220, 836-053-0250, 836-053-0430, 836-053-0440, 836-053-0460, 836-053-0471, 836-053-0700, 836-053-0710, 836-053-0750, 836-053-0760, 836-053-0780, 836-053-0785, 836-053-0790, 836-053-0800, 836-053-1040, 836-053-1401, 836-100-0011, 836-100-0016, 836-100-0020, 836-100-0025, 836-100-0030, 836-100-0035, 836-100-0040, 836-100-0045
Subject: These rules implement changes to insurance regulation necessary to conform to state and federal health reform legislation including Enrolled House Bill 2240(2013 Legislative Session) and the federal Public Health Service Act as amended by the Affordable Care Act. The rules also implement changes to insurer communication requirements, reporting and external review processes. Finally the rules revise obsolete language to provide clarity. Some of the specific changes made by the rules include:

- Establish requirements for electronic reporting.
- Changes to coordination of benefits for individual coverage.
- Eliminate outdated insurer to insurer notice requirement.
- Define essential health benefits and make related changes.
- Establish modification requirements for health benefit plans.
- Changes to association, trust, and MEWA certification requirements.
- Defining the Oregon Bronze and Standard plans.
- Streamline rules relating to underwriting and benefit design for small and large groups.
- Clarify rate filing requirements for grandfathered small group plans.
- Streamline rules relating to underwriting, enrollment, and benefit design for group health benefit plans including small group plans; to create new requirements for the crediting of creditable coverage; and to establish special enrollment provisions and effective dates of coverage.

- Revise creditable coverage requirements for individual and group health benefit plans.

- Provide for open and special enrollment provisions and effective dates of coverage for individual health benefit plans.

- Clarify distinctions between individual grandfathered and non-grandfathered health benefit plan rating requirements.

- Update various reporting requirements.

- Clarify grievance reporting requirements.

- Clarify and update provisions related to independent review requirements.

- Prohibit discrimination based on sexual orientation.

- Clarify the definition of "clean claim".

The rules also adopt changes to the rate filing rule that were previously adopted as a temporary rule on June 17, 2013. The temporary rules expired on December 6, 2013, so these rules will adopt that change permanently.

Rules Coordinator: Victor Garcia—(503) 947-7260

836-010-0011

Filing, Review of Rates and Forms

(1) Except as provided in this section, this rule applies to filings of all insurers, including health care service contractors as defined in ORS 750.005, multiple employer welfare arrangements as governed by 750.301 to 750.431 and fraternal benefit societies as governed by ORS Chapter 748. This rule does not apply to:

(a) Purchasing group insurance filings.

(b) Negotiated forms as described in ORS 742.003, but only if each of the negotiated forms is issued only to one policyholder, the insurer has determined that the forms comply with benefits and coverages mandated by statute and the forms have a company-assigned form number.

(c) Rates and forms approved by the Interstate Insurance Product Regulation Commission.

(2) An insurer must follow the applicable standards set forth on the website of the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov, when making rate and form filings, except that if the insurer files electronically on theSystem for Electronic Rates and Forms Filing, (SERFF), the insurer must comply with the Oregon standards set forth SERFF.

(3) An insurer must submit a completed certificate of compliance as provided in this section with each filing of a new or revised rate and each filing of a new or amended form. The insurer must use the certificate of compliance in Exhibit 1 to this rule. The certificate of compliance must certify compliance with the applicable filing requirements and product standards set forth on the website of the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov or on the SERFF system for Oregon, if filed electronically. The certificate must be accompanied by the applicable product standards form. A certificate of compliance must be completed and signed by:

(a) An officer of the insurer who is authorized by the insurer to do so; and

(b) Signed by the filer who is specifically designated by the insurer to prepare and make the filing.

(4) An insurer filing changes to a form or forms that were previously approved must highlight or otherwise visually call attention to the changes in new or revised forms and must submit a letter explaining the changes.

(5) A filing received for prior approval by the department that does not contain a certificate of compliance and does not comply with the standards referenced in this rule is incomplete and will be returned to the insurer as disapproved.

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

Stat. Auth.: ORS 731.244 & 731.296

Stats. Implemented: ORS 731.296, 737.205, 737.207, 742.001, 732.820, 743.015, 743.018 & 743.825

Hist.: ID 9-1994, f. 7-1-94, cert. ef. 7-15-94; ID 11-1996, f. 6-28-96, cert. ef. 7-1-96; ID 20-1997(Temp), f. 12-29-97, cert. ef. 12-30-97 thru 6-11-98; ID 11-1998, f. & cert. ef. 8-10-98; Administrative correction 6-25-99; ID 6-2000, f. & cert. ef. 7-19-00; ID 3-2001, f. 3-19-01, cert. ef. 5-1-01; ID 11-2002(Temp), f. & cert. ef. 4-18-02 thru 10-11-02; ID 20-2002, f. 10-11-02, cert. ef. 10-12-02; ID 8-2010, f. 3-31-10, cert. ef. 4-1-10; ID 20-2011, f. 12-16-11, cert. ef. 1-1-12; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-010-0051

Requirements for Electronic Reporting or Response

(1) As used in this rule:

(a) "Administrator" means the individual responsible for a person's electronic account activation and maintenance.

(b) "Contact" means the individual responsible for electronic account administration, an electronic report or electronic response.

(c) "Contact Information" means:

(A) Name;

(B) Title;

(C) Direct telephone number;

(D) Electronic mail address; and

(E) Mailing address.

(d) "Maintenance" means ensuring accurate and current company and contact information, providing and updating user access and performing other activities necessary for user submission of reports or responses and timely communication with the Insurance Division.

(e) "User" means an individual with rights to access the person's electronic account.

(2) This rule establishes requirements for submitting information or responses through the reporting system of the Insurance Division according to the instructions set forth on the website of the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov.

(3) A person required to submit information to the Insurance Division or to respond electronically to a request from the Insurance Division must activate and maintain an account through the reporting system of the Insurance Division.

(4) A person subject to section (3) of this rule must:

(a) Designate at least one administrator;

(b) Designate at least one contact for account administration and for each electronic report or response; and

(c) Provide current, accurate contact information for the administrator, company and each contact.

Stat. Auth: ORS 731.244

Stats. Implemented: ORS 731.296

Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-020-0770

Authority, Purpose and Effective Date of OAR 836-020-0770 to 836-020-0805

(1) OAR 836-020-0770 to 836-020-0806 are adopted by the Director of the Department of Consumer and Business Services pursuant to the authority of ORS 731.244 and 743.552, for the purpose of implementing 743.552.

(2) The purpose of OAR 836-020-0770 to 836-020-0806 is to:

(a) Establish a uniform order of benefit determination under which plans pay claims;

(b) Reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, as provided in OAR 836-020-0770 to 836-020-0806, do not have to pay their benefits first; and

(c) Provide greater efficiency in the processing of claims when a person is covered under more than one plan.

Stat. Auth: ORS 731.244, 743.552

Stats. Implemented: ORS 743.552

Hist.: ID 14-2006, f. & cert. ef. 7-20-06; ID 3-2007, f. & cert. ef. 2-12-07; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-020-0775

Definitions

As used in OAR 836-020-0770 to 836-020-0806:

(1) "Allowable expense," except as otherwise provided in this rule or as otherwise used in a statute, is defined and its use is governed by the following:

(a) The term means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person.

(b) If a plan is advised by a covered person that all plans covering the person are high-deductible health plans and the person intends to contribute to a health savings account established in accordance with Section 223 of the Internal Revenue Code of 1986, the primary high-deductible health plan's deductible is not an allowable expense, except for any health care expense incurred that may not be subject to the deductible as described in section 223(c)(2)(C) of the Internal Revenue Code of 1986.

(c) An expense or a portion of an expense that is not covered by any of the plans is not an allowable expense.

(d) Any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an allowable expense.

(e) The following are examples of expenses that are not allowable expenses:

(A) If a person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room is not an allowable expense, unless one of the plans provides coverage for private hospital room expenses.

(B) If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology, any amount charged by the provider in excess of the highest reimbursement amount for a specified benefit is not an allowable expense.

(C) If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

(D) If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the provider's contract permits, that negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits.

(f) The definition of "allowable expense" may exclude certain types of coverage or benefits such as dental care, vision care, prescription drug or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of allowable expense in its contract to expenses that are similar to the expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of allowable expense shall include similar expenses to which COB applies.

(g) When a plan provides benefits in the form of services, the reasonable cash value of each service is considered an allowable expense and a benefit paid.

(h) The amount of the reduction may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan:

(A) Because the covered person does not comply with the plan provisions concerning second surgical opinions or precertification of admissions or services; or

(B) Because the covered person has a lower benefit for the reason that the covered person did not use a preferred provider.

(2) "Birthday" refers only to month and day in a calendar year and does not include the year in which the individual is born.

(3) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

(a) Services, including supplies;

(b) Payment for all or a portion of the expenses incurred;

(c) A combination of subsections (a) and (b) of this section; or

(d) An indemnification.

(4) "Closed panel plan" means a plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the plan, and that excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.

(5) "Consolidated Omnibus Budget Reconciliation Act of 1985" or "COBRA" means coverage provided under a right of continuation pursuant to federal law.

(6) "Coordination of benefits" or "COB" means a provision establishing an order in which plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(7) "Custodial parent" means:

(a) The parent awarded custody of a child by a court decree; or

(b) In the absence of a court decree, the parent with whom the child resides more than one half of the calendar year without regard to any temporary visitation.

(8) "Group-type contract:"

(a) Means a contract that is not available to the general public and is obtained and maintained only because of membership in or a connection with a particular organization or group, including blanket coverage; and.

(b) Does not include an individually underwritten and issued guaranteed renewable policy even if the policy is purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer.

(9) "High-deductible health plan" has the meaning given the term under section 223 of the Internal Revenue Code of 1986, as amended by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(10) "Hospital indemnity benefits:"

(a) Means benefits not related to expenses incurred; and

(b) "Hospital indemnity benefits" does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(11) "Plan" is defined and its use is governed by the following:

(a) "Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.

(b) If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in this subsection. The definition of "plan" in the model COB provision in Appendix A (Exhibit 1 to OAR 836-020-0780) is an example.

(c) "Plan" includes:

(A) Group and individual insurance contracts and subscriber contracts;

(B) Uninsured arrangements of group or group-type coverage;

(C) Group and individual coverage through closed panel plans;

(D) Group-type contracts;

(E) The medical care components of group long-term care contracts, such as skilled nursing care; and

(E) The medical care components of group long-term care contracts, such as skilled nursing care; and

(F) Medicare or other governmental benefits, as permitted by law, except as provided in subsection (d)(H) of this section. That part of the definition of plan may be limited to the hospital, medical and surgical benefits of the governmental program;and

(G) Group and individual insurance contracts and subscriber contracts that pay or reimburse for the cost of dental care.

(d) "Plan" does not include:

(A) Independent, noncoordinated hospital indemnity coverage benefits or other fixed indemnity coverage;

(B) Accident only coverage;

(C) Specified disease or specified accident coverage;

(D) School accident-type coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis;

(E) Benefits provided in group long-term care insurance policies for non-medical services, including for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(F) Medicare supplement policies;

(G) A state plan under Medicaid; or

(H) A governmental plan, that by law provides benefits that are in excess of those of any private insurance plan or other non-governmental plan.

(12) "Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

(a) The plan has no order of benefit determination rules or its rules differ from those permitted by OAR 836-020-0770 to 836-020-0806; or

(b) All plans that cover the person use the order of benefit determination rules required by OAR 836-020-0770 to 836-020-0806, and under those rules the plan determines its benefits first.

(13) "Secondary plan" means a plan that is not a primary plan.

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

Stat. Auth: ORS 731.244, 743.552

Stats. Implemented: ORS 743.552

Hist.: ID 14-2006, f. & cert. ef. 7-20-06; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-020-0780

Use of Model COB Contract Provision

(1) Appendix A (Exhibit 1 to this rule) contains a model COB provision for use in contracts. The use of this model COB provision is subject to OAR 836-020-0785(1), (2) and (3).

(2) Appendix B (Exhibit 2 to this rule) is a plain language description of the COB process that explains to the covered person how health plans will implement coordination of benefits. It is not intended to replace or

change the provisions that are set forth in the contract. Its purpose is to explain the process by which the two or more plans will pay for or provide benefits.

(3) The COB provision contained in Appendix A and the plain language explanation in Appendix B do not have to use the specific words and format shown in Appendix A or Appendix B. Changes may be made to fit the language and style of the rest of the contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred and that indemnify. No substantive changes are permitted.

(4) A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

(a) Another plan exists and the covered person did not enroll in that plan;

(b) A person is eligible or could have been covered under another plan, except with respect to Part B of Medicare; or

(c) A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

(5) A plan may not contain a provision that its benefits are "always excess" or "always secondary" except in accordance with the rules permitted by OAR 836-020-0770 to 836-020-0806.

(6) Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider. In most instances, COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans because the other closed panel plan (the one whose providers were not used) has no liability. However, COB may occur during the plan year when the covered person receives emergency services that would have been covered by both plans. Then the secondary plan shall use OAR 836-020-0790 to determine the amount it should pay for the benefit.

(7) A plan may not use a COB provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have, that does not meet the definition of plan in OAR 836-020-0775.

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

Stat. Auth: ORS 731.244, 743.552

Stats. Implemented: ORS 743.552

Hist.: ID 14-2006, f. & cert. ef. 7-20-06; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-020-0785

Rules for Coordination of Benefits

When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

(1)(a) The primary plan shall pay or provide its benefits as if the secondary plan or plans did not exist.

(b) If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as if it were the primary plan when a covered person uses a non-panel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.

(c) When multiple contracts providing coordinated coverage are treated as a single plan under OAR 836-020-0770 to 836-020-0806, this rule applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one carrier pays or provides benefits under the plan, the carrier designated as primary within the plan shall be responsible for the plan's compliance with 836-020-0770 to 836-020-0806.

(d) If a person is covered by more than one secondary plan, the order of benefit determination rules of OAR 836-020-0770 to 836-020-0806 decide the order in which secondary plans benefits are determined in relation to each other. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan that, under the rules of 836-020-0770 to 836-020-0806, has its benefits determined before those of that secondary plan.

(2)(a) Except as provided in subsection (b) of this section, a plan that does not contain order of benefit determination provisions that are consistent with OAR 836-020-0770 to 836-020-0806 is always the primary plan unless the provisions of both plans, regardless of the provisions of this subsection, state that the complying plan is primary.

(b) Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(3) A plan may take into consideration the benefits paid or provided by another plan only when, under the rules of OAR 836-020-0770 to 836-020-0806, it is secondary to that other plan.

(4) Order of benefit determination: Each plan must determine its order of benefits using the first of the following rules that applies:

(a) Rule regarding non-dependent or dependent:

(A) Subject to paragraph (B) of this subsection, the plan that covers the person other than as a dependent, for example as an employee, member, subscriber or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

(B)(i) If the person is a Medicare beneficiary, and, as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is:

(I) Secondary to the plan covering the person as a dependent; and

(II) Primary to the plan covering the person as other than a dependent (e.g. a retired employee),

(C) Then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

(b) Rule regarding dependent child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child shall determine the order of benefits as follows:

(A) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

(i) The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(ii) If both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

(B) For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:

(i) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does, that parent's spouse's plan is the primary plan. This subparagraph does not apply with respect to any plan year during which benefits are paid or provided before the entity has actual knowledge of the court decree provision;

(ii) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of paragraph (A) of this subsection determines the order of benefits;

(iii) If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of paragraph (A) of this subsection determines the order of benefits; or

(iv) If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child are as follows:

(I) The plan covering the custodial parent;

(II) The plan covering the custodial parent's spouse;

(III) The plan covering the non-custodial parent; and then

(IV) The plan covering the non-custodial parent's spouse.

(C) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits shall be determined, as applicable, under paragraph (A) or (B) of this subsection as if those individuals were parents of the child.

(D) For a dependent child:

(i) Who has coverage under either or both parents' plans and who also has coverage as a dependent under a spouse's plan, the rule in subsection (e) of this section applies.

(ii) In the event the dependent child's coverage under the spouse's plan began on the same date as the dependent child's coverage under either or both parents' plans, the order of benefits shall be determined by applying the birthday rule in paragraph (A) of this subsection to the dependent child's parent and the dependent's spouse.

(c) Rule regarding active employee or retired or laid-off employee:

(A) The plan that covers a person as an active employee that is, an employee who is neither laid off nor retired or as a dependent of an active employee is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(B) If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule is ignored.

(C) This rule does not apply if the rule in subsection (a) of this section can determine the order of benefits.

(d) Rule regarding COBRA or state continuation coverage:

(A) If a person whose coverage is provided pursuant to COBRA or under a right of continuation pursuant to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan and the plan covering that same person pursuant to COBRA or under a right of continuation pursuant to state or other federal law is the secondary plan.

(B) If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored.

(C) This rule does not apply if the rule in subsection (a) of this section can determine the order of benefits

(e) Rule regarding longer or shorter length of coverage:

(A) If the preceding rules in this section do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

(B) To determine the length of time a person has been covered under a plan, two successive plans shall be treated as one if the covered person was eligible under the second plan within 24 hours after coverage under the first plan ended.

(C) The start of a new plan does not include:

(i) A change in the amount or scope of a plan's benefits;

(ii) A change in the entity that pays, provides or administers the plan's benefits; or

(iii) A change from one type of plan to another, such as from a single employer plan to a multiple employer plan.

(D) The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding rules of this section determines the order of benefits, the allowable expenses shall be shared equally between the plans.

Stat. Auth: ORS 731.244, 743.552
Stats. Implemented: ORS 743.552
Hist.: ID 14-2006, f. & cert. ef. 7-20-06; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-020-0806
Effective Date for Existing Contracts

(1) The amendments to OAR 836-020-0770, 836-020-0775 and 836-020-0785 apply to a contract that provides health care benefits and that was issued before January 1, 2015 must comply with the amendments to OAR 836-020-0770, 836-020-0775 and 836-020-0806 that are effective on January 1, 2014 by:

(a) The next anniversary date or renewal date of the contract; or

(b) The expiration of any applicable collectively bargained contract pursuant to which it was written.

(2) A question of the order of benefits between a contract operating under OAR 836-020-0770, 836-020-0775 and 836-020-0785 as amended effective January 1, 2014 for contracts issued or renewed on or after January 1, 2015 and a contract operating under the provisions of OAR 836-020-0770, 836-020-0775 and 836-020-0785 for contracts issued or renewed prior to January 1, 2015 is governed by the version of the rules in effect prior to amendment of the rules effective on January 1, 2014.

Stat. Auth: ORS 731.244, 743.552
Stats. Implemented: ORS 743.552
Hist.: ID 14-2006, f. & cert. ef. 7-20-06; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-052-0676
Premium Rate Schedule Increases

(1) This rule applies as follows:

(a) Except as provided in subsection (b) of this section, this rule applies to any long-term care insurance policy or certificate issued in this state on or after March 1, 2006.

(b) For certificates issued on or after March 1, 2005 under a group long-term care insurance policy as defined in ORS 743.652(3)(a) that was in force on March 1, 2005, this rule applies on the policy anniversary following March 1, 2006.

(2) An insurer shall obtain approval of a premium rate schedule increase from the Director of the Department of Consumer and Business Services, including an exceptional increase as defined in section (3) of this rule, prior to the notice to the policyholders and shall include the following in the submission to the director:

(a) Information required by OAR 836-052-0556;

(b) Certification by a qualified actuary that:

(A) If the requested premium rate schedule increase is implemented and the underlying assumptions that reflect moderately adverse conditions are realized, no further premium rate schedule increases are anticipated; and

(B) The premium rate filing is in compliance with this rule.

(c) An actuarial memorandum justifying the rate schedule change request that includes:

(A) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale, as follows:

(i) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(ii) The projections shall include the development of the lifetime loss ratio according to OAR 836-052-0666, unless the rate increase is an exceptional increase;

(iii) The projections shall demonstrate compliance with section (3) of this rule; and

(iv) For exceptional increases:

(I) The projected experience must be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) In the event the director determines as provided in OAR 836-052-0508(1)(d) that offsets may exist, the insurer shall use appropriate net projected experience.

(B) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(C) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the insurer have been relied on by the actuary;

(D) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(E) Composite rates reflecting projections of new certificates, in the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase.

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the director; and

(e) Sufficient information for review and approval of the premium rate schedule increase by the director.

(3) As used in this rule, "exceptional increase" means only those increases filed by an insurer as exceptional for which the director determines the need for the premium rate increase is justified, owing to changes in statutes or rules applicable to long-term care insurance in this state or owing to increased and unexpected utilization that affects the majority of insurers of similar products. An exceptional increase is subject to the following provisions:

(a) Except as provided in this rule, an exceptional increase is subject to the same requirements as other premium rate schedule increases.

(b) The director may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(c) The director, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(4) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) Each exceptional increase shall provide that 70 percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) Each premium rate schedule increase shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(A) The accumulated value of the initial earned premium times 58 percent;

(B) 85 percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(C) The present value of future projected initial earned premiums times 58 percent; and

(D) 85 percent of the present value of future projected premiums not in paragraph (C) of this subsection on an earned basis.

(c) In the event that a policy form has both exceptional and other increases, the values in subsection (b)(B) and (D) of this section will also include 70 percent for exceptional rate increase amounts; and

(d) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate specified in ORS 733.310 for the valuation of life insurance issued on the same date as the long-term care insurance. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(5) For each rate increase that is implemented, the insurer shall file for review and approval by the director updated projections, as defined in section (2)(c)(A) of this rule, annually for the next three years and include a comparison of actual results to projected values. The director may extend the period to greater than three years if actual results are not consistent with projections values from prior projections. For group insurance policies that meet the conditions in section (12) of this rule, the projections required by this section shall be provided to the policyholder in lieu of filing with the director.

(6) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in section (2)(c)(A) of this rule, shall be filed for review and approval by the director every five years following the end of the required period in section (5) of this rule. For group insurance policies that meet the conditions in section (12) of this rule, the projections required by this section shall be provided to the policyholder in lieu of filing with the director.

(7)(a) If the director has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projection under moderately adverse conditions demonstrates that incurred claims will not exceed proportions of premiums specified in section (4) of this rule, the director may require the insurer to implement any of the following:

(A) Premium rate schedule adjustments; or

(B) Other methods to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration shall be given to section (2)(c)(E) of this rule, if applicable.

(8) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) A plan, subject to director approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increase, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect, otherwise the director may impose the condition in section (9) of this rule; and

(b) The original anticipated lifetime loss ratio and the premium rate schedule increase that would have been calculated according to section (4) of this rule had the greater of the original anticipated lifetime loss ratio or 58 percent been used in the calculations described in section (4)(a)(A) and (C) of this rule.

(9)(a) For a rate increase filing that meets the following criteria, the director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if a significant adverse lapse has occurred or is anticipated:

(A) The rate increase is not the first rate increase requested for the specific policy form or forms;

(B) The rate increase is not an exceptional increase; and

(C) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapse has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the director may determine that a rate spiral exists. Following the determination that a rate spiral exists:

(A) The director may require the insurer to offer, without underwriting, to all in force insureds subjected to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(B) An offer under paragraph (A) of this subsection shall:

(i) Be subject to the approval of the director;

(ii) Be based on actuarially sound principles, but not be based on attained age;

(iii) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and

(iv) Shall credit any unearned premium to the new coverage.

(C) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(i) The maximum rate increase determined based on the combined experience; and

(ii) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent.

(10) If the director determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the director may, in addition to the provisions of section (9) of this rule, prohibit the insurer from doing either of the following:

(a) Filing and marketing comparable coverage for a period of up to five years; or

(b) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(11) Sections (1) to (10) of this rule do not apply to policies for which long-term care benefits provided by the policy are incidental if the policy complies with all of the provisions of this section. For the purpose of this section, "incidental" means that the value of the long-term care benefits provided is less than ten percent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue. The provisions are as follows:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, must be guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy.

(b) The portion of the policy that provides insurance benefits other than long-term care coverage must meet the nonforfeiture requirements for those benefits.

(c) The policy must meet the disclosure requirements under OAR 836-052-0706 for long-term care insurance policies.

(d) The portion of the policy that provides insurance benefits other than long term care coverage must meet the requirements as applicable for life and annuity policies.

(e) An actuarial memorandum that includes the following items must be filed with the director:

(A) A description of the basis on which the long term care rates were determined.

(B) A description of the basis for the reserves.

(C) A summary of the type of policy, benefits, renewability, general marketing method and limits on ages of issuance.

(D) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any.

(E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives.

(F) The estimated average annual premium per policy and the average issue age.

(G) A statement as to whether underwriting is performed at the time of application. The statement must indicate whether underwriting is used and, if used, the statement must include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs.

(H) A description of the effect of the long term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long term care claim status.

(12) Sections (6) and (8) of this rule do not apply to group insurance policies as defined in ORS 743.652(3)(a) when:

(a) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) The policyholder and not the certificate holders pays a material portion of the premium, which shall not be less than 20 percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 742.005, 743.018, 743.650 & 743.652
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 12-2005(Temp), f. & cert. ef. 10-3-05 thru 3-20-06; ID 5-2006, f. 3-15-06, cert. ef. 3-20-06; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-052-0800
Purpose; Applicability

OAR 836-052-0800 to 836-052-0860 are adopted for the purpose of carrying out ORS 743.526, 743.560, 743.562 and 743.565.

Stat. Auth.: ORS 731.244, 743.526, 743.560 & 743.562
Stats. Implemented: ORS 743.526, 743.560 & 743.562
Hist.: ID 9-1992, f. 5-26-92, cert. ef. 7-1-92; ID 5-2002, f. & cert. ef. 2-6-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-052-0860
Form of Notice to Group Policyholder

(1) The form of the notice required by ORS 743.560 shall be as established in this rule. The form shall be printed in 12 point type, one point leaded, and shall provide at least the following:

(a) The date of the notice;

(b) A statement to the effect that the group coverage provided through the group policyholder by the insurer has terminated or will terminate, and the effective date of termination. If termination will occur because of nonpayment of premium, the statement must also provide that the premium was not received, that the policy will be terminated as of the premium due date if the premium is not received by the end of the grace period applicable to the policy and that the insurer will furnish no further notice as to termination, and must include the date of termination. The effective date of a termination for a reason other than nonpayment of premium shall be the date preceding the first day that a group policyholder is effectively without coverage under the group health insurance policy;

(c) The number of the group health insurance policy;

(d) The name of the employer;

(e) An explanation of the rights of the certificate holders under federal law and state law regarding the continuation of coverage.

(2) In the notice to a group policyholder under this rule, the insurer need include only the information that applies to the group policyholder and certificate holder,

(3) An insurer may satisfy the notice requirements of ORS 743.560(2) and (3) in a single notice that is mailed by first class mail to the last known address of the policyholder at least 10 days prior to the end of the grace period under the policy. The notice must also satisfy the requirements of ORS 743.565.

(4) An insurer may give the notice required by ORS 743.560(3) electronically if, at the time of application or renewal, the insurer allows an applicant or enrollee the opportunity to receive such notices by regular mail, and the enrollee fails to exercise that opportunity.

Stat. Auth.: ORS 731.244, 743.526, 743.560 & 743.562
Stats. Implemented: ORS 743.560 & 743.777
Hist.: ID 9-1992, f. 5-26-92, cert. ef. 7-1-92; ID 5-2002, f. & cert. ef. 2-6-02; ID 19-2006, f. & cert. ef. 9-26-06; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0000
Applicability of January 1, 2014 Amendments to OAR Chapter 836, Division 53

(1) Except as provided in section (3) of this rule, the January 1, 2014 amendment to rules in OAR chapter 836, division 53 as amended effective January 1, 2014 apply to health benefit plans issued or renewed on or after January 1, 2014.

(2) Except as provided in section (3) of this rule, the version of rules included in OAR chapter 836, division 53 in effect on December 31, 2013, applies to health benefit plans issued or renewed before January 1, 2014.

(3) Amendments to and repeals of the following rules are effective on January 1, 2014, and apply to all issuers and health benefit plans according to the specified market whether issued or renewed before, on or after January 1, 2014:

(a) OAR 836-053-0700;
(b) OAR 836-053-0710;
(c) OAR 836-053-0750;
(d) OAR 836-053-760;
(e) OAR 836-053-780;
(f) OAR 836-053-0785;
(g) OAR 836-053-0790;
(h) OAR 836-053-0800;
(i) OAR 836-053-0825;
(j) OAR 836-053-083;
(k) OAR 836-053-0835;
(l) OAR 836-053-1000;
(m) OAR 836-053-1035;
(n) OAR 836-053-1070;
(o) OAR 836-053-1130;
(p) OAR 836-053-1170;
(q) OAR 836-053-1180;
(r) OAR 836-053-1190;
(s) OAR 836-053-1315;
(t) OAR 836-053-1320;
(u) OAR 836-053-1325;
(v) OAR 836-053-1330;
(w) OAR 836-053-1335;
(x) OAR 836-053-1340;
(y) OAR 836-053-1342;
(z) OAR 836-053-1345;
(aa) OAR 836-053-1350;
(bb) OAR 836-053-1355;
(cc) OAR 836-053-1360;
(dd) OAR 836-053-1365;
(ee) OAR 836-053-1400;
(ff) OAR 836-053-1401;
(gg) OAR 836-053-1410; and
(hh) OAR 836-053-1415.

Stat. Auth.: ORS 743.018, 743.019, 743.020
Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730, 743.767
Hist.: ID 5-2010, f. & cert. ef. 2-16-10; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0001
Modification of Health Benefit Plan Not Subject to Level of Coverage Requirements

(1) A modification of a health benefit plan not subject to the levels of coverage defined in 42 U.S.C. 18022(d) is defined in this rule for the purposes of:

(a) ORS 743.737 and 743.754, regarding group health benefit plans; and

(b) ORS 743.766, regarding individual health benefit plans.

(2) One or more decreases or increases described in this section in the services or benefits covered in a health benefit plan are a modification and not a discontinuance when the decrease or decreases, or the increase or increases, or any combination thereof, occur at the time of renewal and the change or changes together alter the actuarial valuation of the health benefit plan by less than ten percent in the aggregate to the policyholder. This section applies to a decrease or increase that:

(a) Eliminates or adds benefits payable under the plan;

(b) Decreases or increases benefits payable under the plan, including a decrease or increase that occurs as a result of a change in formulas, methodologies or schedules that serve as the basis for making benefit determinations;

(c) Increases or decreases deductibles, copayments or other amounts to be paid by an enrollee; or

(d) Establishes new conditions or requirements, such as prior authorization requirements, to obtaining services or benefits under the plan, or eliminates such conditions or requirements.

(3) A carrier must give the policyholder notice of a modification to which this rule applies not later than the 30th day before the date of renewal of the plan to which the modification applies.

(4) A change in a requirement for eligibility is not a modification for purposes of this rule but instead is a discontinuance if the change will result in the exclusion of a class or category of enrollees covered under the current plan.

(5) A decrease or increase described in this section in the services or benefits covered in a health benefit plan is a modification and not a discontinuance, but the decrease or increase is not subject to section (2) of this rule. This section applies to the following:

(a) A carrier's normal and customary administrative changes that do not have an actuarial impact, such as the following:

(A) Formulary changes.

(B) Utilization management protocols.

(C) Changes to pharmacy prior authorization requirements if, at least 48 hours before a change, the insurer prominently posts:

(i) A description of any pharmacy prior authorization requirement change to a page of the insurer's website that an enrollee or provider can easily locate and access; and

(ii) A link to the website page described in subparagraph (i) of this paragraph on the home page of the insurer's website.

(D) Changes to non-pharmacy prior authorization requirements that are made other than at renewal only when an insurer does all of the following:

(i) Makes a reasonable and good faith effort to identify all enrollees affected by the changes.

(ii) Makes a reasonable and good faith effort to identify providers who provide a service or treatment affected by the changes.

(iii) Notifies all enrollees and providers identified in subparagraphs (i) and (ii) of this paragraph at least 60 days in advance of the effective date of the change.

(iv) Posts a description of any change to the non-pharmacy prior authorization requirements to a page of the insurer's website that an enrollee or provider can easily locate and access.

(v) Posts a link to the website page described in subparagraph (iv) of this paragraph on the home page of the insurer's website.

(vi) Covers to the extent otherwise payable under the terms of the contract, and without penalty, any claim for services or treatment affected by changes to prior authorization requirements of an enrollee to whom the insurer fails to provide notice of the change.

(b) A decrease or increase required by state or federal law.

Stat. Auth.: ORS 731.244, 743.566 & 743.773
Stats Implemented: ORS 743.737, 743.754 & 743.766
Hist.: ID 7-2002, f. & cert. ef. 2-15-02; ID 18-2010, f. 9-14-10, cert. ef. 1-1-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0002
Modification of a Health Benefit Plan Subject to Levels of Coverage Requirements

(1) A modification of a health benefit plan subject to the levels of coverage defined in 42 U.S.C. 18022(d) is defined in this rule for the purposes of:

(a) ORS 743.737, regarding small employer health benefit plans; and

(b) ORS 743.766, regarding individual health benefit plans.

(2) One or more decreases or increases in the services or benefits covered in a health benefit plan are a modification and not a discontinuance when the decrease or decreases, or the increase or increases, or any combination thereof, occur at the time of renewal and the change or changes together do not alter the level of coverage as defined in 42 U.S.C. 18022(d).

(3) One or more decreases or increases in the services or benefits covered in a health benefit plan are a discontinuance when the decrease or decreases, or the increase or increases, or any combination thereof, alter the level of coverage as defined in 42 U.S.C. 18022(d).

Stat. Auth.: ORS 731.244, 743.566 & 743.773
Stats Implemented: ORS 743.737, 743.754 & 743.766
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0003
Prohibition of Exclusion Period for Pregnancy

A carrier may not impose an exclusion period or a waiver in a health benefit plan for pregnancy and childbirth expenses, for which coverage is required by ORS 743A.080.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.737, 743.754, 743.766 & 743A.080
Hist.: ID 9-2006, f. 4-27-06, cert. ef. 5-1-06; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0005
Prescription Drug Identification Cards

(1) This rule establishes minimum standards for prescription drug identification cards or other technologies that are required by ORS 743.788 to be issued by carriers, administrators of health benefit plans, third party administrators for self-insured plans, pharmacy benefits managers and administrators of state administered plans. This rule is adopted pursuant to the rulemaking authority of 743.790 for the purpose of implementing 743.788.

(2) A prescription drug identification card or other technology required by ORS 743.788 must contain the following information:

(a) The data element consistent with the "BIN, "IIN/BIN" or "RxBIN," which is the American National Standards Institute-assigned international identification number identified in the National Council for Prescription Drug Programs Pharmacy ID Card Implementation Guide, and labeled as RxBIN or BIN.

(b) The enrollee's name and identification number.

(c) A telephone number of the carrier or other issuer of the card or technology that a pharmacist may use to contact the carrier or other issuer, and a telephone number for after hour calls from a pharmacist (if that number is different from the first), unless the telephone number or numbers are provided electronically to the pharmacist at the time of processing.

(d) If required by the claims processor of the carrier or other issuer of the card, the processor control number labeled as RxPCN, and the pharmacy group number if different from the medical group number labeled as RxGrp.

(e) Any other information and any other data element of the National Council for Prescription Drug Programs Guide required by the issuer of the card for the processing of claims.

Stat. Auth.: ORS 743.790
Stats. Implemented: ORS 743.788
Hist.: ID 3-2003, f. 4-14-03 cert. ef. 7-1-03; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0007
Approval and Certification of Associations, Trusts, Discretionary Groups and Multiple Employer Welfare Arrangements

(1) Before an insurer may issue coverage to an association, trust, discretionary group or Multiple Employer Welfare Arrangement (MEWA) not already approved by the Director of the Department of Consumer and Business Services as a group policyholder, the insurer must obtain approval from the director to issue coverage to the association, trust, discretionary group or MEWA as the group policyholder.

(2) Annually, or more frequently if required by the director, an insurer must certify that an association, trust, discretionary group or MEWA that is a group policyholder continues to meet the requirements of ORS 743.522 and section 7, chapter 681, Oregon Laws 2013 .

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.522 & Sect. 7, Ch. 681, OL 2013
Hist.: ID 8-2007(Temp), f. 10-24-07, cert. ef. 10-25-07 thru 4-18-08; ID 6-2008, f. & cert. ef. 4-18-08; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0008
Essential Health Benefits

(1) As used in the Insurance Code:

(a) "Base benchmark health benefit plan" means the PacificSource Health Plans Preferred CoDeduct Value 3000 35 70 small group health benefit plan, including prescription drug benefits, as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov;

(b) "Essential health benefits" means the following coverage provided in compliance with 45 CFR 156:

(A) The base-benchmark health benefit plan, excluding the 24-month waiting period for transplant benefits;

(B) Pediatric dental benefits;

(C) Pediatric vision benefits; and

(D) Habilitative services.

(c) "Habilitative benefits" means the rehabilitative services provisions of the base benchmark when the services are medically necessary for the maintenance, learning or improving skills and function for daily living.

(d) "Pediatric dental benefits" means the benefits described in the children's dental provisions of the State Children's Health Insurance Plan as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. Pediatric dental benefits are payable to persons under 19 years of age.

(e) "Pediatric vision benefits" means the benefits described in the vision provisions of the Federal Employee Dental and Vision Insurance Plan Blue Vision High Option as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. Pediatric vision benefits are payable to persons under 19 years of age.

(2) An issuer of a plan offering essential health benefits may not include as an essential health benefit:

(a) Routine non-pediatric dental services;

(b) Routine non-pediatric eye exam services;

(c) Long-term care or custodial nursing home care benefits; or

(d) Non-medically necessary orthodontia services.

Stat. Auth.: Sec. 2, Ch. 681, OL 2013
Stats. Implemented: Sec. 2, Ch. 681, OL 2013
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0009
Oregon Standard Bronze and Silver Health Benefit Plans

(1) As used in this rule, "coverage" includes medically necessary benefits, services, prescription drugs and medical devices. "Coverage" does not include coinsurance, copayments, deductibles, other cost sharing, provider networks, out-of-network coverage, wigs or administrative functions related to the provision of coverage, such as eligibility and medical necessity determinations.

(2) For purposes of coverage required under this rule:

(a) "Inpatient" includes but is not limited to:

(A) Surgery;

(B) Intensive care unit, neonatal intensive care unit, maternity and skilled nursing facility services; and

(C) Mental health and substance abuse treatment.

(b) "Outpatient" includes but is not limited to services received from ambulatory surgery centers and physician and anesthesia services and benefits when applicable.

(c) "Habilitation services" are medically necessary services for maintenance, learning or improving skills and function for daily living and are subject to the same cost sharing as rehabilitation services.

(d) A reference to a specific version of a code or manual, including but not limited to references to ICD-9, CPT, Diagnostic and Statistical Manual of Mental Disorders, DSM-IV TR, Fourth Edition; place of service and diagnosis includes a reference to a code with equivalent coverage under the most recent version of the code or manual.

(3) When offering a plan required under ORS 743.822, an issuer must use the following naming convention: "[Name of Issuer] Oregon Standard [Bronze/ Silver] Plan". For example, "Acme Oregon Standard Bronze Plan".

(4) Coverage required under ORS 743.822 must be provided in accordance with the requirements of sections (5) to (10) of this rule.

(5) Coverage must be provided in a manner consistent with the requirements of:

(a) 45 CFR 156, except that actuarial substitution of coverage within an essential health benefits category is prohibited;

(b) OAR 836-053-1404 and 836-053-1405; and

(c) The federal Mental Health Parity and Addiction Equity Act of 2008;

(6) Coverage must provide essential health benefits as defined in OAR 836-053-0008.

(7) Except when a specific benefit exclusion applies, or a claim fails to satisfy the issuer's definition of medical necessity or fails to meet other issuer requirements the following coverage must be provided:

(a) Ambulatory services based on the following Place of Service Codes:

(A) 11 — Office;

(B) 12 — Patient's home;

(C) 20 — Urgent care facility;

(D) 22 — Outpatient hospital;

(E) 24 — Ambulatory surgical center;

(F) 25 — Birthing center;

(G) 49 — Independent clinic;

(H) 50 — Federally qualified health center;

(I) 71 — State or local public health clinic;

(J) 72 — Rural health clinic;

(b) Emergency services based on Place of Service Code 23 — Emergency;

(c) Hospitalization services based on Place of Service Code 21 — Hospital;

(d) Maternity and newborn services based on the following ICD-9 codes:

(A) V20 to V20.2;

(B) V22 to V39; and

(C) 630-677;

(e) Rehabilitation and habilitation services based the following ICD-9 or CPT codes:

(A) Physical Therapy/Professional: 97001-97002, 97010-97036, 97039, 97110, 97112, 97113-97116, 97122, 97128, 97139, 97140-97530, 97535, 97542, 97703, 97750, 97760, 97761-97762, 97799, and S9090;

(B) Occupational Therapy/Professional: 97003-97004 and G0129 in addition to all physical therapy codes if performed by an occupational therapist;

(C) Speech Therapy/Professional: 92507-92508, 92526, 92609-92610, and 97532 except ICD-9 784.49;

(f) Laboratory services in the CPT code range 8XXXX;

(g) All grade A and B United States Preventive Services Task Force preventive services, Bright Futures recommended medical screenings for children, Institute of Medicine recommended women's guidelines, and Advisory Committee on Immunization Practices recommended immunizations for children coverage must be provided without cost share; and

(h) Prescription drug coverage at the greater of:

(A) At least one drug in every United States Pharmacopeia (USP) category and class as the prescription drug coverage of the plan described in OAR 836-053-0000(1)(a); or

(B) The same number of prescription drugs in each category and class as the prescription drug coverage of the plan described in OAR 836-053-0000(1)(a).

(8) Copays and coinsurance for coverage required under ORS 743.822 must comply with the following:

(a) Non-specialist copays apply to physical therapy, speech therapy, occupational therapy and vision services when these services are provided in connection with an office visit.

(b) Subject to the Mental Health Parity and Addiction Equity Act of 2008, specialist copays apply to specialty providers including, mental health and substance abuse providers, if and when such providers act in a specialist capacity as determined under the terms of the health benefit plan.

(c) Coinsurance for emergency room coverage must be waived if a patient is admitted, at which time the inpatient coinsurance applies.

(9) Deductibles for coverage required under ORS 743.822 must comply with the following:

(a) For a bronze plan, in accordance with the coinsurance, copayment and deductible amounts and coverage requirements for a bronze plan set forth in Exhibit 1 to this rule. The bronze plan deductible must be integrated applicable to prescription drugs and all services except preventive services.

(b) For a silver plan, in accordance with the coinsurance, copayment and deductible amounts and coverage requirements for a silver plan set forth in Exhibit 1 to this rule. The silver plan deductible applies to all services except preventive services, office visits, urgent care, and prescription drugs.

(c) The individual deductible applies to all enrollees, and the family deductible applies when multiple family members incur claims.

(10) Dollar limits for coverage required under ORS 743.822 must comply with the following:

(a) Annual dollar limits must be converted to a non-dollar actuarial equivalent.

(b) Lifetime dollar limits must be converted to a non-dollar actuarial equivalent.

Stat. Auth.: ORS 743.822
Stats. Implemented: ORS 743.822
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0021
Plans Offered to Oregon Small Employers

(1) A small employer carrier shall issue a plan to a small employer if the employee eligibility criteria established by the small employer meet the requirements of this section. Except when coverage is obtained through the Oregon Health Insurance Exchange Corporation, a carrier must use the form entitled "Oregon Standardized Group Profile Form" set forth on the website of the Insurance Division of the Department of Consumer and Business Services to collect data to determine the applicable type of group coverage for an employer and to provide disclosure notices as required for small employers. The eligibility criteria must be based solely on weekly work hours and completion of a group eligibility waiting period, if applicable, and those criteria must meet the following standards:

(a) The work hours requirement may range from 17.5 to 40 hours per week, but a single, uniform requirement must apply to all employees of the employer; and

(b) A waiting period requirement may not exceed 90 days and a single, uniform requirement must apply to all employees of the employer.

(2) For purposes of determining whether an employer is a small employer a carrier may not count as an employee:

(a) A sole proprietor;

(b) A partner of a partnership;

(c) The owner of more than two percent of the shares of:

(A) An S corporation; or

(B) Limited liability company;

(d) The owner of a corporation wholly owned by the individual or the individual and the individual's spouse; or

(e) The spouse of a person described in subsections (a) to (d) of this section.

(3) Employee eligibility criteria must be limited to those described in section (1) of this rule. Impermissible criteria include:

(a) Health status;

(b) Disability; and

(c) A requirement that an employee be actively at work when coverage would otherwise begin.

(4) A small employer carrier may provide different health benefit plans to different categories of employees of an employer, as determined by the employer only if based on bona fide employment-based classifications

that are consistent with the employer's usual business practice. The categories may not relate to the actual or expected health status of the employees or their dependents

Stat. Auth.: ORS 731.244 & 743.731(4)
Stats. Implemented: ORS 743.730 et seq.
Hist.: ID 5-1998, f. & cert. ef. 3-9-98; ID 23-2002, f. & cert. ef. 11-27-02; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08; ID 2-2008, f. & cert. ef. 2-11-08; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0030
Marketing of a Health Benefit Plan to Small Employers

(1) A carrier may offer different small employer health benefit plans in different geographic areas. The bronze and silver plan required to be offered under ORS 743.822 and a point-of-service plan required under ORS 743.808 must be offered in every geographic area in which the carrier offers or renews its small employer health benefit plans. A carrier may not cease offering or renewing, or offering and renewing, the bronze or silver small group health benefit plan required to be offered under ORS 743.822 or a point-of -service plan required under ORS 743.808 in a geographic area unless the carrier discontinues all plans in the geographic area as provided in 743.737(3)(e).

(2) A carrier must offer all of its approved nongrandfathered small employer health benefit plans and plan options, including small employer health benefit plans offered through an association, to all small employers on a guaranteed issue basis without regard to health status, claims experience or industry except that a carrier may limit enrollment to the period from November 15 to December 15 of each calendar year for small employers that fail to meet the carrier's reasonable participation or contribution requirements. A carrier may not serve only a portion of the small employer market, such as employers with more than 25 employees, and a carrier may not establish or maintain a closed plan or plan option or a closed book of business in the small employer market. For purposes of this section, a "closed" arrangement is one in which coverage is maintained and renewed for currently enrolled small employers, but the coverage is not offered or issued to other small employers.

(3) A carrier may not require a small employer to purchase or maintain other lines of coverage, such as group life insurance, in order to purchase or maintain a small employer health benefit plan. However, a small group carrier may require reasonable assurance of pediatric dental coverage consistent with Essential Health Benefits, Final Rule, 78 Fed. Reg. 12853 (February 25, 2013).

(4) A carrier must market fairly all of its small employer health benefit plans and plan options and shall not engage in any practice that:

(a) Restricts a small employer's choice of such plans and plan options; or

(b) Has the effect or is intended to influence a small employer's choice of such plans and plan options for reasons of risk selection.

(5) A carrier shall not provide to any insurance producer any financial or other incentive that conflicts with the requirements of section (4) of this rule.

(6) A carrier must use the same sales compensation methodology for all small employer health benefit plans offered by the carrier.

(7) A small employer carrier may not terminate, fail to renew, or limit its contract or agreement of representation with an insurance producer for any reason related to the following: the health status, claims experience, occupation, geographic location of small employer groups, or the type of small employer plans placed by the insurance producer with the carrier.

Stat. Auth.: ORS 731.244 & 743.731
Stats. Implemented: ORS 743.736, 743.737, 743.743, 743.822 & 746.650
Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 12-1996, f. & cert. e.f 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08; ID 2-2008, f. & cert. ef. 2-11-08; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0050
Trade Practices Relating to Small Employer Health Benefit Plans

(1) When offering plans to small employers, a carrier must briefly describe the variety of small employer plans and plan options that are available from the carrier and must specify that:

(a) Nongrandfathered plans and plan options are available without regard to health status, claims experience or industry and are offered on a guaranteed issue basis; and

(b) Grandfathered plans and plan options are available under limited circumstances to a small employer that has existing grandfathered coverage.

(2) Subject to requirements established by the Oregon Health Insurance Exchange Corporation pursuant to 45 CFR 155.720(b) for small employer health benefit plans offered through the Oregon Health Insurance Exchange Corporation, a small employer health benefit plan must be issued with an effective date no later than 31 days after the carrier actually receives the application, and if required by the carrier, the premium.

(3) Neither a carrier nor an insurance producer may encourage or direct a small employer to seek coverage from another carrier because of the small employer's health status, claims experience, industry occupation or geographic location, if within the carrier's service area.

(4) Neither a carrier nor an insurance producer may induce or otherwise encourage a small employer to separate or otherwise exclude an eligible employee from employment or from health coverage or benefits provided in connection with the employee's employment.

(5) A small employer health benefit plan may specify that an enrolled small employer may replace its current coverage with another small employer plan offered by the carrier only on the anniversary date of the current coverage. This limitation also applies to a small employer that discontinues coverage with a carrier, or forfeits coverage because of non-payment of premiums and then requests new coverage with the same carrier.

(6) A small employer carrier that also issues individual health benefit plans may not include with an invoice for small employer coverage, individual health benefit plan premiums for employees of the employer or otherwise bill a small employer for such premiums.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 743.731, 743.734(1), 743.736, 743.737 & 746.240
Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 12-1996, f. & cert. e.f 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08; ID 2-2008, f. & cert. ef. 2-11-08; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0063
Rating for Nongrandfathered Small Group Plans

The following provisions relating to rating apply to nongrandfathered health benefit plans offered to small employers:

(1) A small employer carrier shall file a single geographic average rate for each nongrandfathered health benefit plan that is offered to small employers within a geographic area and for each category of family composition. The geographic rate must be determined on a pooled basis and the pool shall only include all of the carrier's nongrandfathered business in the small employer market.

(2) There shall be one rating class for each small employer carrier. All nongrandfathered small employer health benefit plans of the carrier shall be rated in that class. A rating of a health benefit plan is subject to adjustments reflecting age, tobacco use and differences in family composition.

(3) The variation in geographic average rates among different nongrandfathered small employer health benefit plans offered by a carrier must be based solely on objective differences in plan design or coverage. The variation shall not include differences based on the risk characteristics or claims experience of the actual or expected enrollees in a particular plan.

(4) A small employer carrier shall file its geographic average rates for nongrandfathered small employer health benefit plans in accordance with the rate filing requirements of OAR 836-053-0910.

(5) A small employer carrier shall assess administrative expenses in a uniform manner to all nongrandfathered small employer health benefit plans. Administrative expenses shall be expressed as a percentage of premium and the percentage may not vary with the size of the small employer.

(6) Nongrandfathered small group plans shall be rated within the following geographic areas comprising counties as follows:

(a) Area 1 shall include: Clackamas, Multnomah, Washington and Yamhill.

(b) Area 2 shall include: Benton, Lane and Linn.

(c) Area 3 shall include: Marion and Polk.

(d) Area 4 shall include: Deschutes, Klamath and Lake.

(e) Area 5 shall include: Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook.

(f) Area 6 shall include: Baker, Crook, Gilliam, Grant, Harney, Hood River, Jefferson, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler.

(g) Area 7 shall include: Douglas, Jackson and Josephine.

(7) For nongrandgathered small group plans, a small employer carrier may use the same geographic average rate for multiple rating areas.

(8) Premium rates for nongrandfathered small employer health benefit plans:

(a) For each group, shall total the sum of the product of the base rate and the applicable factors in section (9) of this rule for each employee and dependent 21 years of age and older and the sum of the product of the base rate and the applicable factors in section (9) of this rule for each of the three

oldest dependent children under the age of 21 within each family in the group.

(b) Shall be allocated to an employee by dividing the total premium described in subsection (a) of this section by the sum of the products of the number of employees and the applicable tier factors specified in paragraphs (A) through (D) of this subsection, and multiplying the quotient by the applicable tier factor for the employee as specified in paragraphs (A) through (D) of this subsection. The tier factors are:

(A) 1.00 for an employee only;

(B) 1.85 for an employee and one or more children age 25 or younger;

(C) 2.00 for an employee and spouse; and

(D) 2.85 for an employee and family.

(9) The variations in rates described in this rule may be based on one or more of the following factors as determined by the carrier:

(a) The ages of enrolled employees and their dependents according to Exhibit 1 to this rule. Variations in rates based on age may not exceed a ratio of three to one.

(b) A tobacco use factor of no more than 1.5 times the non-tobacco use rate for persons 18 years or older except that the factor may not be applied when the person is enrolled in a tobacco cessation program.

(c) The level at which enrolled employees and their dependents engage in health promotion, disease prevention or wellness programs.

Stat. Auth.: ORS 731.244 & 743.731 & 743.758
Stats. Implemented: ORS 743.731, 743.734 & 743.737
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0065

Rating for Grandfathered Small Group Plans

The following provisions relating to rating apply to grandfathered health benefit plans offered to small employers:

(1) A small employer carrier shall file a single geographic average rate for each grandfathered health benefit plan that is offered to small employers within a geographic area and for each category of family composition. The geographic average rate must be determined on a pooled basis and the pool shall include all of the carrier's grandfathered business in the small employer market.

(2) There shall be one rating class for each small employer carrier. All grandfathered small employer health benefit plans of the carrier shall be rated in that class. A rating of a grandfathered health benefit plan is subject to adjustments reflecting the level of benefits provided and differences in family composition and age.

(3) The variation in geographic average rates among different grandfathered small employer health benefit plans offered by a carrier must be based solely on objective differences in plan design or coverage. The variation shall not include differences based on the risk characteristics or claims experience of the actual or expected enrollees in a particular plan, except that a carrier may make further adjustment at renewal to reflect the expected claims experience of the covered small employer; however, this adjustment may not exceed five percent of the annual premium otherwise payable by the small employer, is not cumulative year to year, and may be based only on the carrier's claims experience with the small employer. A variation based on the level of contribution by the small employer or on the level of participation by eligible employees, or on both, must be actuarially sound.

(4) A small employer carrier shall file its geographic average rates for grandfathered small employer health benefit plans in accordance with the rate filing requirements of OAR 836-053-0910.

(5) A small employer carrier shall assess administrative expenses in a uniform manner to all grandfathered small employer health benefit plans. Administrative expenses shall be expressed as a percentage of premium and the percentage may not vary with the size of the small employer.

(6) Grandfathered small employer plans shall be rated within the following geographic areas comprising counties as follows:

(a) Area 1 shall include: Clackamas, Multnomah, Washington and Yamhill.

(b) Area 2 shall include: Benton, Lane and Linn.

(c) Area 3 shall include: Marion and Polk.

(d) Area 4 shall include: Deschutes, Klamath and Lake.

(e) Area 5 shall include: Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook.

(f) Area 6 shall include: Baker, Crook, Gilliam, Grant, Harney, Hood River, Jefferson, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler.

(g) Area 7 shall include: Douglas, Jackson and Josephine.

(7) For grandfathered small employer plans, a small employer carrier may use five digit zip code groupings to define the carrier's geographic areas. The zip code groupings may vary from the county areas defined in section (6) of this rule by no more than ten percent of the population of a county. The small employer carrier must use either the zip code system or the county system and shall not modify the geographic areas in any other manner.

(8) For grandfathered small employer plans, a small employer carrier may use the same geographic average rate for multiple rating areas.

(9) For grandfathered small employer plans, a small employer carrier may deviate from the variation described in section (1) of this rule for coverage that extends to a geographic area outside the state of Oregon. The carrier must do so in a reasonable fashion and maintain records regarding the basis for the rate charged in the small employer's file.

(10) The premium rates charged during a rating period for a grandfathered health benefit plan issued to a small employer may not vary from the geographic average rate by more than 50 percent

(11) The variations in premium rates described in section (10) of this rule may be based on one or more of the following factors as determined by the carrier:

(a) The ages of enrolled employees and their dependents;

(b) The level at which the small employer contributes to the premiums payable for enrolled employees and their dependents;

(c) The level at which eligible employees participate in the health benefit plan;

(d) The level at which enrolled employees and their dependents engage in tobacco use;

(e) The level at which enrolled employees and their dependents engage in health promotion, disease prevention or wellness programs;

(f) The period of time during which a small employer retains uninterrupted coverage in force with the same small employer carrier; and

(g) Adjustments to reflect the level of benefits provided and differences in family composition.

(12) The premium rate determined in accordance with this rule may be further adjusted to reflect expected claims experience of a small employer but may not exceed five percent of the annual premium rate. The adjustment is not cumulative year to year.

Stat. Auth.: ORS 731.244 & 743.731
Stats. Implemented: ORS 743.731, 743.734 & 743.737
Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 1-1994, f. & cert. ef. 1-26-94; ID 12-1996, f. & cert. ef. 9-23-96; Renumbered from 836-053-0020; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 5-2007(Temp), f. 8-17-07, cert. ef. 8-20-07 thru 2-15-08; ID 2-2008, f. & cert. ef. 2-11-08; ID 4-2013(Temp), f. & cert. ef. 6-17-13 thru 12-6-13; Administrative correction, 12-19-13; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0070

Multiple Employer Welfare Arrangements

For purposes of determining whether a multiple employer welfare arrangement is exempt from the requirements of the Insurance Code that apply to a small employer carrier, the director must consider the following factors:

(1) Whether all of the benefits that are provided under the arrangement are guaranteed by policies of insurance issued by an authorized insurer.

(2) Whether the arrangement consists of an employee welfare benefit plan for employees of two or more employers or their beneficiaries as defined in ERISA sections 3 (5) and (40).

(3) Whether the arrangement is essentially controlled by an insurer, benefit service organization or individual for the purpose of creating a market for furnishing benefits to diverse individuals or groups rather than a bona fide multiple employer welfare arrangement.

Stat. Auth.: ORS 731.244, 743.731 & 746.240
Stats. Implemented: ORS 743.730(24)
Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 12-1996, f. & cert. e.f 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0211

Underwriting, Enrollment and Benefit Design Requirements Applicable to A Group Health Benefit Plan Including A Small Group Health Benefit Plan

(1) As used in this rule, an "enrollee" includes an employee covered under a group health benefit plan and a dependent of an employee covered under a group health benefit plan.

(2) A carrier issuing a group health plan may not:

(a) Modify health insurance with respect to an employee or any eligible dependent of an employee by means of a rider, endorsement or otherwise, for the purpose of restricting or excluding coverage for certain diseases or medical conditions otherwise covered by the health benefit plan;

(b) Decline to offer coverage to any eligible member of a group;

(c) Delay enrollment for an otherwise eligible member of the group or dependent for reasons related to actual or expected health status, race, color, national origin, sex, sexual orientation as defined in ORS 174.100, age or disability; or

(d) Use a health statement when offering a group health benefit plan.

(3) Unless otherwise required by law. a modification to an existing group health benefit plan that is required by ORS 743.730 to 743.754 must be implemented for each policyholder on the next renewal date. As used in this rule, "the next renewal date" means the first renewal date of the policy issued to the policyholder that occurs on or after January 1, 2014.

(4) A carrier must enroll a person who is eligible in a small group health benefit plan during the plan's open enrollment period and when a person is eligible or becomes eligible as a result of the occurrence of an event described in this section, if:

(a) The person applies for coverage within at least 30 calendar days after:

(A) An event described in section 603 of the Employee Retirement Income Security Act of 1974, as amended;

(B) An event described in 45 CFR 146.117(a)(3) if the person is eligible for special enrollment under 45 CFR 146.117(a)(2), except for an event described in 45 CFR 146.117(a)(3)(D) a carrier must enroll a person who applies for coverage within 30 days, or later if allowed by the carrier, after the first denial of a claim due to the operation of a lifetime limit on all benefits; or

(C) Gaining a dependent, including a spouse, or becoming a dependent through marriage, birth, adoption or placement for adoption if the person is eligible for special enrollment under 45 CFR 146.117(b)(2); or

(b) The person applies for coverage within 60 calendar days after:

(A) Loss of eligibility for coverage under a Medicaid plan under title XIX of the Social Security Act or a state child health plan under title XXI of the Social Security Act; or

(B) An event described in 45 CFR 155.725(j)(2)(iii).

(5) The following effective dates apply to coverage for enrollment under section (4) of this rule:

(a) For section (4)(a)(A), coverage must be effective by the applicable date described in 45 CFR 155.420(b)(1).

(b) For section (4)(a)(B) coverage must be effective no later than the first day of the first calendar month following the date the plan or issuer receives the request for special enrollment.

(c) For section (4)(a)(C) coverage must be effective:

(A) In the case of marriage, no later than the first day of the first calendar month following the date the carrier receives the request for special enrollment.

(B) In the case of birth, on the date of birth.

(C) In the case of adoption or placement for adoption, no later than the date of adoption or placement for adoption.

(e) For section (4)(b)(A) coverage must be effective by the applicable date described in 45 CFR 155.420(b)(1).

(f) For section (8)(b)(B) coverage must be effective no later than the first day of the first calendar month following the date the plan or issuer receives the request for special enrollment.

(6) At or before enrollment, a carrier must provide notice to an enrollee that complies with the requirements of 45 CFR 146.117(c).

(7) An enrollee under section (4) of this rule may not be considered a late enrollee.

(8) Violation of this rule is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731.244 & 743.731
Stats. Implemented: Sec. 7, ch. 681, OL 2013, ORS 743.522, 743.730–743.754 & 746.240
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0221

Participation, Contribution, and Eligibility Requirements for Group Health Benefit Plans Including Small Group Health Benefit Plans

(1) For every group health benefit plan, a carrier that chooses to enforce participation, contribution or eligibility requirements must:

(a) Specify in the plan all of participation, contribution and eligibility requirements that have been agreed upon by the carrier and the group; and

(b) Apply the participation and eligibility requirements uniformly to all categories of eligible members and their dependents.

(2) For a small group health benefit plan, a carrier:

(a) May establish and apply contribution requirements for different categories of members and dependents that exceed the minimum contribution;

(b) Must apply participation requirements on an aggregate basis in which all categories of eligible employees of a small employer are combined;

(c) Must apply participation and eligibility requirements uniformly to all small employers with the same number of eligible employees;

(d) If a carrier requires 100 percent participation of eligible employees in a small group health benefit plan, the carrier may not impose a contribution requirement upon the employer that exceeds 50 percent of the premium of an employee-only benefit plan; and

(e) Except as provided in this subsection, a carrier may not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer except at plan anniversary. At plan anniversary, the carrier may increase the requirements only to the extent those requirements are applicable to all other small employer groups of the same size. At the anniversary of a plan or at any time other than the anniversary, a small employer carrier may consider the existing small group as a new group for purposes of coverage if the eligibility requirements applicable to the group are changed by the employer.

(3) Violation of this rule is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731.244 & 743.751
Stats. Implemented: Sec. 7, Ch. 681, OL 2013, ORS 743.522, 743.730– 743.754 & 746.240
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0410

Purpose; Statutory Authority; Enforcement

(1) OAR 836-053-0410 to 836-053-0465 are adopted under the authority of ORS 743.499, 743.769 and 743.894 for the purpose of implementing ORS 743.766 to 743.769and 743.894 relating to individual health benefit plans.

(2) Violation of any provision of OAR 836-053-0430 to 836-053-0465 is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 743.499, 743.769 & 743.894
Stats. Implemented: ORS 743.499, 743.766–743.769 & 743.894
Hist.: ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0415

Cancellation of an Individual Health Benefit Plan Coverage

The notice requirements of ORS 743.499 and 743.894 are triggered at the time an insurer takes administrative action to terminate coverage.

Stat. Auth.: ORS 743.499, 743.769 & 743.894
Stats. Implemented: ORS 743.499, 743.766–743.769 & 743.894
Hist.: ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0431

Underwriting, Enrollment and Benefit Design

(1) A carrier must offer all of its approved nongrandfathered individual health benefit plans and plan options, including individual plans offered through associations, to all individuals on a guaranteed issue basis without regard to health status. Except as provided in section (2) of this rule:

(a) For individual health benefit plans approved by October 1 of each calendar year for sale in the following calendar year, a carrier may limit enrollment to:

(A) October 1, 2013 to March 31, 2014 for coverage effective in 2014;

(B) November 15, 2014 through January 15, 2015 for coverage effective in 2015; and

(C) October 15 to December 7 of each preceding calendar year for coverage effective on or after January 1, 2016; and

(b) Coverage must be effective consistent with the dates described in 45 CFR 155.410(c) and (f).

(2) A carrier must enroll an individual who, within 60 days before application for coverage with the carrier:

(a) Loses minimum essential coverage. Loss of minimum essential coverage does not include termination or loss due to failure to pay premiums or rescission as specified in 45 CFR 147.128. The effective date of coverage for the loss of minimum essential must be consistent with the requirements of 45 CFR 155.420(b)(1).

(b) Gains a dependent or becomes a dependent through marriage, birth, adoption or placement for adoption or foster care. The effective date for coverage for enrollment under this paragraph must be:

(A) In the case of marriage, no later than the first day of the first calendar month following the date the carrier receives the request for special enrollment.

(B) In the case of birth, on the date of birth.

(C), In the case of adoption or placement for adoption or foster care no later than the date of adoption or placement for adoption or foster care.

(c) Experiences a qualifying event as defined under section 603 of the Employee Retirement Income Security Act of 1974, as amended.

(d) Experiences an event described in 45 CFR 155.420(d)(4), (5), (6), or (7). The effective date of coverage for enrollment under this paragraph must be:

(A) For 45 CFR 155.420(d)(4) or (d)(5), consistent with the requirements of 45 CFR 155.420(b)(2)(iii).

(B) For 45 CFR 155.420(d)(6) or (d)(7), consistent with the requirements of 45 CFR 155.420(b)(1).

(e) Loses eligibility for coverage under a Medicaid plan under title XIX of the Social Security Act or a state child health plan under title XXI of the Social Security Act. The effective date of coverage for enrollment under this paragraph must be consistent with the requirements of 45 CFR 155.420(b)(1).

(3) Notwithstanding section (1)(a)(A) of this rule, a carrier must enroll an individual who is enrolled in an individual health benefit plan with a policy year that terminates after March 31, 2014 if the individual applies for coverage within 30 calendar days before the end of the individual's individual health benefit plan policy year. This subsection does not require a carrier to enroll an individual enrolled in an individual health benefit plan with a policy year that ends after December 31, 2014 if enrollment is not otherwise required under section (1) or (2) of this rule. The effective date of coverage for enrollment under this subsection must be effective consistent with the requirements of 45 CFR 155.420(b)(1).

(4) Except as permitted under a preexisting condition provision of a grandfathered individual plan, a carrier may not modify the benefit provisions of an individual health benefit plan for any enrollee by means of a rider, endorsement or otherwise for the purpose of restricting or excluding coverage for medical services or conditions that are otherwise covered by the plan.

(5) A carrier may offer wrap-around occupational coverage to an accepted individual health benefit plan applicant.

(6) A carrier may impose an individual coverage waiting period on the coverage of certain new enrollees in a grandfathered individual health benefit plan in accordance with ORS 743.766. The terms of the waiting period must be specified in the policy form and enrollee summary. The waiting period may apply only when the carrier has determined that the enrollee has a preexisting health condition warranting the application of a waiting period through evaluation of the form entitled "Oregon Individual Standard Health Statement" as set forth on the website of the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov.

(7) A carrier may treat a request by an enrollee in an individual health benefit plan to enroll in another individual plan as a new application for coverage.

(8) Unless otherwise required by law, a carrier must implement a modification of a nongrandfathered individual health benefit plan required by statute on the next anniversary or fixed renewal date of the plan that occurs on or after the operative date of the statutory provision requiring the modification.

(9) For a grandfathered individual health benefit plan:

(a) Unless otherwise required by law, a carrier must implement a modification required by statute on the first day of the calendar year that occurs on or after the operative date of the statutory provision requiring the modification.

(b) A carrier must eliminate and deem ineffective a rider or endorsement in effect for an enrollee based on the actual or expected health status of the enrollee and that excludes coverage for diseases or medical conditions otherwise covered by the plan as of the next renewal date;

(c) If an enrollee who is subject to a preexisting condition provision has a rider or endorsement eliminated in accordance with subsection (a) of this section, the enrollee's medical condition that is subject to the rider or endorsement may be subject to the preexisting conditions provision of the plan, including the prior coverage credit provisions;

(10) In accordance with applicable federal law, a carrier may not deny continuation or renewal of an individual health benefit plan based on Medicare eligibility of an individual but an individual health benefit plan may contain a Medicare non-duplication provision.

(11) Violation of this rule is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 743.745 & 743.769
Stats. Implemented: ORS 743.745 & 743.766–743.769
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0465
Rating for Individual Health Benefit Plans

(1) Individual health benefit plans must be rated in accordance with the geographic areas specified in OAR 836-053-0065. A carrier must file a single geographic average rate for each health benefit plan that is offered to individuals within a geographic area. The geographic average rate must be determined on a pooled basis, and the pool shall include all of the carrier's business in the Oregon individual market.

(2) The variation in geographic average rates among different individual health benefit plans offered by a carrier must be based solely on objective differences in plan design or coverage. The variation shall not include differences based on the risk characteristics or claims experience of the actual or expected enrollees in a particular plan.

(3) A carrier may use the same geographic average rate for multiple rating areas.

(4) For a nongrandfathered health benefit plan:

(a) A carrier must implement premium rate increases on a fixed schedule that applies concurrently to all enrollees in a plan. A carrier may adjust an enrollee's premium during the rating period if the enrollee has a change in family composition.

(b) Premium rates must total the sum of the product of the applicable factors in subsection (c) of this section for each enrollee and dependent 21 years of age and older and the sum of the product of the applicable factors in section (7) of this rule for each of the three oldest dependent children under the age of 21.

(c) As determined by a carrier, variations in rates may be based on one or both of the following factors:

(A) The ages of enrollees and their dependents according to Exhibit 1 to this rule. Variations in rates based on age may not exceed a ratio of three to one; or

(B) A tobacco use factor of no more than one and one-half times the non-tobacco use rate for persons 18 years of age or older except that the factor may not be applied when the person is enrolled in a tobacco cessation program.

(5) For a grandfathered health benefit plan, a carrier must:

(a) Implement premium rate increases in a consistent manner for all enrollees in a plan. A carrier may use either of the following methods to schedule premium rate increases for all enrollees in a grandfathered health benefit plan:

(A) A rolling schedule that is based on the anniversary of the date of coverage issued to each enrollee or on another anniversary date established by the carrier; or

(B) A fixed schedule that applies concurrently to all enrollees in a plan. If a fixed schedule is used, a carrier may adjust the premium of an enrollee during the rating period if the enrollee moves into a higher age bracket or has a change in family composition.

(6) In addition to other bases offered by a carrier, an enrollee of an individual health benefit plan must be offered the opportunity to pay premium on a monthly basis.

Stat. Auth.: ORS 731.244, 743.019, 743.020 & 743.769
Stats. Implemented: ORS 743.766–743.769, 746.015 & 746.240
Hist.: ID 12-1996, f. & cert. ef. 9-23-96; Renumbered from 836-053-0420, ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 7-2001(Temp), f. 5-30-01, cert. ef. 5-31-01 thru 11-16-01; ID 14-2001, f. & cert. ef. 11-20-01; ID 5-2010, f. & cert. ef. 2-16-10; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0472
Statutory Authority and Implementation

(1) OAR 836-053-0473 and 836-053-0475 are adopted under the authority of ORS 731.244, 743.018, 743.019, and 743.020 to aid in giving effect to provisions of ORS Chapters 742 and 743 relating to the filing of rates and policy forms with the Director. The requirements of OAR 836-053-0473 and 836-053-0475 are in addition to any other requirements established by statute or by rule or bulletin of the Department.

(2) OAR 836-053-0473 and 836-053-0475 apply to the following rate filings submitted or resubmitted to the Director on or after April 1, 2010:

(a) Health benefit plans for small employers;

(b) Individual health benefit plans.

Stat. Auth.: ORS 743.018, 743.019 & 743.020
Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730 & 743.767
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0473
Required Materials for Rate Filing for Individual or Small Employer Health Benefit Plans

(1) Every insurer that offers a health benefit plan for small employers or an individual health benefit plan must file the information specified in

section (2) of this rule when the insurer files with the director a schedule or table of premium rates for approval.

(2) A schedule or table of base premium rates filed under section (1) of this rule must include sufficient information and data to allow the director to consider the factors set forth in ORS 743.018(4) and (5). The filing must include all of the following separately set forth and labeled as indicated:

(a) A filing description labeled "Filing Description." The filing description must:

(A) Be submitted in the form of a cover letter;

(B) Provide a summary of the reasons an insurer is requesting a rate change and the minimum and maximum rate impact to all groups or members affected by the rate change, including the anticipated change in number of enrollees if the proposed premium rate is approved;

(C) Explain the rate change in a manner understandable to the average consumer; and

(D) Include a description of any significant changes the insurer is making to the following:

(i) Rating factor changes; and

(ii) Benefit or administration changes.

(b) Rate tables and factors labeled "Rate Tables and Factors." The rate tables and factors must:

(A) Include base and geographic average rate tables;

(B) Identify factors used by the insurer in developing the rates;

(C) Explain how the information is used in the development of rates;

(D) Include a table of rating factors reflecting ages of employees and dependents and geographic area.

(E) Include rate tier tables if base rates are not provided by rating tier;

(F) Indicate whether the rate increases are the same for all policies;

(G) Explain how the rate increases apply to different policies;

(H) Provide the entire distribution of rate changes and the average of the highest and lowest rates resulting from the application of other rating factors;

(I) Within the geographic average rate table, include family type, geographic area and the average of the highest and lowest rates resulting from the application of other rating factors;

(J) Within the base rate table, include the base rates for each available plan and sufficient information for determination of rates for each health benefit plan, including but not limited to:

(i) Each age bracket;

(ii) Each geographic area;

(iii) Each rate tier;

(iv) Any other variable used to determine rates; and

(v) If the rates vary more frequently than annually, separate rates for each effective date of change or sufficient information to permit the determination of the rates and the justification for the variation in the rates;

(K) For a grandfathered small group health benefit plan, include the following factors if applied by the insurer:

(i) Contribution;

(ii) Level of participation;

(iii)Family composition;

(iv) The level at which enrollees or dependents engage in health promotion, disease prevention or wellness programs;

(v) Duration of coverage in force;

(vi) Any adjustment to reflect expected claims experience; and

(vii) Age.

(L) For a grandfathered individual health benefit plan, include the following factors to the extent applied by the insurer:

(i) Family composition; and

(iv) Age; and

(M) For a nongrandfathered health benefit plan, include the following factors if applied by the insurer:

(i) Tobacco usage; and

(ii) The level at which enrollees or dependents engage in health promotion, disease prevention, or wellness programs.

(c) An actuarial memorandum consistent with the requirements of both state and federal law labeled "Actuarial Memorandum." The actuarial memorandum must include all of the following:

(A) A description of the benefit plan and a quantification of any changes to the benefit plan as set forth in subsection (e) of this section;

(B) A discussion of assumptions, factors, calculations, rate tables and any other information pertinent to the proposed rate, including an explanation of the impact of risk corridors, risk adjustment and state and federal reinsurance on the proposed rate;

(C) A description of any changes in rating methodology supported by sufficient detail to permit the department to evaluate the effect on rates and the rationale for the change;

(D) The range of rate impact to groups or members including the distribution of the impact on members;

(E) A cross-reference of all supporting documentation in the filing in the form of an index and citations;

(F) The dated signature of the qualified actuary or actuaries who reviewed and authorized the rate filing; and

(G) The contact information of the filer.

(d) A description of the development of the proposed rate change or base rate that is included as an exhibit to the filing and labeled "Exhibit 1: Development of Rate Change." The development of rate change is the core of the rate filing and must:

(A) Explain how the proposed rate or rate change was calculated using generally accepted actuarial rating principles for rating blocks of business;

(B) Include actual or expected membership information;

(C) Identify a proposed loss ratio for the rating period;

(D) Include a rate renewal calculation that:

(i) Begins with an assumed experience period of at least one year and ends within the immediately preceding year; or

(ii) If more recent data is available, uses the one-year period that ends with the most recent period for which data is available;

(E) Show adjustments to total premium earned during the experience period to yield premium adjusted to current rates;

(F) Include a projection of premiums and claims for the period during which the proposed rates are to be effective; and

(G) Provide a renewal projection using claims underlying the projection that reflect an assumed medical trend rate and other expected changes in claims cost, including but not limited to, the impact of benefit changes or provider reimbursement.

(e) A description of changes to covered benefits or health benefit plan design that is included as an exhibit to the rate filing and labeled "Exhibit 2: Covered Benefit or Plan Design Changes." The covered benefit or plan design changes must:

(A) Explain all applicable benefit and administrative changes with a rating impact, including but not limited to:

(i) Covered benefit level changes;

(ii) Member cost-sharing changes;

(iii) Elimination of plans;

(iv) Implementation of new plan designs;

(v) Provider network changes;

(vi) New utilization or prior authorization programs;

(vii) Changes to eligibility requirements; and

(viii) Changes to exclusions; and

(B) Show any change in the plan offerings that impacts costs or coverage provided not otherwise provided pursuant to subsection (e)(A) of this section.

(f) The average annual rate change included as an exhibit to the filing and labeled "Exhibit 3: Average Annual Rate Change." The average annual rate change must:

(A) Provide the average, maximum and minimum annual rate changes for each effective date in the filing;

(B) Include a meaningful distribution of rate changes; and

(C) Provide an estimate of contributing factors to the annual rate change.

(g) Trend information and projection included as an exhibit to the filing and labeled "Exhibit 4: Trend Information and Projection." The trend information and projection must:

(A) Describe how the assumed future growth of medical claims (the medical trends rate) was developed based on generally accepted actuarial principles; and

(B) At a minimum, include historical monthly average claim costs for the two years immediately preceding the period for which the proposed rate is to apply. If the carrier's structure does not include claims cost, the carrier must submit this information based on allocated costs.

(h) A statement of administrative expenses and premium retention included as an exhibit to the filing and labeled "Exhibit 5: Statement of Administrative Expenses and Premium Retention." The statement of administrative expenses and premium retention must:

(A) Include a completed chart displaying the five-year trend of administrative costs and enumerating the insurer's administrative expenses detailed as follows:

(i) Salaries;

(ii) Rent;

(iii) Advertising;

(iv) General office expenses;

(v) Third party administration expenses;

(vi) Legal and other professional fees; and

(vii) Travel and other administrative costs not accounted for under a category in subsections (h)(B)(i)–(vi) of this section;

(B) Explain how the insurer allocates administrative expenses for the filed line of business;

(C) Include a description of the amount retained by the insurer to cover all of the insurer's non-claim costs including expected profit or contribution to surplus for a nonprofit entity reported on a percentage of premium and per member per month basis; and

(D) Demonstrate the total premium retention for the filing, including total administrative expenses reported under subsection (h)(B) of this section, commissions, taxes, assessments and margin.

(i) Plan relativities included as an exhibit to the filing and labeled "Exhibit 6: Plan Relativities." Plan relativities must:

(A) Explain the presentation of rates for each benefit plan;

(B) Explain the methodology of how the benefit plan relativities were developed; and

(C) Demonstrate the comparison and reasonableness of benefits and costs between plans.

(j) Information about the insurer's financial position included as an appendix to the filing and labeled "Appendix I: Insurer's Financial Position." The insurer's financial position may reference documents filed with the department and available to the public, including the insurer's annual statement. The insurer's financial position must include:

(A) Information about the insurer's financial position including but not limited to the insurer's:

(i) Profitability;

(ii) Surplus;

(iii) Reserves; and

(iv) Investment earnings; and

(B) An analysis, explanation and determination of whether the proposed change in the premium rate is necessary to maintain the insurer's solvency or to maintain rate stability and prevent excessive rate increases in the future.

(k) Changes in the insurer's health care cost containment and quality improvement efforts included as an appendix to the filing and labeled "Appendix II: Cost Containment and Quality Improvement Efforts. The cost containment and quality improvement efforts must:

(A) Explain any changes the insurer has made in its health care cost containment efforts and quality improvement efforts since the insurer's last rate filing for the same category of health benefit plan.

(B) Describe significant new health care cost containment initiatives and quality improvement efforts;

(C) Include an estimate of the potential savings from the initiatives and efforts described in subsection (2(g)(B) of this section together with an estimate of the cost or savings for the projection period; and

(D) Include information about whether the cost containment initiatives reduce costs by eliminating waste, improving efficiency, by improving health outcomes through incentives, by elimination or reduction of covered services or reduction in the fees paid to providers for services.

(l) Certification of compliance labeled "Certification of Compliance." The certification of compliance must:

(A) Comply with OAR 836-010-0011; and

(B) Certify that the filing complies with all applicable Oregon statutes, rules, product standards and filing requirements.

(m) Third party filer's letter of authorization labeled "Third Party Authorization." If the filing is submitted by a person other than the insurer to which the filing applies, the filing must include a letter from the insurer that authorizes the third party to:

(A) Submit the filing to the department;

(B) Correspond with the department on matters pertaining to the rate filing; and

(C) Act on the insurer's behalf regarding all matters related to the filing.

(3)(a) Within 10 days after receiving a proposed table or schedule of premium rate filing, the director must:

(A) Determine whether the proposed table or schedule of premium rate filing is complete. If the director determines that a filing is complete, the director must review the proposed schedule or table of premium rates in accordance with ORS 742.003, 742.005, 742.007 and 743.018. If the director determines that the filing is not complete, the director must notify the insurer in writing that the filing is deficient and give the insurer an opportunity to provide the missing information.

(B) If the filing is complete, open the 30-day public comment period. For purposes of determining the beginning of the public comment period, the date the carrier files a proposed schedule or table of premium rates shall be the date the director determines that the filing is complete.

(b) Within 10 days after the close of the public comment period, the director must issue a decision approving, disapproving or modifying the proposed table or schedule of premium rate filing.

(4) At the beginning of the public comment period, the director must post on the Insurance Division website all materials submitted under section (2) of this rule.

Stat. Auth.: ORS 743.018, 743.019 & 743.020

Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730 & 743.767

Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0475

Approval, Disapproval or Modification of Premium Rates for Individual or Small Employer Health Benefit Plan

(1) The materials submitted under OAR 836-053-0473 must include information sufficient to allow the director to evaluate the proposed schedule or table of premium rates for approval, disapproval or modification. After conducting an actuarial review of the rate filing, the director may approve a proposed premium rate for a health benefit plan for small employers or for an individual health benefit plan if, in the director's discretion, the proposed rates meet the requirements of ORS 742.003, 742.005, 742.007 and 743.018.

(2) The director may approve reasonable increases or decreases in administrative expenses supported by the information provided under OAR 836-053-0473. In addition to the materials submitted under OAR 836-053-0473, in order to determine whether the proposed increase or decrease in administrative expenses is reasonable, the director may consider the cost of living for the previous calendar year, based on the Producer Price Index for Direct Health and Medical Insurance Carriers Industry, as published by the Bureau of Labor Statistics of the United States Department of Labor.

Stat. Auth.: ORS 743.018, 743.019 & 743.020

Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730 & 743.767

Hist.: ID 5-2010, f. & cert. ef. 2-16-10; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0510

Evaluating the Health Status of an Applicant for Individual Health Benefit Plan Coverage

(1) A carrier may not use any health statement except the health statement entitled, "Oregon Standard Health Statement" set forth on the website for the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov to evaluate the health status of an applicant for coverage in a grandfathered individual health benefit plan. In all instances in which a carrier uses the Oregon Standard Health Statement, the carrier must pay for the costs associated with its use or the collection of information described in section (2) of this rule.

(2) In evaluating an Oregon Standard Health Statement, a carrier may request the applicant's medical records or a statement from the applicant's attending physician, but such a request may be made only for questions marked "Yes" by the applicant in the numbered questionnaire portion of the statement. Although a carrier's request for additional medical information is limited to the specific questions marked "Yes," a carrier may use all of the information received in response to such a request in evaluating the applicant's health statement.

(3) A carrier may require an applicant for a nongrandfathered individual health benefit plan to provide health-related information for the sole purpose of health care management, including providing or arranging for the provision of services under the plan.

(a) A carrier that chooses to collect health-related information from an applicant before enrollment must:

(A) Prominently state immediately before, and on the same page as, any health-related questions that:

(i) Health-related information provided by the applicant will be used solely for health care management purposes.

(ii) The applicant's coverage cannot and will not be denied, terminated, delayed, limited or rescinded based on the applicant's responses or failure to respond to the questions.

(iii) The premium charged for the insurance policy cannot and will not change based on the applicant's responses or failure to respond to questions.

(B) Limit pre-enrollment health-related questions to whether an applicant:

(i) Has a disability or a chronic health condition

(ii) Has been advised by a licensed medical professional in the twelve months before application that hospitalization, surgery or treatment is necessary or pending.

(iii) Is pregnant.

(b) A carrier that chooses to ask questions described in paragraph (3)(a)(B) of this section, may include the following as examples of a disability or chronic health condition:

(A) Asthma,

(B) Lung disease,

(C) Depression,

(D) Diabetes,

(E) Heart disease,

(F) Chronic back pain,

(G) Chronic joint pain,

(H) Obesity.

(c) A carrier may not delay or refuse to issue nongrandfathered individual coverage to an applicant because the applicant has failed to respond or failed to respond completely to the questions allowed under paragraph (3)(a)(B) of this section.

(d) For purposes of ORS 743.751 and this section, "applicant" includes a prospective enrollee or dependent of a prospective enrollee.

(4) Violation of any provision of this rule is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731.244 & 743.751

Stats. Implemented: ORS 743.751

Hist.: ID 12-1996, f. & cert. ef. 9-23-96; Renumbered from 836-053-0470, ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 9-2004, f. & cert. ef. 11-19-04; ID 9-2011, f. & cert. ef. 2-23-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0825

Rescission of a Group Health Benefit Plan

(1) For purposes of ORS 743.737 and 743.754, "representative" means a person who, with specific authority from the employer or plan sponsor to do so, binds the employer or plan sponsor to a contract for health benefit plan coverage.

(2) The notice required by ORS 743.737(6), 743.754(8) and 743.894(3) to each plan enrollee affected by the rescission must be in writing and include all of the following:

(a) Clear identification of the alleged fraudulent act, practice or omission or the intentional misrepresentation of material fact underlying the rescission.

(b) An explanation of why the act, practice or omission was fraudulent or was an intentional misrepresentation of a material fact.

(c) A statement explaining an enrollee's right to file a grievance or request a review of the decision to rescind coverage.

(d) A description of the health carrier's applicable grievance procedures, including any time limits applicable to those procedures.

(e) A statement explaining that complaints relating to the notice of rescission required under ORS 743.737(6), 743.754(8) and 743.894(3) may be made with the Insurance Division of the Department of Consumer and Business Services by writing to the Insurance Division at PO Box 14480, Salem, OR 97309-0405; by calling (503) 947-7984 or (888) 877-4894; online at http://www.insurance.oregon.gov; or by electronic mail to cp.ins@state.or.us. The statement shall also explain that complaints to the Insurance Division do not constitute grievances under the health benefit plan and may not preserve an enrollee's rights under the plan.

(f) The toll-free customer service number of the insurer.

(g) The effective date of the rescission and the date back to which the coverage will be rescinded.

(3) Subject to ORS 743.777(3), a health carrier may provide the required notice for small employer group health insurance either by first class mail or electronically.

(4)(a) On or before June 30 of each calendar year, an insurer must submit an electronic notice for the preceding calendar year in the format prescribed by the Director of the Department of Consumer and Business Services and in accordance with instructions accessed through the website of the Insurance Division at http://www.insurance.oregon.gov. The notice required by ORS 743.737 (6)(c), 743.754 (8)(c) and 743.894(4) must include information related to group health benefit plan rescissions including but not limited to the total number of:

(A) Fully rescinded group health benefit plans;

(B) Partially rescinded group health benefit plans;

(C) Group health benefit plans in force on December 31 of the report year;

(D) Enrollees affected by a fully rescinded group health benefit plan; and

(E) Enrollees affected by a partially rescinded group health benefit plan.

(b) The notice required under this section may be combined with the notice required under OAR 836-053-0830 and 836-053-0835.

Stat. Auth.: ORS 743.018, 743.019, 743.020 & 743.894

Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730, 743.737, 743.754 & 743.767 & 743.894

Hist.: ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0830

Rescission of an Individual Health Benefit Plan or Individual Health Insurance Policy

(1) The notice required by ORS 743.894(2) to the individual whose coverage is rescinded must be in writing and include all of the following:

(a) Clear identification of the alleged fraudulent act, practice or omission or the intentional misrepresentation of material fact underlying the rescission.

(b) An explanation as to why the act, practice or omission was fraudulent or was an intentional misrepresentation of a material fact.

(c) A statement informing the individual of any right the individual has to file a grievance or to request a review of the decision to rescind coverage.

(d) A description of the health carrier's grievance procedures, including any time limits applicable to those procedures if such procedures are available to the individual.

(e) A statement explaining that complaints relating to the notice of rescission required by ORS 743.894(2) may be made with the Oregon Insurance Division by writing to PO Box 14480, Salem, OR 97309-0405; by calling (503) 947-7984 or (888) 877-4894; online at http://www.insurance.oregon.gov; or by electronic mail to cp.ins@state.or.us. The statement shall also explain that such complaints do not constitute grievances under the health benefit plan or health insurance policy and may not preserve an enrollee's rights under the plan or policy.

(f) The toll-free customer service number of the insurer.

(g) The effective date of the rescission and the date back to which the coverage will be rescinded.

(2) Subject to ORS 743.777, a health carrier may provide the notice required under ORS 743.894(2) for individual health insurance either by first class mail or electronically.

(3)(a) On or before June 30 of each calendar year, an insurer must submit an electronic notice for the preceding calendar year in the format prescribed by the Director of the Department of Consumer and Business Services and in accordance with instructions set forth on the website of the Insurance Division of the Department of Consumer and Business Services at http://www.insurance.oregon.gov. The notice required by ORS 743.894(4) must include information related to rescission of individual health benefit plans and individual health insurance policies including but not limited to the total number of:

(A) Fully rescinded individual health benefit plans and individual health insurance policies;

(B) Partially rescinded individual health benefit plans and health insurance policies;

(C) Individual health benefit plans and individual health insurance policies in force on December 31 of the report year; and

(D) Enrollees affected by full or partial rescission of an individual health benefit plan or individual health insurance policy.

(b) The notice required under this section may be combined with the notice required under OAR 836-053-0825 and 836-053-0835.

Stat. Auth.: ORS 731.244 & 743.894

Stats. Implemented: ORS 743.731 & 743.894

Hist.: ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0835

Rescission of an Individual's Coverage under a Group Health Benefit Plan or Group Health Insurance Policy

(1) Subject to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, P.L. 99-272, April 7, 1986, and ORS 743.601 and 743.610, for purposes of rescission of an individual's coverage under a group health insurance policy, including a group health benefit plan under ORS 743.737, 743.754, and 743.894, "rescission" does not include retroactive cancellation or discontinuance of coverage of an enrollee if:

(a) The enrollee is no longer eligible for such coverage;

(b) The enrollee has not paid required premiums or contributed to coverage or any premiums paid have been refunded; and

(c) The insurer is not notified of the enrollee's change in eligibility when the change occurs.

(2) The notice required by ORS 743.737(5), 743.754(7) and 743.894(2) to each plan enrollee affected by rescission of coverage under a group health benefit plan or group health insurance policy must be in writing and include all of the following:

(a) Clear identification of the alleged fraudulent act, practice or omission or the intentional misrepresentation of material fact underlying the rescission.

(b) An explanation of why the act, practice or omission was fraudulent or was an intentional misrepresentation of a material fact.

(c) A statement explaining an enrollee's right to file a grievance or request a review of the decision to rescind coverage.

(d) A description of the health carrier's applicable grievance procedures, including any time limits applicable to those procedures.

(e) A statement explaining that complaints relating to the notice of rescission required under ORS 743.737(5), 743.754(7) and 743.894(2) may be made with the Insurance Division of the Department of Consumer and Business Services by writing to the Insurance Division at PO Box 14480, Salem, OR 97309-0405; by calling (503) 947-7984 or (888) 877-4894; online at http://www.insurance.oregon.gov; or by electronic mail to cp.ins@state.or.us. The statement shall also explain that complaints to the Insurance Division do not constitute grievances under the group health benefit plan or group health insurance policy and may not preserve an enrollee's rights under the plan or policy.

(f) The toll-free customer service number of the insurer.

(g) The effective date of the rescission and the date back to which the coverage will be rescinded.

(3) Subject to ORS 743.777, a health carrier may provide the required notice for small employer group health insurance either by first class mail or electronically.

(4)(a) On or before June 30 of each calendar year, an insurer must submit an electronic notice for the preceding calendar year in the format prescribed by the Director of the Department of Consumer and Business Services and in accordance with instructions set forth on the website of the Insurance Division of the Department of Consumer and Business Services at http://www.insurance.oregon.gov. The notice required by ORS 743.737(5), 743.754(7) and 743.894(4) must include information related to rescissions of enrollee coverage under a group health benefit plan or group health insurance policy including but not limited to the total number of enrollees affected by full or partial rescission of coverage under a group health benefit plan or group health insurance policy.

(b) The notice required under this section may be combined with the notice required under OAR 836-053-0825 and 836-053-0830.

Stat. Auth.: ORS 743.244, 743.737, 743.754 & 743.894
Stats. Implemented: ORS 743.737, 743.754 & 743.894
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0851
Purpose; Authority; Applicability; and Enforcement

OAR 836-053-0851 to 836-053-0862 apply to insurers issuing continuation coverage as required under ORS 743.610 and are adopted under the authority of ORS 731.244, 743.601 and 743.610.

Stat. Auth.: ORS 731.244 & 743.610
Stats. Implemented: ORS 743.610
Hist.: ID 12-2010, f. & cert. ef. 6-11-10, ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0900
Purpose; Statutory Authority

OAR 836-053-0900 and 836-053-0910 are adopted under the authority of ORS 731.244 for the purpose of carrying out ORS 743.730 to 743.773 and providing rate filing requirements and procedures for small employer and individual health benefit plans.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.730 - 743.773
Hist.: ID 13-1996(Temp), f. & cert. ef. 9-23-96; ID 2-1997, f. & cert. ef. 3-28-97; ID 5-1998, f. & cert. ef. 3-9-98, Renumbered from 836-053-0180; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-0910
Rate Filing

(1) A carrier must file with the Director of the Department of Consumer and Business Servicesthe appropriate checklists and certification statements as established in OAR 836-010-0011.

(2) A carrier may not:

(a) Offer a small group or individual health benefit plan until the director has determined that the filed geographic average rate meets the applicable statutory requirements.

(b) Modify an approved geographic average rate unless the director has determined that the modification meets the applicable statutory requirements.

(3) Rate filings for small group and individual health benefit plans must be submitted to the director in one of the following electronic formats:

(a) The National Association of Insurance Commissioners' System for Electronic Rate and Form Filings (SERFF) format; or

(b) PDF format for a filing that is less than three megabytes. For the purpose of this subsection, each filing requirement, such as an exhibit, an actuarial memorandum or a certificate of compliance, must be in a separate PDF format that is less than three megabytes . These filings may be submitted by electronic mail with documents attached in PDF format, or the filings may be submitted on a compact disc with documents attached in PDF format. If submitting by electronic mail, the combined size of the electronic mail plus attached documents being transmitted must be less than four megabytes.

(4) The director must post the contents of rate filings described in section (3) of this rule and rate filing summaries described in 836-053-0473 for public inspection on the website for the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov.

Stat. Auth.: ORS 731.244, 743.019, 743.020
Stats. Implemented: ORS 743.019, 743.020, 743.730 - 743.773
Hist.: ID 13-1996(Temp), f. & cert. ef. 9-23-96; ID 2-1997, f. & cert. ef. 3-28-97; ID 5-1998, f. & cert. ef. 3-9-98, Renumbered from 836-053-0185; ID 13-2007(Temp), f. & cert. ef. 12-21-07 thru 5-10-08; Administrative correction 5-20-08; ID 8-2008, f. & cert. ef. 6-18-08; ID 5-2010, f. & cert. ef. 2-16-10; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1000
Statutory Authority and Implementation

(1) OAR 836-053-1000 to 836-053-1200 are adopted under the authority of ORS 731.244, 743.814 and 743.819, for the purpose of implementing ORS 743.804, 743.807, 743.814, 743.817, 743.819, 743.821, 743.829, 743.837 and 743A.012.

(2) For purposes of OAR 836-053-1000 to 836-053-1200, "insurer" includes a public entity that self insures employee health coverage pursuant to ORS 731.036(6) and a carrier as defined in 743.730 that offers a health benefit plan in Oregon.

Stat. Auth.: ORS 731.244, 743.814 & 743.819
Stats. Implemented: ORS 743.804, 743.807, 743.814, 743.817, 743.819, 743.821, 743.829, 743.837 & 743A.012
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 15-2010, f. & cert. 8-19-10; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1020
Drug Formularies

(1) For purposes of OAR 836-053-0000 to 836-053-1200:

(a) "Open formulary" means a method used by an insurer to provide prescription drug benefits in which all prescribed FDA approved prescription drug products are covered except for any drug product that is excluded by the insurer pursuant to the insurer's policy regarding medical appropriateness or by the terms of a specific health benefit plan, or except for an entire class of drug product that is excluded by the insurer.

(b) "Closed formulary" means a method used by an insurer to provide prescription drug benefits in which only specified FDA approved prescription drug products are covered, as determined by the insurer, but in which medical exceptions are allowed. Maximum benefits or coverage may be limited to formulary drugs in a health benefit plan with a closed formulary; and

(c) "Mandatory closed formulary" means a method used by an insurer to provide prescription drug benefits in which only specified FDA approved prescription drug products are covered, as determined by the insurer, and in which no exceptions are allowed.

(2) An insurer that uses an open formulary must have a written procedure that includes the written criteria or explains the review process established by the insurer for determining when an item will be limited or excluded pursuant to the insurer's policy regarding medical appropriateness.

(3) An insurer that uses a closed formulary must have a written procedure stating that FDA approved prescription drug products are covered only if they are listed in the formulary. The procedure must also describe how the insurer determines the content of the closed formulary and how the

insurer determines the application of a medical exception. The procedure must describe how a provider may request inclusion of a new item in the closed formulary and must ensure that the insurer will issue a timely written response to a provider making such a request.

(4) An insurer that uses a mandatory closed formulary must have a written procedure stating that FDA approved prescription drug products are covered only if they are listed in the formulary and that no exception is allowed. The procedure must describe how the insurer determines the content of the mandatory closed formulary. The procedure must also describe how a provider may request inclusion of a new item in the formulary and must ensure that the insurer will issue a timely written response to a provider making such a request.

(5) An insurer must furnish a copy of the procedures it has adopted under section (2), (3), or (4) of this rule to a provider with authority to prescribe drugs and medications, upon the request of the provider.

(6) Except as provided in section (7) of this rule, a formulary must comply with the requirements of 45 CFR 156.122 and include the greater of:

(a) At least one drug in every United States Pharmacopeia therapeutic category and class; or

(b) The same number of drugs in each United States Pharmacopeia category and class as the prescription drug benefit of the plan described in OAR 836-053-0008(1)(a).

(7) An insurer that issues a small group or individual health benefit plan formulary that does not comply with the requirements of section (6) of this rule must file with the Director of the Department of Consumer and Business Services the form entitled "Formulary-Inadequate Category/Class Count Justification" as set forth on the website of the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov. The director may approve a formulary that does not meet the requirements of section (6) of this rule if:

(a) Drugs in a category or class have been discontinued by the manufacturer;

(b) Drugs in a category or class have been deemed unsafe by the Food and Drug Administration or removed from market by the manufacturer due to safety concerns;

(c) Drugs in a category of class have a Drug Efficacy Study Implementation classification;

(d) Drugs in a category or class have become available as generics; or

(e) Drugs in a category or class are provided in a medical setting and are covered under the medical provisions of the plan.

Stat. Auth.: ORS 731.244 & sec. 2, ch.681, OL 2013
Stats. Implemented: ORS 743.804 & sec. 2, ch. 681, OL 2013
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1030
Written Information to Enrollees

(1) Each insurer must furnish written information to policyholders that is required by ORS 743.804, including but not limited to information relating to enrollee rights and responsibilities, including the right to appeal adverse benefit determinations, services, access thereto and related charges and scheduling, and access to external review, as provided in this rule. An insurer:

(a) Must furnish the information regarding an individual health insurance policy to each policyholder; and

(b) Must furnish the information regarding a group health insurance policy to the group policyholder for distribution to enrollees of the group policy.

(2)(a) The written information described in section (1) of this rule must be included either in the policy or in other evidence of coverage that is delivered to the individual policyholder by the insurer, or in the case of a group health insurance policy, that is delivered by the insurer to the group policyholder for distribution to enrollees.

(b) As used inORS 743.804(2)(g), "continued coverage under the health benefit plan" means coverage of an ongoing course of treatment previously approved by the insurer.

(c) The information required under subsection (a) of this section must include all of the following:

(A) A description of the external review process, including when external review is available and how to request external review. The description must include the phone number of the Oregon Insurance Division.

(B) A disclosure that when filing a request for an external review the enrollee will be required to authorize the release of any records, including medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review.

(C) A disclosure that the enrollee is financially responsible for benefits paid to or on behalf of an enrollee pursuant to ORS 743.804(2)(g) if the insurer's adverse benefit determination is upheld on appeal.

(D) A disclosure that the enrollee may request and receive from the insurer the information the insurer is required to disclose under ORS 743.804(5).

(3) The information required by ORS 743.804 must include the following in relation to referrals for specialty care, behavioral health services, hospital services and other services, in addition to other relevant information regarding referrals:

(a) If applicable, how gate keeping or access controls apply to referrals and whether and how the controls differ for specialty care, behavioral health services and hospital services; and

(b) Any limitation on referrals if a plan has a defined network of participating providers and if referrals for specialty care may be limited to a portion of the network, such as to those specialists who contract with an enrollee's primary care group.

(4) The information required by ORS 743.804 must include the information required by ORS 743A.012, relating to coverage of emergency medical conditions and obtaining emergency services, including a statement of the prudent layperson standard for an emergency medical condition, as that term is defined in 743A.012. An insurer may meet the requirement of providing information in 743A.012 by providing adequate disclosure in the information required by 743.804(1) and this rule. An insurer may use the following statement regarding the use of the emergency telephone number 9-1-1, or other wording that appropriately discloses its use:

"If you or a member of your family needs immediate assistance for a medical emergency, call 9-1-1 or go directly to an emergency room."

(5) The information required by ORS 743.804(1)(b) and (4) must include information regarding the use of the insurer's grievance process, including the assistance available to enrollees in filing written grievances in accordance with OAR 836-053-1090 and the utilization review appeal procedures required by ORS 743.807(2)(c). The information must be contained in a separate section and captioned in a manner that clearly indicates that the section addresses grievances and appeals.

(6) The information required by ORS 743.804(1)(b) and (4) must include a notice that states the right of an enrollee to file a complaint with or seek assistance from the Director of the Department of Consumer and Business Services. An insurer may use the following statement or other appropriate wording for this purpose:

"You have the right to file a complaint or seek other assistance from the Oregon Insurance Division. Assistance is available:
By calling (503) 947-7984 or the toll free message line at (888) 877-4894;
By electronic mail at: cp.ins@state.or.us;
By writing to the Oregon Division of Insurance, Consumer Advocacy Unit at:
PO Box 14480; Salem, OR 97309-0405; or
Through the Internet at http://www.insurance.oregon.gov/consumer/consumer.html."

(7) The information required by ORS 743.804(1) for an insurance policy providing managed health care must include a description of the procedures by which enrollees, purchasers and providers may participate in the development and implementation of insurer policy and operation.

(8) The portion of the information required by ORS 743.804 that describes how an insurer makes decisions regarding coverage and payment for treatment or services must include a notice to enrollees that they may request an additional written summary of information that the insurer may consider in its utilization review of a particular condition to the extent the insurer maintains such criteria. The notice to enrollees must include the name and telephone number of the administrative section of the insurer that handles enrollee requests for information.

(9) If a plan has a defined network of participating providers, the information required by ORS 743.804 must include a list of all participating primary care providers, direct access providers and all specialty care providers. For the purposes of this section, a primary care provider or direct access provider is a participating provider under the terms of the plan who an enrollee may designate as the primary care provider for the enrollee or from whom an enrollee may obtain services without referral. The list of providers must include for each provider the provider's name, professional designation, category of practice and the city in which the practice of the provider is located.

(10) If a plan includes risk-sharing arrangements with physicians or other providers, the information required by ORS 743.804 must contain a statement to that effect, including a brief description of risk-sharing in general and must notify enrollees that additional information is available upon request. For the purpose of this requirement, a risk-sharing arrangement does not include a fee-for-service arrangement or a discounted fee-for-service arrangement. An insurer may use the following statement or other appropriate wording to describe risk-sharing:

"This plan includes "risk-sharing" arrangements with physicians who provide servic-

es to the members of this plan. Under a risk-sharing arrangement, the providers that are responsible for delivering health care services are subject to some financial risk or reward for the services they deliver. An example of a risk-sharing arrangement is a contract between an insurer and a group of heart surgeons in which the surgeons agree to provide all of the heart operations needed by plan members and the insurer agrees to pay a fixed monthly amount for those services."

(11) If the insurer of a plan uses a mandatory closed formulary, the information required by ORS 743.804 for that plan must prominently disclose and explain the formulary provision. The disclosure and explanation must be in boldfaced type or otherwise emphasized.

(12) An insurer that issues a health benefit plan must include a notice with the information required by ORS 743.804 that discloses that additional information is available to enrollees upon request]. The notice must include the name and telephone number of the insurer's administrative section that handles enrollee requests for information. The notice must also include the contact described in section (6) of this rule and a statement that the following additional information may be available from the Department of Consumer and Business Services: (a) An annual summary of grievances and appeals;

(b) An annual summary of utilization review policies;

(c) An annual summary of quality assessment activities;

(d) The results of all publicly available accreditation surveys;

(e) An annual summary of the insurer's health promotion and disease prevention activities;

(f) An annual summary of scope of network and accessibility of services.

Stat. Auth.: ORS 731.244 & 743.857
Stats. Implemented: ORS 743.699, 743.804 & 743.807
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1035
Summary of Benefits and Explanation of Coverage

The summary of benefits and explanations of coverage required by ORS 743.804 must be provided in a manner and form consistent with the requirements of 45 CFR 147.200.

Stat. Auth.: ORS 731.244 & 743.804
Stats. Implemented: ORS 743.804
Hist.: ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1070
Reporting of Grievances; Format and Contents

(1) To comply with the requirements in ORS 743.804, on or before June 30 of each calendar year, an insurer must submit information pertaining to grievances closed in the previous calendar year ending December 31. The data must be reported in the format prescribed by the Director of the Department of Consumer and Business Services as set forth on the website of the Insurance Division of the Department of Consumer and Business Services at http://www.insurance.oregon.gov. Filing and reporting requirements in this rule apply to:

(a) A domestic insurer; and

(b) A foreign insurer transacting $2 million or more in health benefit plan premium in Oregon during the calendar year immediately preceding the due date of a required report.

(2) For purposes of this rule, a grievance is "closed" if:

(a) The grievance has been appealed through all available grievance appeal levels; or

(b) The insurer determines that the complainant is no longer pursuing the grievance.

(3) The data to be included in the annual summary required by section (1) of this rule are as follows:

(a) The total number of grievances closed in the reporting year;

(b) The number of grievances closed in each of the categories listed in section (4) of this rule;

(c) The number and percentage of grievances in each of the categories listed in section (4) of this rule in which the insurer's initial decision is upheld and the number and percentage in which the initial decision is reversed at closure of the grievance;

(d) The number and percentage of all grievances that are closed at the conclusion of the first level of appeal;

(e) The number and percentage of all grievances that are closed at the conclusion of the second level of appeal;

(f) The number and percentage of all grievances that result in applications for external review; and

(g) For each level of appeal listed in subsections (d) and (e) of this section, the average length of time between the date an enrollee files the appeal and the date an insurer sends written notice of the insurer's determination for that appeal to the enrollee, or person filing the appeal on behalf of the enrollee.

(4) An insurer must report each grievance according to the nature of the grievance. The nature of the grievance shall be determined according to the categories listed in this section. The insurer must report each grievance in one category only and must have a system that allows the insurer to report accurately in the specified categories. If a grievance could fit in more than one category, an insurer shall report the grievance in the category established in this section that the insurer determines to be most appropriate for the grievance. The categories of grievances are as follows:

(a) Adverse benefit determinations based on medical necessity under ORS 743.857;

(b) Adverse benefit determinations based on an insurer's determination that a plan or course of treatment is experimental or investigational under ORS 743.857;

(c) Continuity of care as defined in ORS 743.854;

(d) Access and referral problems including timelines and availability of a provider and quality of clinical care;

(e) Whether a course or plan of treatment is delivered in an appropriate health care setting and with the appropriate level of care;

(f) Adverse benefit determinations of otherwise covered benefits due to imposition of a source-of-injury exclusion, out-of-network or out-of-plan exclusion, annual benefit limits or other limitations of otherwise covered benefits, or imposition of a preexisting condition exclusion in a grandfathered health plan;

(g) Adverse benefit determinations based on general exclusions, not a covered benefit or other coverage issues not listed in this section;

(h) Eligibility for, or termination of enrollment, rescission or cancelation of a policy or certificate;

(i) Quality of plan services, not including the quality of clinical care as provided in subsection (d) of this section;

(j) Emergency services; and

(k) Administrative issues and issues other than those otherwise listed in this section.

(5) Nothing in this rule prohibits an insurer from creating or using its own system to categorize the nature of grievances in order to collect data if the system allows the insurer to report grievances accurately according to the categories in section (4) of this rule and if the system enables the director to track the grievances accurately.

Stat. Auth.: ORS 731.244 & 732.819
Stats. Implemented: ORS 743.804
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 15-2010, f. & cert. 8-19-10; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1080
Tracking Grievances

An insurer must record data relating to all grievances, significant actions taken from each initial grievance filing through the appeals process, and applications for external review as required by ORS 743.804 in a manner sufficient for the insurer to report grievances accurately as required by ORS 743.804 and OAR 836-053-1070 and for the insurer to track individual files in response to a market conduct examination or other inquiry by the Director of the Department of Consumer and Business Services under ORS 733.170 or OAR 836-080-0215.

Stat. Auth.: ORS 731.244 & 743.819
Stats. Implemented: ORS 743.804
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 15-2010, f. & cert. 8-19-10; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1100
Internal Appeals Process

(1) An insurer must acknowledge receipt of an appeal from an enrollee not later than the seventh day after receiving the appeal.

(2)An insurer must make a decision on the appeal not later than the 30th day after receiving notice of the appeal.

(3) An otherwise applicable standard for timeliness in sections (1) or (2) of this rule does not apply when:

(a) The period of time is too long to accommodate the clinical urgency of the situation;

(b) The enrollee does not reasonably cooperate; or

(c) Circumstances beyond the control of a party prevent that party from complying with the standard, but only if the party who is unable to comply gives notice of the specific circumstances to the other party when the circumstances arise.

(4) For adverse benefit determinations eligible for external review under ORS 743.857, an insurer may waive its internal appeals process at any time. If the insurer waives its internal appeals process, the internal

appeals process is deemed exhausted for the purposes of qualifying for external review.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.804
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1110
Notice of Complaint Filing with Director

A written decision by an insurer in response to a grievance must prominently disclose the following information:

(1) That the enrollee has a right to file a complaint or seek other assistance from the Insurance Division of the Department of Consumer and Business Services; and

(2) The contact information for the Director of the Department of Consumer and Business Services described in OAR 836-053-1030(6).

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.804
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1130
Annual Summary, Utilization Review

(1) To comply with the requirements of ORS 743.807, an insurer must electronically submit on or before June 30 of each calendar year, an annual utilization review program summary for the preceding calendar year to the Insurance Division in the format required by the Director of the Department of Consumer and Business Services as set forth on the website of the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov. Filing and reporting requirements in this rule apply to:

(a) A domestic insurer; and

(b) A foreign insurer transacting $2 million or more in health benefit plan premium in Oregon during the calendar year immediately preceding the due date of a required report.

(2) For calendar year 2014 and each subsequent calendar year the annual summary required by section (1) of this rule must:

(a) Describe the insurer's utilization review policies ;

(b) Provide a summary of established processes and monitoring activities for each of the following program areas:

(A) Program oversight;

(B) Utilization review criteria development, implementation and revision;

(C) List of clinical information, research publications and other information used in the development of pre-service authorization requirements, concurrent review and other utilization review activities;

(D) Provider program participation procedures;

(E) Minimum qualifications of utilization review decision makers;

(F) Time frames for utilization review decisions;

(G) Enrollee and provider communication processes; and

(H) Program monitoring, review, evaluation and update; and

(c) Document:

(A) Delegated utilization review activities, including monitoring and oversight activities of those to whom the activities are delegated; and

(B) Policies for review and audit of delegates and delegated activities.

(3) To minimize duplicative reporting requirements, an insurer may meet the reporting requirements of this rule by submitting to the department either of the following:

(a) A copy of a report prepared for a national accreditation organization. An insurer submitting a copy of a report under this subsection must provide addenda to the report with additional information if the department determines that the report does not provide the information required.

(b) An addendum to an annual filing of the immediately preceding year:

(A) Stating, if applicable, that no information has changed since the previous annual filing; or

(B) Identifying, if applicable, only the information that has changed since the previous annual filing.

(4) An insurer may not submit addenda described in subsection (3)(b) of this rule in two consecutive years.

(5) Nothing in this rule prohibits an insurer from submitting additional information that is significant in relation to its quality assessment and improvement activities.

Stat. Auth.: ORS 731.244 & 743.819
Stats. Implemented: ORS 743.801, 743.804 & 743.807
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1140
Appeal and Utilization Review Determinations

(1) When a provider first appeals an insurer denial described in ORS 743.807(2)(c):

(a) The insurer must acknowledge receipt of the notice of appeal not later than the seventh day after receiving the notice; and

(b) An appropriate medical consultant or peer review committee must review the appeal and decide the issue not later than the 30th day after the insurer receives notice of the appeal.

(2) A standard for timeliness in section (1) of this rule does not apply when:

(a) The period of time is too long to accommodate the clinical urgency of the situation;

(b) The provider does not reasonably cooperate; or

(c) Circumstances beyond the control of a party prevent that party from complying with the standard, but only if the party who is unable to comply gives notice of the specific circumstances to the other party when the circumstances arise.

(3) An insurer must treat an appeal from a decision by a medical consultant or peer review committee pursuant to section (1)(b) of this rule as an internal appeal under the insurer's grievance procedures.

(4) Nothing in this rule prevents an enrollee from filing an internal appeal under the insurer's regular grievance procedure established pursuant to ORS 743.804 when the grievance concerns an adverse benefit determination, but this rule does not entitle a person not otherwise allowed to file a grievance a decision by a medical consultant or peer review committee to file such a grievance.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.804, 743.806 & 743.807
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1170
Annual Summary, Quality Assessment Activities

(1) To comply with the requirements of ORS 743.814(2) and (3), an insurer offering a managed health benefit plan shall electronically submit on or before June 30 of each calendar year an annual quality assessment program summary for the previous calendar year to the Insurance Division in the format required by the Director of the Department of Consumer and Business Services as set forth on the website of the Insurance Division of the Department of Consumer and Business Services. Filing and reporting requirements in this rule apply to:

(a) A domestic insurer; and

(b) A foreign insurer transacting $2 million or more in health benefit plan premium in Oregon during the calendar year immediately preceding the due date of a required report.

(2) For calendar year 2014 and each subsequent calendar year the annual summary required under section (1) of this rule must:

(a) Identify current quality assessment program accreditations, accrediting organization, accreditation level and date. If the quality assessment program is not accredited, describe plans and timelines, if any, to gain accreditation.

(b) Describe the insurer's quality assessment program that enables the insurer to evaluate, maintain and improve the quality of health services provided to enrollees.

(c) Identify the frequency of internal quality assessment program review, evaluation, and update.

(d) List quality improvement goals the insurer has identified, measures of success towards meeting those goals and outcomes demonstrated by selected measures.

(e) Provide a summary of policies and monitoring activities established for each of the following program areas:

(A) Internal program monitoring and oversight;

(B) Credentialing of providers;

(C) Provider program participation procedures;

(D) Clinical practice guidelines;

(E) Identification of priorities;

(F) Assessment of enrollee satisfaction; and

(G) Enrollee and provider communication processes

(3) For calendar year 2014 and each subsequent calendar year the annual summary required under section (1) of this rule must provide:

(a) The results of all publicly available federal Health Care Financing Administration reports and accreditation surveys by national accreditation organizations; and

(b) The reporting of the insurer's health promotion and disease prevention activities, if any, as defined in the Healthcare Effectiveness Data

Information Set maintained by the National Committee for Quality Assurance, including:

(A) The following preventive measures:

(i) Childhood immunizations, including the percentage of children in the insurer's managed care health plans who have received appropriate immunizations by their second birthdays; and

(ii) Tobacco use cessation, including the percentage of adult smokers and the percentage of those who have ceased tobacco use after receiving advice to quit smoking from a health professional in health plans of the insurer.

(B) The chronic condition of diabetes as specified in the Healthcare Effectiveness Data Information Set maintained by the National Committee for Quality Assurance.

(C) The acute condition of pregnancy care. The information must include the percentage of pregnant women in the insurer's health plans that began prenatal care during the first 13 weeks of pregnancy.

(4) To minimize duplicative reporting requirements, the insurer may satisfy the reporting requirements of sections (2) and (3) of this rule by submitting either of the following:

(a) Information prepared by the insurer for another purpose if the information contains the information required by sections (2) and (3) of this rule and the insurer highlights the relevant information to satisfy the reporting requirement; or

(b) An addendum to an annual filing of the immediately preceding year:

(A) Stating, if applicable, that no information has changed since the previous annual filing; or

(B) Identifying, if applicable, only the information that has changed since the previous annual filing.

(5) Summary information described in sections (2) and (3) of this rule may include information prepared by the insurer for the Healthcare Effectiveness Data Information Set maintained by the National Committee for Quality Assurance and may be submitted on the basis of any sampling method recognized by the Healthcare Effectiveness Data Information Set maintained by the National Committee for Quality Assurance. A multi-state or regional Healthcare Effectiveness Data Information Set maintained by the National Committee for Quality Assurance report may be used for reporting under this subsection if the insurer furnishes with the report the number or an estimate of the number of regional members and Oregon members to whom the report applies.

(6) An insurer may not submit addenda described in sections (2) and (3) of this rule in two consecutive years.

(7) Nothing in this rule prohibits an insurer from submitting additional information that is significant in relation to its quality assessment and improvement activities.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 731.244, 743.814 & 743.819

Stats. Implemented: ORS 743.804 & 743.814

Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 17-1998, f. & cert. ef. 11-16-98; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1180

Format and Instructions for Report Required by ORS 743.818

(1) As used in this rule:

(a) "Covered lives" means Oregon residents who are employees, dependents of employees, or individuals otherwise eligible for an individual, student health, association, group, or self-insured group health benefit plan or other benefit plan for which reporting is required and who are enrolled for coverage under the terms of the plan as of the close of the calendar quarter.

(b) "Carrier" has the meaning given that term in ORS 743.730(7).

(c) "Zip code" means the 5-digit code:

(A) Of the employee or individual policyholder's Oregon residence;

(B) Of an Oregon employer group covered by a stop loss policy; or,

(C) In circumstances for which no Oregon zip codes exists, the placeholder code established by the Director of the Department of Consumer and Business Services set forth on the website of the Insurance Division of the Department of Consumer and Business Services at http://www.insurance.oregon.gov.

(2) At quarterly intervals covering each year, a carrier authorized to transact health insurance in Oregon must submit information pertaining to covered lives through the reporting system of the Insurance Division in the format established by the Director of the Department of Consumer and Business Services and in accordance with instructions set forth on the website of the Insurance Division of the Department of Consumer and Business Services at http://www.insurance.oregon.gov. The carrier must submit the required information on or before:

(a) May 1 for the first calendar quarter.

(b) August 1 for the second calendar quarter.

(c) November 1 for the third calendar quarter.

(d) February 1 for the fourth calendar quarter.

(3) A carrier claiming exemption from reporting must request an exemption through the reporting system of the Insurance Division on or before the due date for the calendar quarter for which reporting is first due.

(4) A carrier submitting information pertaining to covered lives or requesting an exemption from reporting is subject to the electronic reporting or response requirements of OAR 836-011-0005.

Stat. Auth.: ORS 731.244, 743.745 & 743.818

Stats. Implemented: ORS 743.818

Hist.:ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1190

Annual Summary, Uniform Indicators of Network Adequacy

(1) An insurer offering managed health insurance or preferred provider organization insurance must submit its annual summary required under ORS 743.817 on March 1 of each year. Filing and reporting requirements in this rule apply to:

(a) A domestic insurer; and

(b) A foreign insurer transacting $2 million or more in health benefit plan premium in Oregon during the calendar year immediately preceding the due date of the required report.

(2) The annual summary must include the following matters for the immediately preceding calendar year as of December 31, according to the following uniform indicators:

(a) Whether the insurer has established a requirement or goal for accessibility that providers must meet, in terms of hours, days or weeks, or in the alternative an indication that the insurer does not establish and maintain such a requirement or goal, for the following categories:

(A) Preventive care;

(B) Routine primary care; and

(C) Urgent care.

(b) Whether accessibility to urgent care services outside of regular business hours differs by region or geographical area of the state that the insurer serves, and if so, a description of the differences among the regions or areas.

(c) The number of communications expressing a concern regarding difficulty in obtaining an appointment with a provider, including but not limited to the inability to find a provider with an open practice or to an unreasonable length of time to wait for an appointment. Communications under this section include but are not limited to complaints and grievances from enrollees.

(d) Whether the insurer has a process for ensuring network adequacy that includes oversight, communication and monitoring, and the following information about the process:

(A) The position and department of the individual with the responsibility of ensuring and monitoring the network;

(B) The telephone number, electronic mail address, address or website that enrollees are requested to use in order to express concerns regarding network adequacy;

(C) The website at which enrollees can locate the provider directory, and the frequency with which the website is updated.

(D) The frequency with which an enrollee is specifically notified of changes to the insurer's provider network and the medium or media by which an enrollee is informed.

(E) Information regarding the insurer's monitoring of its network adequacy, including:

(i) The intervals between formal reviews;

(ii) Whether the results of the reviews are reported to senior management or the board of directors, or both, or neither; and

(iii) How the insurer uses its formal reviews to monitor and improve accessibility for clients.

(e) Whether the insurer's provider directory and updates to the directory disclose which providers are fluent in languages other than English and, if so, what languages are available.

(f) Whether the insurer keeps information on which of the physicians in its network have open practices, and if so:

(A) The frequency with which the insurer updates the information; and

(B) Whether enrollees have access to the information and if so, how enrollees may obtain the information.

(g) Any other information that the insurer determines to be significant in documenting the scope of its network or its monitoring of access to services.

(3) To minimize duplicative reporting, an insurer may meet the requirements of section (2) of this rule by submitting to the department either of the following:

(a) A copy of a report prepared by the insurer for a national accreditation organization. An insurer submitting a copy of a report under this subsection must provide addenda to the report with additional information if the department determines that the report does not provide the information required by section (2) of this rule.

(b) An addendum to an annual filing of the immediately preceding year:

(A) Stating, if applicable, that no information has changed since the previous annual filing; or

(B) Identifying, if applicable, only the information that has changed since the previous annual filing.

(4) An insurer may not submit the addendum described in section (3)(b) of this rule in two consecutive years.

Stat. Auth.: ORS 731.244 & 743.819
Stats. Implemented: ORS 743.817
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1200
Prior Authorization Requirements

(1) The provisions of this rule implement the requirements of ORS 743.807 and 743.837, relating to prior authorization determinations. "Prior authorization" means a determination by an insurer prior to provision of services that the insurer will provide reimbursement for the services. "Prior authorization" does not include referral approval for evaluation and management services between providers.

(2) ORS 743.807 and 743.837 apply to prior authorization determinations that:

(a) Are issued orally or in writing by an insurer to a provider regarding the benefit coverage or medical necessity of a medical or mental health service to be provided to an enrollee; and

(b) Are required under and obtained in accordance with the terms of a health benefit plan.

(3) A prior authorization may be limited to the services of a specific provider or to services of a designated group of providers who contract with or are employed by the insurer.

(4) Nothing in this rule shall require a health benefit plan to contain a prior authorization requirement.

(5) Except in the case of misrepresentation relevant to a request for prior authorization, a prior authorization determination shall be binding on the insurer for the period of time specified in section (6) of this rule.

(6) A prior authorization determination shall be binding on the insurer for:

(a) The lesser of the following periods:

(A) Five business days; or

(B) The period during which the enrollee's coverage remains in effect, provided that when the insurer issues the prior authorization, the insurer has specific knowledge that the enrollee's coverage will terminate sooner than five business days following the day the authorization is issued and the insurer specifies the termination date in the authorization; and

(b) The period during which the enrollee's coverage remains in effect beyond the time period established pursuant to subsection (a) of this section, up to a maximum of thirty calendar days.

(7) For purposes of counting days under section (6) of this rule, day 1 occurs on the first business or calendar day, as applicable, following the day on which the insurer issues a prior authorization determination.

(8) An insurer may not impose a restriction or condition on its prior authorization determinations that limits, restricts or effectively eliminates the binding force established for such determinations in ORS 743.837 and this rule.

(9) When an insurer answers requests by providers for prior authorization of nonemergency services as required by ORS 743.807(2)(d), the answer to a request by a provider for prior authorization of nonemergency services must be one of the following:

(a) The requested service is authorized.

(b) The requested service is not authorized.

(c) The entire requested service is not authorized, but a specified portion of the requested service or a specified alternative service is authorized.

(d) The requested service is not authorized because the insurer needs additional specified information in order to make a decision on the request.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.837 & 743.807
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1315
Performance Criteria

The following are performance criteria that an independent review organization must satisfy when demonstrating its eligibility for contracting with the Director of the Department of Consumer and Business Services to perform independent review responsibilities under ORS 743.862, and in order to continue performing those responsibilities under the contract with the director. For purposes of this rule, an independent review organization must:

(1) Demonstrate its capability of and expertise in reviewing health care, and a history of such review, in terms of the coverage issues that are subject to independent review pursuant to ORS 743.857, in terms of the application of other health plan coverage provisions and in terms of health insurance contract law.

(2) Demonstrate the ability to handle a full range of review cases occurring in this state. An independent review organization may contract with a more specialized review organization, but the independent review organization must ensure that each review conducted meets all the requirements of ORS 743.857, 743.858 and 743.862 and OAR 836-053-1300 to 836-053-1365.

(3) Comply with all conflict of interest provisions in OAR 836-053-1320.

(4) Maintain and assign an adequate number and range of qualified medical reviewers in compliance with OAR 836-053-1310 and 836-053-1315 in order to:

(a) Make determinations regarding the full range of independent review cases occurring in this state under ORS 743.857; and

(b) Meet timelines specified in ORS 743.862 and OAR 836-053-1340, including timelines for expedited review.

(5) Conduct reviews, reach determinations and document determinations consistent with OAR 836-053-1325 and 836-053-1330.

(6) Maintain administrative processes and capabilities in compliance with OAR 836-053-1325 and 836-053-1330.

Stat. Auth.: ORS 731.244, 743.858 & 743.862
Stats. Implemented: ORS 743.858 & 743.862
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1320
Conflict of Interest

(1) An independent review organization:

(a) Must not be a subsidiary of, or in any way owned or controlled by, an insurer or an association of insurers or of doctors, providers or other health care professionals;

(b) Must provide information to the Director of the Department of Consumer and Business Services on its own organizational affiliations and potential conflicts of interest at the time of its response to the director's request for proposals and thereafter when material changes occur;

(c) Must immediately turn down a case referred by the director if accepting it would constitute an organizational conflict of interest; and

(d) Must ensure that medical reviewers are free from any actual or potential conflict of interest in assigned cases.

(2) In connection with a case, neither an independent review organization nor any of its medical reviewers may have any material professional, familial or financial affiliation with the health insurer, enrollee, enrollee's provider, that provider's medical or practice group, the facility at which the service would be provided or the developer or manufacturer of a drug or device under review. For the purpose of this section, an affiliation with any director, officer or executive of an independent review organization shall be considered to be an affiliation with the independent review organization.

(3) Except as provided in section (4) of this rule, the following do not constitute violations of this rule:

(a) Staff affiliation with an academic medical center or National Cancer Institute-designated clinical cancer research center;

(b) Staff privileges at a health facility; or

(c) An independent review organization's receipt of an insurer's payment for independent reviews assigned by the director.

(4) A potential medical reviewer shall be considered to have a conflict of interest in connection with a case with regard to a facility or health plan, regardless of revenue from that source, if the potential reviewer is a member of a standing committee of the facility or the health plan, or a provider or other health care professional network that contracts with the health plan.

(5) A conflict of interest may be waived only if both the enrollee and the health plan agree in writing after receiving full disclosure of the conflict, and only if:

(a) The conflict involves a medical reviewer, and no alternate reviewer with necessary special expertise is available; or

(b) The conflict involves an independent review organization and the director determines that seeking a waiver of conflict is preferable to reassigning the dispute to a different independent review organization.

Stat. Auth.: ORS 731.244 & 743.858
Stats. Implemented: ORS 743.858
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1325

Procedures for Conducting External Reviews

(1) An independent review organization is subject to the following decision-making standards and procedures:

(a) The independent review process is intended to be neutral and independent of influence by any affected party or by state government. The Director of the Department of Consumer and Business Services may conduct investigations as authorized by law but has no involvement in the disposition of specific cases.

(b) Independent review is a document review process. An enrollee, a health plan or an attending provider may not participate in or attend an independent review in person or obtain reconsideration of a decision by an independent review organization.

(c) An independent review organization shall present cases to medical reviewers in a way that maximizes the likelihood of a clear, unambiguous decision. This may involve stating or restating the questions for review in a clear and precise manner that encourages yes or no answers.

(d) An independent review organization may uphold an adverse determination if the patient or any provider refuses or fails to provide in a timely manner relevant medical records that are available and have been requested pursuant to ORS 743.862. . Pursuant to ORS 743.857, an independent review organization may overturn an adverse determination if the insurer refuses or fails to provide in a timely manner relevant medical records that are available and have been requested.

(e) An independent review organization must maintain written policies and procedures covering all aspects of review.

(2) Once the director refers a dispute, the independent review organization must proceed to a final decision in accordance with the procedural requirements of ORS 743.857 and 743.862 and OAR 836-053-1300 to 836-053-1365 unless requested otherwise by both the insurer and the enrollee.

(3) An independent review organization must decide whether or not the dispute pertains to an adverse benefit determination as described in ORS 743.857(1). If the dispute is covered, it is eligible for external review. An independent review organization must also decide whether the dispute concerns a covered benefit in the health benefit plan. If the dispute concerns a non-covered benefit, the dispute does not qualify for external review.

(4) An independent review organization is subject to the following standards with respect to information to be considered for reviews:

(a) An independent review organization must request as necessary and must accept and consider the following information as relevant to a case referred:

(A) Medical records and other materials that the insurer is required to submit to the independent review organization under ORS 743.857(3), including information identified in that section that is initially missing or incomplete as submitted by the insurer.

(B) For cases in which the insurer's decision addressed whether a course or plan of treatment was medically necessary:

(i) A copy of the definition of medical necessity from the relevant health insurance policy;

(ii) An explanation of how the insurer's decision conformed to the definition of medical necessity; and

(iii) An explanation of how the insurer's decision conformed to the requirement that the definition of medical necessity be uniformly applied.

(C) For cases in which the insurer's decision addressed whether a course or plan of treatment was experimental or investigational:

(i) A copy of the definition of experimental or investigational from the relevant health insurance policy;

(ii) An explanation of how the insurer's decision conformed to that definition of experimental or investigational; and

(iii) An explanation of how the insurer's decision conformed to the requirement that the definition of experimental or investigational be uniformly applied.

(D) Other medical, scientific and cost-effectiveness evidence, as described in section (5) of this rule, that is relevant to the case.

(b) After referral of a case, an independent review organization must accept additional information from the enrollee, the insurer or a provider acting on behalf of the enrollee at the enrollee's request if the information is submitted within five business days of the independent review organization after the enrollee's receipt of notification of the appointment of the independent review organization or, in the case of an expedited referral, within 24 hours. The additional information must be related to the case and relevant to statutory criteria contained in ORS 743.857.

(c) An independent review organization must ensure the confidentiality of medical records and other personal health information received for use in reviews, in accordance with applicable federal and state laws.

(5) If a course or plan of treatment is determined to be subject to independent review, a determination of whether the adverse decision of an insurer should be upheld or not must be based upon expert clinical judgment, after consideration of relevant medical, scientific and cost-effectiveness evidence and medical standards of practice in the United States. As used in this section:

(a) "Medical, scientific, and cost-effectiveness evidence" means published evidence on results of clinical practice of any health profession that complies with one or more of the following requirements:

(A) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(B) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medica, Embase, Medline, Medical Literature Analysis and Retrieval System or Health Services Technology Assessment Texts;

(C) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the Social Security Act;

(D) The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information;

(E) Findings, studies or research conducted by or under the auspices of a federal government agency or a nationally recognized federal research institute, including the Federal Agency for Healthcare Research and Quality, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Center for Medicaid and Medicare Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services;

(F) Clinical practice guidelines that meet Institute of Medicine criteria; or

(G) In conjunction with other evidence, peer-reviewed abstracts accepted for presentation at major scientific or clinical meetings.

(b) Medical standards of practice include the standards appropriately applied to physicians or other providers or health care professionals, as pertinent to the case.

(6) The following standards govern the assignment by an independent review organization of appropriate medical reviewers to a case:

(a) A medical reviewer assigned to a case must comply with the conflict of interest provisions in OAR 836-053-1320.

(b) An independent review organization shall assign one or more medical reviewers to each case as necessary to meet the requirements of this subsection. The medical reviewer assigned to a case, or the medical reviewers assigned to a case together, must meet each of the following requirements:

(A) Have expertise to address each of the issues that are the source of the dispute.

(B) Be a clinical peer. For purposes of this paragraph, a clinical peer is a physician or other medical reviewer who is in the same or similar specialty that typically manages the medical condition, procedures or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession and the same licensure category as the attending provider. In a profession that has organized, board-certified specialties, a clinical peer generally will be in the same formal specialty.

(C) Have the ability to evaluate alternatives to the proposed treatment.

(c) Each independent review organization must have a policy specifying the methodology for determining the number and qualifications of medical reviewers to be assigned to each case. The number of reviewers shall be governed by the following requirements:

(A) The number of reviewers must reflect the complexity of the case and the goal of avoiding unnecessary cost.

(B) The independent review organization may consider, but shall not be bound by, recommendations regarding complexity from the insurer or attending provider.

(C) The independent review organization shall consider situations such as review of experimental and investigational treatments that may benefit from an expanded panel.

(7) An independent review organization shall notify the enrollee and the insurer of its decision on the enrollee's case and provide documentation and reasons for the , decision including the clinical basis for the decision unless the decision is wholly based on application of coverage provisions.

(a) Documentation of the basis for the decision shall include references to supporting evidence, and if applicable, the reasons for any interpretation regarding the application of health benefit plan coverage provisions, but shall not recommend a course of treatment or otherwise engage in the practice of medicine.

(b) If the decision overrides the health benefit plan's standards governing the coverage issues that are subject to independent review, the reasons shall document why the health benefit plan's standards are unreasonable or inconsistent with sound, evidence-based medical practice.

(c) The written report shall include the qualifications of each medical reviewer but shall not disclose the identity of the reviewer.

(d) Notification of the decision shall be provided initially by phone, e-mail or fax, followed by a written report by mail. In the case of expedited reviews, the initial notification shall be immediate and by phone, followed by a written report.

(8) An independent review organization's decision shall be final unless, within seven business days of an enrollee's receipt of the written report of the independent review organization's decision, the enrollee submits information to the director that the independent review organization failed to materially comply with the procedural requirements of ORS 743.858 or 743.862 or OAR 836-053-1300 to 836-053-1365. If the enrollee is satisfied with the independent review organization's decision, the enrollee may notify the independent review organization and insurer by electronic mail, fax or telephone, followed by a written notice, stating that the enrollee waives the seven business days before the independent review organization decision is final.

(9) The director shall review the information submitted by the enrollee and, within seven business days, make a written determination whether:

(a) The director is reasonably satisfied that the independent review organization failed to materially comply with the procedural requirements of ORS 743.858 or 743.862 or OAR 836-053-1300 to 836-053-1365; and

(b) The independent review organization's failure to materially comply with the procedural requirements of ORS 743.858 or743.862 or OAR 836-053-1300 to 836-053-1365 materially affected the independent review organization's decision.

(10) The director shall send a written notification of the determination to the enrollee and the independent review organization. The independent review organization's decision will be final if the director is reasonably satisfied that the independent review organization complied with the procedural requirements in ORS 743.858 or743.862 or OAR 836-053-1300 to 836-053-1365.

(11) If an independent review organization failed to materially comply with the procedural requirements in ORS 743.858 or 743.862 or OAR 836-053-1300 to 836-053-1365, the independent review organization shall correct the failure to materially comply by conducting a new external review, at the independent review organization's cost, and issuing a new decision within ten business days.

(a) Within 24 hours of receipt of the written notification from the director described in section (10) of this rule, the independent review organization shall:

(A) Notify the enrollee and the insurer via electronic mail, fax or telephone that the independent review organization will be conducting a new external review, and

(B) Request from the enrollee or the insurer via electronic mail or fax any information not already provided to the independent review organization that is necessary to correct the material failure to comply with the procedural requirements of ORS 743.858, or743.862 or OAR 836-053-1330 to 836-053-1365.

(12) The enrollee or insurer must provide to the independent review organization any requested information in section (11) of this rule within 48 hours after receipt of the request.

(13) Notification of the independent review organization's new decision shall be provided to the enrollee and insurer initially via electronic mail, fax or telephone, followed by a written report by mail.

(14) For the purposes of sections (8) to (13) of this rule, "procedural requirements" does not include requirements related to the exercising of medical judgment or decision making by the independent review organization.

(15) The independent review organization's decision based on the new external review shall be final as of the date of the decision.

(16) Except as provided in this section, an independent review organization shall not disclose the identity of a medical reviewer unless otherwise required by state or federal law. The director shall not require reviewers' identities as part of the contracting process but may examine identified information about reviewers as part of enforcement activities. The identity of the medical director of an independent review organization shall be disclosed upon request of any person.

(17) An independent review organization shall promptly report to the director any attempt by any party, including a state agency, to interfere with the carrying out of the independent review organization's duties under ORS 743.858 or 743.862 or OAR 836-053-1300 to 836-053-1365.

(18) An independent review organization must maintain business hours, methods of contact (including telephone contact), procedures for after-hours requests and other relevant procedures to ensure timely availability to conduct expedited as well as regular reviews.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 731.244 & 743.858

Stats. Implemented: ORS 743.857, 743.858 & 743.862

Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 13-2006, f. 7-14-06 cert. ef. 1-1-07; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1330

Criteria and Considerations for External Review Determinations

(1) The following criteria and considerations apply to decisions by an independent review organization:

(a) An independent review organization must use fair procedures in making a decision, and the decision must be consistent with the standards in ORS 743.858 and 743.862 and OAR 836-053-1300 to 836-053-1365.

(b) An independent review organization may override the standards of a health benefit plan governing the coverage issues that are subject to independent review pursuant to ORS 743.857(1) only if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice.

(2) A decision by an independent review organization of a dispute relating to an adverse decision by an insurer is subject to enforcement under ORS 743.857 to 743.864 if:

(a) The dispute relates to an adverse decision on one or more of the following:

(A) Whether a course or plan of treatment is medically necessary;

(B) Whether a course or plan of treatment is experimental or investigational; or

(C) Whether a course or plan of treatment that an enrollee is undergoing is an active course of treatment for purposes of continuity of care under ORS 743.854; and

(b) The decision by the independent review organization is made in accordance with the coverage described in the health benefit plan, including limitations and exclusions expressed in the plan, except that the independent review organization may override the insurer's standards for medically necessary or experimental or investigational treatment, if the independent review organization determines that:

(A) The standards of the insurer are unreasonable or are inconsistent with sound medical practice; or

(B) For cases in which the insurer's decision addressed whether a course or plan of treatment was medically necessary:

(i) The insurer's decision did not conform to the insurer's definition of medically necessary in the relevant health insurance policy, or

(ii) The insurer's decision did not conform to the requirement that the definition of medical necessity be uniformly applied; or

(C) For cases in which the insurer's decision addressed whether a course or plan of treatment was experimental or investigational:

(i) The insurer's decision did not conform to the insurer's definition of experimental or investigational in the relevant health insurance policy, or

(ii) The insurer's decision did not conform to the requirement that the definition of experimental or investigational be uniformly applied.

(3) No provision of OAR 836-053-1300 to 836-053-1365 establishes a standard of medical care or creates or eliminates any cause of action.

Stat. Auth.: ORS 731.244 & 743.858

Stats. Implemented: ORS 743.858 & 743.862

Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 13-2006, f. 7-14-06 cert. ef. 1-1-07; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1335
Procedures for Complaint Investigation

(1) The Director of the Department of Consumer and Business Services may audit, examine and conduct an on-site review of records to investigate complaints alleging that an independent review organization or medical reviewer committed conduct contrary to ORS 743.858 or 743.862, or OAR 836-053-1300 to 836-053-1365 or the contract between the director and the independent review organization.

(2) In addition to the procedures for an enrollee to submit information about an independent review organization's decision in OAR 836-053-1325, aperson, including, but not limited to, an enrollee, insurer or provider, may submit a written complaint to the director alleging that an independent review organization committed conduct described in this rule. The director may consider the complaint in relation to the terms of the contract with the independent review organization and in relation to ORS 743.858 or 743.862 and OAR 836-053-1300 to 836-053-1365 and take action as appropriate under the contract. The director shall notify the complainant of the results of the director's determinations and of any action taken or to be taken.

Stat. Auth.: ORS 731.244 & 743.858
Stats. Implemented: ORS 743.858 & 743.862
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1340
Timelines and Notice for Dispute That is Not Expedited

(1) An insurer shall give the Director of the Department of Consumer and Business Services notice of an enrollee's request for independent review by delivering a copy of the request to the director not later than the second business day of the insurer after the insurer receives the request for the independent review. In the event the enrollee applies to the director rather than to the insurer for independent review, the director shall provide the insurer notice of the enrollee's request for independent review by delivering a copy of the request to the insurer not later than the next business day of the department after the director receives the request for independent review.

(2) If an insurer reverses its final adverse determination before expiration of the deadline for sending the notice to the director under section (1) of this rule, the insurer must notify the enrollee not later than the next business day of the insurer after the insurer's reversal. The notice to the enrollee may be given by electronic mail, facsimile or by telephone, followed by a written confirmation within two business days of the insurer.

(3) Not later than the next business day of the department after the director has received a request for independent review from an insurer or an enrollee, the director shall assign the review to one of the independent review organizations with whom the director has contracted. The director shall notify the insurer in writing of the name and address of the independent review organization to which the request for the independent review should be sent. If sending written notice will unduly delay notification, the director shall give the notice by electronic mail, facsimile or by telephone, followed by a written confirmation within two business days of the department.

(4) The director shall notify the enrollee of the assignment of the request, not later than the second business day of the department after the director gave notice under section (3) of this rule. The notice must include a written description of the independent review organization selected to conduct the independent review and information explaining how the enrollee may provide the director with documentation regarding any potential conflict of interest of the independent review organization as described in OAR 836-053-1320.

(5) Not later than the third calendar day following receipt of notice from the director under section (4) of this rule, or the subsequent business day of the department if any of the days is not a normal business day of the department, the enrollee may provide the director with documentation in writing regarding a potential conflict of interest of the independent review organization. If sending written documentation will unduly delay the process, the enrollee shall give the notice by electronic mail, facsimileor by telephone, followed by a written confirmation within two business days of the department. If the director determines that the independent review organization presents a conflict of interest as described in OAR 836-053-1320, the director shall assign another independent review organization not later than the next business day of the department. The director shall notify the insurer of the new independent review organization to which the request for the independent review should be sent. The director shall also notify the enrollee of the director's determination regarding the potential conflict of interest and the name and address of the new independent review organization.

(6) Not later than the fifth business day of the insurer after the date on which the insurer received notice from the director under section (3) of this rule, the insurer shall deliver to the assigned independent review organization the following documents and information considered in making the insurer's final adverse decision, including the following:

(a) Information submitted to the insurer by a provider or the enrollee in support of the request for coverage under the health benefit plan's procedures.

(b) Information used by the health benefit plan during the internal appeal process to determine whether the course or plan of treatment is:

(A) Medically necessary;

(B) Experimental or investigational; or

(C) An active course of treatment for purposes of continuity of care.

(c) A copy of all denial letters issued by the plan concerning the case under review.

(d) A copy of the signed waiver form, or a waiver, authorization or consent that is otherwise permitted under the federal Health Insurance Portability and Accountability Act or other state or federal law, authorizing the insurer to disclose protected health information, including medical records, concerning the enrollee that is pertinent to the independent review.

(e) An index of all submitted documents.

(7) Not later than the second business day of the independent review organization after receiving the material specified in section (6) of this rule, the independent review organization shall deliver to the enrollee the index of all materials that the insurer has submitted to the independent review organization. Upon request of the enrollee, the independent review organization shall provide to the enrollee all relevant information supplied to the independent review organization that is not confidential or privileged under state or federal law concerning the case under review.

(8) After receipt of the notice from the director under section (4) of this rule, the enrollee, the insurer or a provider acting on behalf of the enrollee or at the enrollee's request may submit additional information to the independent review organization. In accordance with OAR 836-053-1325(4)(b) the independent review organization must consider this additional information if the information is related to the case and relevant to the statutory criteria for external review contained in ORS 743.857. The independent review organization is not required to consider this information if the information is submitted after the fifth business day of the independent review organization following the enrollee's receipt of notice from the director under section (4) of this rule. Upon receiving information under this section the independent review organization must:

(a) Forward any information provided by the insurer to the enrollee within one business day after the independent review organization receives the information; and

(b) Forward any information provided by the enrollee or a provider acting on behalf of the enrollee or at the enrollee's request to the insurer within one business day after the independent review organization receives the information.

(9) The independent review organization shall notify the enrollee, the provider of the enrollee and the insurer of any additional medical information required to conduct the review after receipt of the documentation under section (7) of this rule. Not later than the fifth business day after such a request, the enrollee or the provider of the enrollee shall submit to the independent review organization the additional information or an explanation of why the additional information is not being submitted. If the enrollee or the provider of the enrollee fails to provide the additional information or the explanation of why additional information is not being submitted within the timeline specified in this subsection, the assigned independent review organization shall make a decision based on the information submitted by the insurer as required by section (6) of this rule. Except as provided in this section, failure by the insurer to provide the documents and information within the time specified in section (6) of this rule shall not delay the external review.

(10) An independent review organization must provide notice to enrollees and the insurer of the result and basis for the decision as provided in OAR 836-053-1325 not later than the fifth day after the independent review organization makes a decision in a nonexpedited case.

Stat. Auth.: ORS 731.244, 743.858 & 743.862
Stats. Implemented: ORS 743.857, 743.858 & 743.862
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1342
Timelines and Notice for Expedited Decision-Making

(1) When an insurer expedites an enrollee's case under ORS 743.857(5), the insurer shall inform the Director of the Department of Consumer and Business Services and the independent review organization that the referral is expedited. If information on whether a referral is expedited is not provided to the independent review organization, the independent review organization may presume that the referral is not an expedited review, but the independent review organization may request clarification from the insurer.

(2) The insurer and the director must expedite an external review that is required to be expedited under ORS 743.857(5) when:

(a) An enrollee requests external review before the enrollee has exhausted all internal appeals; or

(b) An enrollee simultaneously requests an expedited internal appeal and an expedited external review.

(3) An independent review organization shall make its decision in each expedited case within a time period that is appropriate for accommodating the clinical urgency of the particular case, but in any event not exceeding the maximum time period specified in ORS 743.862(3).

(4) In an expedited case, an independent review organization shall immediately provide notice to enrollees and the insurer of the result and basis for the decision as provided in OAR 836-053-1325.

Stat. Auth.: ORS 731.244, 743.858 & 743.862
Stats. Implemented: ORS 743.857, 743.858 & 743.862
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1345
Quality Assurance Mechanisms

(1) An independent review organization must have a quality assurance program that ensures the timeliness, quality of review and communication of determinations to enrollees and insurers. The program must also ensure the qualifications, impartiality and freedom from conflict of interest of the organization, its staff and medical reviewers. The quality of review of an independent review organization includes the use of appropriate methods to match the case, confidentiality and systematic evaluation of complaints for patterns or trends.

(2) A quality assurance program must include a written plan addressing its scope and objectives; program organization, monitoring and oversight mechanisms; and evaluation and organizational improvement of independent review organization activities. Organizational improvement must include the implementation of action plans to improve or correct identified problems, and communication of the results of action plans to staff and medical reviewers.

(3) An independent review organization shall record complaints in a log. The log shall include for each complaint the nature of the complaint and how it was resolved. Upon request, the independent review organization shall provide the log and complaints to the director for review.

Stat. Auth.: ORS 731.244 & 743.858
Stats. Implemented: ORS 743.858
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1350
Ongoing Requirements for Independent Review Organizations

(1) An independent review organization shall file an annual statistical report with the Director of the Department of Consumer and Business Services, on a form specified by the director, that summarizes reviews conducted. The report shall include, but need not be limited to, volumes, types of cases, compliance with timelines for expedited and non-expedited cases, determinations, number and nature of complaints and compliance with conflict of interests rules.

(2) An independent review organization shall submit updated information to the director if at any time there is a material change in the information included in the response of the independent review organization to the director's request for proposals.

(3) An independent review organization shall maintain records of all materials, including materials submitted by all parties, notifications, documents relied upon, and the independent review organization's ultimate decision for a period of not less than three years after any review. The independent review organization shall provide copies of any of these documents to the director upon request.

Stat. Auth.: ORS 731.244, 743.857, 743.858 & 743.862
Stats. Implem ented: ORS 743.858 & 743.862
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 11-2011(Temp), f. & cert. ef. 7-7-11 thru 12-21-11; ID 23-2011, f. & cert. ef. 12-19-11; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1355
Synopses

(1) The synopses of decisions required to be filed by independent review organizations under ORS 743.862(5) with the Director of the Department of Consumer and Business Services must meet the requirements of this rule.

(2) Synopses of decisions shall include the following for each decision:

(a) A description of the dispute sought to be reviewed by the independent review organization, including whether the dispute is alleged to concern the determination of medical necessity or experimental or investigational treatment, whether an active course of treatment is occurring for the purpose of determining whether a person is eligible for continuity of care, or whether the dispute concerns some other issue.

(b) A determination by the independent review organization whether the dispute falls within any of the categories of issues that are eligible for independent review.

(c) A determination of the dispute by the independent review organization in favor of the insurer or enrollee.

(3) A synopsis may include a statement describing the illness, condition or other object of medical treatment, subject to section (4) of this rule.

(4) Synopses must exclude all facts and other matters that identify or may identify an enrollee. The facts and other matters include but are not limited to the name or address of an enrollee, the location of the provider office or other place of treatment, and the disease, condition or other treated matter, the disclosure of which may reveal the identity of the enrollee.

Stat. Auth.: ORS 731.244 & 743.862
Stats. Implemented: ORS 743.862
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02

836-053-1360
External Review Reporting

(1) Each independent review organization shall maintain written records in the aggregate and by insurer on all requests for external review for which it conducted an external review for the Director of the Department of Consumer and Business Services during a calendar year.

(2) Each independent review organization shall submit to the director, by March 31 of each year for the preceding calendar year, a report in the format specified by the director. The report shall include the information required by this section in the aggregate, for each insurer, for Oregon external reviews only. The information to be included in the report as provided in this section is as follows:

(a) The total number of requests for external review received during the reporting period;

(b) The number of requests for external review for which the independent review organization has made a final decision and, of those requests, the number that uphold the insurer's final adverse determination;

(c) The average length of time for final decision by the independent review organization of:

(A) Disputes other than expedited disputes; and

(B) Expedited disputes.

(d) A summary of the types of coverages or cases for which an external review was sought;

(e) The number of requests for which the independent review organization decided that it did not have jurisdiction under ORS 743.857.

(f) The number of external review cases that were terminated as the result of a reconsideration by the insurer of the insurer's final adverse determination after the receipt of additional information from the enrollee or the enrollee's designated representative; and

(g) Any other information the director requests or requires.

Stat. Auth.: ORS 731.244, 743.858 & 743.862
Stats. Implemented: ORS 743.858 & 743.862
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1365
Fees for External Reviews

Fees to be imposed by an independent review organization for its external review of disputes shall be as determined in the competitive solicitation process, but shall be as low as is feasible in the request for proposal process. Fees shall be separately established for initial jurisdictional decisions by an independent review organization and for decisions that call for a more extended review.

Stat. Auth.: ORS 731.244 & 743.858
Stats. Implemented: ORS 743.858
Hist.: ID 10-2002(Temp), f. & cert. ef. 4-5-02 thru 9-27-02; ID 19-2002, f. 9-27-02, cert. ef. 9-28-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1400
Format and Instructions for Report Required by ORS 743.748

(1) A carrier shall submit the information required by ORS 743.748 electronically in the format and according to the directions established by the Director of the Department of Consumer and Business Services and made available on the website of the Insurance Division.

(2) The following terms used in ORS 743.748 have the following meanings for the purpose of the information required by ORS 743.748. References in this section to specific schedules and instructions are to schedules and instructions for the NAIC health annual statement blank. The terms are defined as follows:

(a) "Average amount of premiums per member per month" means total earned premiums as reported on the exhibit of premiums, enrollment and utilization divided by the total member months for the required reporting year.

(b) "Carrier's annual report" is the carrier's annual statement submitted as required by ORS 731.574.

(c) "Medical loss ratio" means the total medical claims cost divided by the total premiums earned, both as reported on the exhibit of premiums, enrollment and utilization.

(d) "Percentage change in the average premium per member per month" means the average amount of premiums per member per month for the reporting year less the average premium per member per month for the preceding reporting year divided by the average premium per member per month for the preceding reporting year.

(e) "Total amount of costs for claims" means incurred claims as reported by the carrier on the exhibit of premiums, enrollment and utilization in its annual statement. If the annual statement blank used by a carrier does not include an exhibit of premiums, enrollment and utilization, "total amount of costs for claims" means total incurred claims costs as calculated by the carrier using the instructions for the exhibit of premiums, enrollment and utilization for reporting the information.

(f) "Total amount of premiums" means earned premium as reported by the carrier on the exhibit of premiums, enrollment and utilization in its annual statement. If the annual statement blank used by a carrier does not include an exhibit of premiums, enrollment and utilization, "total amount of premiums" means total premiums as calculated by the carrier using the instructions for the exhibit of premiums, enrollment, and utilization for reporting the information.

(g) "Total number of members" means total number of members as of December 31 of the reporting year, as reported by the carrier in its annual statement. If the annual statement blank used by a carrier does not include an exhibit of premiums, enrollment and utilization, "total number of members means the total number of members as calculated by" the carrier using the instructions for the exhibit of premiums, enrollment and utilization for reporting the information.

(3) A carrier shall submit the following information by total for all comprehensive hospital and medical products nationwide, for all such products in each Oregon market segment and for the carrier's association health plans:

(a) Number of members.

(b) Number of member months.

(c) Premiums earned.

(d) Medical claims costs.

(e) Medical loss ratio.

(f) Average premium per member per month for the reporting year.

(g) Average premium per member per month for the preceding reporting year.

(h) Percentage change in premium per member per month from the preceding reporting year.

Stat. Auth.: ORS 731.244, 743.748
Stats. Implemented: ORS 743.748
Hist.: ID 7-2006, f. & cert. ef. 4-14-06; ID 8-2007(Temp), f. 10-24-07, cert. ef. 10-25-07 thru 4-18-08; ID 6-2008, f. & cert. ef. 4-18-08; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1410
Procedures

(1) An insurer must allocate covered procedures or services to the categories established in ORS 743.874(3) and 743.876(3) in a manner that will enable the insurer to provide a reasonable estimate of an enrollee's share of costs for a procedure or service. An insurer must determine its allocation according to its Oregon block of business at least once every 12 months to ensure that the procedures and services are currently the most common procedures in the categories.

(2) When an insurer provides a combined estimate for two or more procedures or services, the insurer must apply its standard method of payment to arrive at the combined estimate or other payment method that will achieve an accurate estimate. With the estimate provided under this section, he insurer must disclose to the enrollee that the estimate includes the costs of two or more procedures or services.

(3) With any estimate, an insurer must disclose whether the estimate applies only to those costs specifically relating to the procedure or service, such as is given in commonly used procedure codes, or applies to an episode of care that includes the procedure or service and its related costs.

(4) As required by the director, an insurer must file the following information for the purpose of assessing the effect of the disclosure requirements in ORS 743.874 and 743.876:

(a) The number of requests for estimates under ORS 743.874 and 743.876 received by the insurer in a calendar year; and

(b) Of the requests in paragraph (a) of this subsection, the number of requests for in-network procedures and services and the number of requests for out-of-network procedures and services.

Stat. Auth.: ORS 731.244 & 743.893
Stats. Implemented: ORS 743.874, 743.876 & 743.878
Hist.: ID 16-2008, f. & cert. ef. 9-24-08; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-053-1415
Instructions

(1) An insurer must make available to enrollees detailed instructions by telephone and Internet for obtaining estimates and benefit information under ORS 743.874 and 743.876. At a minimum, the instructions must:

(a) Specify the information needed by the insurer to provide the estimate, including but not limited to information for identifying the procedure or service and the provider;

(b) Describe how an enrollee may obtain an estimate and find benefit information for an in-network procedure, and inform the enrollee that an estimate is not required by law to be provided for a procedure or service that is not included in the insurer's categories; and

(c) Provide a general explanation for obtaining an estimate for an out-of-network procedure or service and specify the information needed for the most accurate estimates.

(2) The instructions described in section (1) of this rule may include a statement that the accuracy of an estimate may depend on the specificity and accuracy of the information provided by the enrollee.

Stat. Auth.: ORS 731.244 & 743.893
Stats. Implemented: ORS 743.874 & 743.876
Hist.: ID 16-2008, f. & cert. ef. 9-24-08; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-075-0045
Format and Instructions for Report Required by ORS 743.818

(1) As used in this rule:

(a) "Covered lives" means Oregon residents who are employees, dependents of employees, or individuals otherwise eligible for an individual, student health, association, group or self-insured group health benefit plan or other benefit plan for which reporting is required and who are enrolled for coverage under the terms of the plan as of the close of the calendar quarter.

(b) "Third party administrator" means a third party administrator licensed under ORS 744.702.

(c) "Zip code" means the 5-digit code:

(A) Of the employee or individual policyholder's Oregon residence;

(B) Of an Oregon employer group covered by a stop loss policy; or

(C) In circumstances for which an Oregon zip code does not exist, the placeholder code established by the Director of the Department of Consumer and Business Services and set forth on the website of the Insurance Division of the Department of Consumer and Business Services at http://www.insurance.oregon.gov.

(2) At quarterly intervals covering each year, a third party administrator must submit information pertaining to covered lives through the reporting system of the Insurance Division in the format established by the director and in accordance with instructions set forth on the website of the Insurance Division at http://www.insurance.oregon.gov. The third party administrator must submit the required information on or before:

(a) May 1 for the first calendar quarter.

(b) August 1 for the second calendar quarter.

(c) November 1 for the third calendar quarter.

(d) February 1 for the fourth calendar quarter.

(3) A third party administrator claiming exemption from reporting must request an exemption through the reporting system of the Insurance Division on or before the due date for the calendar quarter for which reporting is first due.

(4) A third party administrator submitting information pertaining to covered lives or requesting an exemption from reporting is subject to the electronic reporting or response requirements of OAR 836-011-0005.

Stat. Auth.: ORS 731.244, 743.745 & 743.818
Stats. Implemented: ORS 743.818
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-080-0050
Authority; Purpose and Scope

OAR 836-080-0055 is issued under ORS 743.731 and the general rulemaking authority of the Director of the Department of Consumer and Business Services set forth in ORS 731.244(2). The purpose of OAR 836-080-0055 is to identify particular insurance practices involving distinctions based on sexual orientation and distinctions between men and women or between married and unmarried individuals that constitute unfair discrimination in violation of ORS 746.015.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 746.015(1)
Hist.: IC 61, f. 12-2-74, ef. 1-1-75; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-080-0055
Unfair Discrimination Identified

Distinctions based on sex, sexual orientation or marital status made in the following matters constitute unfair discrimination:

(1) The availability of a particular insurance policy.

(2) The availability of a particular amount of insurance or set of coverage delimiting factors.

(3) The availability of a particular policy coverage or type of benefit, except for those relating to physical characteristics unique to one sex.

(4) The premium for a particular insurance policy other than an individual or small group health benefit plan, unless the distinction is demonstrably based on reasonable supporting data.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 746.015(1)
Hist.: IC 61, f. 12-2-74, ef. 1-1-75; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-080-0080
Definition, Claims Handling Services; Claims Procedures and Information

(1) As used in ORS 743.911 and 743.913:

(a) "Clean claim" means a claim under a health benefit plan that has no defect, impropriety, lack of any required substantiating documentation or particular circumstance requiring special treatment that prevents timely payment.

(b) "Clean claim does not mean a claim pended under 45 CFR 156.270(d)(1).

(2) For purposes of ORS 743.911 and 743.913, an insurer is considered to have received a claim when the claim is received by the insurer itself or when the claim is received by a representative of the insurer that performs claims handling on the sole behalf of the insurer, whichever receipt date is earlier. A representative may include but is not limited to a third party administrator, a claims service or a pricing service.

(3) For the purpose of communicating the information necessary for claim form completion as required by ORS 743.911(3), an insurer must include any specific description of standard supporting documentation, information and data routinely required to be submitted with a claim form. Compliance with the standard transaction requirements established under the federal Health Insurance Portability and Accountability Act at 45 CFR parts 160 and 162 or OAR 836-100-0105 and 836-100-0110 constitutes compliance with this section.

Stat. Auth.: ORS 731.244 & 743.911
Stats. Implemented: ORS 743.911 & 743.913
Hist.: ID 1-2002, f. & cert. ef. 1-15-02; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-081-0005
Statutory Authority; Purpose; Definitions

(1) OAR 836-081-0005 and 836-081-0010 are adopted by the Director of the Department of Consumer and Business Services pursuant to the general rulemaking authority in ORS 731.244.

(2) OAR 836-081-0005 and 836-081-0010 identify particular practices that make an unfair discrimination in the availability of insurance in violation of ORS 746.015. OAR 836-081-0005 and 836-081-0010 do not limit the director's authority to determine that other practices relating to insurance availability are unfairly discriminatory.

(3) OAR 836-081-0005 and 836-081-0010 do not concern the making and use of insurance rates. Under ORS 737.310, which applies to most lines of property and casualty insurance, the making and use of rates that are unfairly discriminatory is prohibited. Under ORS 746.015 unfair discrimination in the application of rates is prohibited.

(4) OAR 836-081-0005 and 836-081-0010 do not prohibit the use of other risk selection criteria that reasonably can be related to the rates and policy forms used by the insurer.

(5) For the purpose of OAR 836-081-0005 and 836-081-0010:

(a) "Availability of insurance" includes all terms, conditions, and types of coverage under insurance policies.

(b) "Insurer", when used in connection with several insurers in a group under common ownership or control, refers to the group of insurers collectively rather than individually.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.015(1)
Hist.: IC 2-1978, f. 5-22-78, ef. 6-1-78; ID 19-2006, f. & cert. ef. 9-26-06; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-082-0050
Statutory Authority

OAR 836-082-0055 is adopted by the Director of the Department of Consumer and Business Services pursuant to the authority of the Director:

(1) To carry out the prohibition in ORS 746.015 against unfair discrimination in the availability of insurance and in the terms or conditions of insurance policies;

(2) To aid in the carrying out of ORS 742.005(3); and

(3) To aid in the carrying out of ORS 742.005(4).

Stat. Auth.: ORS 731.244, 742 & 746.240
Stats. Implemented: ORS 742.005(3)–742.005(4) & 746.0015(1)
Hist.: ID 13-1990, f. 6-12-90, cert. ef. 7-1-90; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-082-0055
Continuance of Group Health Insurance Coverage in Situations Involving Replacement

(1) This rule:

(a) Establishes the liable insurer when one insurer's group health policy or contract providing coverage for hospital or medical services or expenses replaces a policy or contract of similar benefits of another insurer;

(b) Establishes which policy or contract provides coverage for a policyholder when an insurer replaces a group health insurance policy or contract with a policy or contract of similar benefits.

(2) An insurer of a prior policy or contract is liable as follows:

(a) If the insurer of the prior policy or contract is not the insurer of the succeeding policy, the insurer of the prior policy or contract remains liable as provided in ORS 743.529 with respect to an individual who is hospitalized on the date of termination of a prior policy or contract only to the extent of its accrued liabilities and extensions of benefits;

(b) If the insurer of the prior policy or contract and the succeeding policy or contract is the same, the insurer remains liable under the prior policy or contract only to the extent of its accrued liabilities and extensions of benefits.

(3) Except as ORS 743.529 otherwise applies to an individual who is hospitalized on the date of termination of the prior policy, if an individual was validly covered under the prior plan on the date of discontinuance and is a member of the class or classes of individuals eligible for coverage under the succeeding plan, the individual is eligible for coverage under the succeeding plan without regard to actively-at-work or nonconfinement provisions. Any reference under this section to an individual who was or was not totally disabled is a reference to the individual's status immediately prior to the date the succeeding plan's coverage becomes effective. The following provisions govern such coverage:

(a) The minimum level of benefits to be provided by a succeeding plan is the applicable level of benefits of the succeeding plan reduced by any benefits payable by the prior plan;

(b) Such coverage must be provided under the succeeding plan until the date on which the individual's coverage would terminate in accordance with the succeeding plan provisions applicable to individual termination of coverage, such as termination of employment or eligibility as a dependent.

(4) Section (3) of this rule does not apply with respect to an individual who is excluded under the succeeding policy because the individual is otherwise covered under another policy with similar benefits.

(5) In applying deductibles or waiting periods, the insurer of a succeeding plan must give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits, whether the prior plan is its own or was issued by another insurer. In the case of deductible provisions, the credit must apply for the same or overlapping benefit periods and must be given for expenses actually incurred and applied against the deductible provisions of the prior plan during the

calendar year in which the succeeding plan becomes effective. However, the credit applies or must be given only to the extent the expenses are recognized under the terms of the succeeding plan and are subject to a similar deductible provision.

(6) In any situation in which a determination of the prior insurer's benefit is required, it is the responsibility of the claimant to furnish evidence of the terms of the prior plan and of claim payments by the prior insurer.

Stat. Auth.: ORS 731.244, 742 & 746.240
Stats. Implemented: ORS 742.005(3) & (4) & 746.0015(1)
Hist.: ID 13-1990, f. 6-12-90, cert. ef. 7-1-90; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-085-0001
Statutory Authority; Purpose; Applicability

(1) OAR 836-085-0001 to 836-085-0050 are adopted pursuant to the general rulemaking authority of the Director of the Department of Consumer and Business Services in ORS 731.244 to aid in implementing ORS 737.330, 746.160 and 746.240.

(2) The purpose of OAR 836-085-0001 to 836-085-0050 is to protect the insurance-buying public in insurance transactions involving termination, renewal or nonrenewal, or premium increases on contracts of insurance by:

(a) Regulating the grounds for midterm cancellation of an insurance policy;

(b) Prohibiting midterm increases in premium;

(c) Increasing the opportunity for policyholders to shop for replacement or substitute insurance;

(d) Reducing the opportunity for breach of policy bargain, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and

(e) Increasing the opportunity for insurance producers to freely compete.

(3) OAR 836-085-0001 to 836-085-0050 shall apply to all forms of commercial insurance that are subject to filing under ORS 737.330 on risks or operations in this state, except for:

(a) Commercial liability insurance as defined in ORS 731.074, and comprehensive or package policies that include commercial liability insurance coverage;

(b) Reinsurance;

(c) Wet marine and transportation insurance;

(d) Marine and transportation insurance;

(e) Health Insurance;

(f) Life Insurance;

(g) FAIR plans and automobile assigned risk insurance;

(h) Workers' Compensation and employers' liability insurance;

(i) Nuclear liability insurance;

(j) Fidelity and surety insurance;

(k) Hazardous waste and environmental impairment insurance;

(l) Aviation insurance;

(m) Commercial automobile liability insurance;

(n) Any commercial insurance policy that has not been previously renewed if the policy has been effect less than 60 days at the time notice of cancellation is mailed or otherwise delivered;

(o) Any policy issued by a surplus lines insurer.

(4) OAR 836-085-0001 to 836-085-0050 are not exclusive. The director may also consider other provisions of the Insurance Code to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these rules. The rights provided by these rules are in addition to, and do not prejudice any other rights the policyholder may have under, common law, statute or other Oregon Administrative Rules.

Stat. Auth.: ORS 731.244, 737 & 746.240
Stats. Implemented: ORS 737.330, 742.005(3)–(4), 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & ef. 12-1-87; ID 21-1988, f. & cert. ef. 12-16-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-085-0005
Definitions

As used in OAR 836-085-0001 to 836-085-0050:

(1) "Cancellation" means termination of a policy at a date other than its expiration date.

(2) "Expiration date" means the date upon which coverage under a policy ends. For a policy written for a term longer than one year or with no fixed expiration date, "expiration date" means the annual anniversary date of the policy.

(3) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premium on a policy of commercial insurance whether the payments are payable directly to the insurer or an insurance producer or indirectly payable under a premium finance plan or extension of credit.

(4) "Premium" means the contractual consideration charged to an insured for insurance for a specified period of time regardless of the timing of actual charges.

((5) "Renewal" or "Renew" means the issuance of, or the offer to issue by an insurer, a policy succeeding a policy previously issued and delivered by the same insurer or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.045, 746.055, 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & ef. 12-14-87; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-085-0010
Midterm Cancellation

(1) A policy of commercial insurance may not be cancelled by the insurer prior to the expiration date of the policy, except on one or more of the following grounds:

(a) Nonpayment of premium;

(b) Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;

(c) Substantial increase in the risk of loss after insurance coverage has been issued or renewed, including but not limited to an increase in exposure due to rules, legislation or court decision;

(d) Failure to comply with reasonable loss control recommendations;

(e) Substantial breach of contractual duties, conditions or warranties;

(f) Determination by the Director of the Department of Consumer and Business Services that the continuation of a line of insurance or class of business to which the policy belongs will jeopardize a company's solvency or will place the insurer in violation of the insurance laws of Oregon or any other state; or

(g) Loss or decrease in reinsurance covering the risk.

(2) Cancellation of a commercial policy that includes provisions of the standard fire insurance policy under ORS 742.206 to 742.242 and is written as a single coverage shall not be effective until at least 30 days after the insured receives a written notice of cancellation. Cancellation of a commercial policy that does not include provisions of the standard fire insurance policy shall not be effective until at least 10 working days after the insured receives a written notice of cancellation. The notice in either case shall state the effective date of and the reason for cancellation and shall inform the insured of the hearing rights established by OAR 836-085-0011.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 737.330, 742.005, 746.160 & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & cert. ef. 12-14-87; ID 21-1988, f. & cert. ef. 12-16-88; ID 8-1990, f. & cert. ef. 5-4-90; ID 15-1996, f. & cert. ef. 11-12-96; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-085-0025
Renewal with Altered Terms

(1) If an insurer offers or purports to renew a policy of insurance on terms less favorable to the insured or at higher rates, the new terms or rates may take effect on the renewal date if the insurer provides 30 days' written notice to the insured and to the insurance producer, if any. If the insurer does not provide such notice, the insured may cancel the renewal policy within 30 days after receipt of such notice. Earned premium for period of coverage, if any, shall be calculated pro rata at the lower of the current or previous year's rate. If the insured accepts the renewal, any premium increase or changes in terms shall be effective immediately following the prior policy's expiration date.

(2) Nonrenewal of a policy shall not be effective until at least 30 days after the insured receives a written notice of nonrenewal. If, after an insurer provides a notice of nonrenewal as described in this section, the insurer extends the policy 90 days or less, additional notice of nonrenewal is not required with respect to the extension. For purposes of this section, "nonrenewal" means the refusal of an insurer to renew a policy at its expiration date.

(3) Section (1) of this rule does not apply:

(a) If the change is a form, rate or plan filed with the Director of the Department of Consumer and Business Services and applicable to the entire line of insurance or class of business to which the policy belongs; or

(b) To a premium increase based on the altered nature or extent of the risk insured against.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.045, 746.055, 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; IC 6-1985, f. 11-29-85, ef. 12-1-85; ID 8-1988, f. & cert. ef. 12-14-87; ID 21-1988, f. & cert. ef. 12-16-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-085-0035
Cancellation or Nonrenewal Notice

(1) If a risk sharing plan exists under ORS Chapter 735 for the kind of coverage cancelled or nonrenewed, notice of cancellation or nonrenewal required under OAR 836-085-0010(2) is not effective unless the notice contains adequate instructions to the policyholder and the insurance producer, if any, for applying for insurance through a risk sharing plan under ORS Chapter 735.

(2) Adequate instructions under section (1) of this rule must direct the policyholder to the agent of the notifying insurer for assistance or, if no agent exists, must provide that the insurer will directly assist in submission of the application.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.045, 746.055, 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & ef. 12-14-87; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-085-0045
Unfair Trade Practices

(1) Failure of an insurer to comply with OAR 836-085-0010 to 836-085-0050 constitutes an unfair trade practice under ORS 746.240.

(2) A midterm premium increase or a policy coverage reduction attempted or executed in nonconformance with ORS 737.330 or 742.003 constitutes an unfair trade practice under 746.240.

(3) Block Cancellations or Nonrenewals of entire lines of insurance or withdrawal of classes of business are presumed to be unfairly discriminatory and constitute an unfair trade practice under ORS 746.240, unless prior authorization is received.

(4) Termination of an appointed insurance producer, or an attempt to terminate an appointed insurance producer solely to achieve block cancellation or nonrenewal of entire lines of insurance or other such instant reunderwriting of an insurance producer book of business is presumed to constitute an unfair trade practice under ORS 746.240 and an unfair trade practice detrimental to free competition under 746.160.

(5) Any nonrenewal must be for justifiable cause.

(6) Inability to substantiate justifiable cause for nonrenewal will be subject to Insurance Division review.

(7) Unjustified nonrenewals of such frequency as to indicate a general business practice are presumed to constitute an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.045, 746.055, 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & ef. 12-14-87; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

836-085-0050
Proof of Notice

A post office certificate of mailing to the named insured at the named insured's last-known address constitutes conclusive proof that the named insured received the notice of cancellation or nonrenewal on the third calendar day after the date of the certificate of mailing.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.045, 746.055, 746.160(3) & 746.240
Hist.: ID 8-1987, f. & ef. 12-14-87; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14

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Rule Caption: Update of Holding Company Rules Including Enterprise Report and Prior Notice of Acquisitions
Adm. Order No.: ID 1-2014
Filed with Sec. of State: 1-8-2014
Certified to be Effective: 1-8-14
Notice Publication Date: 11-1-2013
Rules Adopted: 836-027-0125, 836-027-0140
Rules Amended: 836-027-0005, 836-027-0010, 836-027-0030, 836-027-0035, 836-027-0045, 836-027-0050, 836-027-0100
Subject: These new and amended rules related to holding companies incorporate changes necessary as a result of legislation passed by the 2013 Legislative Assembly. The major changes are to adopt the forms and requirements for an annual enterprise report for holding companies and the pre-acquisition notification required to be filed by a domestic insurer that is proposing a merger or acquisition or by a non-domiciliary insurer licensed to do business in this state. The rules are based on the National Conference of Insurance Commissioners' Model Regulation #450, Insurance Holding Company System Model Regulation with Reporting Forms and Instructions. The proposed rules include the two new forms as exhibits.

These rules were originally filed on December 26, 2013, but were refiled on January 8, 2014 due to a filing error.
Rules Coordinator: Victor Garcia—(503) 947-7260

836-027-0005
Definitions

(1) Unless the context otherwise requires, as used in OAR 836-027-0005 to 836-027-0180:

(a) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(b) "Foreign insurer" includes an alien insurer except where specifically noted otherwise.

(c) "Form A" means the form prescribed by OAR 836-027-0100, Exhibit 1, Form A.

(d) "Form B" means the form prescribed by OAR 836-027-0010, Exhibit 2, Form B.

(e) "Form C" means the form prescribed by OAR 836-027-0012, Exhibit 3, Form C.

(f) "Form D" means the form prescribed by OAR 836-027-0160, Exhibit 4, Form D.

(g) "Form E" means the form prescribed by OAR 836-027-0125, Exhibit 5, Form E.

(h) "Form F" means the form prescribed by OAR 836-027-0140, Exhibit 6, Form F.

(i) "Ultimate controlling person" means the person who is not controlled by any other person.

(2) Unless the context requires otherwise, other terms used in OAR 836-027-0005 to 836-027-0180 are used as defined in ORS 732.548.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 732.572
Stats. Implemented: ORS 732.517 - 732.592
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

836-027-0010
Registration of Insurers — Statement Filing

An insurer required to file an annual registration statement pursuant to ORS 732.517 to 732.592 shall:

(1) Furnish the required information on Form B, which is incorporated in and made a part of this rule as Exhibit 2.

(2) Include a statement that the insurer's board of directors oversees corporate governance and internal controls.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 732.572
Stats. Implemented: ORS 732.517 - 732.592
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 13-1993, f. & cert. ef. 12-1-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

836-027-0030
Forms; General Requirements

(1) Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by ORS 732.517 to 732.592, including but not limited to the registration provisions thereof. The forms are not intended to be blank forms that are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers to the items are prepared so as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer to any item is in the negative, an appropriate statement to that effect shall be made.

(2) One complete copy of each statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the Director of the Department of Consumer and Business Services by personal delivery or mail. A copy of Form C shall be filed in each state in which an insurer is authorized to do business if the Commissioner of that state has notified the insurer of its request in writing. An insurer who has been so notified shall file the form not later than the 30th day after the date of receipt of the notice. At least one of the copies shall be manually signed

and certified in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(3) If an applicant requests a hearing on a consolidated basis under section 4, chapter 370, Oregon Laws 2013, in addition to filing the Form A with the director, the applicant must file electronically a copy of Form A with the National Association of Insurance Commissioners.

(4) Statements must be prepared on paper 8-1/2" X 11" or 8-1/2" X 13" in size and bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements or exhibits shall be clear, easily readable, and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 732.572
Stats. Implemented: ORS 732.517 - 732.592
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 19-2006, f. & cert. ef. 9-26-06; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

836-027-0035
Forms; Incorporation by Reference, Summaries, and Omissions

(1) Information required by any item of Form A, B, D, E or F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority or any other document may be incorporated by reference in answer or partial answer to any item of Form A, B, D, E or F if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be attached as exhibits if the documents are extensive. Documents currently on file with the Director that were filed within three years need not be filed as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case in which the incorporation would render the statement incomplete, unclear, or confusing.

(2) If an item requires a summary or outline of the provisions of any document, only a brief statement of the pertinent provisions of the document shall be made. The summary or outline may in addition incorporate by reference particular parts of any exhibit or document currently on file with the Director that was filed within three years and may be qualified in its entirety by such reference. If two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution or other details, a copy of only one of such documents need be filed, but it shall have attached a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents of which a copy is filed.

Stat. Auth.: ORS 731 & 732.705
Stats. Implemented: ORS 732.523, 732.552 & 732.574
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

836-027-0045
Forms; Additional Information and Exhibits

In addition to the information expressly required to be included in Forms A, B, C, D, E and F there shall be included further material information, if any, as may be necessary to make the information contained in the form not misleading. The person filing may also file exhibits in addition to those expressly required by the statement. Such exhibits shall be marked to indicate clearly the subject matters to which they refer.

Stat. Auth.: ORS 731 & 732.705
Stats. Implemented: ORS 732.523, 732.552, 732.553 & 732.574
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

836-027-0050
Instructions; Amendments

A change to Form A, B, C, D, E and F shall include on the top of the cover page the phrase: "Change No. _____ to" and shall indicate the date of the change and not the date of the original filing.

Stat. Auth.: ORS 731 & 732.705
Stats. Implemented: ORS 732.523, 732.552, 732.554 & 732.574
Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-24-93; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

836-027-0100
Acquisition of Control — Statement Filing

A person required to file a statement pursuant to ORS 732.517 to 732.592 shall furnish the required information on Form A, which is incorporated in and made a part of this rule as Exhibit 1. The person also shall furnish the required information on Form E, which is incorporated in and made a part of this rule as Exhibit 5 and described in OAR 836-027-0125.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 732.705
Stats. Implemented: ORS 732.517 - 732.592
Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

836-027-0125
Pre-Acquisition Notification

(1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition under ORS 732.523, the person must file a pre-acquisition notification form, Form E, as required under section 6, chapter 370, Oregon Laws 2013.

(2) If a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to sections 4 to 8, chapter 370, Oregon Laws 2013, that person shall file a pre-acquisition notification form, Form E. A pre acquisition notification form need not be filed if the acquisition is beyond the scope of sections 5 to 8, chapter 370, Oregon Laws 2013.

(3) In addition to the information required by Form E, the director may require an opinion from an economist as to the competitive impact of the proposed acquisition.

Stat. Auth.: ORS 732.705
Stats. Implemented: ORS 732.517 - 732.592
Hist.: ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

836-027-0140
Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report under section 10, chapter 370, Oregon Laws 2013shall furnish the required information on Form F, which is incorporated in and made a part of this rule as Exhibit 6.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 732.705
Stats. Implemented: ORS 732.517 - 732.592
Hist.: ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14

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Department of Corrections
Chapter 291

Rule Caption: Arrest and Transport of Offenders
Adm. Order No.: DOC 1-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 6-1-2013
Rules Amended: 291-014-0100, 291-014-0110, 291-014-0120
Subject: These modifications are necessary to clarify the minimum training standards for a parole officer to make an arrest. This is being refiled to correct a filing error.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-014-0100
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to provide community protection by the apprehension and arrest of offenders who engage in violation behavior or are subject to an arrest warrant. Arrest shall be made in the appropriate manner as prescribed by law (ORS 137.550; 144.331; 144.334, 144.350, 144.360, 144.610 and 144.613) and this rule.

Stat. Auth.: ORS 137.545, 144.350, 144.360, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.545, 144.331, 144.334, 144.350, 144.360, 144.610, 144.613, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 5-2006, f. & cert. ef. 7-24-06; DOC 18-2013, f. & cert. ef. 12-13-13; DOC 1-2014, f. & cert. ef. 1-14-14

291-014-0110
Definitions

(1) Arrest: To place an offender under actual or constructive restraint or to take a person into custody.

(2) Offender: Any person under supervision who is on parole, post prison supervision, transitional leave, local control or probation status.

(3) Officer: Any state parole and probation officer certified as such by the Department of Public Safety Standards and Training.

(4) Reasonable Grounds: Exists when facts and circumstances within the officer's knowledge are sufficient to justify a belief that a violation has occurred.

(5) Warrant: A written order made on behalf of the releasing authority, or the court, which commands the officer to arrest the offender.

Stat. Auth.: ORS 137.545, 144.350, 144.360, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.545, 144.331, 144.334, 144.350, 144.360, 144.610, 144.613, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 5-2006, f. & cert. ef. 7-24-06; DOC 18-2013, f. & cert. ef. 12-13-13; DOC 1-2014, f. & cert. ef. 1-14-14

291-014-0120
Arrest

(1) A parole/probation officer is authorized to make an arrest if the officer participates in a minimum of eight hours annual training in arrest procedures, use of restraints, less than lethal force options, and defensive tactics.

(2) When a warrant has been issued for an offender by the releasing authority or the Court, based on a violation of a release condition, the supervising officer shall cause the execution of any arrest warrant.

(3) In all other arrest cases, at least one of the following criteria must be met:

(a) Reasonable grounds that a violation(s) has occurred and is serious enough to warrant a recommendation of incarceration;

(b) The offender's behavior constitutes a threat or danger to the community or to himself/herself.

Stat. Auth.: ORS 137.545, 144.350, 144.360, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.545, 144.331, 144.334, 144.350, 144.360, 144.610, 144.613, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 5-2006, f. & cert. ef. 7-24-06; DOC 18-2013, f. & cert. ef. 12-13-13; DOC 1-2014, f. & cert. ef. 1-14-14

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Rule Caption: Non-Cash Incentives for Inmates in Department of Corrections Institutions
Adm. Order No.: DOC 2-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 9-1-2013
Rules Amended: 291-077-0035
Subject: The department has developed non-cash incentives to encourage pro-social behavior among inmates and to motivate inmates toward positive institutional behavior and program compliance. These modifications update the privileges and services available to inmates to decrease the effectiveness of the use of the incentives in managing inmate behavior. Note: This is being refiled to correct a filing error.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-077-0035
Non-Monetary Incentives (Non-Cash Incentives)

The purpose of non-cash incentives is to enhance cost effective inmate management by providing tiered access to services and privileges at department facilities. Non-cash incentives encourage pro-social behavior among inmates consistent with good correctional practices and the mission of the department. Functional unit managers may limit an inmate's access to services and privileges available within the incentive level attained by the inmate, as necessary, to ensure the safe and secure operation of the facility and within resources available to and physical plant limitations of the facility.

(1) General:

(a) Functional unit managers will develop a list of services and privileges specific to their facility as part of the DOC non-cash incentives program (institution incentive level matrix).

(b) Specific services and privileges available to inmates may differ between facilities depending on size and configuration of space and availability of resources.

(c) Some incentive services and privileges will be offered consistently throughout the department at each facility, when possible, as outlined in Appendix C.

(d) There will be three incentive levels (Level I, Level II, and Level III) available to inmates.

(e) Incentive Level I is a restricted level statewide. Restrictions imposed may differ between facilities due to the size and configuration of each facility. Level I inmates are identified with an orange identification card.

(f) Incentive Level II offers more services and privileges than Level I. Level II inmates are identified with the standard identification card (red fading into white).

(g) Incentive Level III is the highest attainable incentive level. Level III inmates are identified with a silver, holographic tamper resistant "NCI 3" sticker placed on their identification.

(h) Incentive levels will be calculated electronically at the end of each business day and made available to staff the following business day.

(2) Inmate Eligibility:

(a) All general population inmates will be eligible to earn services and privileges identified as non-cash incentives. Inmates who are not in general population will be ineligible to participate in the non-cash incentive program within the context of this rule. A non-cash incentive program may be developed and implemented in select special housing assignments as recommended by the functional unit manager and approved by the Assistant Director for Operations or designee.

(b) All department facilities will share a single set of inmate eligibility criteria.

(c) The incentive levels and corresponding eligibility are shown in Appendix B. Functional unit managers may develop additional criteria to manage services and privileges specific to the institution within the framework of Appendix B (e.g., waiting lists).

(d) New or returning commitments to the department will be placed at incentive Level II if they have not had a major misconduct in the last 180 incarcerated days or program fail in the last 90 incarcerated days.

(e) If an inmate has segregation time to complete from a prior incarceration period with the department. Upon readmission, once segregation time is completed, the inmate will be placed at the proper incentive level as outlined in Appendix B.

(f) The time period necessary to attain eligibility to promote to a higher incentive level will not start until an inmate is released from special housing and after all disciplinary sanctions (segregation and loss of privileges) are satisfied.

(g) The time an inmate spends in the infirmary or mental health infirmary, for non-disciplinary reasons and while not serving any disciplinary sanctions, will not negatively impact their incentive level. Time spent in these units will count toward eligibility to promote to the next incentive level so long as these criteria are met.

(h) Inmates may earn promotion to higher incentive levels by compliance with prescribed programming and good institutional behavior.

(i) Alternatively, an inmate's incentive level may be lowered as a consequence of noncompliance with prescribed programming or engaging in prohibited conduct.

(j) The functional unit manager or designee may adjust an inmate's incentive level by two levels, up or down, as necessary to promote good institutional conduct and program compliance.

(k) An inmate's incentive level will be lowered no more than one level as a result of a disciplinary sanction and program failure arising out of a single act of prohibited conduct except when the inmate receives a sanction of more than 21 days in segregation. When the sanction is greater than 21 days in segregation, the inmate will be placed at the lowest incentive level available at the facility. An inmate whose incentive level has been reduced one level as a result of a disciplinary sanction will be considered as meeting all the eligibility criteria of the reduced incentive level.

(l) An inmate's incentive level will be adjusted once the inmate is found in violation of a major misconduct or a program failure is upheld.

(m) The functional unit manager or designee may waive the non-cash incentive system for a specific event(s) to allow all general population inmates to participate.

(3) Transfers:

(a) Inmates will retain the incentive level they have earned and any time accrued towards promotion to the next incentive level upon transfer to another facility.

(b) Inmates transferred to another facility will retain incentive property and commissary spending limit privileges earned prior to the transfer. Access to institution-specific services and privileges available at the receiv-

ing facility may be subject to waiting periods established by the functional unit manager or designee.

(4) Property:

(a) Inmates will retain property purchased (e.g.., television, CD player, CDs) prior to the adoption of this rule subject to limitations on use established by the functional unit manager or designee.

(b) Property items offered as part of the non-cash incentive program (incentive property) will be offered department wide unless the property is part of a limited duration pilot project approved by the Assistant Director of Operations or designee.

(c) Once purchased, incentive property will be handled in accordance with the rule on Personal Property (Inmate) (OAR 291-117).

(d) When access to property is restricted by a disciplinary sanction (loss of privileges or assignment to special housing), incentive property will be stored at the direction of the functional unit manager/designee.

(e) Inmates will not be required to send incentive property home as a result of disciplinary infractions.

(f) The use of specific property, including but not limited to personal electronics, may be restricted until the proper incentive level is achieved. Select incentive property and the manner in which the property is restricted will be at the functional unit manger's/designee's discretion and may differ by institution. The property may be stored or disabled until the proper incentive level is achieved.

(g) Certain property sold prior to implementation of this rule will not transfer to the receiving facility; e.g., 13-inch television (box or CRT).

(5) The functional unit manager or designee will create a matrix of non-cash incentives detailing services and privileges available to inmates at each incentive level within the facility. The matrix will be updated and made available to inmates at least annually. Any restrictions or additional eligibility criteria for institution-specific services and privileges (e.g., waiting lists) will be included in the matrix.

(6) Miscellaneous:

(a) Any inmate, regardless of incentive level, may be placed on the Security Threat Management caseload.

(b) The use of some or all of an inmate's incentive property and non-mandated services and privileges may be authorized or restricted by the functional unit manager or designee regardless of the inmate's incentive level.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 421.440, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.440, 423.020, 423.030 & 423.075
Hist.: DOC 2-2001(Temp), f. & cert. ef. 1-22-01 thru 7-18-01; DOC 15-2001, f. & cert. ef. 7-9-01; DOC 14-2003, f. 9-25-03, cert. ef. 10-1-03; DOC 1-2006, f. & cert. ef. 2-15-06; DOC 14-2013, f. 11-18-13, cert. ef. 12-1-13; DOC 2-2014, f. & cert. ef. 1-14-14

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Department of Energy
Chapter 330

Rule Caption: Amending Biomass Tax Credit rules to increase application fee, clarify eligibility and application process.
Adm. Order No.: DOE 5-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 10-1-2013
Rules Amended: 330-170-0010, 330-170-0020, 330-170-0030, 330-170-0040, 330-170-0050, 330-170-0060
Subject: These permanent rule amendments for the Biomass Producer or Collector Tax Credit program implement changes providing additional details about the application contents and clarify the eligibility of biomass feedstocks and activities. The rule adds clarity and transparency for applicants and assists the Oregon Department of Energy in administering the certification process. ORS 315.141(5)(b) directs the department to collect a fee not to exceed the cost of administering the program. The rule increases the application fee. The department explained and included the fee increase in the budget approved by the legislature as part of the 2013-2015 budget process.
Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-170-0010
Purpose and Scope

(1) OAR chapter 330, division 170 establishes the procedure and criteria for certifying tax credits under ORS 315.141 and 469B.403.

(2) These rules apply to tax years beginning on or after January 1, 2014.

Stat. Auth.: ORS 315.141
Stats. Implemented: ORS 315.141 & 469B.403
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0020
Definitions

For the purposes of OAR chapter 330, division 170 the definitions in ORS 315.141 apply and in addition the following definitions shall apply:

(1) "Applicant" means an individual or a legal entity (including but not limited to any domestic or foreign corporation, trust, partnership, cooperative, or limited liability company), but does not include a nonprofit organization or a government entity, applying for the tax credit under ORS 315.141 and 469B.403.

(2) "Certificate" means a document issued by the department representing the right to claim a tax credit described in ORS 315.141 for the amount described on the certificate.

(3) "Charcoal" means biomass produced into a densified, carbon rich product used in filters, as an absorbent, soil amendment, or a fuel marketed for cooking purposes and not including biofuels produced by torrefaction.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the department.

(6) "Dry ton" means the amount of biomass that would weigh 2,000 pounds at zero percent moisture content.

(7) "Firewood" as used in this rule means whole or split pieces of wood that are in a form commonly used for burning in campfires, stoves, or fireplaces.

(8) "Manure" means feces and urine of domestic livestock as excreted.

(9) "Oil Seed Crops" means canola, camelina, soybean, sunflower, safflower, mustard, and flaxseed grown for use as a biofuels feedstock.

(10) "Rendering Offal" means the waste or by-products of a rendering process.

(11) "Slash" means material from trees and woody plants, including limbs, tops, needles, leaves and other woody parts, grown in a forest, woodland, farm, rangeland or wildland-urban interface environment and collected at the harvest site.

(12) "Used Cooking Oil" means waste vegetable oil from food preparation.

(13) "Vegetative Biomass from Agricultural Crops" means residual material derived from crop production and crops grown solely to be used for energy, but does not include food processing residuals.

(14) "Virgin Oil" means un-used oil that has been extracted from an agricultural crop.

(15) "Waste Grease" means waste vegetable oil, animal fat, or organic grease from food preparation that is recovered from a grease trap, grease interceptor, grease recovery or similar device.

(16) "Wastewater Biosolids" means solids derived from primary, secondary, or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemically stabilize solids to the extent that they do not attract vectors. This term refers to domestic wastewater treatment facility solids that have undergone adequate treatment to permit their land application. This term has the same meaning as the term "sludge" in ORS 468B.095.

(17) "Yard Debris" is defined in ORS 459.005(31).

Stat. Auth.: ORS 351.141
Stats. Implemented: ORS 315.141 & 469B.403
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0030
Applicant Eligibility

To be eligible for certification, the applicant must:

(1) Be subject to taxation under ORS 316, 317 or 318;

(2) Be an agricultural producer or biomass collector;

(3) Have title to the biomass at the time the biomass is delivered to a biofuel producer;

(4) Produce or collect the biomass in Oregon; and

(5) Deliver or cause the delivery of the biomass to be:

(a) Used as biofuel in Oregon; or

(b) Used to produce biofuel in Oregon.

Stat. Auth.: ORS 351.141
Stats. Implemented: ORS 315.141 & 469B.403
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0040
Biomass Eligibility

(1) The biomass must be eligible under these rules, fall within the definitions in ORS 315.141 and have a credit rate listed in ORS 469B.403.

(2) The biomass must be converted into biofuel in Oregon or used as biofuel in Oregon.

(3) Waste grease that is not dewatered prior to delivery to a biofuel producer is considered to have an eligible biomass content of 10 percent of the delivered weight of the oil and water mixture, unless the applicant can demonstrate, to the satisfaction of the department, an alternative measurement.

(4) Forest or rangeland woody debris must be collected and produced at the harvesting or thinning site.

(5) Only one certified credit may be issued for each unit of biomass as defined in ORS 469B.403.

(6) The following material is not eligible:

(a) Material used to produce firewood or charcoal.

(b) Construction and demolition debris, urban wood waste, yard debris.

(c) Forest or rangeland woody debris not collected and produced at the harvesting or thinning site.

(d) Algae.

(e) Material from pre-construction or construction activities and golf courses.

(f) Canola grown, collected or produced in the Willamette Valley.

(g) Grain corn.

(h) Other material that is not listed in ORS 315.141 or does not have a credit rate listed under ORS 469B.403.

Stat. Auth.: ORS 351.141
Stats. Implemented: ORS 315.141 & 469B.403
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0050
Application Process

(1) Applicants requesting a Biomass Producer or Collector Tax Credit must apply on the department approved form. The form must include the following information:

(a) The name of the applicant, address, phone number and email;

(b) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law;

(c) A description of the quantity and type of biomass produced or collected;

(d) The name of the biofuel producer that received the biomass for use as biofuel or to produce biofuel;

(e) The applicant's certification statement; and

(f) The name, address, email address and telephone number of the responsible party for the applicant.

(2) In addition to the information on the form, the applicant must provide all of the following information related to the amount of biomass claimed in the application:

(a) Evidence that the agricultural producer or biomass collector held title to the biomass at the time the biomass was delivered. Evidence of title that may be satisfactory to the department, includes, but is not limited to: contracts, receipts, settlement sheets.

(b) Documentation indicating the origination of the biomass, such as the physical address; township, range, section and quarter/quarter section; or other specific geographic indicator.

(c) A summary or settlement sheet for each shipment received by the biofuel producer. Each summary or settlement sheet must include the following:

(A) The name and address of the biofuel producer to which the biomass was delivered;

(B) The date of delivery for each shipment of biomass;

(C) The type of biomass included in each shipment and the applicable tax credit rate for each shipment;

(D) The amount of biomass delivered in each shipment;

(E) The delivered price for each shipment of biomass, including the dry ton payment rate if applicable;

(F) The weight ticket number or a similar unique identifier for each shipment; and

(G) For woody biomass and vegetative biomass from agricultural crops, the dry ton weight equivalent of the actual tonnage in each shipment, calculated in a manner acceptable to the department.

(d) A receipt of qualifying biomass that includes the type of biomass, name and address of biomass producer or collector, name and address of the person receiving the biomass from the applicant, type of biofuel facility, dates delivered, amount of biomass received and a statement attesting to the receipt and use of biomass. An applicant may complete the department approved Receipt of Qualifying Biomass form or provide a receipt satisfactory to the department.

(e) All calculations used to convert one measure of the biomass to another measure and source references for the calculations and all variables.

(f) An application fee of $100 plus 2.5 percent of the total amount of tax credit.

(g) If eligible biomass is stored or aggregated with other biomass or materials after the initial production or collection activities and prior to delivery to a biofuel producer, the biomass producer or collector must provide detailed records certifying the amount and source of each type of biomass.

(h) Agricultural producers or biomass collectors that produce or collect animal manure must use the department approved worksheet or the following formula to calculate the amount of eligible manure:

(A) A x b x c / 2000; where:

(i) A is equal to the number of 1,000 pound animal units contributing manure during the period,

(ii) B is equal to the average animal manure production value from the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Revision 2, March 2008, and

(iii) C is equal to the number of days in the period.

(B) The following documentation must be included with the application:

(i) The log of animal numbers and calculation of 1,000 pound animal units: [Number of animals contributing manure, by classification, (conduct a separate calculation for milkers, dry cows, heifers, calves)] multiplied by [the average lbs./1,000] = number of 1,000 pound animal units;

(ii) Documentation indicating the manure was used or is to be used as biofuel in Oregon or to produce biofuel in Oregon; and

(iii) A copy of the Oregon Confined Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) General Permit Summary; and

(iv) The most recent Oregon Confined Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) General Permit Annual Report.

(i) When it is not practicable to produce weight tickets for deliveries to a biofuel producer, agricultural producers that produce oil seed crops, grain crops, grass, wheat, straw or other vegetative biomass must include the following records with their application:

(A) Documentation demonstrating the quantity of biomass produced, which must include one or more of the following:

(i) Acreage report(s) or yield data submitted to the United States Department of Agriculture;

(ii) Crop insurance records of acreage planted and quantity harvested of biofuel crop; or

(iii) Additional documentation showing the actual yields of the biomass crop.

(B) Receipts or equivalent documentation indicating the biomass was used or is to be used as biofuel in Oregon, or to produce biofuel.

(j) If the applicant is transferring biomass that cannot be weighed or calculated, the applicant must supply documentation indicating the amount of biomass as measured by metering equipment or a similar device.

(A) Applicants must provide documentation, including manufacturer's specifications that indicate the measurements are accurate and reliable.

(B) Metering equipment or similar devices must be calibrated according to the manufacturer's specifications and the calibration records must be maintained for a period of no less than five years.

(3) The department may require the applicant to provide further information to complete a review of the application and verify compliance with statute and these rules. This information may include, but is not limited to, demonstration that the biomass is used as biofuel in an eligible manner. The department will notify the applicant in writing requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(4) If a biomass collector requests a tax credit in place of the agricultural producer that produced the biomass, the application must include a signed statement from the agricultural producer that they are aware the bio-

mass collector will be applying for the credit and that the agricultural producer will not apply for a tax credit for the same unit of biomass.

(5) Applications must be received within 60 days following the end of the applicant's tax year during which the biomass is delivered to a biofuel producer. Applications received after this date will be returned and any application fee will be fully refunded.

(6) The department may refund up to 75 percent of the application fee if the application is withdrawn prior to review by the department. Only refunds that are $100 or greater will be issued.

(7) The department may require the applicant to pay reasonable costs, not to exceed actual costs, incurred in connection with reviewing the application that exceed the original application fee and which the Director determines are incurred solely in connection with processing the application. The department shall advise the applicant of any additional costs the applicant must pay before the department incurs the costs.

Stat. Auth.: ORS 351.141
Stats. Implemented: ORS 315.141 & 469B.403
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

330-170-0060
Certification and Denial

(1) If the department approves an application, the Director will issue a Certificate to the applicant identifying the name of the Certificate holder, the biomass, and the amount of the tax credit certified.

(a) The amount of tax credit certified will be determined by multiplying the amount of eligible biomass delivered to a biofuel producer by the applicable tax credit rate found in ORS 469B.403.

(b) Except for oil seed crops, tax credit certificates will be issued for the tax year the biomass is delivered to a biofuel producer for use in Oregon. Tax credit certificates for the production of oil seed crops used to produce biofuel will be issued for the tax year in which the oil seeds are delivered to an oil seed processor. The department will not certify tax credits for agricultural producers that produce oil seeds until documentation indicating the oil has been used in Oregon to produce biofuel is provided in accordance with these rules.

(2) The department may adjust the amount of tax credit certified from the applied amount if miscalculations, inconsistencies or errors are found during the technical review.

(3) If multiple types of eligible biomass are included in a load that is appropriately documented under these rules, the department will apply the lowest credit rate associated with the biomass in determining the amount of certified credit for the entire load of eligible biomass.

(4) The department may review the biomass origination, production or collection activities, or the operating activities of the biofuel producer. The information gathered during a review may be used to determine if the application complies with applicable statutory provisions and rules.

(5) If the department does not approve an application, the Director will provide written notice of denial, including a statement of the findings and reasons for the denial, by mail. The department may deny the application if:

(a) The application does not comply with applicable statutory provisions and rules;

(b) The applicant does not provide information requested by the department within 30 days from date of request;

(c) The application is for biomass that is not eligible for the tax credit, or the department cannot determine the amount of eligible biomass that is co-mingled or combined with biomass that is not eligible; or

(d) The department is unable to determine whether the application complies with applicable statutory provisions and rules based on the information provided by the applicant or gathered during the review process.

(6) The applicant may request reconsideration in writing no later than 60 days after the Director issues a decision denying an application.

Stat. Auth.: ORS 351.141
Stats. Implemented: ORS 315.141 & 469B.403
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Updates the list of state-regulated appliances, adds test methods and clarifies product certification process.
Adm. Order No.: DOE 6-2013
Filed with Sec. of State: 12-23-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 330-092-0005, 330-092-0010, 330-092-0015, 330-092-0020, 330-092-0025, 330-092-0030, 330-092-0035, 330-092-0040, 330-092-0045, 330-092-0050, 330-092-0055, 330-092-0070
Rules Repealed: 330-092-0060, 330-092-0065
Subject: These permanent rule amendments implement minimum energy efficiency standards for new televisions, battery charger systems and high light output double-ended quartz halogen lamps sold or installed in Oregon, as established by Senate Bill 692, passed by the 2013 Oregon Legislative Assembly. Methods for testing the energy consumption of those three products are described in the rules. The rule amendments also update the list of products now subject to federal energy efficiency standards and therefore no longer subject to state regulation, and update and clarify the certification and compliance requirements for state-regulated equipment. Two sections regarding the department's authority to postpone, adopt or update minimum energy efficiency standards are repealed as they are redundant with statute.
Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-092-0005
Purpose

The purpose of these rules is to establish procedures to govern the enforcement and amendment of standards found in ORS 469.229 through 469.261, which establish minimum energy efficiency standards for equipment and appliances for sale or use in Oregon that are not federally regulated.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0010
Definitions

As used in OAR 330-092-0010 through 330-092-0046:

(1) "Director" means the Director of the Oregon Department of Energy.

(2) "Department" means the Oregon Department of Energy.

(3) "Equipment" means a category of equipment or appliances regulated by ORS 469.229 to 469.261 and described in OAR 330-092-0015, below.

(4) "Multi-State Compliance System" or M-SCS means the multi-state database program located at www.appliancestandards.org to register and list compliant equipment.

(5) "Product" means a particular model number or series available from a particular manufacturer, as distinct from a category of equipment.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0015
Effective Dates for Regulated Equipment

(1) The following list specifies the effective dates for equipment for which Oregon minimum energy efficiency standards have been adopted:

(a) Battery charger systems, as defined in ORS 469.229(7): The standards in ORS 469.233(19) are effective January 1, 2014, for sale of equipment and installation.

(b) Bottle-type water dispensers, as defined in ORS 469.229(9): The standards in ORS 469.233(12) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(c) Commercial hot food holding cabinets, as defined in ORS 469.229(13): The standards in ORS 469.233(13) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(d) Commercial refrigerators and freezers, as defined in ORS 469.229(15): The standards in ORS 469.233(4) are effective January 1, 2008 for sale of equipment and January 1, 2009 for installation.

(e) Compact audio products, as defined in ORS 469.229(16): The standards in ORS 469.233(14) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(f) Digital versatile disc players and digital versatile disc recorders, as defined in ORS 469.229(21): The standards in ORS 469.233(15) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(g) High light output double-ended quartz halogen lamps, as defined in Oregon Laws 2013, Chapter 418, Section 2: The standards in Oregon

Laws 2013, Chapter 418, Section 4, are effective January 1, 2016, for sale of equipment and installation.

(h) Portable electric spas, as defined in ORS 469.229(32): The standards in ORS 469.233(16) are effective September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(i) Televisions, as defined in ORS 469.229(42): The standards in ORS 469.233(18) are effective January 1, 2014, for sale of equipment and installation.

(2) The following equipment is currently federally regulated and not subject to further regulation under ORS 469.229 through 469.261 or these rules:

(a) Automatic commercial ice cube machines as defined in ORS 469.229(2).

(b) Commercial clothes washers, as defined in ORS 469.229(12).

(c) Commercial pre-rinse spray valves, as defined in ORS 469.229(14).

(d) Illuminated exit signs, as defined in ORS 469.229(24).

(e) Incandescent reflector lamps, as defined in ORS 469.229(41).

(g) Metal halide lamp fixtures, as defined by ORS 469.229(28).

(i) Single-voltage external AC to DC power supplies, as defined in ORS 469.229(39).

(h) Torchieres, as defined in ORS 469.229(45).

(i) Traffic signal modules, as defined in ORS 469.229(46).

(j) Unit heaters, as defined in ORS 469.229(47).

(k) Walk-in refrigerators and walk-in freezers, as defined in ORS 469.229(49).

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0020
Minimum Energy Efficiency Standards and Test Methods

(1) Beginning on the effective date shown in OAR 330-092-0015(1)(i), televisions must meet the energy efficiency standards in ORS 469.233(18) as measured in accordance with the federal test procedure described in 10 CFR Section 430.23(h) (Appendix H to Subpart B of Part 430) (2013). Alternatively, until April 23, 2014, television efficiency may be measured in accordance with:

(a) For standby passive mode, the test methods contained in International Electrotechnical Commission (IEC) 62301:2005, Edition 1.0 "Household Electrical Appliances — Measurement of Standby Power"; and

(b) For on mode and power factor test, the test methods contained in IEC 62087:20008(E), Edition 2.0 — "Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment", Section 11.6.1 — "On mode (average testing with dynamc broadcast-content video signal" and the specifications contained in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1604(v)(3), effective January 1, 2011.

(2) Beginning on the effective date shown in OAR 330-092-0015(1)(a), battery charger systems must meet the energy efficiency standards in ORS 469.233(19) as measured in accordance with:

(a) For small battery chargers, the test methods contained in 10 CFR Section 430.23(aa) (Appendix Y to Subpart B of Part 430) (2011) and the specifications contained in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1604(w)(1), effective January 1, 2013; and

(b) For large battery chargers, the test methods contained in Energy Efficiency Battery Charger System Test Procedure Version 2.2 dated November 12, 2008, and published by ECOS and EPRI Solutions, with the modifications specified in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1604(w)(2).

(3) Beginning on the effective date shown in OAR 330-092-0015(1)(g), high light output double-ended quartz halogen lamps must meet the energy efficiency standards in Oregon Laws 2013, Chapter 418, Section 4, as measured in accordance with the IESNA LM-45: Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps published by the Illuminating Engineering Society of North America.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0025
Reporting Product Compliance Through the Multi-State Compliance System

(1) Manufacturers of Oregon-regulated equipment shall report compliance by registering a product on the Multi-State Compliance System website (www.appliance-standards.org) or by registering products with the California Energy Commission appliance efficiency database (www.energy.ca.gov/appliances). Products registered on the California Energy Commission appliance efficiency database will be automatically entered on the M-SCS database.

(2) Questions concerning product registration should be directed to the Oregon Department of Energy's Appliance Efficiency Standards Program Manager, energyweb.incoming@state.or.us, 503-378-4040, 625 Marion St. N.E., Salem OR 97301.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0030
Effect of Registration

To be sold or installed in Oregon after the effective dates described in OAR 330-092-0016, Oregon-regulated products must be listed as "Compliant" in the M-SCS database. Products that are not listed in the database or are listed as "Needing Attestation" or "Non-Compliant" may not be sold or installed in Oregon after the applicable effective date.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0035
Manufacturer Certification of Information Entered in the Multi-State Compliance System

(1) Manufacturers of Oregon-regulated equipment not listed in the M-SCS database as compliant with the California standards must certify to the Oregon Department of Energy with a letter signed by a responsible officer in the organization, such as the Chief Financial Officer, Government Relations Officer, Chief Engineer or Technical Officer, that:

(a) The information related to the products listed by the manufacturer is true and accurate; and

(b) The products have been tested in accordance with test methods specified in ORS 469.233 or in these rules, as appropriate.

(2) A single letter may certify compliance for multiple products, but the letter must list each product to which it applies separately. Additional certifications are required when new products are listed.

(3) The letter may be sent by mail, fax, e-mail of a scanned copy, or e-mail with electronic signature, to the Oregon Department of Energy's Appliance Efficiency Standards Program Manager, 625 Marion St. N.E., Salem OR 97301, fax 503-373-7806, energyweb.incoming@state.or.us.

(4) The Department will update the M-SCS database as needed to reflect that compliance letters have been received.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0040
Determination of Compliance

(1) Products for which the Oregon minimum energy efficiency standards are identical to or lower than standards adopted in California, and that have been approved by the California Energy Commission, will automatically be certified as compliant for sale and installation in Oregon.

(2) Products for which Oregon minimum energy efficiency standards are not identical to standards adopted in California, or that have not been approved by the California Energy Commission, must be approved by the Oregon Department of Energy and will be designated in the M-SCS database as "Needing Attestation" until they are approved.

(3) Products which do not comply with the appliance efficiency standards set forth in ORS 469.233 will be designated in the M-SCS database as "Non-Compliant."

(4) A manufacturer may request the Department to change the status of a product in the M-SCS database from "Needing Attestation" or "Non-Compliant" to "Compliant" if it believes the product is incorrectly listed. The Department may require the manufacturer to submit or resubmit certification pursuant to OAR 330-092-0035 and any other documentation demonstrating that the product meets the applicable minimum energy efficiency standard.

(5) The Department may require the manufacturer to provide test results or other documentation verifying that a product meets Oregon's minimum energy efficiency standards for that category of equipment.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0045
Labeling

(1) Except as provided in subsections (2) through (4) of this section, a product which is listed as "Compliant" in the M-SCS database will be deemed to meet Oregon's labeling requirements if that product is permanently, legibly and conspicuously marked, labeled or tagged on an accessible place on each unit with the following information:

(a) Manufacturer's name or brand name or trademark, which shall be either the name, brand or trademark of the listed manufacturer reporting compliance pursuant to OAR 330-092-0035;

(b) Model number; and

(c) Date of manufacture, indicating at least the year and month. If the date is in a code that is not readily accessible to the lay person, the manufacturer shall immediately, upon request, provide the code to the Department.

(2) For lamps, the information required by subsection (1) of this section shall be permanently, legibly, and conspicuously displayed on an accessible place on each unit, on the unit's packaging, or, where the unit is contained in a group of several units in a single package, on the packaging of the group.

(3) The Department may waive marking, labeling or tagging requirements for products marked, labeled or tagged in compliance with federal requirements.

(4) The Department may grant a waiver from these labeling requirements on a case-by-case basis for a category of equipment if it determines:

(a) Oregon's labeling requirements would be different and more burdensome than requirements in other states with similar standards.

(b) Current labeling materially complies with the intent of Oregon's labeling requirements.

(c) Compliance with subsection (1) would be impractical.

(d) Labeling is unnecessary.

(e) No waiver will be made for an individual manufacturer or individual product.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0050
Determination of Non-Compliance

(1) If a manufacturer has not submitted certification to the Department pursuant to OAR 330-092-0035 for a product, the Department may change the Oregon status in the M-SCS to "Needing Attestation" and require the manufacturer to provide such certification within 30 days. If certification is not received within 30 days, the Department may change the status to "Non-Compliant" until such time as the certification is provided.

(2) The Department may review any product if it has cause to believe the product may not comply with Oregon's appliance efficiency standards.

(a) Upon completing its review, the Department will notify a manufacturer in writing of its determination whether the product is in compliance with the appropriate appliance energy efficiency standard. The notification will include:

(A) Identification of the product.

(B) An explanation of any deficiencies in compliance with the applicable standards, testing requirements, or labeling requirements.

(C) The action the Department proposes to take if it determines the product is non-compliant or the information supplied to the Department through the M-SCS database or other means is in error.

(b) The manufacturer must respond to the notice of deficiency within thirty days of mailing.

(c) The Department will make its final determination within fifteen days of receiving the manufacturer's response.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0055
Appeals

(1) A manufacturer may request reconsideration of the Department's order in writing. The Department will respond within fifteen days of receipt of a request for reconsideration.

(2) A manufacturer may appeal an action taken by Department staff to the Director. An appeal shall state as clearly as possible the original request, the action taken by staff, and any relevant information demonstrating why the manufacturer believes the Department action is in error.

(3) The Director will respond to an appeal within fifteen days.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

330-092-0070
Mailing List

Pursuant to ORS 183.355(8), the Department will establish a mailing list of manufacturers for each category of regulated equipment and other interested parties to give notice of program information including proposed rulemaking.

Stat. Auth.: ORS 469.040, 469.255, 469.261, OL 2013, Ch. 418 (SB 692)
Stats. Implemented: ORS 469.229–469.261, OL 2013, Ch. 418
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08; DOE 6-2013, f. 12-23-13, cert. ef. 1-1-14

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Rule Caption: Amends requirements for including green energy technology in new construction and public buildings renovation.
Adm. Order No.: DOE 7-2013
Filed with Sec. of State: 12-23-2013
Certified to be Effective: 12-23-13
Notice Publication Date: 11-1-2013
Rules Adopted: 330-135-0060
Rules Amended: 330-135-0010, 330-135-0015, 330-135-0018, 330-135-0020, 330-135-0025, 330-135-0030, 330-135-0035, 330-135-0040, 330-135-0045, 330-135-0050, 330-135-0055
Rules Repealed: 330-135-0047
Rules Ren. & Amend: 330-135-0048 to 330-135-0052
Subject: These permanent rule amendments revise the requirements for public bodies to spend 1.5 percent of the total contract price for the construction, renovation or major remodel of a public building, pursuant to House Bill 3169 passed by the 2013 Oregon Legislative Assembly. Amendments relate to requirements for installing green energy technology at an alternate site, deferring funds to a future project, and reporting project information. Additionally, amendments include editorial changes to clarify the roles and process for determining if green energy technology is appropriate at a site. A new section describing outreach to public bodies is adopted.
Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-135-0010
Purpose

The purpose of these rules is to establish procedures to administer ORS 279C.527 through 279C.528 and Oregon Laws 2013 ch. 612 (HB 3169), which require a contracting agency to include an appropriate green energy technology in the construction, reconstruction, or major renovation of a public building by spending an amount equal to at least 1.5 percent of the total contract price associated with that building.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented:ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0015
Definitions

For the purpose of this division, the following definitions apply:

(1) "Building" means any structure used or intended for supporting or sheltering any use or occupancy, as defined in Section 202 of the 2010 Oregon Structural Specialty Code.

(2) "Contracting agency" means a public body as defined in ORS 174.109 that plans to enter into a public improvement contract for the construction, reconstruction or major renovation of a public building.

(3) "Cost-effective" means an investment in green energy technology away from the site has a higher estimated economic benefit than an investment in corresponding green energy technology at the site. The comparison must include, but is not limited to, the cost of green energy technology, the cost of energy transmission infrastructure back to the public building, the value of electrical energy produced, saved or used over the life of the system, and the value of thermal energy produced, saved or used over the life of the system.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Direct use" of geothermal energy means using the geothermal resource directly for space or water heating in a building without the assistance of a heat pump. For the purpose of these rules, direct use applications employ resource temperatures of at least 140°F.

(7) "Geothermal energy" means the energy from a geothermal source including, but not limited to, indigenous steam, hot water, and hot brines.

(8) "Green energy technology" has the definition given in ORS 279C.527 as updated by Oregon Laws 2013, chapter 612 (HB 3169).

(9) "Green energy technology database" means a database of public building construction projects that are subject to these rules, and is administered by Oregon Department of Energy.

(10) "Site" means a land parcel or a group of contiguous land parcels, controlled by the contracting agency, on which a building either is or will be located.

(11) "Total contract price" means the estimated cost to construct a building including building systems, interior finishes, site infrastructure within five feet of the building perimeter, connections to existing utilities, landscaping, and sidewalks and parking lots built for the immediate use of the building. It does not include the cost of major new utility infrastructure that needs to be brought to the site or wetland mitigation requirements.

(12) "Total solar resource fraction" (TSRF) means the percent of energy produced by a fixed axis solar energy system when compared to the annual performance of the same system with optimal tilt and orientation and no external shading.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, 2013 OL, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0018
Requirement for Inclusion of Green Energy Technology

(1) Except as provided in OAR 330-135-0040, contracting agencies must spend an amount equal to at least 1.5 percent of the total contract price of an eligible public building project, as defined in OAR 330-135-0020, for the inclusion of green energy technology in the eligible public building.

(2) Contracting agencies may install the green energy technology required under subsection (1) of this section at a site located away from the eligible public building in accordance with ORS 279C.527(2)(b) to (c).

(3) Contracting agencies may defer expenditure of these funds under the conditions of OAR 330-135-0045 and 330-135-0050.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612 (HB 3169)
Hist.: DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0020
Eligible Building Projects

(1) These rules apply to any permanent building(s) which will be owned, partially owned or controlled by a contracting agency and which is either:

(a) Used for conducting public business; or

(b) Used or occupied by employees of the contracting agency on a regular basis for a significant part of their work.

(2) Eligible public building projects are new capital construction projects for which the total contract price is $1,000,000 or more for a single building or a group of buildings on the same site and major renovations for which the total contract price is $1,000,000 or more and at least 50 percent of the insured value of the building.

(3) These rules apply to projects advertised, but if not advertised then projects with building construction contracts entered into, on or after the effective date of these rules.

(4) Public improvement projects that are not buildings are not required to comply with these rules. Projects that are not subject to these rules include, but are not limited to:

(a) Group U occupancies as defined in Section 312 of the 2010 Oregon Structural Specialty Code.

(b) Motor pool lots, parking lots not associated with a building, highways, bridges, sewers, fishponds, fish ways, and similar non-architectural structures.

(c) Buildings that house public industrial processes where only a small portion of the square footage houses employees of the contracting agency, such as: maintenance sheds, and water and waste water facilities including reservoirs, dams, conduit, pipe, pumps, wells, collection basins, pump stations, controls and other buildings primarily used for the purpose of water or waste water treatment.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0025
Eligible Contract Price

(1) The 1.5 percent to be spent on green energy technology must be based on the total contract price.

(2) The total contract price must not be reduced by federal, state, or other incentives that may be available for the green energy technology.

(3) Any constitutionally, statutorily or contractually dedicated government funds for the building that have been determined to be unavailable for the installation of green energy technology may be excluded when determining eligible costs under this section.

(4) For buildings with a joint public-private ownership, the total contract price must be pro-rated based on the contracting agency's share of the ownership.

(5) For buildings that are being constructed or renovated with private funding but which are intended for ultimate ownership by a contracting agency, the total contract price must include the privately-funded share of the construction contract.

(6) Dividing a single project into multiple smaller projects in order to avoid or reduce the level of compliance with ORS 279C.527 and 279C.528 and these rules is not permitted.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0030
Green Energy Technology Performance Requirements

(1) Solar electric (photovoltaic), solar water heating, solar pool heating, and active solar space heating systems are to be installed in locations that have a total solar resource fraction (TSRF) of 75 percent or greater.

(2) Photovoltaic and geothermal electric systems must be separately metered to record electricity production.

(3) Geothermal systems that directly supply heat to the building system(s), passive solar thermal systems, daylighting systems or any combination thereof must jointly reduce the building's baseline energy use by 20 percent or more, as demonstrated with whole building energy modeling prepared under the direction of a professional engineer.

(a) The baseline energy use includes space heating, space cooling, fan, pump, domestic hot water, and lighting loads. Other equipment and process loads are excluded.

(b) The baseline building model must follow the 2010 SEED Guidelines, Appendix L.

(A) For local or special government bodies, the baseline building must be modeled according to the requirements of the 2010 Oregon Energy Efficiency Specialty Code.

(B) For state government bodies, the baseline building must be modeled according to the requirements of the Proposed Building as defined in the 2010 SEED Guidelines, Appendix L.

(c) The system(s) must be commissioned by a third-party commissioning agent.

(4) Purchase of renewable energy certificates does not constitute compliance with the requirements of ORS 279C.527 through 279C.528 and Oregon Laws 2013, chapter 612.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0035
Eligible Green Energy Technology Costs

(1) For photovoltaic systems, eligible costs include the photovoltaic modules, mounting structure and hardware, modifications to the building structure specifically to accommodate the solar energy system, associated electrical equipment, metering, labor and system commissioning. Costs for auxiliary distribution systems such as chargers in electric vehicle charging stations or energy storage system (batteries or other) do not qualify.

(2) For building integrated photovoltaic (BIPV) systems, eligible costs include the difference between the costs for the BIPV components and the costs of the conventional building components that are modified or replaced to accommodate the installation of the BIPV system components.

(3) For solar water heating and solar pool heating systems, eligible costs include the solar collectors, mounting structure and hardware, associated plumbing and controls, metering, labor, and system commissioning. Costs for backup systems that use conventional energy sources do not qualify.

(4) For active solar space heating systems, eligible costs include the solar collectors, mounting structure and hardware, associated plumbing and controls, metering, labor, and system commissioning. Costs for heat distribution systems, such as ductwork or radiant floors, or costs for backup systems that use conventional energy sources, do not qualify.

(5) For passive solar systems and daylighting systems, eligible costs include materials and labor costs that can be directly and exclusively attributed to the passive solar and daylighting system, the cost for modeling the building energy performance, and commissioning.

(a) For passive solar systems eligible costs may include, but not be limited to, added thermal mass and shading controls.

(b) For daylighting systems, eligible costs may include, but not be limited to, automatic controls, light shelves, overhangs, automated louvers and blinds and related controls, skylights in spaces where automatic controls are present, and the portion of windows higher than 7 feet above the floor.

(6) For geothermal electricity generation, eligible costs include the cost of supply and disposal pipelines, turbine generators, controls, transformers, metering, labor and balance of plant.

(7) For geothermal energy use in building systems, eligible costs include the cost of supply and disposal pipelines, pumps, heat exchangers, controls, the cost for modeling the building energy performance, metering and labor.

(8) Costs for permanent educational displays located in or on the building that explain the green energy technology incorporated in the project are allowed.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, \279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0040
Alternative Financing

(1) Alternative financing arrangements to allow leveraging of federal, state, utility and other incentives, including but not limited to, lease-purchase agreements, power purchase agreements or energy savings performance contracts qualify under this program if the contracting agency documents that the costs of the green energy system meets or exceeds 1.5 percent of the total contract price.

(2) The minimum term of the agreement between the owner of the green energy system and the contracting agency must be at least ten years, unless ownership of the green energy system reverts to the contracting agency before that time.

(3) The agreement between the owner of the green energy system and the contracting agency must be exclusive to the green energy system required under the provisions of ORS 279C.527 through 279C.528 and Oregon Laws 2013, chapter 612. It may not include terms relating to operation and maintenance or capital equipment purchase of any other equipment or services. For power purchase agreements and energy savings performance contracts, the output of the green energy system must be separately metered.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0045
Determination Whether Green Energy Technology is Appropriate

(1) The contracting agency must determine whether constructing green energy technology at the site of the public building is appropriate. In making its determination, the contracting agency may consider factors including but not limited to:

(a) Whether there is opportunity to use photovoltaic or geothermal electric, solar thermal, passive solar heating systems or the direct use of geothermal energy in building systems

(b) Whether green energy technology can be installed in a manner that meets the minimum performance requirements of OAR 330-135-0030;

(c) Whether the building is listed or eligible for listing on the National Register of Historic Places and the green energy technology installation would be disruptive to the historic character of the building;

(d) Whether the installation of green energy technology would create security risks for staff or inhabitants of the building.

(2)(a) The contracting agency must also determine whether constructing green energy technology away from the site is appropriate if the contracting agency:

(A) Determines that constructing green energy technology at the public building site is not appropriate; or

(B) Prefers to construct the green energy technology away from the public building site instead of at the public building site.

(b) In making its determination, the contracting agency must consider whether green energy technology installed away from the public building site meets the factors listed in subsection (1) of this section and the requirements of ORS 279C.527(2)(b) and (c).

(3) If a contracting agency intends to install green energy technology away from the site, the contracting agency must request from the department, in accordance with OAR 330-135-0052, a technical review of its determination that an away-from-the-site installation is appropriate.

(4) The contracting agency must report its determination to the department in accordance with the reporting requirements in OAR 330-135-0055.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0050
Requirements for Deferral of Expenditures

(1) If a contracting agency determines, in accordance with OAR 330-135-0045, that it is not appropriate to install green energy technology at the public building site or away from the public building site, the contracting agency must:

(a) Defer the expenditure of 1.5 percent of the total contract cost of the current public building project to the contracting agency's next eligible public building project;

(b) Request from the department a technical review of its determination in accordance with OAR 330-135-0052; and

(c) Report, in accordance with OAR 330-135-0055, information about the deferred expenditure and the future project to which the deferred expenditure will be applied, if known.

(2) If the contracting agency defers the expenditure, the amount spent on green energy technology in the next building project must include the deferred expenditure from the current building project plus the 1.5 percent of total project cost for including green energy technology in the future building project, if required.

(3) Any amount spent on green energy technology in excess of 1.5 percent of the total contract price may not be credited to other current or future projects.

(4) Public improvement contracts for which state funds have not been appropriated for the construction or renovation of the public building are not required to defer funds.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0052
Requirements for Technical Review

(1) The director will appoint a permanent technical panel with members serving terms of up to three years. The technical panel will include, but not be limited to, the following membership:

(a) A chair from the Oregon Department of Energy;

(b) A representative from a public body;

(c) A representative from green energy technology industry; and

(d) An engineer or architect.

(2) A contracting agency that intends to construct green energy technology away from the public building site must submit to the department a request for technical review of its determination that green energy technology constructed away from the site is appropriate and meets the requirements of ORS 279C.527(2)(b) and (c). The contracting agency must provide supporting documentation for review.

(3) A contracting agency that intends to defer expenditure of 1.5 percent of the total contract cost to a future building project must submit to the department a request for technical review of its determination that green energy technology is not appropriate either at the public building site or away from the public building site. The contracting agency must provide supporting documentation for review.

(4) Within two weeks of receiving the contracting agency's request for technical review and supporting documentation, the department will forward the request along with the supporting documentation to the technical review panel. The department will request supplemental information from the contracting agency if needed by the technical review panel to make its recommendation.

(5) Within 60 days of receiving the department's request for technical review, the technical review panel will provide its recommendation to the department, and the department will convey the recommendation to the contracting agency.

(6) After receiving the technical review panel's recommendation, the contracting agency must make a final determination about whether

installing green energy technology is appropriate either at the public building site or away from the public building site. The contracting agency must enter its final determination and the technical panel's recommendation into the green energy technology database described in OAR 330-135-0055.

Stat. Auth.: ORS 469.040, 279C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; Renumbered from 330-135-0048, DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0055
Requirement to Report on Green Energy Technology

(1) A contracting agency must enter information about its public building project into the green energy technology database after it makes its final determination about whether green energy technology is appropriate and before the construction/renovation of the building(s) commences.

(2) The contracting agency will enter the information into the green energy technology database using an online form provided by the department and accessible from the department website.

(3) Information entered in the green energy technology database must include, but not be limited to:

(a) Project name;

(b) Address of public building;

(c) Name of contracting agency;

(d) Contact information for reporting person;

(e) Utility companies serving the building;

(f) Date the contracting agency first advertised or otherwise solicited a contract for the construction, reconstruction or major renovation of the public building;

(g) Total contract price;

(h) Total insured building value (renovation projects);

(i) Whether the project includes previously deferred funds, the name of the previous project and the amount of the deferred funds;

(j) Projected start of construction and occupation date of building;

(k) Description of the proposed green energy technology;

(l) Location details of the green energy technology installation;

(m) Disclosure of non-public funds used in financing the green energy technology;

(n) Estimated annual energy production or savings of the green energy system;

(o) Contracting agency determination of whether green energy technology is appropriate at the public building site or away from the public building site, or contracting agency decision to defer the expenditure;

(p) Technical review panel recommendation;

(q) Future project to which funds will be deferred and projected start of construction of the future building, if applicable and future project is known;

(r) The account or fund where the deferred funds are to be held, if applicable;

(s) Cost-effectiveness comparison between green energy technology away-from-the-site of the public building compared to green energy technology at the site of public building under construction or renovation, if applicable; and

(t) Evidence of additional new renewable energy generation from green energy technology installed at the away-from-the-site location, if applicable.

(4) Upon completion of construction of the new building or major renovation and at the request of the department, the contracting agency must provide to the department the actual amount spent for green energy technology and, if significant changes were made to the green energy technology system design, an updated project description and updated estimated annual energy generation or savings.

Stat. Auth.: Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13

330-135-0060
Outreach to Public Bodies

The department will conduct outreach to public bodies at least once per year to help inform them of the requirement ORS 279C.527 through 279C.528 to spend at least 1.5 percent of the total contract price for eligible public buildings on green energy technology.

Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.:DOE 7-2013, f. & cert. ef. 12-23-13

Rule Caption: Residential Energy Tax Credit rule updating solar photovoltaic and stove incentives and other program aspects
Adm. Order No.: DOE 8-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 330-070-0014, 330-070-0020, 330-070-0021, 330-070-0022, 330-070-0025, 330-070-0026, 330-070-0029, 330-070-0064, 330-070-0073
Rules Repealed: 330-070-0019
Subject: These permanent rule amendments for the Residential Energy Tax Credit program assist and improve program administration, decrease the solar photovoltaic incentive rate and rework the incentive calculation for wood and pellet stoves. The rule also clarifies pass-through requirements, updates rule language to disallow multiple incentives from the department, defines a single system and repeals and deletes sections of rule no longer applicable. For solar photovoltaic projects, the rule requires a retail-pricing breakout for material and labor/installation, adds a requirement for the department to verify the project's inverters and modules are listed on the California Electric Commission's list and adds an allowance for a third-party reservation to be transferred in limited situations. Lastly, the rule includes housekeeping amendments to correct terminology, simplifies language and updates statutory references.
Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-070-0014
Pass-Through Eligibility

(1) A person or business that pays the present value to purchase the approved tax credit from the applicant may be eligible to claim the tax credit in place of the applicant.

(2) In accordance with ORS 469B.106(10) the department establishes the following rates for calculating the present value of the tax credit:

(a) For tax credits greater than $1,500 the present value is 90 percent of the tax credit amount.

(b) For tax credits less than $1,500 the present value is 95 percent of the tax credit amount.

(3) The department will issue a credit certificate to the pass through partner when the applicant confirms receipt of an amount equal to the present value of the tax credit and relinquishes any claim to the credit.

(4) A tax credit may be transferred or sold only once.

(5) A tax credit may not be transferred in portions. Only the whole tax credit amount may be transferred.

Stat. Auth.: ORS 469.040, 469B.106; 469B.109
Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115
Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

330-070-0020
Eligibility

(1) To qualify for a credit, a person must meet all of the following:

(a) Be subject to Oregon personal income tax (or corporate excise tax, if seeking a credit under ORS 317.115).

(b) Purchase an AED, complete construction and installation if applicable, and obtain a certification in accordance with OAR 330-070-0010 through 330-070-0097.

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner:

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a primary or secondary residence.

(2) If the basis for the credit is a fueling station necessary to operate an alternative fuel vehicle, unless the certificate is transferred, the company that constructs the dwelling that incorporates the fueling station or who installs the fueling station in the dwelling may claim the credit. If the alternative energy device is an alternative fuel vehicle or related equipment, the credit must be claimed by the system owner.

(3) Notwithstanding (1)(b), a residential property owner may qualify for a credit for an AED that is a third-party alternative energy device installation by meeting the following additional requirements:

(a) Installations must include a minimum 10-year agreement between the residential property owner and the third-party owner of the AED. The

agreement must cover maintenance of the AED and either the use of the AED or the power generated by the AED for the entire length of the agreement.

(b) The third-party must comply with OAR 330-070-0029.

(c) The applicant must provide system cost information for third-party AED installations. System cost can be demonstrated by providing either a copy of an invoice for the purchase of the AED by the third-party owner, or a declaration from the third-party owner of representative market value for an AED that includes the costs of supply and installation. Such a declaration must include a list of primary system components and their pricing, itemizing material pricing separately from installation pricing.

Stat. Auth.: ORS 469.040; 469B.100; 469B.103; 469B.106
Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

330-070-0021
Eligible Devices

(1) To be eligible for a tax credit, an AED must meet all of the following:

(a) Be a complete system that is currently operating and meets these rules.

(b) Be a system that is built, installed, and operated in accordance with ORS 469B.100 through 469B.118.

(c) Be a system with manufacturers' warranties against defects in products and materials, including remanufactured equipment.

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems and be one of the following:

(A) A system that uses solar energy;

(B) A ground source heat pump system;

(C) A renewable energy system that heats or cools space, heats water, or makes electricity;

(D) An energy-efficient appliance including a wastewater heat recovery device;

(E) An alternative fuel device; For tax years prior to January 1, 2012 this includes vehicles licensed and registered for first new use on Oregon roadways and used vehicles being modified for first new use of a qualifying alternative fuel device.

(F) A fuel cell system;

(G) For tax years prior to January 1, 2012 a heat pump water heater. Beginning January 1, 2012 only residential heat pump water heaters that meet the "Northern Climate" specification established by the Northwest Energy Efficiency Alliance for electricity will be eligible;

(H) A premium efficiency biomass combustion device;

(I) A ductless mini-split heat pump;

(J) A gas furnace;

(K) A heat and energy recovery ventilator;

(L) An air source heat pump; or

(M) A ground source heat pump compressor upgrade.

(e) Be a single system, which must be fully functional without the assistance of or component sharing with another system. Regardless of the number of components, a system must be controlled and able to distribute its result separate of any other system. Two or more units that share controls, a ductwork distribution system or hydronic distribution system will be considered a single system. This subsection does not apply to category two alternative energy devices.

(2) The following devices are not eligible for an AED tax credit:

(a) Standard efficiency furnaces;

(b) Standard backup heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood except a qualifying premium efficiency biomass combustion device;

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;

(f) Swimming pools and hot tubs used to store heat;

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing spa and hot tub systems;

(i) Above-ground, uninsulated swimming pools, spas and hot tubs;

(j) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(k) Used equipment, not including remanufactured equipment that meets program standards;

(l) Repairs and maintenance of systems having received prior certification for an AED tax credit;

(m) Water source heat pump: A system that uses surface or subsurface water in a single pass without recirculation (open loop);

(n) Hydro systems;

(o) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water;

(p) Systems or projects that received certification under the Energy Incentives Program or the Business Energy Tax Credit program.

(q) Air Conditioning Systems;

(r) Boilers;

(s) Dishwashers.

(t) Refrigerators and Freezers;

(u) Clothes Washers and Dryers; and

(v) Photovoltaic systems participating in the pilot Feed-In Tariff program under ORS 757.365.

Stat. Auth.: ORS 469.040; 469B.100; 469B.103; 469B.106
Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

330-070-0022
Amount of Tax Credit

(1) The amount of the AED tax credit is based on the first-year energy yield of an eligible AED. The department has determined first-year energy yield estimates for eligible AEDs and associated tax credit amounts, which are listed in the RETC Rate Chart. The energy yield basis for a solar tax credit may be adjusted by the department to account for less than optimal solar access.

(2) The amount of the AED tax credit must not exceed the lesser of:

(a) $1,500 or the first-year energy yield of the AED in kWh multiplied by 60 cents for AEDs used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1998. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation. Only one tax credit for ground source heat pump systems will be issued per year per residence.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c) For each alternative fuel device, 25 percent of the eligible cost of the alternative fuel device or $750.

(d) For fuel cell systems placed in service on or after January 1, 2007, $3.00 per watt of the installed capacity or $6,000, and not to exceed 50 percent of the cost of the system. One tax credit may be issued per year, per residence, and the maximum credit claimed per year will not exceed $1,500.

(e) For photovoltaic systems installed on or after November 4, 2005, one $6,000 tax credit not to exceed 50 percent of the cost of the system as defined in OAR 330-070-0022(4). One tax credit may be issued per year, per residence, and the maximum credit claimed per year will not exceed $1,500, over a four year period.

(f) For wind AEDs installed on or after January 1, 2007, the first-year energy yield of the AED in kWh multiplied by $2.00, not to exceed the lesser of $6,000 or 50 percent of the cost of the system. One tax credit may be issued per year, per residence, and the maximum credit claimed per year will not exceed $1,500, over a four year period.

(g) For premium efficiency biomass combustion devices, the average heating need times the stove efficiency improvement times 60 cents, up to $1,500. The department will use the EPA default efficiency as of January 1, 2014 when calculating the stove efficiency improvement for:

(A) Wood or pellet stoves without full efficiency testing listed on the EPA list of EPA Certified Wood Stoves,

(B) Wood or pellet stoves without full efficiency testing with the testing data submitted and approved by EPA, or

(C) Pellet stoves on the List of EPA Exempt Wood Heating Appliances that submitted testing certificates to the department.

(3) For photovoltaic systems:

(a) Installed on or after November 4, 2005 and prior to January 1, 2011, the credit allowed under this section is equal to $3 per watt of the installed capacity measured in watts of direct current at industry standard test conditions.

(b) Installed on or after January 1, 2011 and before January 1, 2012, the credit allowed under this section is equal to $3 per watt of the installed output. This is equal to $2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions.

(c) On or after January 1, 2012 and before January 1, 2014, the credit allowed under this section is equal to $2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(d) On or after January 1, 2014, the credit allowed under this section is equal to $1.90 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(e) A maximum of one credit valued at $6,000 is allowed per residence, per AED. The maximum amount of credit allowed per year, beginning in the year in which the AED was installed, is $1,500 per year over a four-year period. The total credit may not exceed 50 percent of the cost of the system. All photovoltaic systems installed at a dwelling within a 5 year period will be considered a single device.

(4) The amount of the tax credit may not exceed the system cost of the AED to the applicant. The sum of any rebates or cash payments, including public purpose organization or federal grants or credits and the residential energy tax credit may not exceed system costs.

(5) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the system cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have system cost prorated. System cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) The department may find an AED to be too large for a dwelling. In such case the system cost must be prorated. System cost must be based on the largest useful size of an AED for the dwelling. The department will determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and any addition may not exceed $1,500 per year. (6) For purposes of the tax credit, the eligible system cost of the AED is only those costs necessary for the system to yield energy savings and does not include:

(a) Unpaid labor (including the applicant's labor);

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

(g) Loan interest;

(h) Vendor rebates, discounts and refunds;

(i) Service contracts;

(j) Cost of moving a used AED from one site to another;

(k) Cost of repair or resale of a system; or

(l) Any part of the purchase price which is optional, such as an extended warranty.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.040; 469B.103; 316.116

Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

330-070-0025

Application for System Certification

(1) Applicants for a tax credit must obtain a system certification from the department.

(2) All applications for a system certification must meet all of the following:

(a) Provide all requested information and include a statement that the system and technician or owner-builder will meet all federal, state and local requirements.

(b) Include the applicant's social security number for use as an identification number in maintaining internal records. The applicant's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) State:

(A) The system cost of the AED;

(B) The location of the AED;

(C) The estimated first-year energy yield of the AED provided by the tax-credit technician or from the department's energy yield chart, if any; and

(D) That the applicant has received an operating manual for the AED, except that no operating manual is required for sunspaces or direct gain space heating systems.

(d) Include an agreement by the tax-credit technician to make any changes required by the department for the system to comply with ORS 469B.100 through 469B.118.

(e) Be signed by the applicant and tax-credit technician, if any. Alternatively, a form of electronic signature acceptable to the department may be provided.

(f) Include no false or misleading information about an AED.

(g) For third-party installations, include a valid reference number as issued to the third-party by the department under OAR 330-070-0029.

(3) System certification applications for solar water heating AEDs must contain:

(a) All the data required in section (2);

(b) The number of collectors;

(c) The manufacturer and/or supplier;

(d) The collector dimensions and/or the net area of the collectors;

(e) The amount of heat storage;

(f) The system type;

(g) A declaration of SRCC certification status or equivalence, as determined by the department;

(h) A description of the freeze protection for the system;

(i) A description of the over-heat protection for the system;

(j) The system model;

(k) A description of the orientation and tilt of the collector;

(l) A solar site assessment worksheet for the collector location;

(m) A Consumer Disclosure signed by the applicant and technician or supplier, if any;

(n) A statement that the applicant has received a copy of consumer information supplied by the department; and

(o) Other data the department requires to determine eligibility.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A solar site assessment worksheet for the collector location; and

(e) Other data the department requires to determine eligibility.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) All the data required in section (2) above;

(b) A copy of the building permit plans;

(c) A copy of the window specifications used;

(d) The type and amount of thermal storage;

(e) A solar site assessment worksheet taken at the center of the solar glazing; and

(f) Other data the department requires to determine eligibility.

(6) System certification applications for photovoltaic AEDs must contain:

(a) The data required in section (2);

(b) Retail customer pricing information for:

(A) Total project labor, and

(B) Total project materials;

(c) A list of primary system components that include, but are not limited to, panels, inverters, storage systems, racking systems, trackers and miscellaneous supplies;

(d) The number of modules;

(e) The brand name of the module(s);

(f) The rated DC output in watts of the module(s) under Standard Test Conditions (STC);

(g) A description of the storage provided if storage is a part of the system;

(h) Storage brand and model;

(i) Storage capacity in kWh;

(j) The brand name of the inverter if an inverter is part of the system;

(k) The capacity of the inverter;

(L)The Total Solar Resource Fraction (TSRF);

(m) Other data the department requires to determine eligibility; and

(n) A copy of the final inspection after the system has been permitted by applicant's local jurisdiction.

(7) System certification applications for ground source heat pumps must contain:

(a) All the data required in section (2) of this rule;

(b) For all systems connected to a well, data on the well including:

(A) Depth;

(B) Diameter (cased);

(C) Temperature;

(D) Static water level below grade;

(E) A copy of the well driller's log, if available; and

(F) Other data the department requires to determine eligibility.

(c) For systems connected to a heat pump:

(A) Brand name and model number of the heat pump;

(B) Rated output at the entering water temperature;

(C) Estimated system COP rated by ARI under Standard 325 -85 at an entering water temperature of 50 degrees Fahrenheit; and

(D) Any other data the department requires to determine eligibility.

(d) For ground loop heat pump systems:

(A) All the information in subsection (7)(b) of this rule;

(B) Brand name, rated output, estimated COP;

(C) Length and depth of the loop;

(D) Materials and spacing used;

(E) Type of heat transfer fluid; and

(F) Other data the department requires to determine eligibility.

(8) System certification applications for energy-efficient appliances must contain:

(a) All the data required in section (2) of this rule;

(b) The dealer's business location;

(c) The brand name, make, model number, capacity and/or size of the appliance;

(d) A signed copy of the sales agreement, which must include all of the following:

(A) Verification of applicant's name and address;

(B) Verification of model of appliance; and

(C) Verification of actual price paid for appliance.

(e) Certification of new equipment warranty; and

(f) Other data the department requires to determine eligibility.

(9) System certification applications for alternative fuel devices must contain:

(a) Taxpayer's name;

(b) Taxpayer identification or social security number;

(c) State of Oregon vehicle registration number, if the device is a vehicle;

(d) Installation location by street address;

(e) The name of the licensed and bonded company employing the technician;

(f) The employing company's business location;

(g) The brand name, make, model number, or component list of the AFD;

(h) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of applicant's name and address;

(B) Verification of model of, or components used for AFD; and

(C) Verification of actual price paid for the AFD.

(i) Certification of new equipment warranty;

(j) An optional letter attached to the application declaring that the applicant designates an Investor Owned Utility (IOU) or other qualifying entity as the eligible recipient of the credit certificate on behalf of the project owner applicant that includes:

(A) Name, address, contact person, phone number, facsimile number of the IOU or designated qualifying party; and

(B) Signature, or form of electronic signature acceptable to the department, of an authorized representative of the IOU or other designated qualifying party stating the party's willingness to accept the tax credit certificate; and

(k) Other data the department requires to determine eligibility.

(10) System certification applications for fuel cells must contain:

(a) All of the data required in section (2) of this rule;

(b) The rated fuel cell stack peak capacity, in kW;

(c) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);

(d) Whether or not the system is grid connected;

(e) The fuel used by the system;

(f) The type of fuel stack (PEM, PAFC, SOFC, etc.);

(g) An estimate of the average load, in kW, expected to be placed on the system;

(h) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;

(i) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and

(j) Other data the department requires to determine eligibility.

(11) System certification applications for premium efficiency biomass combustion devices must contain:

(a) The manufacturer, model, capacity, serial number of the device;

(b) The device characteristics, defined as catalytic, non-catalytic, or pellet stove or boiler;

(c) Vendor name and address;

(d) Price paid for the device, any parts or installation;

(e) Efficiency information, as demonstrated by:

(A) The efficiency and grams of particulate emissions per hour published in the List of EPA Certified Wood Stoves;

(B) A certificate of performance including the grams of smoke per hour and efficiency for the specific manufacturer and model of wood burning device from a currently US EPA certified woodstove testing laboratory, tested in accordance with CSA B415.1 and submitted and approved by EPA; or

(C) A certificate of performance including the grams of smoke per hour, for pellet stoves on the List of EPA Exempt Wood Heating Appliances, for the specific manufacturer and model from a currently US EPA certified stove testing laboratory, tested in accordance with CSA B415.1. The certificate must be submitted to the department. The department will use the EPA default efficiency for pellet stoves as the device efficiency beginning on January 1, 2014.

(f) For replacement of uncertified woodstoves, the applicant must additionally provide:

(A) A signed certification from the applicant verifying that the wood burning device being replaced has been rendered unusable, can no longer be used as a heating device, and will be retired permanently from service; and

(B) Documentation, in the form of a disposal receipt from a metal recycler, landfill or licensed contractor, verifying that the wood burning device being replaced is an uncertified woodstove and has been rendered unusable; and

(g) Other data the department requires to determine eligibility.

(12) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

(13) For a third-party financed system, the application must provide copies of an energy purchase or lease agreement and full service maintenance agreement.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115

Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

330-070-0026

Tax-Credit Technician

(1) Technicians may apply for the department's tax-credit technician (TCT) status for a technology listed in section (2) of this section. Tax-credit technician status is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to department rules, and verify system installation quality and performance. Technician status is valid for two years and must be renewed to remain in effect.

(2) A tax-credit technician status applies only to the following products:

(a) Solar water heating systems;

(b) Ground source heat pumps (geothermal);

(c) Photovoltaic systems;

(d) Performance-tested ducts; and

(e) Air source heat pumps/air conditioning systems.

(3) The tax-credit technician's status is based on the following:

(a) Knowledge and understanding of the tax credit program requirements and expectations;

(b) Ability to provide systems that are designed and installed consistent with the manufacturer's warranty; and

(c) Employment by a company with a Construction Contractors Board (CCB) license.

(4) Those who do not maintain the competencies in section (3) are subject to revocation of the status.

(5) Tax-credit technician status entitles a technician to:

(a) Inform the AED system owner that he or she has attended the department's online training and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Verify that installation of tax-credit qualified equipment and systems meets department standards for performance and longevity.

(6) Tax-credit technician status requires that the technicians must follow department requirements including:

(a) Duct and air-source heat pump/air conditioning technicians must have a current or valid certification with Performance Tested Comfort System (PTCS) or Proctor Engineering CheckMe! Programs.

(b) Solar technicians must show at least one of the following, a valid and current:

(A) North American Board of Certified Energy Practitioners (NABCEP) certification,

(B) Limited Renewable Energy Technician (LRT) license for solar electric,

(C) Solar Thermal License (STL) for solar thermal,

(D) Successful passage of the NABCEP Entry-Level Exam for the appropriate AED, or

(E) Other certification approved by the Director to maintain their tax-credit solar technician status with the department.

(c) First-time geothermal technician applicants must show proof of successful completion of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the Director.

(d) Solar and geothermal tax-credit technician applicants must complete the department's online training at least once every three years unless otherwise specified in department rule.

(e) Technicians must verify the AED owner has a user manual for the equipment/system.

(f) Technicians must provide the AED owner with a completed application and a copy of the final, itemized and dated invoice for the system that is marked "inspected and paid for," And they must verify the owner has a written full warranty for the system that lasts no less than 24 months after the system is installed.

(g) Technicians must maintain tax-credit technician status by completing the following technology-specific requirements during the period between awarding initial status and the renewal period or between renewal periods:

(A) For solar technology:

(i) Technicians must:

(I) Submit and have approved two (2) Residential or Energy Incentives Program applications for systems in a technology in which the tax-credit technician is listed and complete four (4) hours of related technical continuing education; or

(II) Submit and have approved one (1) Residential or Energy Incentives Program application for a system in a technology in which the tax-credit technician is listed and complete six (6) hours of related technical continuing education; or

(III) Complete eight (8) hours of related technical education.

(IV) Provide information on the number of job hours directly associated with the installation of RETC qualified photovoltaic systems within the prior two years. Job estimates should be submitted in hours.

(ii) Technicians are subject to the renewal period on the second year from the year of initial status or renewal year.

(iii) The two month renewal period begins every year on June 1st and ends prior to August 1st.

(iv) Proof of related technical continuing education must be provided during the renewal period.

(v) Failure to complete requalification during the renewal period will result in the revocation of TCT status for one year. TCT status may be reinstated during the following year's renewal period.

(B) For air source heat pumps/air conditioning, technicians must have a current or valid certification with PTCS or Proctor Engineering CheckMe! Programs.

(C) For performance tested duct systems, technicians must have a current or valid certification with PTCS.

(D) For ground-source heat pumps, technicians must submit and have approved a minimum of one (1) tax credit application or provide proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(7) Tax credits for installation of air source heat pumps/air conditioning systems, performance-tested ducts, geothermal systems, solar electric and solar thermal systems must be verified by a tax-credit technician.

(8) A tax-credit technician must notify the department within 30 days if changes are made in any of the information in the TCT application.

(9) The department will compile a list of companies employing duct and air-source heat pump/air conditioning technicians. A listed company must:

(a) Employ a tax-credit technician who has a valid or current certification with PTCS or Proctor Engineering CheckMe! Programs.

(b) Apply in writing and renew its listing on an annual basis.

(c) Have a minimum of two key administrative staff participate in the department's online training.

(d) Tax-credit technicians that do not meet the minimum requirements are suspended for one-year, after which they may reapply.

(10) Tax-credit technicians inspect owner-built systems to verify that the system appears to be installed in a workman-like manner. As part of an owner-built inspection, a tax-credit technician is not required to provide a warranty or guarantee of the owner-built system.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100–469B.118; 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

330-070-0029

Third-Party Alternative Energy Device Installations

(1) A third-party who intends to complete a third-party alternative energy device installation must obtain a reservation before commencing installation.

(2) The third-party must apply to reserve potential tax credits by submitting a completed reservation request to the department. A reservation request may only be submitted after the owner of the residential property has entered into a contract for a third-party alternative energy device installation. The reservation request must contain the information required by the department on its form, but may be submitted in an alternative format.

(3) The department may require the third-party to provide a copy of the signed contract at any time after the submission of a reservation request. Failure to provide requested documents within 30 calendar days may result in the loss of reservations made by the third-party.

(4) A third-party may request the reservation of up to 25 potential tax credits in each reservation request, and may submit one request each week.

(5) The department will reserve the requested potential tax credits from the amount allowed by Oregon Laws 2011, chapter 730, section 75 and will provide the third-party with a reference number for each potential tax credit. The owner of the residential property at which the alternative energy device is installed must include the reference number on their tax credit application.

(6) A third-party may release a reservation by submitting a written request, including the reference number, to the department. If reservations are released in the same tax year they are reserved the department will reallocate the potential tax credits to new reservation requests in the order the requests are received. Reservations of potential tax credits may not be transferred, except to a purchaser or owner of the residential site address where the AED is located.

(7) The department will continually monitor the rate of allocation of tax credits to ensure that the total amount of tax credits do not exceed the amounts specified in Oregon Laws 2011, chapter 730, section 75. The department will allocate potential tax credits according to these rules and in the order in which requests are received. The department will return any excess reservation requests. A third-party may not commence installation until a reservation reference number is issued by the department.

(8) The department will issue tax credits based on the year the potential tax credit is reserved if the installation is completed, as verified by an approved final inspection issued by the local jurisdiction, before April 1 of the following tax year. Tax credits for installations completed after April 1

of the tax year following reservation will be issued for the tax year in which the installation is completed.

(9) Reservation of potential tax credits does not guarantee approval of tax credit applications.

Stat. Auth.: ORS 469.040; 469B.103
Stats. Implemented: ORS 469B.100-469B.118; 316.116
Hist.: DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

330-070-0064
Photovolatic AEDs

(1) Installations of photovoltaic systems must be professional quality, comply with all applicable Oregon codes and be verified by a tax-credit technician.

(2) System size will be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC). The minimum system size must be 200 Watts DC output under STC.

(3) The system must have a minimum total solar resource fraction (TSRF) of 75 percent.

(4) The department will verify that the modules and inverters are listed on the California Energy Commission (CEC) eligible list as of the date of the application.

(5) Photovoltaic AED costs eligible for the tax credit include the cost of:

(a) Solar labor costs;

(b) Solar material costs, including the cost of:

(A) Photovoltaic modules;

(B) Inverters;

(C) Storage systems and regulators;

(D) Monitors, meters, and controls;

(E) Wiring and framing materials;

(F) Trackers;

(G) Mounting or racking structures only, no structures beyond those needed for mounting or racking purposes; and

(H) Shipping cost.

(c) The cost of owner-built system inspections by a tax-credit technician, up to $400; and

(d) Permit and fee costs, including up to $200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.040; 469B.103
Stats. Implemented: ORS 469B.100–469B.118; 316.116
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

330-070-0073
Energy-Efficient Appliances and Alternative Fuel Devices

(1) Energy-efficient appliances must meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be currently listed with the department as qualifying premium efficiency appliances.

(2) Where USDOE test procedures do not exist, the department will designate a nationally recognized test procedure that will apply instead.

(3) Water Heating Appliances.

(a) Water heater efficiency requirements:

(A) Equipment efficiency requirements for units of nominal 1-ton or less capacity are based on listing by ENERGY STAR® or California Energy Commission or on the USDOE Energy Factor, as derived from the USDOE Appendix E test procedure for residential water heating equipment in effect at the time the rules are adopted. Efficiency requirements for units larger than 1-ton in capacity and smaller than 6-tons in capacity, are based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by the department.

(B) High-efficiency heat pump water heaters (HPWH) for domestic hot water must meet the "Northern Climate" specifications for electricity by the Northwest Energy Efficiency Alliance (NEEA). Split systems with a capacity greater than 1-ton and less than 6-tons must have a COP rating of not less than 2.5. HPWH less than 1-ton must have a minimum energy factor (EF) for the appropriate Tier Level stated in the specifications.

(C) Natural gas, propane, or oil-fired residential storage type water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have an Energy Factor of 0.80 or greater as tested with natural gas fuel.

(D) Whole-home gas fired instantaneous water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have:

(i) An Energy Factor of at least 0.80, a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour if installed prior to January 1, 2011;

(ii) An Energy Factor of at least 0.82 or greater if installed on or after January 1, 2011.

(E) Equipment efficiency requirements are based on either the listing by ENERGY STAR®, the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), or other third-party certified list approved by the Director.

(b) Combined space/water-heating system efficiency must be based on the water heating Energy Factor for Combined Systems (CEF) as derived from the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) 124-1991 test method. Water heaters that are part of a combined space and water heating system may not receive a tax credit for space heating efficiency as a boiler in addition to the tax credit as a water heating appliance.

(4) For Wastewater Heat Recovery Systems, field performance data submitted to and approved by the department will be the basis for tax credit qualification. The following rules also apply:

(a) The system must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(5) Performance Checked Space Conditioning Duct Systems must meet the following requirements:

(a) All work must be done in accordance with Performance Tested Comfort Systems (PTCS) specifications, a regionally developed set of protocols with provisions for testing and sealing duct work that is maintained by the Regional Technical Forum (RTF), as adopted by the RTF and in effect at the time the work is performed.

(b) If the home serviced by the performance checked duct system is new, or the building envelope is being altered, the house must meet residential energy conservation requirements of the Oregon Structural Specialty Code or of the Oregon One and Two Family Dwelling Code in effect at the time the home is constructed or structurally altered.

(c) Duct leakage must be tested in accordance with Performance Tested Comfort Systems (PTCS) approved testing protocols.

(d) Testing to verify that these standards have been achieved must be conducted by technicians approved by the department.

(e) Costs eligible for the purpose of calculating a performance checked duct system tax credit include:

(A) For new construction, the cost of:

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles;

(vi) Duct testing; and

(vii) Labor and materials for bringing duct systems inside heated space.

(B) For new ducts in existing homes, the cost of:

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles; and

(vi) Duct testing.

(C) For duct repair and sealing/existing ducts in existing homes, the cost of:

(i) Duct sealing labor and materials;

(ii) Labor and materials for installing multiple returns;

(iii) Labor and materials for installing passive pressure relief grilles; and

(iv) Duct testing.

(f) To apply for a performance checked duct tax credit, the following information must be submitted in a form approved by the department:

(A) Application form;

(B) Test results worksheet for "new construction," "new duct systems in existing homes," or "duct repair and sealing"/existing ducts in existing homes, as applicable; and inclusion of the PTCS identification number associated with the "duct repair and sealing" measure being submitted for tax credit on the application form.

(C) Copies of heating and cooling load calculations and/or duct sizing calculations, as applicable, must be made available to the department upon request; and

(D) Itemized invoice identifying costs detailed in (e).

(6) Performance Checked Heat Pumps and Central Air Conditioners must meet the following standards:

(a) Systems must be tested and serviced as needed to confirm correct refrigerant charge and air flow by a tax-credit technician authorized by the department and by an approved Performance Tested Comfort System (PTCS) provider.

(b) Testing must be in accordance with PTCS specifications, a regionally developed set of protocols with provisions for testing the operation of air-source heat pumps and air conditioners that are maintained by the Regional Technical Forum (RTF), as adopted by the RTF and in effect at the time the work is performed.

(c) Eligible systems must be confirmed by the system diagnostic tests using PTCS protocols in use at the time of measure installation. Duplicate tax credits may not be claimed.

(d) Costs eligible for the purpose of calculating a performance checked heat pump/air conditioner tax credit include costs for:

(A) System diagnostic tests;

(B) Adding or removing refrigerant when initial diagnostic tests indicate need for refrigerant adjustment and post repair tests indicate correct charge has been installed;

(C) Altering the duct system to improve air flow when initial diagnostic tests show low air flow and post repair tests show an air flow improvement of 10 percent or more;

(D) Cleaning the inside coil when initial diagnostic tests indicate low air flow and post repair tests show an air flow improvement of 10 percent or more;

(E) Replacing an existing inside fan motor with an electronically commutated permanent magnet motor (ECPM DC) when initial diagnostic tests show low air flow and tests after ECPM DC installation show an air flow improvement of 10 percent or more; and

(F) Control modifications necessary for the system to pass the diagnostic test.

(e) To apply for a performance checked heat pump/air conditioner tax credit, the following information must be submitted in a form approved by the department:

(A) Application form;

(B) Performance checked heat pump/AC diagnostics data entry form;

(C) Pre- and post-repair system air flow measurements using approved methods listed in (b), if applicable; and

(D) Itemized labor and materials cost information for applicable measures, testing, and repairs.

(7) Alternative Fuel Vehicles must have equipment installed to make the vehicle capable of storing and utilizing an alternative fuel for vehicle propulsion.

(a) Equipment may consist of:

(A) Original equipment manufacturer components;

(B) Components for natural gas powered vehicles that meet EPA1-A requirements current at the time these rules are adopted;

(C) Components for hybrid vehicles must provide the hybrid vehicle with a combination of power between propulsion energy systems such that the peak power ratio of the vehicle is 0.10 or greater; or

(D) Other components as recognized by the department as necessary for alternative fuel use.

(b) Those applying for alternative fuel vehicle tax credits must acknowledge that they do not intend to transfer ownership of the vehicle to a non-Oregon resident for a period of one year.

(c) Vehicles must be purchased before January 1, 2012.

(8) Alternative Fuel Fueling Systems must be permanently installed to meet all state and local safety codes and be capable of re-fueling or recharging an alternative fuel vehicle within 14 hours.

(9) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed;

(c) Have a maximum EUI of 1.10 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(d) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 68 percent at 32°F/0°C when operating at the highest fan speed.

(10) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.10 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 68 percent at 32°F/0°C when operating at the highest fan speed.

(11) High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI);

(d) Have a minimum EER rating at DOE standard test condition "A" conditions of 13.0;

(e) Be installed in accordance with the protocols specified in OAR 330-070-0073(9); and

(f) Be purchased before January 1, 2012.

(12) High Efficiency Air Source Heat Pump Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) that is in effect at the time these rules are adopted;

(b) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI);

(c) Have a minimum DOE Region IV HSPF rating of 10.0 or greater;

(d) Have a minimum EER rating at DOE's standard test condition "A" of at least 12.0; and

(e) Be installed in accordance with the protocols specified in OAR 330-070-0073(9).

(13) High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating:

(A) of 0.90 (90 percent) for installations completed prior to January 1, 2009;

(B) of 0.92 (92 percent) for installations completed on or after January 1, 2009 and prior to January 1, 2011;

(C) of 0.94 (94 percent) for installations completed on or after January 1, 2011 and prior to January 1, 2012; and

(D) of 0.95 (95 percent) for installations completed on or after January 1, 2012.

(c) Use ducted outdoor air for combustion; and

(d) Must be listed in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) directory of Certified Energy Rating in effect at the time these rules are adopted as an "e" "electrically efficient" furnace. The "e" electrically efficient designation applies to furnaces whose electricity consumption is 2 percent or less of the furnaces total energy use, according to the department's official test procedure, and is determined according to the following formula: (3413 x EAE) / [(3413 x EAE) + (1,000,000 x EF)] ≤ 2.0 percent. EAE is the average annual auxiliary electrical energy consumption for a gas furnace in kilowatt-hours per year (kWh/yr). It is a measure of the total electrical energy supplied to a furnace during a one-year period. EF is the average annual fuel energy consumption for a gas furnace in millions of Btus per year (MMBtu/yr).

(14) High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(15) High Efficiency Ductless Air Source Heat Pump Systems must:

(a) Include an inverter-driven variable speed compressor;

(b) Be listed in the Air-Conditioning, Heating and Refrigeration Institute (AHRI) Directory of Certified Products;

(c) Deliver at least 50 percent of its AHRI-certified rated heating capacity at 17°F outside temperature;

(d) Include no integrated electric resistance backup heat;

(e) Be sized and installed per manufacturer specifications; and

(f) Be installed by a technician trained by the equipment manufacturer within the last five years.

(16) Premium Efficiency Biomass Combustion Devices must be:

(a) Less than one quarter of a million British thermal units (< 250,000 Btus) per hour heat output;

(b) Installed in an Oregon residential dwelling;

(c) Installed in accordance with appliance manufacturer's instructions;

(d) Installed with a dedicated outside combustion air intake within five feet of the device, which may be a duct, barometric damper or grill; and

(e) Efficiency tested, as evidenced by:

(A) A listing in the United States Department Environmental Protection Agency (EPA) List of EPA Certified Wood Stoves with emissions of 4.0 grams of particulate per hour or less if it is designated in that list as a non-catalytic wood stove purchased in 2013 and 3.5 grams of particulate per hour or less designated in that list as a non-catalytic wood stove purchased on or after January 1, 2014;

(B) A listing in the List of EPA Certified Wood Stoves with emissions of 2.5 grams of particulate per hour or less if it is designated in that list as a catalytic wood or pellet stove;

(C) Having a certificate of performance for the specific manufacturer and model of wood burning device from a current US EPA certified woodstove testing laboratory, tested in accordance with CSA B415.1 and submitted and approved by EPA. The certificate must show emissions of 4.0 grams of particulate per hour or less if it is designated as a non-catalytic wood stove purchased in 2013 and 3.5 grams of particulate per hour or less designated as a non-catalytic wood stove purchased on or after January 1, 2014 or emissions of 2.5 grams of particulate per hour or less if it is designated as a catalytic wood or pellet stove; or

(D) A certificate of performance including the grams of smoke per hour, for pellet stoves on the List of EPA Exempt Wood Heating Appliances, for the specific manufacturer and model from a currently US EPA certified stove testing laboratory, tested in accordance with CSA B415.1. The certificate must be submitted to the department. The department will use the EPA default efficiency for pellet stoves as the device efficiency beginning on January 1, 2014.

(17) Ground Source Heat Pump Compressor Upgrade must comply with the following requirements:

(a) All units must be installed on systems that comply with OAR 330-070-0025, 330-070-0040 and 330-070-0070. See also OAR 330-070-0027.

(b) All units must be installed on systems that use an operational closed-loop ground coupled heat exchanger. Open-loop systems do not qualify.

(c) The compressor upgrade unit must be sized within 15 percent of the unit it is replacing, based on rated cooling capacity in Btus. The department may grant an exception to this limit for an upgrade that is accompanied by a written justification including measured data and appropriate engineering calculations.

(d) All units must be manufactured by a company appearing in the Air-Conditioning and Refrigeration Institute (ARI) Unitary Directory.

(e) Post-upgrade system COP must be at least 3.3 for closed loop systems and 3.5 for direct expansion (DX) systems, including energy used by pumps. COP must be determined by the following methods:

(A) For water source heat pumps, the COP must be determined in accordance with ARI Standard 325-85, at an entering water temperature of 50 degrees F.

(B) For water source or ground loop heat pumps using ambient surface water as an energy source and for solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(18) Any other standards adopted by the department for energy-efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director.

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

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100–469B.118; 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14

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Department of Environmental Quality
Chapter 340

Rule Caption: Portland Area Transportation Control Measure
Adm. Order No.: DEQ 12-2013
Filed with Sec. of State: 12-19-2013
Certified to be Effective: 12-19-13
Notice Publication Date: 8-1-2013
Rules Amended: 340-200-0040
Subject: The Environmental Quality Commission approved an amendment to the Portland Area Carbon Monoxide Maintenance Plan that DEQ will submit to the Environmental Protection Agency.

The plan update substitutes a new transportation control measure for increasing regional transit service to replace the original transit service control measure. Both the new and the old measures require transit service in the Portland area to be expanded one percent per year. The new measure assesses the average transit service increase over the cumulative life of the ten-year Portland area's plan to improve air quality, instead of a five-year rolling average. By operation of law under 42 USC § 7506(c)(8), the substitute transportation control measure becomes part of the Oregon State Implementation Plan and will be federally enforceable. U.S. EPA will not conduct a separate public notice process.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on December 11, 2013.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, DEQ shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020, 468A.035 & 468A.070

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ

26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert.ef 12-10-12; DEQ 10-2012, f. & cert. ef. 12-11-12; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 11-2013, f. & cert. ef. 11-7-13; DEQ 12-2013, f. & cert. ef. 12-19-13

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Rule Caption: Oregon Low Emission Vehicles — 2013 Update
Adm. Order No.: DEQ 13-2013
Filed with Sec. of State: 12-19-2013
Certified to be Effective: 12-19-13
Notice Publication Date: 10-1-2013
Rules Amended: 340-257-0010, 340-257-0020, 340-257-0030, 340-257-0050, 340-257-0070, 340-257-0080, 340-257-0090, 340-257-0100, 340-257-0110, 340-257-0120
Subject: The Environmental Quality Commission amended Low and Zero Emission Vehicle Program rules to match revisions adopted by California in 2012. Oregon has opted-in to California's emission standards. Under the federal Clean Air Act, states that choose to apply emission limits that are more stringent than federal standards for new vehicles must adopt California's vehicle emission standards.

There are two major portions of the updated rules: Low Emission Vehicles III and Zero Emission Vehicles 2.0. The LEV III rules are largely the same as the federal Greenhouse Gas and Tier 3 motor vehicle emission rules. This alignment between state and federal regulations is the result of a negotiated agreement among automakers, state and federal regulators to harmonize requirements. Both the California LEV III and federal regulations would cut fleet-average greenhouse gas emissions of new vehicles between 2017 and 2025 to half of 2008 levels. Both sets of rules would also cut smog-forming compounds by approximately 70 percent. These measures would continue to apply primarily to auto manufacturers who must deliver compliant vehicles for sale in Oregon. Auto dealers would continue to be prohibited from importing noncompliant vehicles for use in the state.

Adopting the LEV III rules would keep Oregon's rules identical to California's rules. If the federal government weakens or repeals the federal Greenhouse Gas rules in the future, Oregon's LEV III rules ensure these requirements would continue to apply to new vehicles sold in Oregon.

These rules also update Oregon's existing Zero Emission Vehicle Program by incorporating California's 2012 amendments known as the ZEV 2.0 regulations. The ZEV 2.0 rule amendments increase the percentage of new cars and trucks that are pollution-free vehicles, such as all-electric vehicles and plug-in hybrids. The amendments also provide greater flexibility for manufacturers to choose among compliance options.
Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-257-0010
Purpose

The purpose of this division is to establish an Oregon **Low Emission Vehicle** program that implements California vehicle emission standards under section 177 of the federal Clean Air Act. This program establishes criteria and procedures for the manufacture, distribution and sale of new motor vehicles in Oregon as listed in OAR 340-257-0050.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0020
Applicability & Effective date

This division is in effect as of January 1, 2006 and applies to and establishes requirements for automobile manufacturers, Oregon motor vehicle dealers, and all 2009 and subsequent model year passenger cars, light-duty trucks, medium-duty vehicles, and medium-duty passenger vehicles registered, leased, rented, delivered for sale or sold in the State of Oregon, except as provided in OAR 340-257-0060 Exemptions.

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0030
Definitions and Abbreviations

The definitions in OAR 340-200-0020, the definitions in CCR, Title 13, sections incorporated by reference in OAR 340-257-0050, and the definitions in this division apply to this division. If the same term is defined in different passages, the definitions in this division apply first, followed by definitions in CCR Title 13 sections incorporated by reference, and finally the definitions in OAR 340-200-0020.

(1) "Assembled vehicle" means a motor vehicle that:

(a) Is an assembled vehicle under ORS 801.130; or

(b) Is a replica vehicle under ORS 801.425.

(c) Will be used for occasional transportation, exhibitions, club activities, parades, tours, testing its operation, repairs or maintenance and similar uses; and

(d) Will not be used for general daily transportation.

(2) "ATPZEV" means advanced technology partial zero emission vehicle as defined in CCR, Title 13, section 1962.1(i).

(3) "CARB" means California Air Resources Board.

(4) "CCR" means California Code of Regulations.

(5) "Custom vehicle" means a motor vehicle that:

(a) Is a street rod under ORS 801.513; or

(b) Was manufactured to resemble a vehicle at least twenty-five (25) years old and of a model year after 1948; and

(A) Has been altered from the manufacturer's original design; or

(B) Has a body constructed from non-original materials.

(6) "Emergency vehicle" means a vehicle as defined in ORS 801.260 that is equipped with lights and sirens as required under ORS 820.350 and 820.370 and that is any of the following:

(a) Operated by public police, fire or airport security agencies.

(b) Designated as an emergency vehicle by a federal agency.

(c) Designated as an emergency vehicle by the Director of Transportation.

(7) "Emission credits" are earned when a manufacturer's reported fleet average is less than the required fleet average. Credits are calculated according to formulas contained in CCR, Title 13, section 1961(c) and 1961.1(b).

(8) "Emission debits" are earned when a manufacturer's reported fleet average exceeds the required fleet average. Debits are calculated according to formulas contained in CCR, Title 13, section 1961(c) and 1961.1(b).

(9) "Fleet average greenhouse gas emission requirements" are generally referred to as limitations on greenhouse gas exhaust mass emission values from passenger cars, light-duty trucks and medium-duty passenger vehicles. The fleet average greenhouse gas emission requirements are set forth in CCR, Title 13, section 1961.1(b).

(10) "Gross vehicle weight rating" or "GVWR" is the value specified by the manufacturer as the loaded weight of a single vehicle.

(11) "Independent low volume manufacturer" is defined in CCR, Title 13, section 1900(b)(8)..

(12) "Intermediate volume manufacturer" is defined in CCR, Title 13, section 1900(b)(9)..

(13) "Large volume manufacturer" is defined in CCR, Title 13, section 1900(b)(10).

(14) "Light-duty truck" is any 2000 and subsequent model year motor vehicle certified to the standards in CCR, Title 13, section 1961(a)(1), rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for the purposes of transportation of property, is a derivative of such vehicle, or is available with special features enabling off-street or off-highway operation and use.

(15) "Medium duty-passenger vehicle" (MDPV) is any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium-duty passenger vehicle definition does not include any vehicle which

(a) Is an "incomplete truck" i.e., is a truck that does not have the primary load carrying device or container attached; or

(b) Has a seating capacity of more than 12 persons; or

(c) Is designed for more than 9 persons in seating rearward of the driver's seat; or

(d) Is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for the purpose of this definition.

(16) "Medium duty vehicle" means any pre-1995 model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 8,500 pounds or less; any 1992 through 2006 model-year heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in section 1960.1(h)(2) having a manufacturer's gross vehicle weight rating of 14,000 pounds or less; and any 2000 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in Section 1961(a)(1) or 1962.1 having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds.

(17) "Model year" is the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture is the date of completion of the chassis.

(18) "Non-methane organic gas" (NMOG) is the sum of non-oxygenated and oxygenated hydrocarbons contained in a gas sample as measured in accordance with the "California Non-Methane Organic Gas Test Procedures," which is incorporated herein by reference.

(19) "NMOG fleet average emissions" is a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from passenger cars and light duty trucks in any model year subject to this regulation delivered for sale in Oregon.

(20) "Passenger car" is any motor vehicle designed primarily for transportation of persons and having a design capacity of twelve persons or less.

(21) "PZEV" means partial zero emission vehicle as defined in CCR, Title 13, section 1962.1(j).

(22) "Small volume manufacturer" is defined as set forth in CCR, Title 13, section 1900(b)(22), and incorporated herein by reference.

(23) "ZEV" means zero emission vehicle as defined in CCR Title 13, section 1962.1(j).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 6-2011, f. & cert. ef. 4-29-11; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0050
Incorporation by Reference

(1) For purposes of applying the incorporated sections of the California Code of Regulations, unless otherwise specified in this division or the application is clearly inappropriate, "California" means "Oregon," "Air Resources Board (ARB)" or "California Air Resources Board (CARB)" means Department of Environmental Quality or Environmental Quality Commission depending on context, and "Executive Officer" means director or director's designee.

(2) Emission standards, warranty, recall and other California provisions adopted by reference. Each manufacturer of new 2009 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles must comply with each applicable standard specified in the following sections of the California Code of Regulations (CCR), Title 13, which are incorporated by reference herein. References to provisions of CCR, Title 13 in this division are to such provisions effective on the California effective dates listed in this section:

(a) Section 1900: Definitions. California effective date 12/31/12.

(b) Section 1956.8(g) and (h): Exhaust Emission Standards and Test Procedures — 1985 and Subsequent Model Heavy Duty Engines and Vehicles. California effective date 12/31/12.

(c) Section 1960.1: Exhaust Emission Standards and Test Procedures — 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles. California effective date 12/31/12.

(d) Section 1961: Exhaust Emission Standards and Test Procedures — 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 12/31/12.

(e) Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures — 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 8/7/12.

(f) Section 1961.2: Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 12/31/12.

(g) Section 1961.3: Greenhouse Gas Emission Standards and Test Procedures — 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 12/31/12.

(h) Section 1962: Zero-Emission Vehicle Standards for 2005 through 2008 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles. California effective date 2/13/2010.

(i) Section 1962.1: Zero-Emission Vehicle Standards for 2009 through 2017 Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 12/31/12.

(j) Section 1962.2: Zero-Emission Vehicle Standards for 2018 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 12/31/12.

(k) Section 1962.3: Electric Vehicle Charging Requirements. California effective date 8/7/12.

(l) Section 1965: Emission Control and Smog Index Labels - 1979 and Subsequent Model Year Vehicles. California effective date 8/7/12.

(m) Section 1968.2: Malfunction and Diagnostic System Requirements — 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 7/31/13.

(n) Section 1968.5: Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines. California effective date 7/31/13.

(o) Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions. California effective date 12/31/12.

(p) Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. California effective date 8/7/12.

(q) Section 2035: Purpose, Applicability and Definitions. California effective date 11/9/07.

(r) Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles. California effective date 8/7/12.

(s) Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such. California effective date 8/7/12.

(t) Section 2039: Emission Control System Warranty Statement. California effective date 12/26/90.

(u) Section 2040: Vehicle Owner Obligations. California effective date 12/26/90.

(v) Section 2046: Defective Catalyst. California effective date 2/15/79.

(w) Section 2109: New Vehicle Recall Provisions. California effective date 12/30/83.

(x) Section 2111: Applicability. California effective date 12/8/10.

(y) Section 2112: Definitions. California effective date 8/7/12.

(z) Appendix A to Article 2.1. California effective date 8/16/2009.

(aa) Section 2113: Initiation and Approval of Voluntary and Influenced Recalls. California effective date 1/26/95.

(bb) Section 2114: Voluntary and Influenced Recall Plans. California effective date 11/27/99.

(cc) Section 2115: Eligibility for Repair. California effective date 1/26/95.

(dd) Section 2116: Repair Label. California effective date 1/26/95.

(ee) Section 2117: Proof of Correction Certificate. California effective date 1/26/95.

(ff) Section 2118: Notification. California effective date 1/26/95.

(gg) Section 2119: Record keeping and Reporting Requirements. California effective date 11/27/99.

(hh) Section 2120: Other Requirements Not Waived. California effective date 1/26/95.

(ii) Section 2122: General Provisions. California effective date 12/8/2010.

(jj) Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. California effective date 1/26/95.

(kk) Section 2124: Availability of Public Hearing. California effective date 1/26/95.

(ll) Section 2125: Ordered Recall Plan. California effective date 1/26/95.

(mm) Section 2126: Approval and Implementation of Recall Plan. California effective date 1/26/95.

(nn) Section 2127: Notification of Owners. California effective date 1/26/95.

(oo) Section 2128: Repair Label. California effective date 1/26/95.

(pp) Section 2129: Proof of Correction Certificate. California effective date 1/26/95.

(qq) Section 2130: Capture Rates and Alternative Measures. California effective date 11/27/99.

(rr) Section 2131: Preliminary Tests. California effective date 1/26/95.

(ss) Section 2132: Communication with Repair Personnel. California effective date 1/26/95.

(tt) Section 2133: Record keeping and Reporting Requirements. California effective date 1/26/95.

(uu) Section 2135: Extension of Time. California effective date 1/26/95.

(vv) Section 2141: General Provisions. California effective date 12/8/10.

(ww) Section 2142: Alternative Procedures. California effective date 2/23/90.

(xx) Section 2143: Failure Levels Triggering Recall. California effective date 11/27/99.

(yy) Section 2144: Emission Warranty Information Report. California effective date 11/27/99.

(zz) Section 2145: Field Information Report. California effective date 8/7/12.

(aaa) Section 2146: Emissions Information Report. California effective date 11/27/99.

(bbb) Section 2147: Demonstration of Compliance with Emission Standards. California effective date 8/7/12.

(ccc) Section 2148: Evaluation of Need for Recall. California effective date 11/27/99.

(ddd) Section 2149: Notification of Subsequent Action. California effective date 2/23/90.

(eee) Section 2235: Requirements. California effective date 8/8/12.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360

Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360

Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 6-2011, f. & cert. ef. 4-29-11; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0070

Fleet Average Non-Methane Organic Gas (NMOG) Exhaust Emission Requirements, Reporting, and Compliance.

(1) Fleet average requirement.

(a) Effective model year 2009 through 2014, except as provided in this subsection, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars, light-duty trucks and medium-duty vehicles delivered for sale in Oregon must not exceed the fleet average NMOG Exhaust Emission Requirement set forth in CCR, Title 13, section 1961(b). For the 2014 model year only, a manufacturer may comply with the fleet average NMOG + NOx values in subsection (b) of this section in lieu of complying with the NMOG fleet average emissions in this subsection. A manufacturer must either comply with the NMOG + NOx fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet or comply with the NMOG fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet. A manufacturer must calculate its fleet average NMOG + NOx values using the applicable full useful life standards. Compliance will be based on the number of vehicles subject to this regulation, delivered for sale in Oregon.

(b) Effective model year 2015, each motor vehicle manufacturer's NMOG + NOx fleet average emissions from passenger cars, light duty trucks and medium duty vehicles delivered for sale to Oregon must not exceed the Fleet Average NMOG + NOx Exhaust Emission Requirement set forth in CCR, Title 13, section 1961.2. Compliance will be based on the number of vehicles subject to this regulation, delivered for sale in Oregon.

(2) Fleet average NMOG and NMOG plus NOx exhaust emission credits and debits.

(a) Effective model year 2009 through 2014, except as provided in this subsection each vehicle manufacturer may accrue NMOG emission credits and debits and use credits in accordance with the procedures in California Code of Regulations, Title 13, section 1961(b). For the 2014 model year only, a manufacturer may comply with the fleet average NMOG + NOx values in subsection (b) of this section in lieu of complying with the NMOG fleet average emissions in this subsection. A manufacturer must either comply with the NMOG + NOx fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet or comply with the NMOG fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet. A manufacturer must calculate its fleet average NMOG + NOx values using the applicable full useful life standards. . Debits and credits accrued and used will be based on the number of vehicles subject to this division, produced and delivered for sale by each manufacturer in Oregon.

(b) Effective model year 2015, each vehicle manufacturer may accrue NMOG + NOx emission credits and debits and use credits in accordance with the procedures in California Code of Regulations, Title 13, section 1961.2. Debits and credits accrued and used will be based on the number of vehicles subject to this division, produced and delivered for sale by each manufacturer in Oregon.

(3) Reporting.

(a) Effective model year 2009 through model year 2014 except as provided in this subsection, each manufacturer must report to DEQ by March 1 data that calculates the fleet average NMOG exhaust emissions for the model year just ended. The report must follow the procedures in CCR, Title 13, section 1961, and be in the same format used to report such information to the California Air Resources Board. Manufacturers that elect to comply with the NMOG + NOx fleet average emission limit for 2014 must report as provided in subsection (b) of this section.

(b) Effective model year 2015 and each model year thereafter, each manufacturer must report to DEQ by March 1 data that calculates the fleet average NMOG + NOx exhaust emissions for the model year just ended. The report must follow the procedures in CCR, Title 13, section 1961.2 and be in the same format used to report such information to the California Air Resources Board.

(4) Compliance with fleet average NMOG requirement. Effective model year 2012 through 2014, if a report submitted by the manufacturer under subsection (3)(a) of this rule demonstrates that the manufacturer is not in compliance with the fleet average emission standard, the manufacturer must submit to DEQ within 60 days a Fleet Average Remediation Report. The Fleet Average Remediation Report must:

(a) Describe how the manufacturer intends to equalize any accrued debits, as required in CCR, Title 13, section 1961(c)(3);

(b) Identify all vehicle models delivered for sale in Oregon, their corresponding certification standards, and the percentage of each model delivered for sale in Oregon and California in relation to total fleet sales in the respective state; and

(c) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(5) Compliance with fleet average NMOG plus NOx requirement. Effective model year 2015, if a report submitted by the manufacturer under subsection (3)(b) of this rule demonstrates that the manufacturer is not in compliance with the fleet average emission standard, the manufacturer must submit to DEQ within 60 days a Fleet Average Remediation Report. The Fleet Average Remediation Report must:

(a) Describe how the manufacturer intends to equalize any accrued debits, as required in CCR, Title 13, section 1961.2(c)(3);

(b) Identify all vehicle models delivered for sale in Oregon, their corresponding certification standards, and the percentage of each model delivered for sale in Oregon and California in relation to total fleet sales in the respective state; and

(c) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(6) For model years 2009 through 2011, manufacturers must submit the Fleet Average Remediation Report, if needed, to DEQ by March 1, 2012. If debits are accrued in all three years, one year of debits must be equalized by the end of the 2012 model year.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360

Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360

Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 6-2011, f. & cert. ef. 4-29-11; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0080
ZEV Sales Requirement

(1) Effective model year 2009 through 2017, each manufacturer must comply with the ZEV sales requirement contained in CCR, Title 13, section 1962.1, including early credit and banking provisions.

(2) Effective model year 2018 and each subsequent model year, each manufacturer must comply with the ZEV sales requirement contained in CCR, Title 13, section 1962,2 including early credit and banking provisions.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0090
ZEV Credit Bank and Reporting

(1) Beginning model year 2009, each intermediate volume and large volume manufacturer of ZEVs, ATPZEVs, and PZEVs may open an account in the ZEV Credit Bank operated by DEQ.

(2) In order to generate and deposit credits for vehicles delivered for sale in Oregon during the 1999 through 2005 model years, a manufacturer must open an account with the ZEV Credit Bank and submit an appropriate Notice of Generation to DEQ on or before September 1, 2006.

(3) Manufacturers wishing to claim ZEV credits must use the format and process contained in CARB's Manufacturer's Advisory Correspondence (MAC) 2011-02 for reporting and tracking ZEV deliveries and placements, unless this division specifies different requirements. DEQ will follow CARB's procedures contained in that MAC for tracking and recording ZEV sales and credits.

(4) Except as provided in section (2) of this rule, annually each manufacturer must submit to DEQ a Notice of Credit Generation or Notice of Credit Transfer to or from another manufacturer. Credits generated or acquired must be reported to DEQ on or before September 1 following the close of the model year in which the qualifying vehicle was produced and delivered for sale in Oregon.

(5) To deposit credits into the ZEV Credit Bank, a manufacturer must submit a Notice of Credit Generation to DEQ. The Notice of Generation must include the following:

(a) For ZEVs delivered for sale in Oregon:

(A) Manufacturer's ZEV Credit Bank account identifier;

(B) Model year of vehicle qualifying for credit;

(C) CARB Executive Order number;

(D) ZEV Tier type (NEV, 0, I, II, III for California, III for Section 177 states);

(E) Vehicle identification number; and

(F) Date the vehicle was delivered for sale in Oregon.

(b) For ZEVs placed in service in Oregon, all information listed under subsection (6)(a) of this rule, plus the following:

(A) Date the vehicle was placed in service, and

(B) Whether the vehicle was placed in service with an option to purchase or lease the vehicle.

(c) For ATPZEVs and PZEVs delivered for sale in Oregon:

(A) Vehicle certification class (ATPZEV or PZEV);

(B) Manufacturer's ZEV Credit Bank account identification;

(C) Model year of vehicle(s);

(D) For ATPZEVs, the Federal test group;

(E) The CARB Executive Order number;

(F) Number of vehicles delivered; and

(6) The number of the credits generated and deposited for each qualifying vehicle must be the number of qualifying vehicles multiplied by the applicable multiplier specified in CCR, Title 13, sections 1962, 1962.1 or 1962.2 as appropriate, , except the multiplier applied to vehicles produced and delivered for sale in Oregon from January 1, 1999 to January 13, 2004 will be the highest applicable multiplier used by the CARB for the period January 1, 1999 to January 13, 2004.

(7) A vehicle equivalent credit does not constitute or convey a property right.

(8) A manufacturer with an account in the ZEV Credit Bank may acquire credits from another manufacturer with an account in the ZEV Credit Bank. However, if the credits are to be used for future compliance with the ZEV sales requirement at CCR Title 13, section 1962.1, the transaction must be recorded in the ZEV Credit Bank and certified by both parties to the transaction.

(9) A manufacturer may deposit into its account in the ZEV Credit Bank a number of credits equal to its California credit balance at the beginning of the 2009 model year. The transferred credit balance will be multiplied by the number of new motor vehicles registered in Oregon, and divided by the number of new motor vehicles registered in California. The proportion of new motor vehicles in Oregon and California will be determined by the average number of vehicles registered in model years 2003 through 2005, or by the average number of vehicles registered in model year 2009. The deposit may be made only after all credit obligations for model years 2008 and earlier have been satisfied in California.

(10) Each manufacturer with a ZEV Credit Bank account under this rule must report to the Department the following information:

(a) By May 1, 2009, the total number of PC and LDT1 vehicles produced and delivered for sale in Oregon and California for 2003 through 2005 model years; or

(b) By May 1, 2009, the total projected number of PC and LDT1 vehicles to be produced and delivered for sale in Oregon and California during model year 2009 and, by March 1, 2010, the actual number of 2009 model year PC and LDT1 vehicles produced and delivered for sale in Oregon and California; and

(c) By May 1, 2009, provide the Department with the total number of banked California credits after all 2008 model year and earlier obligations have been met.

(11) A manufacturer electing to deposit credits under section (9) of this rule must offer for sale in Oregon in model years 2009 through 2011 any PZEV, ATPZEV or ZEV, except Type III ZEVs, that it offers for sale in California during the same period.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 6-2011, f. & cert. ef. 4-29-11; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0100
Fleet Average Greenhouse Gas Exhaust Emission Requirements, Reporting and Compliance

(1) Each manufacturer subject to the greenhouse gas provisions of this regulation must comply with emissions standards, fleet average greenhouse gas exhaust mass emission requirements for passenger car, light duty truck, medium duty passenger vehicle weight classes, and other requirements of CCR, Title 13, section 1961.1 and 1961.3.

(2) Requirements for Large Volume Manufacturers. The fleet average greenhouse gas exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles produced and delivered for sale in the State of Oregon by a large volume manufacturer for each 2009 and subsequent model year are established in CCR, Title 13, section 1961.1 and 1961.3.

(3) Requirements for Small, Intermediate, and Independent Manufacturers. The fleet average greenhouse gas exhaust emission requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles delivered for sale in the State of Oregon by small volume, intermediate volume and independent low volume manufacturers are set forth in CCR, Title 13, section 1961.1, which specifies that requirements for these manufacturers are waived before the 2016 model year, and CCR, Title 13, section 1961.3, which specifies the requirements that apply for the 2017 and each subsequent model year.

(4) Greenhouse gas emission credits and debits. Greenhouse gas credits and debits may be accrued and used based on each manufacturer's sale of vehicles in Oregon in accordance with CCR, Title 13, section 1961.1 and 1961.3.

(5) Optional alternative compliance with greenhouse gas emission standards. Greenhouse gas vehicle test groups that are certified pursuant to CCR, Title 13, section 1961.1(a)(1)(B)2.a in the State of California may receive equivalent credit if delivered for sale and use in the State of Oregon.

(6) Alternative compliance credit. A manufacturer must submit to the Department the data set forth in CCR, Title 13, section 1961.1(a)(1)(B)2.a.i for Oregon-specific sale and use in order to receive the credit identified in (5) above.

(7) Reporting on greenhouse gas requirements. Effective model year 2009 and for each model year thereafter, each manufacturer must report to the Department by May 1, end-of-model year data that calculates the fleet average greenhouse gas emissions for the model year just ended. The report must include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to CCR, Title 13, section 1961.1 or 1961.3 as appropriate. The report must follow the procedures in CCR, Title 13, section 1961.1 or 1961.3 and be in the same format used to report such information to the California Air Resources Board.

(8) Compliance with fleet average greenhouse gas requirements. Effective model year 2009, if the report submitted by the manufacturer under subsection (7)(b) of this rule demonstrates that the manufacturer is

not in compliance with the fleet average emission standards, the manufacturer must submit to the Department within 60 days a Fleet Average Remediation Report. The Fleet Average Remediation Report must:

(a) Describe how the manufacturer intends to equalize any accrued debits, as required in CCR, Title 13, section 1961.1 or 1961.3 as appropriate; (b) Identify all vehicle models delivered for sale in Oregon, their corresponding certification standards, and the percentage of each model delivered for sale in Oregon and California in relation to total fleet sales in the respective state; and

(c) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0110
Additional Reporting Requirements

(1) The manufacturer must submit to DEQ one copy of the California Executive Order and Certificate of Conformity for certification of new motor vehicles for each engine family to be sold in the State of Oregon within thirty (30) days of DEQ's request. If such reports are available electronically, the manufacturer must send the record in an electronic format acceptable to the director or the director's designee.

(2) To determine compliance with this division, DEQ may require any vehicle manufacturer to submit any documentation DEQ deems necessary to the effective administration and enforcement of this division, including all certification materials submitted to CARB.

(3) Upon request, dealers must report to DEQ the sale of each previously-titled light-duty and medium-duty motor vehicle subject to this division. The report must include the following information and be submitted in a manner DEQ prescribes:

(a) The dealer's name and address;

(b) Vehicle description including make and model year;

(c) The vehicle identification number;

(d) Date of sale;

(e) The California or federal emission category to which the vehicle is certified; and

(f) Evidence of any applicable exemption.

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 6-2011, f. & cert. ef. 4-29-11; DEQ 13-2013, f. & cert. ef. 12-19-13

340-257-0120
Warranty Requirements

(1) For all 2009 and subsequent model year vehicles subject to the provisions of this division, each manufacturer must provide, to the ultimate purchaser and each subsequent purchaser, a warranty that complies with the requirements contained in CCR, Title 13, sections 2035 through 2038, 2040, and 2046.

(2) The 15-year or 150,000-mile extended warranty specified in CCR, Title 13, section 1962.1(c)(2)(D) for PZEVs is not included as a requirement of this rule or OAR 340-257-0050, for the period 2009 through 2017 provided that PZEVs delivered for sale to Oregon are equipped with the same quality components as PZEVs supplied to areas where the full 15-year or 150,000-mile warranty remains in effect. The provisions of this section do not amend the requirements of CCR, Title 13, section 1962.1(c)(2)(D) that indicate the warranty period for a zero emission energy storage device used for traction power will be 10 years or 150,000 miles, whichever occurs first.

(3) For all 2009 and subsequent model year vehicles subject to the provisions of this division, each manufacturer must include the emission control system warranty statement that complies with the requirements in CCR, Title 13, section 2039. Manufacturers must submit the documents required by subsections (a) and (b) of section 2039 only upon the Department's request. Manufacturers may modify this statement as necessary to inform Oregon vehicle owners of the warranty's applicability. The manufacturer must provide a telephone number that Oregon consumers can use to learn answers to warranty questions.

(4) Upon the Department's request, any manufacturer must submit to the Department Failure of Emission-Related Components reports as defined in CCR, Title 13, section 2144, for vehicles subject to this regulation. For purposes of compliance with this requirement, manufacturers may submit copies of the Failure of Emission-Related Components reports that are submitted to the California Air Resources Board in lieu of submitting reports for vehicles subject to this division.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.010, 468A.015, 468A.025 & 468A.360
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 6-2011, f. & cert. ef. 4-29-11; DEQ 13-2013, f. & cert. ef. 12-19-13

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Rule Caption: Onsite Program Fees and Updates
Adm. Order No.: DEQ 14-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-2-14
Notice Publication Date: 10-1-2013
Rules Amended: 340-018-0030, 340-071-0100, 340-071-0115, 340-071-0120, 340-071-0130, 340-071-0135, 340-071-0140, 340-071-0150, 340-071-0155, 340-071-0160, 340-071-0162, 340-071-0165, 340-071-0170, 340-071-0205, 340-071-0215, 340-071-0220, 340-071-0260, 340-071-0265, 340-071-0275, 340-071-0290, 340-071-0295, 340-071-0302, 340-071-0325, 340-071-0335, 340-071-0340, 340-071-0345, 340-071-0360, 340-071-0400, 340-071-0415, 340-071-0420, 340-071-0425, 340-071-0435, 340-071-0445, 340-071-0520, 340-071-0600, 340-071-0650
Rules Repealed: 340-071-0131, 340-071-0270
Subject: Short summary:

These Onsite Program rules:

Implement 2011 and 2013 legislatively-approved fees, including establishing a land use review fee, compliance recovery fee and increases to the surcharge fee and license fees.

Implement changes to alternative treatment technologies, or ATT, product approval based on 2009 Onsite Advisory Committee recommendations. This includes establishing an ATT system product approval process that provides for performance testing of systems to verify that they are meeting defined treatment standards in the environment and a system to track installations.

Require that newly-permitted sand filters and pressurized distribution systems have a service contract with ongoing maintenance similar to ATT systems.

Streamline rules to make it easier for the public to comply.

Correct errors in the rules and update some sections to contemporary rule standards.

Remove the site evaluation confirmation application and fee from the rules because anticipated efficiencies were not realized and very few applications were submitted.

Remove evapotranspiration-absorption systems from the rules. These systems were primarily used in Jackson County and have not been as successful as sand filter systems. DEQ has not issued new permits for these systems in decades.

Brief history:

The 2009 Onsite Advisory Committee recommended improvements to the onsite program. Recommendations included requiring owners of certain types of systems to contract with certified maintenance providers and submit annual reports and establishing various fees or fee increases to provide sustainable funding source for the program. DEQ formed the committee in 2009 in response to a dramatic drop in the number of applications in 2008 and the related drop in program revenue.

Regulated parties:

These rules affect septic system owners, manufacturers, certified service providers, county and city onsite agents, system designers and licensed sewage disposal services.
Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-018-0030
Applicability

The provisions of this rule, OAR 340-018-0000 through 340-018-0200 apply to DEQ programs and actions subsequently determined to have significant effects on land use pursuant to ORS 197.180 and OAR 660-030-0075. DEQ land use actions are identified below:

(1) Air Quality Division:

(a) Approval of Noise Impact Boundaries for Motor Racing Facilities;

(b) Approval of Airport Noise Abatement Program and Noise Impact Boundaries;

(c) Approval of Notice of Construction;
(d) Issuance of Air Contaminant Discharge Permit;
(e) Issuance of Indirect Source Construction Permit;
(f) Approval of Parking and Traffic Circulation Plan.
(g) Employee Commute Options.
(2) Environmental Cleanup Division: Issuance of Environmental Hazard Notice.
(3) Hazardous and Solid Waste Division:
(a) Issuance of Solid Waste Disposal Permit;
(b) Issuance of Waste Tire Storage Permit; and
(c) Issuance of Hazardous Waste and PCB Storage, Treatment and Disposal Permit.
(4) Management Services Division: Approval of Pollution Control Bond Fund Application.
(5) Water Quality Division:
(a) Approval of Wastewater System and Facility Plans;
(b) Approval of State Revolving Loan Application;
(c) Issuance of Onsite Construction-Installation Permits, Alteration Permits, and Authorization Notices;
(d) Issuance of NPDES and WPCF Permits;
(e) Development of Water Quality Wetland Protection Criteria;
(f) Requirement of an Implementation Plan to Meet Restrictions for Waste Load Allocations on Water Quality Limited Waterways (TMDLS);
(g) Certification of Water Quality Standards for Federal Permits, Licenses;
(h) Development of Action Plan for Declared Ground Water Management Area;
(i) Development of Nonpoint Source Management Plan;
(j) Development of Estuary Plans;
(k) Development of Oil Spill Regulations.
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 197.180
Hist.: DEQ 36-1990, f. & cert. ef. 8-28-90; DEQ 14-1996, f. & cert. ef. 8-14-96; DEQ 5-1997(Temp), f. & cert. ef. 3-3-97; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0100
Definitions

As used in OAR 340, divisions 071 and 073, unless otherwise specified:

(1) "Absorption Area" means the entire area used for underground dispersion of the liquid portion of sewage including the area designated for a future replacement system. It may consist of a seepage pit, absorption field, or combination of the two. It may also consist of a cesspool, seepage bed, bottomless sand filter, or evapotranspiration-absorption system.

(2) "Absorption Facility" means a system of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities that are designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

(3) "Absorption Field" means a system of absorption trenches, a seepage trench, or a system of seepage trenches.

(4) "Absorption Trench" means a ditch or a trench installed into soil, permeable saprolite, or diggable bedrock, with vertical sides and a substantially flat bottom.

(5) "Active Sand Dune" means wind-drifted ridges and intervening valleys, pockets, and swales of sand adjacent to the beach. The sand is grayish-brown with little or no horizon, color, or textural difference. Active dunes are either bare of vegetation or lack sufficient vegetation to prevent blowing of sand.

(6) "Aerobic Sewage Treatment Facility" means a sewage treatment plant that incorporates a means of introducing air and oxygen into the sewage to provide aerobic biochemical stabilization during a detention period. Aerobic sewage treatment facilities may include anaerobic processes as part of the treatment system.

(7) "Aerobic System" means an alternative system that incorporates a septic tank or other treatment facility, an aerobic sewage treatment facility, and an absorption facility to provide treatment before dispersal.

(8) "Agent" means the director or person authorized to act on behalf of the director, frequently referring to DEQ or contract county staff performing onsite permitting activities.

(9) "Alteration" means expansion or change in location of an existing system or any part thereof. Major alteration is the expansion or change in location of the soil absorption facility, treatment unit, or any part thereof. Minor alteration is the replacement or relocation of a septic tank or other components of the system other than the soil absorption facility, or a change in distribution technique or method.

(10) "Alternative System" means any onsite wastewater treatment system approved by the commission or DEQ for use in lieu of the standard subsurface system.

(11) "Alternative Treatment Technologies" means an alternative system that incorporates aerobic and other treatment technologies or units not specifically described elsewhere in this division.

(12) "Approved Material" means construction items that have been approved for use by DEQ.

(13) "Approved Criteria" means methods of design or construction that have been approved for use by DEQ.

(14) "ASTM" means American Society of Testing Materials.

(15) "Authorization Notice" means a written document issued by an agent establishing that an existing onsite wastewater treatment system appears adequate for its intended use.

(16) "Authorized Representative" means a person with written authorization to act as another person's delegate.

(17) "Automatic Siphon" means a hydraulic device designed to rapidly discharge the contents of a dosing tank between predetermined liquid levels.

(18) "Bedroom" means any room within a dwelling accepted as a bedroom by state or local building departments.

(19) "Biochemical Oxygen Demand" (BOD5) means the quantity of oxygen used in the biochemical oxidation of organic matter in five days at 20 degrees centigrade under specified conditions and reported as milligrams per liter (mg/L).

(20) "Black Waste" means human body wastes including feces, urine, other substances of body origin, and toilet paper.

(21) "Capping Fill System" means an alternative system that incorporates an absorption trench with an effective sidewall installed a minimum of 12 inches into the natural soil below a soil cap of specified depth and texture.

(22) "Carbonaceous Biochemical Oxygen Demand" (CBOD5) means BOD minus the nitrogenous oxygen demand, typically measured in mg/L.

(23) "Cesspool" means a lined pit that receives raw sewage, allows separation of solids and liquids, retains the solids, and allows liquids to seep into the surrounding soil through perforations in the lining.

(24) "Chemical Recirculating Toilet Facility" means a toilet facility wherein black wastes are deposited and carried from a bowl by a combination of liquid waste and water that has been chemically treated and filtered.

(25) "Chemical Toilet Facility" means a nonflushing, nonrecirculating toilet facility wherein black wastes are deposited directly into a chamber containing a solution of water and chemical.

(26) "Clayey Soil" means mineral soil with over 40 percent clay that shrinks and develops wide cracks when dry and swells and shears when wet, forming slickensides and wedge-shaped structure. Clayey soil is very hard or extremely hard when dry, very firm when moist, and very sticky and very plastic when wet.

(27) "Claypan" means a dense, compact clay layer in the subsoil. It has a much lower permeability than the overlying soil horizon from which it is separated by an abrupt boundary. Claypans are hard when dry and very sticky and very plastic when wet and impede movement of water, air, and growth of plant roots.

(28) "Combustion Toilet Facility" means a toilet facility wherein black wastes are deposited directly into a combination chamber for incineration.

(29) "Commercial Facility" means any structure or building or portion thereof other than a single-family dwelling.

(30) "Commission" means the Environmental Quality Commission.

(31) "Community System" means an onsite system that serves more than one lot or parcel, more than one condominium unit, or more than one unit of a planned unit development.

(32) "Completed Application" means an application form that is completed in full; is signed by the owner or owner's authorized representative or, for WPCF permits, by the applicant or applicant's authorized representative; and is accompanied by all required exhibits and fees.

(33) "Conditions Associated with Saturation" means soil morphological properties that may indicate the presence of a water table that persists long enough to impair system function and create a potential health hazard. These conditions include depleted matrix chromas caused by saturation and not a relict or parent material feature, and the following:

(a) High chroma matrix with iron depletions. Soil horizons whose matrix chroma is 3 or more in which there are some visible iron depletions having a value 4 or more and a chroma of 2 or less. Iron-manganese concentrations as soft masses or pore linings may be present but are not diagnostic of conditions associated with saturation.

(b) Depleted matrix with iron concentrations. Soil horizons whose matrix color has a value of 4 or more and a chroma of 2 or less as a result of removal of iron and manganese oxides. Some visible zones of iron concentration are present as soft masses or pore linings.

(c) Depleted matrix without iron concentrations. Soil horizons whose color is more or less uniform with a value of 4 or more and a chroma of 2 or less as a result of removal of iron and manganese oxides. These horizons lack visible iron concentrations as soft masses or pore linings.

(d) Reduced matrix. Soil horizons whose color has a value of 4 or more and a chroma of 2 or less with hues that are often, but not exclusively, on the gley pages of the Munsell Color Book. Upon exposure to air, yellow colors form within 24 hours as some of the ferrous iron oxidizes.

(e) Dark colored soils with organic matter accumulation. Mineral soils with a high amount of decomposed organic matter in the saturated zone, a value of 3 or less, and a chroma of 1 or less. Included in this category are organic soils with a minor amount of mineral matter.

(f) Soils with a dark surface. The upper surface layer has a dark color with a value of 3 or less and a chroma of 1 or less immediately underlain by a layer with a chroma of 2 or less.

(g) Iron stripping and staining in sandy soils. Soil horizons in which iron/manganese oxides or organic matter or both have been stripped from the matrix, exposing the primary base color of soil materials. The stripped areas and trans-located oxides or organic matter form a diffuse splotchy pattern of two or more colors.

(h) Salt-affected soils. Soils in arid and semi-arid areas that have visible accumulations of soluble salts at or near the ground surface.

(i) Dark colored shrink-swell soils. Vertisols whose colors have values of 3 or less and chromas of 1 or less. Iron concentrations may be present but are not diagnostic of conditions associated with saturation.

(j) Other soils that lack the diagnostic value and chroma as described in this section but remain saturated long enough to impair system function and have a high water table in accordance with OAR 340-071-0130(23).

(34) "Confining Layer" means a layer associated with an aquifer that because of low permeability does not allow water to move through it perceptibly under head differences occurring in the groundwater system.

(35) "Construction" includes the installation of a new system or part thereof or the alteration, repair, or extension of an existing system. The grading, excavating, and earth-moving work connected with installation, alteration, or repair of a system or part thereof is considered system construction.

(36) "Contract County" means a local unit of government that has entered into an agreement with DEQ under OAR 340-071-0120 to perform duties of DEQ under this division.

(37) "Conventional Sand Filter" means a filter with 2 feet or more of sand filter media designed to chemically and biologically process septic tank or other treatment unit effluent from a pressure distribution system operated on an intermittent basis.

(38) "Curtain Drain" means a groundwater interceptor that is designed to divert groundwater from an absorption facility. The drain creates a "curtain" to block water from reaching the absorption facility.

(39) "Cut-manmade" means a land surface resulting from mechanical land shaping operations where the modified slope is greater than 50 percent and the depth of cut exceeds 30 inches.

(40) "DEQ" means the Department of Environmental Quality.

(41) "Design Capacity" means the maximum daily flow a system is designed to treat and disperse.

(42) "Design Criteria" means the criteria used in designing onsite wastewater treatment systems including but not limited to dimensions, geometry, type of materials, size of drain media or filter media, absorption field sizing, depth, grade or slope, hydraulic loading rate, or any other factor relevant to the successful operation of the system. It does not include absorption area siting criteria.

(43) "Designer" means a person who plans onsite wastewater treatment and dispersal technology for an onsite system.

(44) "Director" means the Director of the Department of Environmental Quality.

(45) "Disposal Trench" means "absorption trench."

(46) "Distribution Box" means a watertight structure that receives septic tank or other treatment facility effluent and distributes it concurrently into 2 or more header pipes leading to the absorption area.

(47) "Distribution Pipe" means an open-jointed or perforated pipe used in the dispersion of septic tank or other treatment facility effluent into absorption trenches, seepage trenches, or seepage beds.

(48) "Distribution Unit" means a distribution box, dosing tank, diversion valve or box, header pipe, or other means of transmitting septic tank or other treatment unit effluent from the effluent sewer to the distribution pipes.

(49) "Diversion Valve" means a watertight structure that receives septic tank or other treatment facility effluent through one inlet and distributes it to 2 outlets, only one of which is used at a time.

(50) "Dosing Tank" means a watertight receptacle placed after a septic tank or other treatment facility equipped with an automatic siphon or pump.

(51) "Dosing Septic Tank" means a unitized device performing functions of both a septic tank and a dosing tank.

(52) "Drainfield" means an "absorption field."

(53) "Drain Media" means clean washed gravel or clean, crushed rock with a minimum size of 3/4 inch and a maximum size of 2-1/2 inches used in the distribution of effluent. The material must be durable and inert so that it will maintain its integrity, will not collapse or disintegrate with time, and will not be detrimental to the performance of the system. Drain media also includes any product or material approved by DEQ for distribution of effluent in an absorption field.

(54) "Dwelling" means any structure or building or portion thereof that is used, intended, or designed to be occupied for human living purposes including but not limited to houses, houseboats, boathouses, mobile homes, recreational cabins, travel trailers, hotels, motels, and apartments.

(55) "Effective Seepage Area" means the sidewall area within an absorption trench or a seepage trench from the bottom of the trench to a level 2 inches above the distribution pipes; the sidewall area of any cesspool, seepage pit, unsealed earth pit privy, graywater waste absorption sump seepage chamber, or trench with drain media substitute; or the bottom area of a pressurized soil absorption facility installed in soil.

(56) "Effective Soil Depth" means the depth of soil material above a layer that impedes movement of water and air and growth of plant roots. Layers that differ from overlying soil material enough to limit effective soil depth are hardpans, claypans, fragipans, compacted soil, bedrock, saprolite, and clayey soil.

(57) "Effluent Filter" means an effluent treatment device installed on the outlet of a septic tank or outside the septic tank in a separate enclosure and designed to prevent the passage of suspended matter larger than 1/8 inch in size.

(58) "Effluent Lift Pump" means a pump used to lift septic tank or other treatment facility effluent to a higher elevation.

(59) "Effluent Sewer" means that part of the system of drainage piping that conveys partially treated sewage from a septic tank or other treatment facility into a distribution unit or an absorption facility.

(60) "Emergency Repair" means immediate action to repair a failing system when sewage is backing up into a dwelling or building or to repair a broken pressure sewer pipe. It does not include the construction of new or additional absorption facilities but does include use of the septic tank as a temporary holding tank until new or additional absorption facilities can be permitted and constructed.

(61) "Equal Distribution" means the distribution of effluent to a set of absorption trenches in which each trench receives effluent in equivalent or proportional volumes.

(62) "Escarpment" means any naturally occurring slope greater than 50 percent that extends vertically 6 feet or more from toe to top, is characterized by a long cliff or steep slope that separates two or more comparatively level or gently sloping surfaces, and may intercept one or more layers that limit effective soil depth.

(63) "Existing Onsite Wastewater Treatment System" means any installed onsite wastewater treatment system constructed in conformance with the rules, laws, and local ordinances in effect at the time of construction.

(64) "Existing System" means "existing onsite wastewater treatment system."

(65) "Failing System" means any system that discharges untreated or incompletely treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters or that creates a public health hazard.

(66) "Family Member" means any one of two or more persons related by blood or by law.

(67) "Fecal Coliform" means bacteria common to the digestive systems of warm-blooded animals and cultured in standard tests. The term is typically used to indicate fecal pollution and the possible presence of enteric pathogens and is measured as colonies/100ml.

(68) "Filter Fabric" means a woven or spun-bonded sheet material used to impede or prevent the movement of sand, silt, and clay into drain media.

(69) "Fragipan" means a loamy subsurface horizon with high bulk density relative to the horizon above, seemingly cemented when dry, and weakly to moderately brittle when moist. Fragipans are mottled and low in organic matter, and they impede movement of water and air and growth of plant roots.

(70) "Governmental Unit" means the state or any county, municipality, or political subdivision or any agency thereof.

(71) "Grade" means the rate of fall or drop in inches per foot or the percentage of fall of a pipe.

(72) "Graywater" means household sewage other than "black wastes," such as bath water, kitchen waste water, and laundry wastes.

(73) "Graywater Waste Sump" means a receptacle or series of receptacles designed to receive hand-carried graywater for dispersal into the soil.

(74) "Grease and Oils" means a component of sewage typically originating from food stuffs, consisting of compounds of alcohol or glycerol with fatty acids.

(75) "Groundwater Interceptor" means any natural or artificial groundwater or surface water drainage system, including drain tile, curtain drain, foundation drain, cut banks, and ditches, that intercept and divert groundwater or surface water from the area of the absorption facility.

(76) "Hardpan" means a hardened layer in soil caused by cementation of soil particles with silica, calcium carbonate, magnesium carbonate, iron, or organic matter. The hardness does not change appreciably with changes in moisture content. Hardpans impede movement of water and air and growth of plant roots.

(77) "Header Pipe" means a tight-jointed part of the sewage drainage conduit that receives septic tank effluent from the distribution box, drop box, or effluent sewer and conveys it to the absorption area.

(78) "Headwall" means a steep slope at the head or upper end of a land slump block or unstable landform.

(79) "Holding Tank" means a watertight receptacle designed to receive and store sewage to facilitate treatment at another location.

(80) "Holding Tank System" means an alternative system consisting of the combination of a holding tank, service riser, and level indicator (alarm), designed to receive and store sewage for intermittent removal for treatment at another location.

(81) "Hydrosplitter" or "hydrasplitter" means a hydraulic device to proportion flow under pressure by the use of one or more orifices.

(82) "Incinerator Toilet Facility" means "combustion toilet facility."

(83) "Individual System" means a system that is not a community system.

(84) "Individual Water Supply" means a source of water and a distribution system that provides water for drinking, culinary, or household uses and is not a public water supply system.

(85) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste or a combination thereof resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

(86) "Intermittent Sand Filter" means a conventional sand filter.

(87) "Intermittent Stream" means any public surface water or groundwater interceptor that continuously flows water for a period greater than two months in any one year but not continuously for that year.

(88) "Invert" is the lowest portion of the internal cross section of a pipe or fitting.

(89) "Large System" means any onsite system with a projected daily sewage flow greater than 2,500 gallons.

(90) "Lateral Pipe" means "distribution pipe."

(91) "Maintenance" means taking the actions necessary to keep onsite system components properly functioning as designed. Maintenance is further defined as:

(a) Major Maintenance is cleaning, repairing or replacing a broken or plugged effluent sewer pipe that:

(A) Is the same make and model; or

(B) Meets the requirements in this division; and

(C) Is performed by a certified maintenance provider or certified licensed installer.

(b) Minor Maintenance includes, but is not limited to, repairing or replacing of a tank riser or lid, or pump, screen, filter, or other component internal to the tank that:

(A) Is the same make and model; or

(B) Meets the requirements in this division.

(92) "Maintenance provider" means a person who performs maintenance of onsite systems and:

(a) Possesses adequate skills and knowledge regarding onsite wastewater treatment, absorption facilities, and system functions to competently inspect and maintain onsite systems, and

(b) Is certified in compliance with OAR 340-071-0650.

(93) "Mechanical Sewage Treatment Facility" or "Mechanical Oxidation Sewage Treatment Facility" means an aerobic sewage treatment facility.

(94) "Nonwater-Carried Waste Facility" means any toilet facility that has no direct water connection, including but not limited to pit privies, vault privies, and portable toilets.

(95) "Occupant" means any person living or sleeping in a dwelling.

(96) "Onsite Sewage Disposal System" means "onsite wastewater treatment system."

(97) "Onsite Wastewater Treatment System" means any existing or proposed subsurface onsite wastewater treatment and dispersal system including but not limited to a standard subsurface, alternative, experimental, or nonwater-carried sewage system. It does not include systems that are designed to treat and dispose of industrial waste as defined in OAR chapter 340, division 045.

(98) "Operating Permit" means a WPCF permit issued pursuant to these rules.

(99) "Owner" means any person who alone, jointly, or severally:

(a) Has legal title to any single lot, dwelling, dwelling unit, or commercial facility;

(b) Has care, charge, or control of any real property as agent, executor, administrator, trustee, commercial lessee, or guardian of the estate of the holder of legal title; or

(c) Is the contract purchaser of real property.

(100) "Peer Review" means a review by at least three members of a scientific community recognized as experts in the field of study and well-rehearsed with scientific principles and experimentation.

(101) "Permanent Groundwater Table" means the upper surface of a saturated zone that exists year-round. The thickness of the saturated zone and resulting elevation of the permanent groundwater table may fluctuate as much as 20 feet or more annually, but the saturated zone and associated permanent groundwater table is present at some depth beneath land surface throughout the year.

(102) "Permit" means the written document, issued and signed by an agent, that authorizes a permittee to install a system or any part thereof and, in some cases, to operate and maintain the system in accordance with the permit.

(103) "Permit Action" means the issuance, modification, renewal, reinstatement, or revocation of a permit by an agent.

(104) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(105) "Pollution" or "Water Pollution" means any alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or any discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that, alone or in connection with any other substance, threatens to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish, or other aquatic life or the habitat thereof.

(106) "Portable Toilet" means any self-contained chemical toilet facility that is housed within a portable toilet shelter and includes but is not limited to construction-type chemical toilets.

(107) "Portable Toilet Shelter" means any readily relocatable structure built to house a toilet facility.

(108) "Pressure Distribution Lateral" means piping and fittings in pressure distribution systems that distribute septic tank or other treatment unit effluent to drain media through small diameter orifices.

(109) "Pressure Distribution Manifold" means piping and fittings in a pressure distribution system that supply effluent from pressure transport piping to pressure distribution laterals.

(110) "Pressure Distribution System" means any system designed to uniformly distribute septic tank or other treatment unit effluent under pressure in an absorption facility or treatment unit.

(111) "Pressure Transport Piping" means piping that conveys sewage effluent from a septic tank or other treatment or distribution unit typically by means of a pump or siphon.

(112) "Pretreatment" means the wastewater treatment that takes place prior to discharging to any component of an onsite wastewater treatment system, including but not limited to pH adjustment, oil and grease removal, BOD5 and TSS reduction, screening, and detoxification.

(113) "Prior Approval" means a written approval for an onsite wastewater treatment system for a specific lot issued before January 1, 1974.

(114) "Prior Construction Permit" means a subsurface wastewater treatment system construction-installation permit issued before January 1, 1974, by a county that had an ordinance requiring construction-installation permits for subsurface wastewater treatment systems.

(115) "Privy" means a structure used for disposal of human waste without the aid of water. It consists of a shelter built above a pit or vault in the ground into which human waste falls.

(116) "Projected Daily Sewage Flow" or "design flow" means the peak daily quantity of sewage production from a facility for which a system is sized and designed. The projected daily sewage flow allows for a safety margin and reserve capacity for the system during periods of heavy use.

(117) "Public Health Hazard" means the presence of sufficient types or amounts of biological, chemical, physical, or radiological agents relating to water or sewage that cause or threaten to cause human illness, disorders, or disability. These include but are not limited to pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes.

(118) "Public Waters" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except private waters that do not combine or effect a junction with natural surface or underground waters), that are wholly or partially within or bordering the state or within its jurisdiction.

(119) "Recirculating Gravel Filter (RGF)" means a gravel filter wastewater treatment system in which a portion of the filtered effluent is mixed with septic tank effluent in a recirculation/dilution tank and redistributed to the filter.

(120) "Recirculating Gravel Filter System" means a recirculating gravel filter and an absorption facility used to treat wastewater.

(121) "Redundant Absorption Field System" means a system in which two complete absorption fields are installed, the absorption trenches of each system alternate with each other, and only one system operates at a given time.

(122) "Repair" means installation of all portions of a system necessary to eliminate a public health hazard or pollution of public waters created by a failing system.

(a) Major repair is the replacement of the soil absorption facility, treatment unit, or any part thereof.

(b) Minor repair is the replacement of a septic tank, broken pipe, distribution unit, or any part of the onsite system external to the septic tank or treatment facility except the soil absorption system. Unless classified as a major repair or major maintenance, any replacement of a part of a system with a part that does not meet the original design specifications is a minor repair.

(123) "Residential Strength Wastewater" means septic tank effluent that does not typically exceed five-day biochemical oxygen demand (BOD5) of 300 mg/L; total suspended solids (TSS) of 150 mg/L; total Kjeldahl nitrogen (TKN) of 150 mg/L; oil & grease of 25 mg/L; or concentrations or quantities of other contaminants normally found in residential sewage.

(124) "Sand Filter Media" means a medium sand or other approved material used in a conventional sand filter. The media must be durable and inert so that it will maintain its integrity, will not collapse or disintegrate with time, and will not be detrimental to the performance of the system. The particle size distribution of the media must be determined through a sieve analysis conducted in accordance with ASTM C-117 and ASTM C-136. The media must comply with the following particle size distribution: 100 percent passing the 3/8 inch sieve, 95 percent to 100 percent passing the No. 4 sieve, 80 percent to 100 percent passing the No. 8 sieve, 45 percent to 85 percent passing the No. 16 sieve, 15 percent to 60 percent passing the No. 30 sieve, 3 percent to 15 percent passing the No. 50 sieve, and 4 percent or less passing the No. 100 sieve.

(125) "Sand Filter Surface Area" means the area of the level plane section in the medium sand horizon of a conventional sand filter located 2 feet below the bottom of the drain media containing the pressurized distribution piping.

(126) "Sand Filter System" means an alternative system that combines a septic tank or other treatment unit; a dosing system with effluent pump and controls or dosing siphon, piping and fittings; a sand filter; and an absorption facility to treat wastewater.

(127) "Sanitary Drainage System" means that part of a system's drainage piping that conveys untreated sewage from a building or structure to a septic tank or other treatment facility, to a service lateral at a curb or in a street or alley, or to another disposal terminal holding human or domestic sewage. The sanitary drainage system consists of a building drain or building drain and building sewer.

(128) "Saprolite" means weathered material underlying the soil that grades from soft thoroughly decomposed rock to rock that has been weathered sufficiently so that it can be broken in the hands or cut with a knife. It has rock structure instead of soil structure and does not include hard bedrock or hard fractured bedrock.

(129) "Saturated Zone" means a three-dimensional layer, lens, or other section of the subsurface in which all open spaces including joints, fractures, interstitial voids, and pores are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge or discharge.

(130) "Scum" means a mass of sewage solids floating at the surface of sewage that is buoyed up by entrained gas, grease, or other substances.

(131) "Seepage Area" means "effective seepage area."

(132) "Seepage Bed" means an absorption system having absorption trenches wider than 3 feet.

(133) "Seepage Pit" means a cesspool that has a treatment facility such as a septic tank ahead of it.

(134) "Seepage Trench System" means a system with absorption trenches with more than 6 inches of drain media below the distribution pipe.

(135) "Self-Contained Nonwater-Carried Waste Containment Facility" means a system in which all waste is contained in a watertight receptacle, including but not limited to vault privies, chemical toilets, combustion toilets, recirculating toilets, and portable toilets.

(136) "Septage" means the domestic liquid and solid sewage pumped from septic tanks, cesspools, holding tanks, vault toilets, chemical toilets or other similar domestic sewage treatment components or systems and other sewage sludge not derived at sewage treatment plants.

(137) "Septic Tank" means a watertight receptacle that receives sewage from a sanitary drainage system and is designed to separate solids from liquids, digest organic matter during a period of detention, and allow the liquids to discharge to a second treatment unit or to a soil absorption facility.

(138) "Septic Tank Effluent" means partially treated sewage that is discharged from a septic tank.

(139) "Serial Distribution" means the distribution of effluent to a set of absorption trenches constructed at different elevations in which one trench at a time receives effluent in consecutive order beginning with the uppermost trench by means of a drop box, a serial overflow, or another approved distribution unit. The effluent in an individual trench must reach a level of 2 inches above the distribution pipe before effluent is distributed to the next lower trench.

(140) "Sewage" means water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with any groundwater infiltration, surface waters, or industrial waste that may be present.

(141) "Sewage Disposal Service" means:

(a) The construction of onsite wastewater treatment systems (including the placement of portable toilets) or any part thereof;

(b) The pumping out or cleaning of onsite wastewater treatment systems (including portable toilets) or any part thereof;

(c) The disposal of material derived from the pumping out or cleaning of onsite wastewater treatment systems (including portable toilets); or

(d) Grading, excavating, and earth-moving work connected with the operations described in subsection (a) of this section.

(142) "Sewage Stabilization Pond" means a pond designed to receive the raw sewage flow from a dwelling or other building and retain that flow for treatment without discharge.

(143) "Site Evaluation Report" means a report on the evaluation of a site to determine its suitability for an onsite system prepared in accordance with OAR 340-071-0150.

(144) "Slope" means the rate of fall or drop in feet per 100 feet of the ground surface. It is expressed as percent of grade.

(145) "Soil Permeability" refers to the ability of a soil to transmit water or air.

(146) "Soil Separate" means the size of soil particles described in Table 7.

(147) "Soil Texture" means the amount of each soil separate in a soil mixture. Field methods for judging the texture of a soil consist of forming a cast of soil, both dry and moist, in the hand and pressing a ball of moist soil between thumb and finger.

(a) The major textural classifications are defined as follows and shown in Table 6.

(A) Sand: Individual grains can be seen and felt readily. Squeezed in the hand when dry, this soil will fall apart when the pressure is released. Squeezed when moist, it will form a cast that will hold its shape when the pressure is released but will crumble when touched.

(B) Loamy Sand: Consists primarily of sand, but has enough silt and clay to make it somewhat cohesive. The individual sand grains can readily be seen and felt. Squeezed when dry, the soil will form a cast that will readily fall apart, but if squeezed when moist, a cast can be formed that will withstand careful handling without breaking.

(C) Sandy Loam: Consists largely of sand, but has enough silt and clay present to give it a small amount of stability. Individual sand grains can be readily seen and felt. Squeezed in the hand when dry, this soil will readily fall apart when the pressure is released. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand.

(D) Loam: Consists of an even mixture of the different sizes of sand and of silt and clay. It is easily crumbled when dry and has a slightly gritty, yet fairly smooth feel. It is slightly plastic. Squeezed in the hand when dry, it will form a cast that will withstand careful handling. The cast formed of moist soil can be handled freely without breaking.

(E) Silt Loam: Consists of a moderate amount of fine grades of sand, a small amount of clay, and a large quantity of silt particles. Lumps in a dry, undisturbed state appear quite cloddy, but they can be pulverized readily; the soil then feels soft and floury. When wet, silt loam runs together in puddles. Either dry or moist, casts can be handled freely without breaking. When a ball of moist soil is passing between thumb and finger, it will not press out into a smooth, unbroken ribbon but will have a broken appearance.

(F) Clay Loam: Consists of an even mixture of sand, silt, and clay that breaks into clods or lumps when dry. When a ball of moist soil is pressed between the thumb and finger, it will form a thin ribbon that will readily break, barely sustaining its own weight. The moist soil is plastic and will form a cast that will withstand considerable handling.

(G) Silty Clay Loam: Consists of a moderate amount of clay, a large amount of silt, and a small amount of sand. It breaks into moderately hard clods or lumps when dry. When moist, a thin ribbon or 1/8-inch wire can be formed between thumb and finger that will sustain its weight and will withstand gentle movement.

(H) Silty Clay: Consists of even amounts of silt and clay and very small amounts of sand. It breaks into hard clods or lumps when dry. When moist, a thin ribbon or 1/8 inch or smaller wire formed between thumb and finger will withstand considerable movement and deformation.

(I) Clay: Consists of large amounts of clay and moderate to small amounts of sand and silt. It breaks into very hard clods or lumps when dry. When moist, a thin, long ribbon or 1/16-inch wire can be molded with ease. Fingerprints will show on the soil, and a dull to bright polish is made on the soil by a shovel.

(b) Soil textural characteristics described in the United States Department of Agriculture Textural Classification Chart are incorporated herein by reference. This textural classification chart is based on the Standard Pipette Analysis as defined in the United States Department of Agriculture, Soil Conservation Service Soil Survey Investigations Report No. 1 (See Table 6).

(148) "Soil with Rapid or Very Rapid Permeability" means:

(a) Soil that contains 35 percent or more of coarse fragments 2 millimeters in diameter or larger by volume with interstitial soil of sandy loam texture or coarser;

(b) Coarse textured soil defined as loamy sand or sand in this rule; or

(c) Stones, cobbles, gravel, and rock fragments with too little soil material to fill interstices larger than 1 millimeter in diameter.

(149) "Split Waste Method" means a process where black waste sewage and graywater from the same dwelling or building are managed by separate systems.

(150) "Stabilized Dune" means a sand dune that is similar to an active dune except that vegetative growth is dense enough to prevent blowing of sand. The surface horizon is either covered by a mat of decomposed and partially decomposed leaves, needles, roots, twigs, moss, or other vegetative material or contains roots to a depth of at least 6 inches and has a color value of 3 or less.

(151) "Standard Subsurface System" means an onsite wastewater treatment system consisting of a septic tank, distribution unit, and absorption facility constructed in accordance with OAR 340-071-0220.

(152) "Steep Slope System" means a seepage trench system installed on slopes greater than 30 percent and less than or equal to 45 percent.

(153) "Subsurface Absorption System" means the combination of a septic tank or other treatment unit and an effluent sewer and absorption facility.

(154) "Subsurface Sewage Disposal" means "subsurface wastewater treatment."

(155) "Subsurface Disposal System" means "subsurface absorption system."

(156) "Subsurface Wastewater Treatment" means the dispersal of wastewater from a septic tank or other treatment unit into the zone of aeration to be further treated through physical, chemical, or biological processes.

(157) "System" or "onsite system" means "onsite wastewater treatment system."

(158) "Temporary Groundwater Table" means the upper surface of a saturated zone that exists only on a seasonal or periodic basis. Like a permanent groundwater table, the elevation of a temporary groundwater table may fluctuate, but a temporary groundwater table and associated saturated zone will dry up for a period of time each year.

(159) "Test Pit" means an open pit dug to sufficient size and depth to permit thorough examination of the soil to evaluate its suitability for subsurface wastewater treatment.

(160) "Third-Party" means a consulting firm, research institute, academic institute, or other similar entity with no vested interest in the outcome of test results of a material, design, or technology under evaluation.

(161) "Tile Dewatering System" means an alternative system in which the absorption facility is encompassed with field collection drainage tile to reduce and control a groundwater table and create a zone of aeration below the bottom of the absorption facility.

(162) "Toilet Facility" means a fixture housed within a toilet room or shelter to receive black waste.

(163) "Total Kjeldahl Nitrogen" (TKN) means the combination of ammonia and organic nitrogen, excluding nitrate and nitrite nitrogen.

(164) "Total Nitrogen" (TN) means the sum of all nitrogen forms.

(165) "Total Suspended Solids" (TSS) means solids in wastewater that can be removed readily by standard filtering procedures in a laboratory and reported as milligrams per liter (mg/L).

(166) "Treatment" means the alteration of the quality of wastewaters by physical, chemical, or biological means or combination thereof to reduce potential degradation of water quality or the environment and risk to public health.

(167) "Treatment Standard 1" means a 30-day average of less than 20 mg/L of BOD5 and 20 mg/L of TSS. A 30-day average of less than 17 mg/L of CBOD5 is acceptable in lieu of the BOD5 value.

(168) "Treatment Standard 2" means a 30-day average of less than 20 mg/L of BOD5 and 20 mg/L of TSS, a 30-day geometric mean of less than 400 fecal coliform per 100 milliliters, and a 30-day average of 30 mg/L of TN. A 30-day average of less than 17 mg/L of CBOD5 is acceptable in lieu of the BOD5 value.

(169) "Turbidity" means the optical condition of waters caused by suspended or dissolved particles or colloids that scatter and absorb light rays instead of transmitting light in straight lines through the water column. Turbidity may be expressed as nephelometric turbidity units (NTU) measured with a calibrated turbidimeter.

(170) "Underdrain Media" means the material placed under the sand filter media in a sand filter and consists of clean, washed pea gravel with 100 percent passing the 1/2 inch sieve, 18 to 100 percent passing the 1/4 inch sieve, 5 to 75 percent passing the No. 4 sieve, 24 percent or less passing the No. 10 sieve, 2 percent or less passing the No. 16 sieve, and 1 percent or less passing the No. 100 sieve.

(171) "Unstable Landforms" means areas showing evidence of mass downslope movement such as debris flow, landslides, rockfall, and hummock hill slopes with undrained depressions upslope. Examples are landforms exhibiting slip surfaces roughly parallel to the hillside; landslide scars and curving debris ridges; fences, trees, and telephone poles that

appear tilted; and tree trunks that bend uniformly as they enter the ground. Active sand dunes are unstable landforms.

(172) "Vertisols" means a mineral soil characterized by a high content of swelling-type clays that in dry seasons cause the soils to develop deep, wide cracks.

(173) "WPCF Permit" means a Water Pollution Control Facilities permit that has been issued under OAR chapter 340, divisions 045 or 071.

(174) "Wastewater" means "sewage."

(175) "Zone of Aeration" means the unsaturated zone that occurs below the ground surface and above the point at which the upper limit of the water table exists.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.605 & 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0115

Technical Review Committee

(1) The Director may form a Technical Review Committee (TRC) to advise and assist DEQ in:

(a) Implementing the onsite wastewater management program, including development of program improvements and rules; and

(b) Evaluating the use of new or innovative technologies, materials, or designs that maintain or advance protection of the quality of public waters and public health and general welfare in Oregon. The TRC may use performance standards and criteria as appropriate to evaluate the efficiency and safety of new technologies, materials, or designs.

(2) Committee composition and term. The TRC may consist of up to 9 persons appointed for 3-year, staggered terms by and serving at the pleasure of the Director. The TRC may include onsite wastewater treatment experts from local government, DEQ, equipment manufacturers, consultants, installers and pumpers and other persons with technical or scientific knowledge applicable to the onsite program.

(3) Chair. The Director will approve the chair of the TRC for a term determined by the Director.

(4) Meeting frequency. DEQ may convene the TRC as necessary and reimburse members for reasonable expenses in accordance with DEQ policy.

(5) Staffing. DEQ will provide the necessary technical, engineering, and clerical staff and services for the TRC to fulfill its responsibilities in a timely, professional, informed, and responsible manner.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.775

Hist.: DEQ 27-1994, f.& cert. ef. 11-15-94; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0120

Jurisdiction and Policy

(1) DEQ may enter agreements with local governmental units authorizing those units to become DEQ's agents for permitting onsite systems, including receiving and processing applications, issuing permits, enforcing, and performing required inspections for onsite systems that do not require WPCF permits. DEQ retains those responsibilities for systems in nonagreement counties and for all systems that require WPCF permits.

(2) Each owner of real property is jointly and severally responsible for:

(a) Treating wastewater generated on that property in conformance with the rules adopted by the commission;

(b) Connecting all plumbing fixtures from which wastewater is or may be discharged to a sewerage facility or onsite system approved by DEQ or an agent;

(c) Maintaining, repairing, and replacing the onsite system on that property as necessary to ensure proper operation of the system; and

(d) Complying with all requirements for construction, installation, maintenance, replacement, and repair of onsite systems required in this division and OAR chapter 340, division 073.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.655, 454.665, 454.725 & 454.755

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0130

General Standards, Prohibitions and Requirements

(1) Protection of public waters from public health hazards. An agent may not authorize installation or use of a system that is likely to pollute public waters or create a public health hazard. If, in the judgment of the agent, the minimum standards in this division will not adequately protect public waters or public health on a particular site, the agent must require a system to meet requirements that are protective. This may include but is not limited to increasing setbacks, increasing drainfield sizing, or using an alternative system. The agent must provide the applicant with a written statement of the specific reasons why more stringent requirements are necessary.

(2) Approved treatment and dispersal required. All wastewater must be treated and dispersed in a manner approved in accordance with these rules.

(3) Prohibited discharges of wastewater. A person may not discharge untreated or partially treated wastewater or septic tank effluent directly or indirectly onto the ground surface or into public waters. Such discharge constitutes a public health hazard and is prohibited.

(4) Prohibited discharges to systems. A person may not discharge into any system cooling water, air conditioning water, water softener brine, groundwater, oil, hazardous materials, roof drainage, or other aqueous or nonaqueous substances that are detrimental to the performance of the system or to groundwater.

(5) Increased flows prohibited. Except where specifically allowed by this division, a person may not connect a dwelling or commercial facility to a system if the total projected sewage flow would be greater than that allowed under the original system construction-installation permit.

(6) System capacity. Each system must have adequate capacity to properly treat and disperse the maximum projected daily sewage flow. The projected quantity of sewage flow must be determined from Table 2 or other information the agent determines to be valid.

(7) Material standards. All materials used in onsite systems must comply with standards in this division and OAR chapter 340, division 073.

(8) Encumbrances. Before a permit to install a new system may be issued, the site for the new system must be approved pursuant to OAR 340-071-0150 and be free of encumbrances (such as easements or deed restrictions) that could prevent the installation or operation of the system from conforming with the rules of this division.

(9) Plumbing fixtures connected. All plumbing fixtures in dwellings, commercial facilities, and other structures from which sewage is or may be discharged must be connected to and discharge into an approved area-wide sewerage system or an approved onsite system that is not failing.

(10) Future connection to sewerage system. Placement of plumbing in buildings to facilitate connection to a sewerage system is encouraged in areas where a district has been formed to provide sewerage facilities.

(11) Property lines crossed: All or part of an onsite system, including areas for future repair or replacement, may be located on one or more lots or parcels different from the lot or parcel on which the facility the system serves is located. The lots and parcels may be under the same or different ownership:

(a) For each lot or parcel different from and under different ownership than the lot or parcel served, the owner of the lot or parcel served must ensure that a utility easement and covenant against conflicting uses is executed and recorded in such owner's favor, on a form approved by the agent, in the county land title records. The easements and covenants must accommodate the parts of the system, including a 10-foot setback surrounding the areas for future repair or replacement, that lie beyond the property line of the facility served and must allow entry by the grantee, successor, or assigns to install, maintain, and repair the system;

(b) For each lot or parcel different from but under the same ownership as the lot or parcel served, the owner of the property must execute and record in the county land title records, on a form approved by DEQ, an easement and a covenant in favor of the State of Oregon:

(A) Allowing the state's officers, agents, employees, and representatives to enter and inspect, including by excavation, that portion of the system, including setbacks, on the servient lot or parcel;

(B) Agreeing not to put that portion of the servient lot or parcel to a conflicting use; and

(C) Agreeing, upon severance of the lots or parcels, to grant or reserve and record a utility easement and covenant against conflicting uses, in a form approved by DEQ, in favor of the owner of the lot or parcel served by the system in accordance with subsection (a) of this section.

(12) Initial and replacement absorption area. Except as provided in specific rules, the absorption area, including installed system and replace-

ment area, must not be subject to activity that is likely, in the opinion of the agent, to adversely affect the soil or the functioning of the system. This may include but is not limited to vehicular traffic, covering the area with asphalt or concrete, filling, cutting, or other soil modification.

(13) Operation and maintenance. Owners of onsite systems must operate and maintain their systems in compliance with all permit conditions and applicable requirements in this division and must not create a public health hazard or pollute public waters. Operation and maintenance requirements for systems under WPCF permits are established by the WPCF permits required in this division.

(14) Construction. An agent may limit the time period during which a system can be constructed to ensure that soil conditions, weather, groundwater, or other conditions do not adversely affect the reliability of the system.

(15) Permit requirements:

(a) A person may not cause or allow construction, alteration, or repair of a system or any part thereof without a WPCF permit issued under OAR 340-071-0162 or a construction-installation, alteration, or repair permit under 340-071-0160, 340-071-0210, and 340-071-0215 except for emergency repairs authorized under 340-071-0215(1) and (2);

(b) The following systems must be constructed and operated under a renewable WPCF permit issued pursuant to OAR 340-071-0162:

(A) Any system or combination of systems located on the same property or serving the same facility and having a total sewage flow design capacity greater than 2,500 gpd. Flows from single family residences or equivalent flows on separate systems incidental to the purpose of the large system or combination of systems (e.g., caretaker residence for a mobile home park) need not be included;

(B) A system of any size, if the septic tank effluent produced is greater than residential strength wastewater as defined in OAR 340-071-0100 or systems using pretreatment methods other than grease traps and grease interceptor tanks to achieve residential strength wastewater;

(C) Except as provided for in section (16)(d) of this rule, other systems that are not described in this division and do not discharge to surface public waters or the ground surface.

(16) WPCF permits for existing facilities:

(a) The owner of an existing system required to have a WPCF permit under subsection (15)(b) of this rule is not required to obtain a WPCF permit until a system major repair or major alteration of a system, or facility expansion, is necessary;

(b) The permittee of an existing aerobic treatment unit, recirculating gravel filter, commercial sand filter, or alternative treatment technology system constructed or operating under a WPCF permit that is no longer required under section (15) of this rule may request DEQ to terminate the permit:

(A) The permittee must submit, on a form approved by DEQ:

(i) A copy of the service contract required in OAR 340-071-0290, 340-071-0302, or 340-071-0345; and

(ii) A written statement from a maintenance provider certifying that the system is not failing.

(B) DEQ will send a letter to the permittee to terminate a WPCF permit. The letter will be deemed a Certificate of Satisfactory Completion for the permitted system.

(c) DEQ may terminate WPCF permits for existing holding tanks for which permits are no longer required under section (15) of this rule. DEQ will send a letter to the permittee to terminate the permit. The letter will be deemed a Certificate of Satisfactory Completion for the permitted system;

(d) Permittees of other existing systems or combination of systems constructed or operating under a WPCF permit may request DEQ terminate the permit if all of the following conditions are met:

(A) The system or combination of systems located on the same property or serving the same facility must have a total sewage flow design capacity of 2,500 gpd or less; and

(B) The system or combination of systems must not produce septic tank effluent greater than residential strength wastewater as defined in OAR 340-071-100; and

(C) The system or combination of systems must have been operating under a WPCF permit prior to July 1, 2007; and

(D) The absorption facility is described in this division and does not discharge to surface public waters or the ground surface; and

(E) DEQ determines that the system or combination of systems is in compliance with the waste disposal limitations specified in the WPCF permit; and

(F) The permittee submits a copy of a service contract that meets the requirements of OAR 340-071-0302(6); and

(G) The permittee submits a written statement from a maintenance provider certifying that the system is not failing;

(H) Owners of and maintenance providers for these systems must operate and maintain the system in accordance with the requirements described for recirculating gravel filter systems in OAR 340-071-0302(4), (5), and (6). DEQ will send a letter to the permittee to terminate the WPCF permit. The letter will be deemed a Certificate of Satisfactory Completion for the permitted system. Conditions specified in the Certificate of Satisfactory Completion continue in force as long as the system is in use.

(17) Annual permit fees and reports:

(a) Owners of pressurized distribution, sand filter, recirculating gravel filter, and alternative treatment technology systems and those systems described in section (16)(d) of this rule not under WPCF permits must submit annual fees and reports as follows:

(A) Owners must pay the annual report evaluation fee in OAR 340-071-0140(3) by the date specified by DEQ for each year the system is in operation. A system is placed in operation when it first receives wastewater and remains in operation until DEQ receives notice the system has been decommissioned;

(B) Owners must submit written certification prepared by a maintenance provider on a DEQ-approved form that:

(i) The system has been maintained in accordance with the requirements of the rules in this division during the reporting year and is operating in accordance with the agent-approved design specifications; or

(ii) The owner has applied for a repair permit under OAR 340-071-0215.

(C) Owners are not required to submit fees or reports under this subsection that a maintenance provider has submitted on behalf of the owner in accordance with this section.

(b) Owners of holding tanks not under WPCF permits. Owners of holding tanks not under WPCF permits must pay annual fees and reports as follows:

(A) Owners must pay the annual report evaluation fee in 340-071-0140(3) by the date specified by DEQ for each calendar year the tank is in operation;

(B) Owners must submit written certification on a DEQ-approved form that the holding tank has been regularly inspected and pumped during the reporting year and that the year's service log for the holding tank is available for inspection by the agent.

(c) Fees for systems under WPCF permits. Permittees of onsite systems under WPCF permits must pay the annual compliance determination fee in OAR 340-071-0140(4) by the date specified by DEQ for each year the system is in operation.

(18) Engineering plan review. Unless specifically exempted in this division, all plans and specifications for the construction, installation, or modification of onsite systems must be submitted to the agent for approval or denial. The design criteria and rules governing the plan review are as follows:

(a) The agent must review all plans and specifications for WPCF permits in accordance with OAR chapter 340, division 052;

(b) Plans and specifications for construction-installation permits for commercial sand filter, recirculating gravel filter, and advanced treatment technology systems with design capacities greater than 600 gpd must be signed by a person registered in accordance with ORS 672 or 700.

(19) Criteria and standards for design and construction. The criteria and standards for design and construction in this division and OAR chapter 340, division 073 apply to all onsite systems:

(a) For onsite systems subject to WPCF onsite permits, DEQ may allow variations of the criteria, standards, and technologies in this division and OAR chapter 340, division 073 based on adequate documentation of successful operation of the proposed technology or design. The system designer must demonstrate the performance of new processes, treatment systems, and technologies in accordance with OAR chapter 340, division 052;

(b) For systems not requiring WPCF permits, DEQ may authorize variances from the criteria, standards, and technologies in this division through the variance processes in OAR 340-071-0415 through 340-071-0445.

(20) Manufacturer's specifications. All materials and equipment, including but not limited to tanks, pipe, fittings, solvents, pumps, controls, and valves, must be installed, constructed, operated, and maintained in accordance with manufacturer's specifications.

(21) Sewer and water lines. Effluent sewer and water line piping constructed of materials that are approved for use within a building, as defined by the 2000 Edition of the Oregon State Plumbing Specialty Code, may be

run in the same trench. Effluent sewer pipe of material not approved for use in a building must not be run or laid in the same trench as water pipe unless both of the following conditions are met:

(a) The bottom of the water pipe at all points is at least 12 inches above the top of the sewer pipe;

(b) The water pipe is placed on a solid shelf excavated at one side of the common trench with a minimum clear horizontal distance of at least 12 inches from the sewer pipe.

(22) Septage management. A person may not dispose of wastewater, septage, or sewage-contaminated materials in any location or manner not authorized by DEQ.

(23) Service Contracts. Service contracts for servicing and maintaining onsite systems must include:

(a) A schedule for the first two years of operation that directs the maintenance provider to inspect, adjust and service the system a minimum of once every six months,

(b) A schedule for subsequent years of operation that directs the maintenance provider to inspect, adjust and service the system:

(A) According to the manufacturer's specifications in the approved owner's manual; and

(B) At least once every 12 months.

(c) A clause stating that the maintenance provider must provide an effluent quality inspection that includes but is not limited to:

(A) A visual assessment for color, turbidity, and scum overflow,

(B) An olfactory assessment for odor, and

(C) Any other performance assessment or operational diagnosis, which may include sampling of treated effluent (post-disinfection if disinfection is used) necessary to determine or ensure proper operation of the facility.

(d) A clause stating that the maintenance provider must notify the system owner in writing about any improper system function that cannot be remedied during the time of inspection and include an estimated date of correction.

(e) Other information and conditions of the agreement such as:

(A) Owner's name and address;

(B) Property address and legal description;

(C) Permit requirements;

(D) Contact information for the owner, maintenance provider, and agent;

(E) Details of service to be provided, including the service required in this section;

(F) Schedule of maintenance provider duties;

(G) Cost and length of service contract and time period covered;

(H) Details of any warranty; and

(I) Owner's responsibilities under the contract for routine operation of the onsite system.

(24) A maintenance provider under a contract required in OAR 340-071-0275, 0290, 0302 & 0345 must:

(a) Observe and record conditions in the drainfield during all operation and maintenance activities for the system and report those observations to the system owner;

(b) Make repairs or alteration to comply with OAR 340-071-0215, 340-071-0210 and other applicable requirements in this division.

(c) Maintain accurate records of their service contracts, customers, performance data, and time lines for renewing the contracts. These records must be available for inspection upon request by the agent;

(d) Notify the agent of service contracts that are terminated or not renewed within 30 days of their termination or expiration,

(e) Make emergency service available within 48 hours of a service request,

(f) Submit the annual report required in section (17) and the annual evaluation fee in OAR 340-071-0140(3) for each system under contract to be serviced by the maintenance provider.

(g) System owners must report evidence of any system failures to the agent and take appropriate action approved by the agent to correct the problem.

(25) Groundwater levels. All groundwater levels must be predicted using conditions associated with saturation. In areas where conditions associated with saturation do not occur or are inconclusive, such as in soil with rapid or very rapid permeability, predictions of the high level of the water table must be based on past recorded observations of an agent. If such observations have not been made or are inconclusive, the application must be denied until observations can be made. Groundwater level observations must be made during the period of the year in which high groundwater normally occurs in an area. A properly installed nest of piezometers or other methods acceptable to DEQ must be used for making water table observations.

(26) A person may not submit information required by statute, rule, permit, or order that is false, inaccurate, or incomplete.

[Publications: Publications referenced are available from the agency.]

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.655, 454.695, 468B.050, 468B.055, 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 5-2000(Temp), f. 2-24-00, cert. ef. 3-1-00 thru 8-27-00; DEQ 14-2000, f. & cert. ef. 8-24-00; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 5-2007, f. & cert. ef. 7-3-07; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0135

Approval of New or Innovative Technologies, Materials, or Designs for Onsite Systems

(1) DEQ approval.

(a) Coordination with listing of alternative treatment technologies, OAR 340-071-0345. Under OAR 340-071-0345, DEQ maintains a list of alternative treatment technologies (ATTs) that have been tested by an NSF/ANSI organization that meets the requirements of ISO/IEC 17025 – 2005. The ATT must meet the performance standards and other requirements in OAR 340-071-0345. ATTs are usually separate treatment units that are installed in onsite systems. Only listed ATTs may be installed under the siting criteria in OAR 340-071-0345. This rule provides a process for approving new or innovative technologies, materials, or designs for various components of onsite systems, such as drainfield products or appurtenances. Add-on treatment units, such as units to remove nitrogen following an ATT or sand filter, may also be approved under this rule. However, DEQ does not intend to approve alternatives to standard systems under this rule. Alternative systems will need to be listed as ATTs under OAR 340-071-0345 or approved under new rules in this division.

(b) DEQ may approve new or innovative technologies, materials, or designs for onsite systems pursuant to this rule if it determines they will protect public health, safety, and waters of the state as effectively as systems authorized in this division. DEQ must base approval on one or more of the following.

(A) A performance evaluation conducted in accordance with section (3) of this rule that demonstrates the technology, material, or design will achieve applicable performance standards in OAR chapter 340, divisions 071 and 073 and any additional standards DEQ determines are necessary to satisfy the requirements of subsection (1)(b) of this rule.

(B) Documentation that the alternative drainfield products are functionally equivalent to drainfield products approved by DEQ.

(C) Documentation that the material used as a substitute for drain media in absorption trenches will achieve the performance standards and design criteria in section (5) of this rule.

(D) Certification of the new material, technology, or design for proposed uses by NSF/ANSI, or another program providing equivalent performance demonstration required by this rule and approved by DEQ.

(c) DEQ may approve or deny a request for approval of a new or innovative technology, material, or design or may limit approval to those locations or conditions for which achievement of standards has been demonstrated.

(d) DEQ may amend or revoke approval of a new or innovative material, technology, or design if it determines:

(A) Approval was based on false or misleading information;

(B) The material, technology, or design no longer achieves performance standards for which it was approved; or

(C) The manufacturer is not meeting the requirements in this rule or conditions of the approval.

(2) Requests for approval.

(a) Any person may submit a completed application for approval of a new or innovative technology, material, or design for onsite systems to DEQ.

(b) The application must include the following:

(A) For approval based on a performance evaluation under paragraph (1)(b)(A) of this rule:

(i) A proposed evaluation protocol in accordance with section (3) of this rule and a proposed schedule for completing the proposed evaluation; and

(ii) At the conclusion of the performance evaluation, documentation demonstrating the technology, material, or design achieves applicable standards.

(B) For approval under paragraph (1)(b)(B) of this rule, documentation supporting a determination of functional equivalency.

(C) For approval under paragraph (1)(b)(C) of this rule, documentation supporting a determination that the applicable standards will be achieved.

(D) For approval under paragraph (1)(b)(D) of this rule, documentation of certification by an approved program.

(E) The Innovative or Alternative Technology, Material, or Design Review fee established in OAR 340-071-0140(5).

(3) Requirements for studies. Field or other studies used to demonstrate performance of technologies, materials, or designs under paragraph (1)(b)(A) of this rule must satisfy the following requirements.

(a) Be based on theory or applied research that supports the intended use of the technology, material, or design.

(b) Follow an evaluation protocol that has been peer reviewed and approved by DEQ and that clearly defines the number of systems for installation reasonably necessary for the study and performance objectives, including standards to be achieved; performance measurements to validate attainment of the objectives; and the variables to be considered, including climate, soil, waste characteristics such as flow and strength, and topography.

(c) Include controls that represent the standards to be achieved.

(d) Include sufficient monitoring and reporting of performance data on both the test product and control product to support direct comparisons to the standards to be achieved.

(e) Address system operations at maturity and relevant temporal variations to support comparison to the standards to be achieved.

(f) Be designed and conducted by a qualified third party approved by DEQ who certifies whether the installation, monitoring, and evaluation of the systems studied and reports submitted to DEQ satisfy the requirements of this rule.

(g) At the conclusion of the study, provide sufficient performance data to demonstrate standards are met. Data must be peer-reviewed, be scientifically defensible, and have sufficient replication to be representative and to address variations in climate, soil, topography, waste loading, and strength relevant to the proposed use.

(4) Installation of onsite systems for study. The following requirements must be met for each system incorporating unapproved new or innovative technologies, materials, or designs installed for study under this rule or OAR 340-071-0130, or former OAR 340-071-0116 or 340-071-0117 (replaced by this rule).

(a) Prior to installation, the system owner must obtain a WPCF permit under OAR 340-071-0162 or, for a system incorporating only unapproved drainfield materials and not otherwise requiring a WPCF permit, or a construction-installation permit under OAR 340-071-0160.

(b) Before installation, the system owner must provide legal and physical access for construction inspections and monitoring.

(c) The system owner must acknowledge that the system being installed is an unapproved technology and must agree in writing to hold the State of Oregon and its officers, employees, and agents harmless of any and all loss or damage caused by system failure or defective installation or operation of the proposed systems.

(d) Before transferring ownership of a system using an unapproved technology, the system owner must notify all transferees that the technology has not been approved, and the transferee must agree in writing to hold the state of Oregon and its officers, employees, and agents harmless of any and all loss or damage caused by system failure or defective installation or operation of the proposed systems.

(e) A site evaluation must be conducted in accordance with this division. Suitable area must be available for installation of both an initial onsite system and a full replacement system.

(5) Standards and design criteria for drain media substitutes. To be approved under (1)(b)(C) of this rule, substitutes for drain media used in absorption trenches, including seepage trenches, seepage beds, or other similar absorption facilities, must meet the following performance standards and design criteria.

(a) Performance standards. New or innovative materials to be used as a substitute for drain media must be structurally sound, durable, and inert in the environment they are placed. The substitute material must be capable of passing wastewater toward the infiltrative surfaces at a rate equal to or greater than gravel drain media.

(b) Design criteria for absorption trenches.

(A) The trench must be excavated in conformance with the trench standards described in this division. If warranted by the design configuration of the substitute material, the trench width may be less than 24 inches, provided the trench length is increased to compensate for the loss of the bottom surface area using the following formula: Adjusted Trench Length = (24 inches ÷ W) x L, where W = the reduced trench width in inches, and L = the original trench length as specified in paragraph (5)(b)(F) of this rule.

(B) The substitute material for the drain media must be placed in the trench and be in uniform contact with the trench bottom and both sidewalls. If voids larger than typically found with the use of drain media are present along the trench bottom after placement of the substitute material, steps must be taken to prevent the entry of burrowing rodents. If the substitute material for drain media is not in uniform contact with both sidewalls, drain media must be placed in the trench to provide that contact.

(C) The substitute material for drain media must be placed to provide a uniform sidewall infiltrative surface depth as measured along the trench sidewall from the bottom to the top of the drain media substitute in contact with the sidewall. In seepage trenches, the depth of the substitute material must be greater than 12 inches. If the substitute material provides less than 12 inches of sidewall contact depth, either drain media must be placed to accomplish the minimum sidewall contact depth, or the length of the absorption trench must be increased to compensate for the reduced sidewall seepage area depth using the following formula: Adjusted Trench Length = (12 inches ÷ D) x L, where D = the reduced sidewall seepage area depth in inches, and L = the original trench length as specified in paragraph (5)(b)(F) of this rule.

(D) If a substitute material is used in a trench that is both narrower than 24 inches and has a sidewall contact depth that is less than 12 inches, the adjusted trench length must be the longer of the adjusted trench lengths calculated using the formulae in paragraphs (A) and (C) of this section.

(E) The top surface of the substitute material for the drain media must be level across the trench and in contact with each side of the trench. The substitute material for drain media must have porosity at the top surface that is not appreciably different from the porosity of drain media. Drain media may be placed across the top of the substitute material to provide the level surface extending from sidewall to sidewall.

(F) The sizing for standard absorption trenches using a substitute material for drain media must conform to applicable criteria in OAR 340-071-0220(2), 340-071-0290(3), or 340-071-0360(2)(a). Seepage trenches using a substitute material for drain media must be sized in conformance with applicable criteria in OAR 340-071-0280(2), 340-071-0290(3), 340-071-0310(2), or 340-071-0360(2)(b).

(c) Design criteria for seepage beds.

(A) Beds must be excavated in conformance with the standards described in OAR 340-071-0275(4)(d).

(B) The substitute material for drain media must be placed in the excavation and in contact with the bottom and sidewalls of the bed. If voids larger than typically found with the use of drain media are present along the bottom or sidewalls after placement of the substitute material, steps must be taken to prevent entry of burrowing rodents.

(C) The substitute material for drain media must be placed to provide a substitute material depth of at least 12 inches, as measured from the bottom of the excavation to the top of the drain media substitute. If the depth of the media substitute is less than 12 inches, drain media must be placed within the excavation to provide this depth.

(D) The upper surface of the substitute material for drain media must be level from sidewall to sidewall. The porosity of the top surface of the substitute material must not appreciably differ from the porosity of drain media. Drain media may be placed across the top of the substitute material to provide the level surface extending from sidewall to sidewall.

(E) Seepage beds using a substitute material for drain media must be sized in conformance to OAR 340-071-0275(4)(d)(B).

(d) Distribution piping in absorption facilities using a substitute material for drain media must comply with the appropriate pipe standards in this division and OAR chapter 340, division 073.

(6) Study protocols for substitutes for drain media -- example. This section provides an example study protocol to demonstrate substitute drain media under paragraph (1)(b)(C) of this rule. Proposed protocols must be approved for study under section (3) of this rule.

(a) A standard onsite system must be installed and sized for a given soil group according to Tables 4 and 5 of this division. The system must be designed to allow a side-by-side performance comparison of the substitute material with a standard absorption trench (the control). For this purpose, the drainfield must contain four small test cells, two of them containing the substitute material and two the standard drain media, which receive septic tank effluent before the remaining portion of the drainfield. The test cells must represent approximately one-third of the total drainfield. The cells containing the substitute material must be sized according to the manufacturer's claim for equivalence to the standard trench length.

(b) A drop box or similar monitoring box containing a sump must be placed at the end of each test cell. All drop boxes must be connected to the remaining portion of the drainfield.

(c) The test cells must be fed by a pump and a hydrosplitter to distribute the effluent equally to each test cell. Installation of a water meter or pump cycle-counter may be required.

(d) Observation ports must be installed in each test cell to allow measurement and recording of the effluent ponding depth.

(e) Domestic wastewater coming directly from a septic tank connected to a residence or facility must be used in the field study.

(f) The performance standard to be achieved is the acceptance rate of the effluent by the substitute material, measured by observing the time required for each test cell to overflow to the drop box.

(g) The test must conclude at the end of three years or when overflow is observed in one of each paired test cells, whichever occurs first. Observation of overflow or no overflow and of ponding must be recorded at least monthly.

(h) For approval for statewide use, the testing described in this section must be duplicated at sites within the two major climatic regimes of Oregon (west of the Cascade Mountain Range and east of the Cascade Mountain Range) and in each of the soil groups described in **Tables 4** and **5** of this division. At least 18 duplicate sites are required, with 3 sites in each of 3 soil groups in the 2 major climatic regimes of Oregon. Studies may include additional sites.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.607,454.615, 454.784, 468.035,468.045,468.065 & 468B.050

Hist.: DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 14-2000, f. & cert. ef. 8-24-00; Renumbered from 340-071-0116 & 340-071-0117, DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0140

Onsite System Fees

(1) This rule establishes the fees for site evaluations, permits, reports, variances, licenses, and other services DEQ provides under this division.

(2) Site evaluation and existing system evaluation fees are listed in **Table 9A**.

(3) Permitting fees for systems not subject to WPCF permits are listed in Table 9B and Table 9C. Online submittals for annual report evaluation fees may apply upon DEQ implementation of online reporting.

(4) WPCF permit fees. Fees in this section apply to WPCF permits issued pursuant to OAR 340-071-0162. WPCF permit fees are listed in Table 9D.

(5) Innovative, Alternative Technology and Material Plan Review fees are listed in Table 9F.

(6) Sewage Disposal Service License and Truck Inspection fees are listed in Table 9E.

(7) Compliance Recovery Fee. When a violation results in an application in order to comply with the requirements in this division, the agent may require the applicant to pay a compliance recovery fee in addition to the application fee. The amount of the compliance recovery fee shall not exceed the application fee. Such violations include but are not limited to installing a system without a permit, performing sewage disposal services without a license, or failure to obtain an authorization notice when it is required.

(8) Land Use Review Fee. Land use review fees are listed in Table 9C and are assessed when an agent review is required in association with a land use action or building permit application and no approval is otherwise required in the division.

(9) Contract county fee schedules.

(a) Each county having an agreement with DEQ under ORS 454.725 must adopt a fee schedule for services rendered and permits issued. The county fee schedule may not include DEQ's surcharge established in section (10) of this rule unless identified as a DEQ surcharge.

(b) A copy of the fee schedule and any subsequent amendments to the schedule must be submitted to DEQ.

(c) Fees may not exceed actual costs for efficiently conducted services.

(10) DEQ surcharge.

(a) To offset a portion of the administrative and program oversight costs of the statewide onsite wastewater management program, DEQ and contract counties must levy a surcharge for each site evaluation, report permit, and other activity for which an application is required in this division. The surcharge fee is listed in Table 9F. This surcharge does not apply to pumper truck inspections, annual report evaluation fees, or certification of installers or maintenance providers.

(b) Proceeds from surcharges collected by DEQ and contract counties must be accounted for separately. Each contract county must forward the proceeds to DEQ in accordance with its agreement with the DEQ.

(11) Refunds. DEQ may refund all or a portion of a fee accompanying an application if the applicant withdraws the application before any field work or other substantial review of the application has been done.

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

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)

Stats. Implemented: ORS 454.745, 468.065 & 468B.050

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 13-1986, f. & ef. 6-18-86; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 18-1994, f. 7-28-94, cert. ef. 8-1-94; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 9-2001(Temp), f. & cert. ef. 7-16-01 thru 12-28-01; DEQ 14-2001, f. & cert. ef. 12-26-01; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 7-2008, f. 6-27-08, cert. ef. 7-1-08; DEQ 10-2009, f. 12-28-09, cert. ef. 1-4-10; DEQ 7-2010, f. 8-27-10, cert. ef. 9-1-10; DEQ 9-2011, f. & cert. ef. 6-30-11; DEQ 6-2012, f. 10-31-12, cert. ef. 11-1-12; DEQ 8-2013, f. 10-23-13, cert. ef. 11-1-13; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0150

Site Evaluation Procedures

(1) A site evaluation is the first step in the process of obtaining a construction-installation permit for an onsite system. Except as otherwise provided in these rules, before obtaining a permit to construct an onsite system, a person must obtain a site evaluation report finding the site suitable for an onsite system in accordance with this division.

(2) Completed applications for site evaluations must be submitted to the agent with all required exhibits and the applicable site evaluation fee in OAR 340-071-0140(2).

(a) Unless other procedures are approved by DEQ for a contract county, applicants must provide at least two test pits, with dimensions and configuration as directed by the agent, located approximately 75 feet apart and within the area of the proposed system, including the repair/replacement area.

(b) The fee paid for a site evaluation report covers as many site inspections within ninety days of the initial inspection as necessary to determine the suitability of a single lot or parcel for a single system. A site is considered to be suitable as soon as it is found to meet the criteria for any type of onsite system.

(3) Site evaluation report.

(a) The agent or, for WPCF permits, an agent or a qualified private contractor must evaluate the site of the proposed system, consider all system options, and provide a report of such evaluation.

(b) The site evaluation report must be on a form approved by DEQ.

(c) The report must contain, at a minimum, a site diagram and observations of the following site characteristics.

(A) Parcel size;

(B) Slope in absorption field and replacement areas (percent and direction);

(C) Surface streams, springs, other bodies of water;

(D) Existing and proposed wells;

(E) Escarpments;

(F) Cuts and fills;

(G) Unstable landforms;

(H) Soil profiles determined from test pits provided by applicant;

(I) Water table levels (as indicated by conditions associated with saturation or water table observations);

(J) Useable area for initial and replacement absorption areas;

(K) Encumbrances observed or listed on the application;

(L) Sewerage availability;

(M) Other observations including off-site features as appropriate.

(d) Site evaluation reports for subdivisions or other land divisions must be based on an evaluation of each lot.

(e) Specific conditions or limitations imposed on an approved site must be listed on the evaluation report.

(f) A site evaluation report approving a site for a system qualifies the property owner for a permit to construct a system on that property if other requirements for a permit are met.

(4) Approval or denial:

(a) A site must be approved for a system if the site evaluation report documents the following:

(A) The site evaluation report identifies the types of the initial and replacement systems for which the site is approved.

(B) All criteria for approval of a specific type or types of systems, as described in this division are satisfied.

(C) Each lot or parcel has sufficient usable area available to accommodate an initial and replacement system. The usable area may be located within the lot or parcel or within the bounds of another lot or parcel that is secured in accordance with OAR 340-071-0130(11). The initial and replacement systems may be of different types, e.g., a standard subsurface system as the initial system and an alternative system as the replacement system. The site evaluation report must indicate the types of the initial and replacement systems for which the site is approved.

(D) A replacement area is not required in areas under control of a legal entity such as a city, county, or sanitary district if the legal entity gives a written commitment that sewerage service will be provided within five years.

(b) A site must be denied if the conditions identified in section (4)(a) of this rule are not met.

(c) Changes in technical requirements in this division may not invalidate a site approval but may require design changes or use of a different type of system.

(5) Site evaluation report review. An applicant may request DEQ to review a site evaluation report issued by an agent. The application for review must be submitted to DEQ in writing within 60 days after the site evaluation report issue date and must include the site evaluation review fee in OAR 340-071-0140(2). DEQ will review and approve or disapprove the site evaluation report.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.655 & 454.755
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0155

Existing System Evaluation Report

(1) An evaluation of an existing onsite wastewater treatment system must meet the following requirements:

(a) An evaluation must be performed by a person with one or more of the qualifications listed below:

(A) Professional Engineer in accordance with ORS chapter 672 with knowledge and experience inspecting onsite systems;

(B) Registered Environmental Health Specialist or Wastewater Specialist in accordance with ORS chapter 700 with knowledge and experience inspecting onsite systems;

(C) A certified installer with knowledge and experience inspecting onsite systems;

(D) A certified maintenance provider with knowledge and experience inspecting onsite systems;

(E) A current NAWT inspector training and certification accreditation;

(F) Other similar license or certification approved in writing by DEQ.

(b) An evaluation must include the following:

(A) An examination of the records available on the existing system, including all permit records and pumping and other maintenance records.

(B) For existing systems without a permit record, the inspector must create a record to document system materials, components, and location. Methods used to create the record may include the use of soil probes, metal detectors, electronic pipe tracers, radio and video technology, and uncovering system components.

(C) A field inspection of the existing system.

(D) A report of findings on a form approved by DEQ including the information obtained relevant to system performance, such as age; usage; records of installation, maintenance, and repairs; type, size, capacity, and condition of components; evidence of any failures; other relevant information (e.g., condition of repair area if known); and a complete sketch of the system showing location and distances of major components.

(E) The evaluation must include all portions of the system that serve the facility, including any portion located on a lot or parcel different from the lot or parcel on which the facility the system serves is located.

(2) A person may not conduct an existing system evaluation required by this rule unless he or she meets the qualifications in subsection (1)(a) of this rule prior to conducting the evaluation.

(3) Any person may request an agent to provide an evaluation report on an existing onsite wastewater treatment system.

(4) A completed application form must be submitted to the agent with all necessary exhibits and the existing system evaluation fee in OAR 340-071-0140(2).

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615, 454.755, 468B.015 & 468B.080
Hist.: DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0160

Permit Application Procedures — Construction, Installation, Alteration, and Repair Permits

(1) Permittees. A permit for construction of a system may be issued under this rule only to the owner of the real property that the system will serve.

(2) Application. A completed application for a construction -- installation, alteration, or repair permit must be submitted to the appropriate agent on approved forms with all required exhibits the applicable permit application fee in OAR 340-071-0140(3). Applications that are not completed in accordance with this section will not be accepted for filing. Except as otherwise allowed in this division, the exhibits must include:

(a) A site evaluation report approving the site for the type and quantity of waste to be disposed. Agents may waive the requirement for the report and fee for applications for repair or alteration permits.

(b) A land use compatibility statement from the appropriate land use authority as required in OAR chapter 340, division 018.

(c) Plans and specifications for the onsite system proposed for installation within the area identified and approved by the agent in a site evaluation report. The agent must determine and request the minimum level of detail necessary to insure proper system construction.

(d) Any other information the agent determines is necessary to complete the permit application.

(3) Deadlines for action. The agent must either issue or deny the permit within 20 days after receipt of the completed application unless weather conditions or distance and unavailability of transportation prevent the agent from timely action. The agent must notify the applicant in writing of any delay and the reason for delay and must either issue or deny the permit within 60 days after the mailing date of notification.

(4) Permit denial. The agent must deny a permit if any of the following occurs.

(a) The application contains false information.

(b) The application was wrongfully received by the agent.

(c) The proposed system would not comply with applicable requirements in this division or in OAR chapter 340, division 073.

(d) The proposed system, if constructed, would violate a commission moratorium under OAR 340-071-0460.

(e) The proposed system location is encumbered as described in OAR 340-071-0130(8).

(f) A sewerage system that can serve the proposed sewage flow is both legally and physically available, as described in paragraphs (A) and (B) of this subsection.

(A) Physical availability.

(i) A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies.

(I) For a single family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.

(II) For a proposed subdivision or group of two to five single family dwellings or other establishment with the equivalent projected daily sewage flow, the nearest sewerage connection point from the property to be served is not further than 200 feet multiplied by the number of dwellings or dwelling equivalents.

(III) For proposed subdivisions or other developments with more than five single family dwellings or equivalent flows, the agent will determine sewerage availability.

(B) Legal availability. A sewerage system is deemed legally available if the system is not under a DEQ connection permit moratorium and the sewerage system owner is willing or obligated to provide sewer service.

(5) Permit effective dates. A permit issued for construction of a system pursuant to this rule is effective for one year from the date of issuance. After a system has been installed pursuant to the permit and a Certificate of Satisfactory Completion has been issued for the installation, conditions specified in the Certificate of Satisfactory Completion continue in force as long as the system is in use.

(6) Permit renewal, reinstatement, or transfer. An agent may renew, reinstate, or transfer a permit if the following conditions are met.

(a) The applicant submits a completed application for permit renewal before the permit expiration date or for reinstatement within one year after the permit expiration date.

(b) Applications for transfer of a permit from a permittee to another person must be filed before the permit expiration date. Only the name of the permittee may be changed in a transfer.

(c) Applications for permit renewal, reinstatement, or transfer must conform to the requirements of this rule and the permit will be issued or denied in accordance with this rule.

(7) Temporary holding tank. If a permit has been issued pursuant to these rules but existing soil moisture conditions preclude the construction of the soil absorption system, an agent may approve installation of a septic tank for use as a temporary holding tank for up to 12 months. Before approval, the permittee must demonstrate that the outlet of the tank has been sealed with a water tight seal and that the permittee has entered into a pumping contract for the tank. Unless otherwise authorized by the agent, the septic tank must be designed and constructed in accordance with OAR 340-071-0340.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615 & 454.655
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0162
Permit Application Procedures — WPCF Permits

(1) Procedures in this rule are for applications for WPCF permits for onsite systems.

(2) Any person may request a new, modified, or renewal WPCF permit by submitting an application on forms provided by DEQ with the specified number of copies of all required exhibits. The name of the applicant and permittee must be the legal name of the owner of the facilities served by the system or the lessee responsible for the operation and maintenance. Applications must be submitted at least 60 days before a permit is needed. Required exhibits include but are not limited to the following:

(a) A land use compatibility statement from the local land use planning agency indicating that the site is approved for the activity for which the applicant is applying. If the activity is approved only upon conditions in a conditional use permit, a copy of the conditional use permit must be provided;

(b) A copy of a site evaluation report approving the site for the type and quantity of wastes to be disposed;

(c) Evidence that the permit processing fees and the first year's annual compliance determination fee in OAR 340-071-0140(4) have been paid to DEQ or agent, as directed; and

(d) A site diagram meeting the requirements of OAR 340-071-0160(2)(c).

(3) Applications that are obviously incomplete, improperly signed, or lacking required exhibits clearly identified will not be accepted by DEQ for filing and will be returned for completion. Applications that are correctly signed and appear administratively complete will be considered timely upon receipt. A request for further information under section (4) of this rule will not affect the timeliness of an application.

(4) Within 45 days after receipt of an application, DEQ will preliminarily review the application to determine the adequacy of the information submitted. Failure to complete this review within 45 days does not preclude DEQ from later requesting additional information from the applicant as provided in this section.

(a) DEQ will request in writing from the applicant any additional information needed to review the application. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request.

(b) If DEQ determines that additional measures are necessary to gather facts regarding the application, DEQ will notify the applicant of measures to be instituted and the timetable and procedures to be followed. The application will be considered withdrawn if the applicant fails to comply with the additional measures.

(5) Draft permit review. Before issuing a permit, DEQ will send a draft permit to the applicant for review. The applicant will have up to 14 calendar days to comment on the draft permit.

(6) Public participation. DEQ will provide for public participation in accordance with the requirements for WPCF permits in OAR chapter 340, division 045.

(7) Final DEQ action. DEQ must take final action on the permit application within 45 days of the close of the public comment period if a comment period is required. DEQ will consider all timely comments and other information obtained pertinent to the permit action. DEQ will notify the applicant of the action taken.

(8) Applicant's appeal rights. DEQ's final action is effective 20 days from the date of service of the notice to the applicant of DEQ's final action unless the applicant requests a hearing before the effective date. The request for a hearing must be in writing and state the grounds for the request. Any hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division 011.

(9) Permit term. The term of a permit issued pursuant to this rule may not exceed ten years. The expiration date will be recorded on each permit issued.

(10) For systems that are proposed to be or are operating under a WPCF permit, a person may not construct, alter, or repair the system or any part thereof unless that person is licensed under ORS 454.695 or is the permittee.

(11) A person may not connect to or use any system authorized by a WPCF permit unless the system has been inspected and certified in accordance with OAR chapter 340, division 052 and DEQ has accepted that certification.

(12) Renewal of a permit. The procedures for issuance of a new WPCF permit apply to renewal of a permit. A permit may be renewed if a completed permit renewal application, on forms provided by DEQ, is filed with DEQ at least sixty days before the permit expires. The permit will not expire until final action has been taken on a timely renewal application.

(13) DEQ may terminate, revoke, modify, or transfer a permit in accordance with the rules in OAR chapter 340, division 045 applicable to WPCF permits.

(14) Rules which do not apply to WPCF applicants or permittees.

(a) Because the permit review, issuance, and appeal procedures for WPCF permits are different from those of other onsite permits in these rules, the following rules do not apply to WPCF applicants or permittees: OAR 340-071-0135; 340-071-0155; 340-071-0160(1), (2)(a), (b), and (d), (3), (5) and (6); 340-071-0165(1); 340-071-0170; 340-071-0175; 340-071-0185; 340-071-0200; 340-071-0205; 340-071-0210; 340-071-0215(1), (2), (3), and (5); 340-071-0275(4)(c)(A); 340-071-0290(7); 340-071-0295(1); 340-071-0302(6); 340-071-0330; 340-071-0345(1)-(7) and (9)-(14); 340-071-0360(2)(b)(B); 340-071-0410; 340-071-0415; 340-071-0420; 340-071-0425; 340-071-0430; 340-071- 0435; 340-071-0440; 340-071-0445; and 340-071-0500.

(b) WPCF permit applicants and permittees are not subject to any WPCF permit-related fees other than those specified in OAR 340-071-0140.

(c) The following rules in OAR chapter 340, division 073 do not apply to WPCF applicants or permittees: OAR 340-073-0030(1); 340-073-0065; 340-073-0070; and 340-073-0075.

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)
Stats. Implemented: ORS 468.065, 468.070, 468B.050 & 468B.055
Hist.: DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0165
Permit Denial Review — Construction-Installation, Repair, Alteration Permits

(1) Upon request of the applicant, DEQ must review a permit denied by an agent. The application for review must be submitted to DEQ in writing within 60 days of the date the agent issues the permit denial notice and must include the permit denial review fee in OAR 340-071-0140(3).

(2) Permit denials for systems proposed to serve commercial facilities intended for use in a commercial activity, trade, occupation, or profession may be appealed through the contested case hearing procedure set forth in ORS Chapter 183 and OAR chapter 340, division 011.

(3) If the agent intends to deny a permit for a parcel of ten acres or larger, the agent must:

(a) Provide the applicant with a Notice of Intent to Deny;

(b) Specify reasons for the intended denial; and

(c) Offer a contested case hearing in accordance with ORS chapter 183 and OAR chapter 340, division 011.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.655
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0170
Pre-Cover Inspections

(1) System installers must request a pre-cover inspection when construction, alteration, or repair of a system is complete except for backfill (cover) and as otherwise required by a permit. The agent must inspect the installation to determine whether it complies with this division, unless the agent waives the inspection in accordance with section (2) of this rule or OAR 340-071-0400(6).

(2) The agent may waive inspections for a system proposed to serve a single family dwelling or for a system of similar flow and waste strength if:

(a) The system was installed by a sewage disposal service business licensed under ORS 454.695;

(b) The installer complies with all requirements of this rule; and

(c) Upon request by the agent, the installer submits to the agent photographs of those portions of the construction for which the inspection is waived.

(3) To request a pre-cover inspection, the installer must submit the following information to the agent at the time construction of the system is complete.

(a) A detailed and accurate as-built plan of the constructed system.

(b) A list of all materials used in the construction of the system.

(c) Certification on an approved form signed by the permittee who installed the system or an installer certified in accordance with OAR 340-071-0650 on a DEQ-approved form that the system was constructed in accordance with the permit, this division, and OAR chapter 340, division 073.

(4) An agent may require an owner to pay the reinspection fee in OAR 340-071-0140(3) when a pre-cover inspection correction notice requires correction of improper construction and, at a subsequent inspection, the agent finds system construction deficiencies have not been corrected.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.665
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0205
Authorization to Use Existing Systems

(1) Authorization Notice required. Except as specifically allowed in this rule, a person may not place into service, reconnect to, change the use of, or increase the projected daily sewage flow into an existing onsite system without first obtaining an Authorization Notice, construction-installation permit, or alteration permit as appropriate.

(2) Exceptions.

(a) An Authorization Notice is not required to replace a mobile home with a similar mobile home in a mobile home park or a recreation vehicle with another recreation vehicle in a lawful recreation vehicle park if the onsite wastewater system has adequate capacity for safe treatment of wastewater generated within the park.

(b) An Authorization Notice is not required to place into service a previously unused system for which a Certificate of Satisfactory Completion has been issued within five years of the date such system is placed into service if the projected daily sewage flow does not exceed the design flow and the system is in compliance with the requirements of the Certificate of Satisfactory Completion and applicable requirements in this division.

(3) A completed application for the Authorization Notice must be submitted to an agent with all required exhibits and the authorization notice fee in OAR 340-071-0140(3). The exhibits must include:

(a) A land use compatibility statement from the appropriate land use authority as required in OAR chapter 340, division 018;

(b) An accurate property development plan;

(c) An onsite system description;

(d) A lot map or equivalent plat map for the property;

(e) Documentation of any hardship claimed;

(f) All other information the agent finds necessary to complete the application.

(4) An agent may issue an Authorization Notice valid for up to one year to place into service or change the use of an existing onsite system when no increase in sewage flow is projected and the design flow is not exceeded, if:

(a) The existing system is not failing;

(b) All set-backs between the existing system and the structure can be maintained; and

(c) In the opinion of the agent, the proposed use would not create a public health hazard on the ground surface or in public surface waters.

(5) An agent may issue an Authorization Notice valid for up to one year to place into service or change the use of an existing system when projected daily sewage flow would increase by not more than 300 gallons above the design capacity and not more than 50 percent of the design capacity for the system if:

(a) The existing system is not failing;

(b) All set-backs between the existing system and the structure can be maintained;

(c) A full system replacement area is available and meets all siting requirements in this division except those relating to soil conditions and groundwater; and

(d) In the opinion of the agent, the proposed increase in sewage flow would not create a public health hazard or pollute water.

(6) A construction-installation permit is required to place into service or change the use of a system when projected daily sewage flows would increase by more than 300 gallons above the design capacity or by more than 50 percent of the design capacity of the system.

(7) Personal hardship.

(a) The agent may issue an Authorization Notice allowing a temporary dwelling to use an existing system serving another single family dwelling to provide housing for a person suffering hardship or for an individual providing care for such a person if:

(A) The agent receives a hardship approval issued under local planning ordinances;

(B) The system is not failing; and

(C) The agent receives evidence that local zoning and land use planning regulations allow placement of a hardship temporary dwelling on the subject property.

(b) The Authorization Notice remains in effect for a specified period not to exceed 5 years, but may not exceed cessation of the hardship. The Authorization Notice may be extended for additional periods upon application in accordance with the requirements in section (3) of this rule.

(c) The agent must impose conditions in the Authorization Notice that are necessary to protect public health.

(8) Temporary placement.

(a) The agent may issue an Authorization Notice allowing a temporary dwelling to use an existing system serving another single family dwelling to provide temporary housing for a family member in need if:

(A) The agent receives evidence that the family member is in need of temporary housing;

(B) The system is not failing;

(C) A full system replacement area is available; and

(D) The agent receives evidence that local zoning and land use planning regulations allow placement of a temporary dwelling on the subject property.

(b) The Authorization Notice may authorize use for no more than 2 years and is not renewable. The agent must impose conditions in the Authorization Notice necessary to protect public health. If the system fails during the temporary placement and additional replacement area is no longer available, the owner must disconnect the temporary dwelling from the system.

(9) If the conditions of sections (4), (5), (6), (7), and (8) of this rule are not satisfied, the agent must either deny the Authorization Notice or withhold issuance until necessary alterations or repairs to the system are made.

(a) Alteration or repair requires a permit in accordance with OAR 340-071-0160, 340-071-0210, or 340-071-0215. The agent must credit the Authorization Notice fee submitted with the Authorization Notice application toward the permit fee.

(b) The agent may require submittal of the exhibits described in OAR 340-071-0160(2) to complete the permit application and must issue or deny the permit in accordance with OAR 340-071-0160.

(10) Upon request of the applicant, DEQ will review an Authorization Notice denied by an agent. The application for review must be submitted to DEQ in writing within 45 days of the Authorization Notice denial along with the denial review fee in OAR 340-071-0140(3) and other information DEQ finds necessary to complete the review. DEQ will prepare a report of the review.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615 & 468B.080
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0215
Repair of Existing Systems

(1) A failing system must be immediately repaired unless, in the opinion of the agent, adverse soil conditions resulting from climatic conditions would likely preclude a successful repair. In that circumstance, the agent may allow a delay in commencing or completing repairs until the soil conditions improve. If a delay is authorized, the agent must issue a notice of noncompliance to the system owner specifying a compliance date and any interim provisions required to prevent a public health hazard and protect public waters.

(2) Except for emergency repairs, a person may not repair a failing system without first obtaining a repair permit in accordance with this rule. Emergency repairs may be made without first obtaining a permit if a repair permit application is submitted to the agent within three working days after the emergency repairs are begun. The permit application procedure is described in OAR 340-071-0160.

(3) Certificate of Satisfactory Completion. Upon completion of installation of that part of a system for which a repair permit has been issued, the system installer must comply with the requirements for pre-cover inspections in OAR 340-071-0170. The agent must issue or deny the Certificate of Satisfactory Completion in accordance with OAR 340-071-0175.

(4) Criteria for permit issuance.

(a) If the site characteristics and standards in OAR 340-071-0220 can be met, the repair installation must conform to the requirements.

(b) If the site characteristics or standards in OAR 340-071-0220 cannot be met, the agent may allow a reasonable repair installation to eliminate a public health hazard, including the installation of an alternative system as necessary.

(5) Notwithstanding the permit duration specified in OAR 340-071-0160(5), a permit issued pursuant to this rule may be effective for a period of less than one year from the date of issue if specified by the agent.

(6) System owners must decommission failing systems in accordance with OAR 340-071-0185 if the systems cannot be repaired.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.655, 454.665, 454.675 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0220

Standard Subsurface Systems

(1) Criteria For standard subsurface systems. Each site must meet all of the conditions in this section to be approved for a standard subsurface system.

(a) Effective soil depth must extend 30 inches or more below the ground surface as shown in Table 3. A minimum 6-inch separation must be maintained between the layer that limits effective soil depth and the bottom of the absorption facility.

(b) Water table levels must be predicted using standards in OAR 340-071-0130(23).

(A) The permanent water table must be at least 4 feet below the bottom of the absorption facility, except in defined geographic areas where DEQ has determined through a groundwater study that less separation will not degrade groundwater or threaten public health. In these exception areas, the permanent water table must be at least 24 inches below the ground surface.

(B) A temporary water table must be 24 inches or more below the ground surface. An absorption facility may not be installed deeper than the top of the temporary water table.

(C) A groundwater interceptor may be used to intercept or drain water from an absorption area on sites with adequate slope to permit proper drainage. An agent may require a demonstration that the site can be dewatered before issuing a site evaluation report approving the site. Where required, groundwater interceptors are an integral part of the system but do not need to meet setback requirements to property lines, wells, streams, lakes, ponds, or other surface water bodies that are required for the wastewater absorption area.

(c) Except as provided in subsection (d) of this section, soil with rapid or very rapid permeability must be 36 inches or more below the ground surface. A minimum 18-inch separation must be maintained between soil with rapid or very rapid permeability and the bottom of absorption trenches.

(d) Sites may be approved with no separation between the bottom of absorption trenches and soil with rapid or very rapid permeability as defined in OAR 340-071-0100(148)(a) and (b) and absorption trenches may be placed into such soil if any of the following conditions occur.

(A) A confining layer occurs between the bottom of absorption trenches and the groundwater table and a minimum 6-inch separation is maintained between the bottom of absorption trenches and the top of the confining layer.

(B) A layer of nongravelly (less than 15 percent gravel) soil with sandy loam or finer texture at least 18 inches thick occurs between the bottom of the absorption trenches and the groundwater table.

(C) The projected daily sewage flow does not exceed a loading rate of 450 gallons per acre per day.

(e) Slopes do not exceed 30 percent or the slope/effective soil depth relationship set forth in Table 3.

(f) The site has not been filled or the soil has not been modified in a way that would in the opinion of the agent, adversely affect functioning of the system.

(g) The site is not on an unstable land form that might adversely affect operation of the system.

(h) The site of the initial and replacement absorption facility is not covered by asphalt or concrete or subject to vehicular traffic, livestock, or other activity that would adversely affect the soil.

(i) The site of the initial and replacement absorption facility will not be subjected to excessive saturation from artificial drainage of ground surfaces, driveways, roads, roof drains, or other circumstances.

(j) Setbacks in Table 1 except as modified by this subsection can be met.

(A) Surface waters setbacks. Setback from streams or other surface waters must be measured from bank drop-off or mean yearly high water mark, whichever provides the greatest separation distance.

(B) Lots created before May 1, 1973. For lots or parcels legally created before May 1, 1973, the agent may approve installation of a standard or alternative system with a setback from surface waters of less than 100 feet but not less than 50 feet if all other applicable provisions of this rule can be met.

(C) Water lines and sewer lines. Effluent sewer and water line piping constructed of materials that are approved for use within a building in the 2000 Edition of the Oregon State Plumbing Specialty Code may be run in the same trench or may cross. Where the effluent sewer pipe material is not approved for use in a building, it may not be run or laid in the same trench as water pipe unless:

(i) The bottom of the water pipe at all points is set at least 12 inches above the top of the sewer pipe; and

(ii) The water pipe is placed on a solid shelf excavated at one side of the common trench with a minimum, clear, horizontal distance of at least 12 inches from the sewer pipe.

(D) Septic tank setbacks. The agent must encourage the placement of septic tanks and other treatment units as close as feasible to the minimum separation from the building foundation to minimize clogging of the building sewer.

(E) Pressure transport pipe setback to well. Notwithstanding the setback distance in Table 1, the agent may allow the separation distance between a pressure transport pipe and a well to be less than 50 feet but no less than 25 feet when:

(i) The pressure transport pipe is PVC Sch. 40 or heavier pressure-rated piping meeting ASTM Specification D-2241;

(ii) The pressure transport pipe is placed within a larger diameter PVC or ABS Sch. 40 or heavier encasement pipe, with the pipe ends located at least 50 feet away from the well; and

(iii) All pipe joints in the pressure transport pipe and encasement pipe are solvent-welded.

(2) Criteria for sizing absorption fields. Absorption fields must be designed and sized based on the criteria in this section.

(a) Table 2, specifying quantities of sewage flows, or other information the agent determines is reliable with the following exception. A system must be sized on the basis of 300 gallons sewage flow per day plus 75 gallons per day for the third bedroom when the system:

(A) Is proposed to serve a single family dwelling on a lot of record created before March 1, 1978, that is too small to accommodate a system sized for a daily sewage flow of 450 gallons; or

(B) Serves specifically planned developments with living units of three or fewer bedrooms and deed restrictions prohibit an increase in the number of bedrooms.

(b) Table 4, specifying the minimum length of absorption trenches based on soil texture and effective soil depth.

(c) Table 5, specifying the minimum length of absorption trenches based on soil texture and depth to temporary water.

(d) Strength of the wastewater. If the strength of the wastewater exceeds the maximum limits for residential strength wastewater or the contents of the wastewater are atypical of residential strength wastewater or pose a threat to groundwater, public health, or the environment, the wastewater must be pretreated to acceptable levels before being discharged into a standard or alternative system.

(3) Septic tank.

(a) Liquid capacity.

(A) The quantity of daily sewage flow projected for a facility must be estimated from Table 2. The agent must determine the projected daily sewage flow for establishments not listed in Table 2.

(B) A septic tank that serves a commercial facility must have a liquid capacity of at least two times the projected daily sewage flow unless otherwise authorized by the agent. In all cases the capacity must be at least 1,000 gallons.

(C) The capacity of a septic tank that serves a single family dwelling must be based on the number of bedrooms in the dwelling. For a dwelling with 4 or fewer bedrooms, the tank capacity must be at least 1,000 gallons. Septic tank capacity must be at least 1,500 gallons for dwellings with more than 4 bedrooms.

(D) The agent may require a larger capacity than specified in this subsection as needed for special or unique waste characteristics, such as flow patterns, volumes, waste strength, or facility operation.

(b) Installation requirements.

(A) Septic tanks must be installed on a level, stable base that will not settle.

(B) Septic tanks located in high groundwater area must be weighted or provided with an antibuoyancy device to prevent flotation in accordance with the manufacturer's instructions.

(C) Tanks must be installed with at least one watertight riser extending to the ground surface or above. The riser must have a minimum diameter of 20 inches when the soil cover above the tank does not exceed 36 inches. The riser must have a minimum diameter of 30 inches when the soil cover above the tank exceeds 36 inches or when the tank capacity exceeds 3,000 gallons. A gasketed cover must be provided and securely fastened or weighted to prevent unauthorized access.

(D) Tanks must be installed in a location that provides access for maintenance.

(E) Where practicable, the sewage flow from an establishment must be consolidated into one septic tank.

(F) The agent may allow a removable plug to be placed in the top of a septic tank inlet sanitary tee if the septic tank discharges directly into a gravity-fed absorption facility.

(G) A demonstration of watertightness is required for all tanks after installation in accordance with OAR 340-073-0025.

(H) Unless otherwise allowed by the agent, an effluent filter meeting the requirements of OAR 340-073-0056 must be installed at the septic tank outlet if a tank serves a commercial facility. A service access riser and cover meeting the requirements of 340-071-0220(3)(b)(C) must be placed above the effluent filter.

(c) Construction. Tank construction must comply with minimum standards in OAR chapter 340, division 073, unless otherwise authorized in writing by DEQ.

(d) Multi-compartment tank requirement.

(A) With the exception in paragraph (B) of this subsection, if a septic tank is preceded by a sewage ejector pump, the tank must be manufactured as a multi-compartment tank in accordance with requirements in this division and OAR chapter 340, division 073. An effluent filter must be installed unless the agent allows other methods with equal or better performance in preventing the passage of suspended solids to the drainfield.

(B) If the sewage ejector pump preceding the septic tank at a single family residence receives wastewater from only a clothes washing machine and a sink, a single-compartment septic tank may be used in lieu of a multi-compartment septic tank. The tank must meet the minimum capacity requirement in subsection (a) of this section, and an effluent filter must be installed in the tank's outlet tee fitting. Alternatively, the agent may allow the filter to be placed in a separate vault and riser located just outside the septic tank or may authorize other alternatives as appropriate.

(4) Distribution techniques. Absorption trenches must be constructed according to one of the methods in this section.

(a) Gravity-fed equal distribution (including loop).

(A) Equal distribution must be used on generally level ground. All trenches and piping must be level within a tolerance of plus or minus 1 inch. All lateral piping must be at the same elevation.

(B) A pressure-operated hydrosplitter may be used to achieve equal distribution.

(C) To determine the total useable area of a looped soil absorption facility, the agent must add the sum of the lengths of the parallel absorption trenches and the lengths of up to two absorption trenches intersecting the parallel trenches.

(b) Serial distribution. Serial distribution is generally used on sloping ground. Each trench must be level within a tolerance of plus or minus 1 inch. Serial distribution may be a combination of equal distribution and serial distribution.

(c) Pressurized distribution systems. Pressurized distribution must satisfy the requirements in OAR 340-071-0275.

(5) Distribution boxes and drop boxes.

(a) Construction. Construction of distribution boxes and drop boxes must comply with standards in OAR 340-073-0035 and 340-073-0040.

(b) Foundation. All distribution boxes and drop boxes must be bedded on a stable, level base.

(c) In all gravity distribution techniques, the connection of the effluent piping to the distribution piping must include at least one distribution or drop box or other device acceptable to the agent as a means for locating and monitoring the absorption field.

(6) Dosing tanks and dosing septic tanks.

(a) Tank construction must comply with the standards in OAR chapter 340, division 073 unless otherwise authorized in writing by DEQ.

(b) The tank must be installed on a stable, level base at a location that provides access for maintenance.

(c) The tank must be provided with at least one watertight service access riser extending to the ground surface or above. The riser must have a minimum diameter of 20 inches when the soil cover above the tank does not exceed 36 inches. The riser must have a minimum diameter of 30 inches when the soil cover above the tank exceeds 36 inches. A gasketed cover must be securely fastened or weighted to prevent unauthorized access.

(d) A tank located in a high groundwater area must be weighted or provided with an antibuoyancy device to prevent flotation in accordance with the tank manufacturer's instructions.

(7) Absorption trenches.

(a) Absorption trenches must be constructed in accordance with the standards in this section unless otherwise authorized in this division.

(A) Minimum bottom width of trench — 24 inches.

(B) Minimum depth of trench:

(i) Equal or looped distribution — 18 inches.

(ii) Serial distribution — 24 inches.

(iii) Pressure distribution — 18 inches.

(C) Maximum depth of trench — 36 inches.

(D) Maximum length of an individual trench — 150 linear feet, unless otherwise authorized in writing by the agent.

(E) Minimum distance of undisturbed earth between trenches — 8 feet.

(b) The bottom of the trench must be level within a tolerance of plus or minus 1 inch end to end and level from side to side.

(c) When the sidewall within a trench has been smeared or compacted, sidewalls must be raked to ensure permeability.

(d) Trenches must be constructed to prevent septic tank effluent from flowing backwards from the distribution pipe to undermine the distribution box, the septic tank, or any portion of the distribution unit.

(e) Drain media must extend the full width and length of the trench to a depth of at least 12 inches with at least 6 inches of drain media under the distribution pipe and at least 2 inches over the distribution pipe.

(f) Before backfilling the trench, the drain media must be covered with filter fabric, untreated building paper, or other material approved by the agent.

(g) If trenches are installed in sandy loam or coarser soils, filter fabric or other nondegradable material approved by the agent must be used to cover the drain media.

(8) Trench backfill.

(a) The installer must backfill the system. Backfill must be carefully placed to prevent damage to the system.

(b) A minimum of 6 inches of backfill is required; in serial systems 12 inches is required.

(c) Backfill must be free of large stones, frozen clumps of earth, masonry, stumps, waste construction materials, or other materials that could damage the system.

(9) Header pipe. Header pipe must be watertight, have a minimum diameter of 3 inches, and be bedded on undisturbed earth. Where distribution boxes or drop boxes are used, the header pipe between the box and the distribution pipe must be at least 4 feet in length and be installed level.

(10) Distribution pipe.

(a) Distribution pipes must have a minimum diameter of 3 inches.

(b) Each disposal trench must have distribution piping that is centered in the trench and laid level within a tolerance of plus or minus 1 inch.

(c) Distribution pipe must comply with standards in OAR 340-073-0060(4).

(d) All perforated pipe must be installed with centerline markings up.

(11) Effluent sewer. The effluent sewer must extend at least 5 feet beyond the septic tank before connecting to the distribution unit. It must be installed with a minimum fall of 4 inches per 100 feet and at least 2 inches of fall from one end of the pipe to the other. In addition, there must be a

minimum difference of 8 inches between the invert of the septic tank outlet and either the invert of the header to the distribution pipe of the highest lateral in a serial distribution field or the invert of the header pipe to the distribution pipes of an equal distribution absorption field. A minimum 18-gauge, green-jacketed tracer wire or green color-coded metallic tape must be placed above the effluent sewer pipe.

(12) Curtain drain construction. Unless otherwise authorized by the agent, curtain drains must comply with the following requirements.

(a) Ground slope must be at least 3 percent, or other landform features such as an escarpment must allow for effective drainage.

(b) The curtain drain must extend at least 6 inches into the layer that limits effective soil depth or to a depth adequate to effectively dewater the site.

(c) Trench width must be a minimum of 12 inches.

(d) Perforated pipe must have a minimum diameter of 4 inches and must meet the requirements in OAR 340-073-0060(4).

(e) Perforated pipe must be installed at least 2 inches above the bottom and along the full length of the trench and must be covered by a minimum of 10 inches of drain media.

(f) The curtain drain must be filled with drain media to within 12 inches of the ground surface.

(g) Outlet pipe must be rigid, smooth-wall, solid PVC pipe meeting or exceeding ASTM Standard D-3034 with a minimum diameter of 4 inches. A flap gate or rodent guard must be installed.

(h) Filter fabric must be placed over the drain media.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 7-2008, f. 6-27-08, cert. ef. 7-1-08; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0260

Alternative Systems, General

(1) Application requirements. The requirements in this division and OAR chapter 340, division 073 for siting, construction, and maintenance of standard subsurface systems apply to alternative systems unless the standards for alternative systems in this division provide otherwise.

(2) Periodic inspections.

(a) Agents may perform periodic inspections of installed alternative systems. System owners must pay the inspection fee in OAR 340-071-0140(3) for the inspection upon billing by the agent.

(b) The agent must prepare a report of each inspection listing system deficiencies, corrections required, and timetables for correction, and will provide a copy to the system owner. The agent may follow up as necessary to ensure proper corrections.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0265

Capping Fills

(1) Criteria for approval. Each site approved for a capping fill system must meet all the following conditions.

(a) Slope does not exceed 12 percent.

(b) Temporary water table is not closer than 18 inches to the ground surface at anytime during the year. A 6-inch minimum separation must be maintained between the bottom of the absorption trench and the temporary water table.

(c) Where a permanent water table is present, a minimum 4-foot separation must be maintained between the bottom of the absorption trench and the water table.

(d) Except as provided in subsection (e) of this section, where material with rapid or very rapid permeability is present, a minimum 18-inch separation must be maintained between the bottom of the absorption trench and soil with rapid or very rapid permeability.

(e) Sites may be approved with no separation between the bottom of the absorption trenches and soil with rapid or very rapid permeability (as defined in OAR 340-071-0100(148)(a) or (b)), and absorption trenches may be placed into such soil if any of the following conditions occur.

(A) A confining layer occurs between the bottom of absorption trenches and the temporary groundwater table and a minimum 6-inch separation is main-tained between the bottom of absorption trenches and the top of the confining layer.

(B) A layer of non-gravelly (less than 15 percent gravel) soil with sandy loam or finer texture at least 18 inches thick occurs between the bottom of the absorption trenches and the groundwater table.

(C) The projected daily sewage flow does not exceed a loading rate of 450 gallons per acre per day.

(f) Effective soil depth is 18 inches or more below the natural soil surface.

(g) Soil texture from the ground surface to the layer that limits effective soil depth is no finer than silty clay loam.

(h) A minimum 6-inch separation is maintained between the bottom of the absorption trench and the layer that limits effective soil depth.

(i) The system can be sized according to effective soil depth in Table 4.

(2) Installation requirements. The cap must be constructed in accordance with the permit. Unless otherwise required by the agent, construction must follow this sequence.

(a) The soil must be examined and approved by the agent before placement of the cap. The texture of the soil used for the cap must be the same textural class as or one textural class finer than the natural topsoil unless otherwise allowed in this division.

(b) Construction of capping fills must occur between June 1 and October 1 unless otherwise allowed by the agent. The upper 18 inches of natural soil must not be saturated or have a moisture content that causes loss of soil structure and porosity when worked.

(c) The absorption area and the borrow site must be scarified to destroy the vegetative mat.

(d) The system must be installed as specified in the construction-installation permit with a minimum 10-foot separation between the edge of the fill and the absorption facility.

(e) Filter fabric must be used between the drain media and the soil cap, unless otherwise authorized by the agent.

(f) Fill must be applied to the fill site and worked in so that the two contact layers, native soil and fill, are mixed. Fill material must be evenly graded to a final depth of 10 inches over the drain media for an equal system or 16 inches over the drain media for a serial system to allow for appropriate settled depths. Both initial cap and repair cap may be constructed at the same time.

(g) The site must be landscaped according to permit conditions and be protected from livestock, automotive traffic, and other activity that could damage the system.

(3) Required inspections. Unless waived by the agent, the following inspections must be performed for each capping fill installed.

(a) Inspection of both the absorption area and borrow material before cap construction for scarification, soil texture, and moisture content.

(b) Pre-cover inspection of the installed absorption facility.

(c) Inspection after the cap is placed to determine adequate contact between fill material and native soil (no obvious contact zone visible), adequate depth of material, and uniform distribution of fill material.

(d) Final inspection after landscaping or other erosion control measures are established.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0275

Pressurized Distribution Systems

(1) Pressurized distribution systems receiving residential strength wastewater may be permitted on any site meeting the requirements for installation of a standard onsite system and on other sites where this method of effluent distribution is preferable and the site conditions in this rule can be met.

(2) Except as allowed in OAR 340-071-0220(1)(d), pressurized distribution systems must be used where depth to soil with rapid or very rapid permeability as defined in OAR 340-071-0100(148)(a) and (b) is less than 36 inches and the minimum separation distance between the bottom of the absorption trench and such soil is less than 18 inches.

(3) Pressurized distribution systems installed in soil with rapid or very rapid permeability as defined in OAR 340-071-0100(148)(a) and (b) in areas with permanent water tables may not discharge more than 450 gallons of effluent per 1/2 acre per day except where:

(a) Groundwater is degraded and designated as a non-developable resource by the Oregon Water Resources Department; or

(b) A detailed hydrogeological study discloses loading rates exceeding 450 gallons per 1/2 acre per day would not increase the nitrate-nitrogen

concentration in the groundwater beneath the site or at any down gradient location to above 5 mg/L.

(4) Materials and construction.

(a) General.

(A) All materials used in pressurized systems must be structurally sound, durable, and capable of withstanding normal stresses incidental to installation and operation.

(B) Pump wiring must comply with applicable building, electrical, or other codes. An electrical permit and inspection from the Department of Consumer and Business Services, Building Codes Division or the municipality with jurisdiction is required for pump wiring installation.

(C) A single compartment dosing septic tank may not be used in a system with pressurized distribution laterals unless the tank is partitioned with a flow-through below the tank's lowest liquid level. The flow through port must be at 65 to 75 percent of the minimum liquid level and be at least 4" in diameter.

(b) Pressurized distribution piping. Piping, valves, and fittings for pressurized systems must meet the following minimum requirements.

(A) All pressure transport, manifold, lateral piping, and fittings must meet the requirements in OAR 340-073-0060(3).

(B) Pressure transport piping must be uniformly supported along the trench bottom. The agent may require the piping to be bedded in sand or other material approved by the agent. A minimum 18 gauge, green-jacketed tracer wire or green color-coded metallic locate tape must be placed above piping.

(C) Orifices must be located on top of the pipe, except as noted in paragraph 4(b)(I) of this section.

(D) The ends of lateral piping must be constructed with long sweep elbows or an equivalent method to bring the end of the pipe to finished grade. The ends of the pipe must be provided with threaded plugs, caps, or other devices acceptable to the agent to allow for access and flushing of the lateral.

(E) All joints in the manifold, lateral piping, and fittings must be solvent-welded using the appropriate joint compound for the pipe material. Pressure transport piping may be solvent-welded or rubber-ring jointed.

(F) A shut off valve must be placed on the pressure transport pipe in or near the dosing tank when appropriate.

(G) A check valve must be placed between the pump and the shut off valve when appropriate.

(H) All orifices must be covered by a protective, durable, noncorrosive orifice shield designed to keep orifices from being blocked by drain media or other system components. The shields or piping must be removable for access to the orifices.

(I) The agent may specify alternate orifice orientation and valve arrangements for conditions such as extended freezing temperatures, temporary or seasonal use, or effluent characteristics.

(J) Where the operation of a pump could result in siphonage of effluent to below the normal off level of the pump, an anti-siphon measure in the form of a non-discharging valve designed for the specific purpose must be used. The anti-siphon valve must be installed and operated in accordance with manufacturer's specifications.

(c) Absorption trench sizing and construction.

(A) A system using absorption trenches must be designed and sized in accordance with the requirements of OAR 340-071-0220(2).

(B) Absorption trenches must be constructed using the specifications for the standard disposal trench unless otherwise authorized by the agent.

(C) The trench must contain drain media at least 12 inches deep, with at least 6 inches of media under the pressure distribution laterals and sufficient media above the laterals to meet or cover the orifice shields to provide a smooth, even cover.

(D) The top of the drain media must be covered with filter fabric or other nondegradable material permeable to fluids that will not allow passage of soil particles coarser than very fine sand. In unstable soils, sidewall lining may be required.

(d) Seepage bed construction.

(A) Seepage beds may be used instead of absorption trenches in soil as defined in OAR 340-071-0100(148)(b) if flows do not exceed 600 gpd.

(B) The effective seepage area must be based on the bottom area of the seepage bed. The area must be at least 200 square feet per 150 gallons per day waste flow.

(C) Beds must be installed at least 18 inches deep (12 inches with a capping fill) but not deeper than 36 inches into the natural soil. The seepage bed bottom must be level.

(D) The top of the drain media must be covered with filter fabric or other nondegradable material that is permeable to fluids but will not allow passage of soil particles coarser than very fine sand.

(E) The bed must contain drain media at least 12 inches deep with at least 6 inches of media under the pressure distribution laterals and sufficient media above the laterals to meet or cover the orifice shields to provide a smooth, even cover.

(F) Pressurized distribution piping must be horizontally spaced not more than 4 feet apart and not more than 2 feet away from the seepage bed sidewall. At least 2 parallel pressurized distribution pipes must be placed in the seepage bed.

(G) A minimum of 10 feet of undisturbed earth must be maintained between seepage beds.

(5) Hydraulic design criteria. Pressurized distribution systems must be designed for appropriate head and capacity.

(a) Head calculations must include maximum static lift, pipe friction, and orifice head requirements.

(A) Static lift where pumps are used must be measured from the minimum dosing tank level to the level of the perforated distribution piping.

(B) Pipe friction must be based upon a Hazen Williams coefficient of smoothness of 150. All pressure piping and fittings on laterals must have a minimum diameter of 2 inches unless submitted plans and specifications show a smaller diameter pipe is adequate.

(C) A minimum head of 5 feet at the remotest orifice and no more than a 10 percent flow variation between the nearest and remotest orifice in an individual unit are required.

(b) The capacity of a pressurized distribution system refers to the rate of flow given in gallons per minute (gpm).

(A) Lateral piping must have discharge orifices drilled a minimum diameter of 1/8 inch and evenly spaced no more than 24 inches apart in coarse textured soils or no more than 4 feet apart in finer textured soils.

(B) The system must be dosed at a rate not to exceed 20 percent of the projected daily sewage flow.

(C) The effect of back drainage of the total volume of effluent within the pressure distribution system must be evaluated for its impact upon the dosing tank and system operation.

(6) Service contracts. The owner of a pressurized distribution system must maintain a contract, in accordance with OAR 340-071-0130(23), with a maintenance provider to serve, maintain and adjust the onsite system. A service contract must be entered before the system is installed and must be maintained until the system is decommissioned.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615, 454.775 & 468B.080
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0290
Conventional Sand Filter Systems

(1) Criteria for approval. Construction of conventional sand filter systems may be approved for single family dwellings or commercial facilities.

(2) Sites approved for sand filter systems. Sand filters may be permitted on any site meeting requirements for standard onsite systems in OAR 340-071-0220 or for pressurized distribution systems in OAR 340-071-0275 if site conditions in this section can be met.

(a) Separation from the temporary groundwater table must satisfy the requirements in this subsection.

(A) The high level attained by a temporary groundwater table is:

(i) Twelve inches or more below ground surface where:

(I) The ground slope does not exceed 12 percent;

(II) Equal distribution methods are achieved by gravity or the use of either a hydrosplitter or pressurized distribution method; and

(III) A capping fill is placed in accordance with OAR 340-071-0265(2) and 340-071-0265(3)(a) through (c).

(ii) Eighteen inches or more below ground surface where equal distribution methods are achieved by gravity or through the use of a hydrosplitter or pressurized distribution.

(iii) Twenty-four inches or more below ground surface where serial distribution methods are used.

(B) Methods used in OAR 340-071-0315 for tile dewatering systems may be used to achieve separation distances from temporary groundwater.

(C) Absorption trenches may not be installed deeper than the highest level of the temporary water table. The minimum backfill depth within the

absorption trenches is 6 inches for trenches using equal distribution methods and 12 inches for trenches using serial distribution.

(b) Separation from the permanent groundwater table must satisfy the requirements in this subsection.

(A) The highest level attained by a permanent water table does not exceed the minimum separation distance from the bottom of the absorption area as follows:

(i) For gravel and Soil Group A: sand, loamy sand, sandy loam — 24 inches;

(ii) For Soil Group B: loam, silt loam, sandy clay loam, clay loam - 18 inches;

(iii) For Soil Group C: silty clay loam, silty clay, clay, sandy clay — 12 inches.

(B) Shallow absorption trenches placed not less than 12 inches into the original soil profile may be used with a capping fill to achieve separation distances from permanent groundwater. The fill must be placed in accordance with OAR 340-071-0265(2) and 340-071-0265(3)(a) through (c).

(C) Methods used in OAR 340-071-0315 for tile dewatering systems may be used to achieve separation distances from permanent groundwater.

(c) Sand filter systems installed in soils with rapid or very rapid permeability as defined in OAR 340-071-0100(148)(a) and (b) in areas with permanent water tables may not discharge more than 450 gallons of effluent per 1/2 acre per day except where:

(A) Groundwater is degraded and designated as a nondevelopable resource by the Oregon Water Resources Department; or

(B) A detailed hydrogeological study determines loading rates exceeding 450 gallons per 1/2 acre per day would not increase nitrate-nitrogen concentration in the groundwater beneath the site or any downgradient location to above 5 mg/L.

(d) Sand filter systems may be installed in soils, fractured bedrock, or saprolite diggable with a backhoe if, in the judgment of the agent, the soils, fractured bedrock, or saprolite is permeable to the extent that effluent will absorb adequately and not hinder the performance of the filter or absorption field. The agent may require that an absorption test be conducted to determine the permeability of the bedrock or saprolite. Test methods must be acceptable to DEQ.

(A) Where ground slope does not exceed 12 percent, a capping fill, 12-inch deep trench may be installed in accordance with OAR 340-071-0265, except that when installed in fractured bedrock or saprolite, the cap material must be Soil Group B.

(B) Where ground slope exceeds 12 percent but is not greater than 30 percent, a standard 24-inch deep trench may be installed.

(e) A sand filter absorption facility may be installed on slopes of 30 percent or less if other conditions in this section are satisfied.

(f) An absorption facility following a sand filter may be installed on slopes above 30 percent and up to 45 percent where:

(A) Projected daily flow does not exceed 450 gallons and the installation is sized in accordance with sand filter absorption area criteria;

(B) The soil is diggable with a backhoe to a depth of at least 36 inches and 12 inches below the bottom of the trench; and

(C) The temporary water table is at least 30 inches below the ground surface and 6 inches below the bottom of the trench.

(g) Setbacks in Table 1 can be met, except the minimum separation distance between the sewage absorption area and surface waters must be at least 50 feet.

(3) Absorption trenches. Absorption trenches for sand filter absorption facilities must satisfy the requirements in this section.

(a) The minimum length of a standard absorption trench per 150 gallons of projected daily sewage flow is:

(A) For gravel and Soil Group A: sand, loamy sand, sandy loam — 35 linear feet;

(B) For Soil Group B: loam, silt loam, sandy clay loam, clay loam -- 45 linear feet;

(C) For Soil Group C: silty clay loam, silty clay, sandy clay, clay — 50 linear feet;

(D) For permeable saprolite or fractured bedrock — 50 linear feet;

(E) For high shrink-swell clays (Vertisols) — 75 linear feet.

(b) On lots created before January 1, 1974, which do not have sufficient, suitable area for an absorption facility sized in accordance with this section, the agent may allow seepage trenches if:

(A) The design criteria and limitations in OAR 340-071-0280(2) are met;

(B) The soil is not a high shrink-swell clay;

(C) The temporary water table is at least 30 inches below the ground surface; and

(D) All other requirements of this rule are met.

(c) Trench designs in Vertisols.

(A) Absorption trenches in Vertisols must contain 24 inches of drain media and 24 inches of soil backfill in areas with an annual rainfall of 25 inches or less, minimum slopes of 5 percent, and a temporary water table at least 48 inches below the ground surface.

(B) Seepage trenches in Vertisols containing less than 24 inches of drain media may be used if designed in accordance with the criteria and limitations in OAR 340-071-0280 in areas with an annual rainfall of 25 inches or less, minimum slopes of 5 percent, and a temporary water table at least 48 inches below the ground surface.

(4) Bottomless sand filter. Sites may use a bottomless sand filter if the site meets the criteria in this section and section (3) of this rule.

(a) Saprolite; fractured bedrock; gravel; or soil textures of sand, loamy sand, or sandy loam occur in a continuous section at least 2 feet thick in contact with and below the bottom of the sand filter.

(b) The agent determines the saprolite, fractured bedrock, gravel, or soil is permeable over the basal area to the extent that effluent will absorb adequately and not hinder the performance of the filter. The agent may require that an absorption test be conducted to determine the permeability of the basal area. Test methods must be acceptable to DEQ.

(c) The application rate is based on the design sewage flow in OAR 340-071-0220(2)(a) and the basal area of the sand.

(d) The water table is at least 24 inches below the ground surface throughout the year, and a minimum 24-inch separation is maintained between a water table and the bottom of the sand filter.

(5) Materials and construction.

(a) All materials used in sand filter system construction must be structurally sound, durable, and capable of withstanding normal installation and operation stresses. Component parts subject to malfunction or excessive wear must be readily accessible for repair and replacement.

(b) All filter containers must be placed over a stable, level base.

(c) In a gravity-operated distribution system, the invert elevation of the outlet end of the underdrain pipe must be at or above the final settled ground elevation of the highest absorption trench.

(d) Piping and fittings for the sand filter distribution system must comply with the requirements for pressure distribution systems in OAR 340-071-0275.

(e) Septic tanks, dosing tanks, and other components must comply with the requirements in OAR 340-071-0220 unless this rule specifies different requirements.

(f) The design and construction requirements in OAR 340-071-0295 must be met. A bottomless sand filter unit does not require a watertight floor, but does require watertight walls unless otherwise authorized by the agent.

(g) A bottomless sand filter unit does not require a minimum 10-foot separation between the original and replacement unit.

(6) Gravelless absorption method.

(a) Absorption trenches following a sand filter may be constructed without the use of drain media if they meet the criteria in this section.

(A) Absorption trenches must be 12 inches wide by 10 inches deep and incorporate pressurized distribution and a chamber constructed of half sections of 12-inch diameter plastic irrigation pipes (PIP). DEQ may consider deviations to the depth requirement in this rule for alternative drainfield products.

(B) Trenches must be level end to end and across their width.

(C) The agent may allow trenches on minimum 3-foot centers maintaining at least 2 feet of undisturbed earth between parallel trench sidewalls.

(D) Pressurized distribution piping must meet the requirements of OAR 340-071-0275(4)(b), except that orifice shields are not required.

(E) Distribution piping must be perforated with 1/8 inch diameter orifices on maximum 2-foot centers at the 12 o'clock position. The hydraulic design must provide at least a 2-foot residual head at the distal orifice.

(F) The chambers must have an adequate footing to support the soil cover and all normal activity and at a minimum must be constructed of 12-inch PIP rated at 43 pounds per square inch and meeting the appendix standards of ASTM D-2241. Each line must be equipped with a minimum 6-inch diameter inspection port.

(b) Except as noted in subsection (a) of this section, all construction and siting criteria for conventional sand filter systems in this division must be met. This includes but is not limited to the absorption field sizing for sand filter systems in OAR 340-071-0290(3) and area sizing for an initial and replacement absorption facility meeting standard trench separations in OAR 340-071-0220(7)(a)(E). Plans must verify that a system can be installed on the parcel that will meet the requirements in OAR 340-071-0290(3) and

340-071-0220(7)(a)(E) and all other applicable rules before a gravelless absorption method is approved.

(c) A gravelless absorption method may be used wherever this division allows a standard or alternative-type absorption trench for sand filter systems, except in Vertisols.

(d) A method to prevent burrowing animals from entering the chamber must be provided in areas where this is likely to occur.

(7) Operation and maintenance. Owners of conventional and other sand filter systems must ensure the sand filter and all other components of the system are continuously operated and timely maintained in accordance with the requirements on the Certificate of Satisfactory Completion and this rule.

(a) Owners of conventional and other sand filter systems must comply with the operation and maintenance requirements in this section. The owner of a sand filter system must inspect the septic tank and other components of the system at least annually for sludge accumulation, pump calibration, and cleaning of the laterals. Tanks must be pumped when there is an accumulation of floating scum less than 3 inches above the bottom of the outlet tee fitting, holes or ports, or an accumulation of sludge less than 6 inches below the bottom of the outlet tee fitting, holes or ports. Pump calibration, cleaning of the laterals, and other maintenance must be completed as necessary.

(b) Service Contracts. The owner of a residential sand filter system and all sand filter systems serving commercial facilities must maintain a contract, in accordance with OAR 340-071-0130(23), with a maintenance provider to serve and maintain the onsite system. A service contract must be entered before the system is installed and must be maintained until the system is decommissioned.

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.775 & 454.780

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05, Renumbered from 340-071-0305; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0295

Conventional Sand Filter Design and Construction

(1) Criteria for sizing. Systems must be sized based on quantities of sewage flow in accordance with OAR 340-071-0220(2)(a).

(2) Minimum filter area:

(a) A sand filter proposed to serve a single family dwelling must have an effective medium sand surface area of at least 360 square feet. If the design sewage flow exceeds 450 gallons per day, the medium sand surface area must be determined with the following equation: Area = projected daily sewage flow divided by 1.25 gallons per square foot.

(b) A bottomless sand filter following an ATT system must have an effective medium sand surface area of at least 250 square feet. If the design sewage flow exceeds 450 gallons per day, the medium sand surface area must be determined with the following equation: Area = projected daily sewage flow divided by 1.80 gallons per square foot.

(c) Sand filter influent may not exceed concentrations of 300 mg/L BOD5, 150 mg/L TSS, or 25 mg/L oil and grease.

(3) Design criteria.

(a) The interior base of the filter container must be level or constructed at a grade of 1 percent or less to the underdrain piping elevation.

(b) Except for sand filters without a bottom, underdrain piping must meet the requirements in OAR 340-073-0060(2) and must be installed in the interior of the filter container at the lowest elevation. The piping must be level or on a grade of 1 percent or less to the point of passage through the filter container. The pipe perforations or slots must be oriented in the upright or sideways position.

(c) The base of the filter container with the underdrain piping in place must be covered with a minimum of 6 inches of drain media or underdrain media. Unless waived by the agent, the underdrain media proposed for a sand filter must be sieved to determine conformance with the criteria in OAR 340-071-0100(170) and a report of the analysis must be provided to the agent. Where underdrain media is used, the underdrain piping must be enveloped in an amount and depth of drain media to prevent migration of the underdrain media to the pipe perforations.

(d) Where drain media is used at the base of the filter, it must be covered by a layer of filter fabric meeting the specifications in OAR 340-073-0041. Where underdrain media is used, filter fabric is not required.

(e) A minimum of 24 inches of approved sand filter media must be installed over the filter fabric or underdrain media. The sand filter media must be damp at the time of installation. The top surface of the media must be level. Unless waived by the agent, the sand filter media proposed for each sand filter must be sieve-tested to determine conformance with the criteria in OAR 340-071-0100(124), and a report of the analysis must be provided to the agent.

(f) A minimum of 3 inches of clean drain or underdrain media is required below the distribution laterals, and sufficient media is required above the laterals to meet or cover the orifice shields to provide a smooth, even cover.

(g) A pressurized distribution system meeting the requirements of OAR 340-071-0275(4) and (5) must be constructed as described in subsection (f) of this section.

(A) Distribution laterals must be spaced a maximum of 30 inches center to center. Orifices must be spaced no more than 30 inches apart.

(B) The ends of the distribution laterals must be designed and constructed to allow flushing of the piping, collectively or individually, using a corrosion-resistant and accessible valve or threaded endcap. The flushed effluent may be discharged to the septic tank or into the sand filter.

(C) The diameters of the distribution manifold and laterals must be at least 1/2 inch in diameter.

(D) A sand filter must be dosed at a rate not to exceed 10 percent of the projected daily sewage flow.

(h) The top of the media in which the pressure distribution system is installed must be covered with filter fabric meeting the specifications in OAR 340-073-0041.

(i) The top of the sand filter area must be backfilled with a soil cover free of rock, vegetation, wood waste, and other materials that may harm the filter. The soil cover must have a textural class no finer than loam unless otherwise authorized by the agent. The soil cover must be at least 6 inches and no more than 12 inches deep.

(j) All piping passing through the sand filter container must be watertight.

(4) Container design and construction.

(a) A reinforced concrete container with watertight walls and floors must be used where watertightness is necessary to prevent groundwater from infiltrating into the filter or to prevent the effluent from exfiltrating from the filter except as otherwise allowed in this division or OAR chapter 340, division 073. The container structure may require a building permit for construction.

(b) The container may be constructed of materials other than concrete where equivalent function, workmanship, watertightness, and at least a 20-year service life can be documented.

(A) Flexible membrane liner (FML) materials must have properties at least equivalent to 30 mil unreinforced polyvinyl chloride (PVC) described in OAR 340-073-0085. For FML materials to be approved for installation:

(i) Field repair instructions and materials must be provided to the purchaser with the liner; and

(ii) The final materials must have factory-fabricated boots suitable for field bonding onto the liner to facilitate the passage of piping through the liner in a waterproof manner.

(B) Where accepted for use, flexible sheet membrane liners must be installed in accordance with OAR 340-073-0085.

(C) The backfill around the container must be no steeper than a 3:1 slope (3 feet for every vertical foot) unless otherwise authorized by the agent.

(5) Internal pump option. Where a pump is used to discharge effluent from a sand filter to another treatment unit, a distribution unit, or an absorption facility, the design and construction of the filter may include an internal pump station if the following conditions are met.

(a) The location, design, and construction of the pump station must not conflict with design, construction, and operation of the sand filter system.

(b) The design and construction of the pump, discharge plumbing, controls, and alarm must meet the requirements in OAR 340-073-0055 except subsections (4)(d) and (4)(h).

(c) The pump and related apparatus must be housed in a corrosion-resistant vault designed to withstand stresses and prevent the migration of drain media, sand, or underdrain media to its interior. The vault must have a durable, affixed floor. The vault must provide watertight access to finished grade with a diameter equal to that of the vault and designed to receive treated effluent from the bottom of the sand filter.

(d) The depth of underdrain media and the operating level of the pump cycle and alarm may not allow effluent to come within 2 inches of the bottom of the sand filter media. The pump off-level may be no lower than the invert of the perforations of the underdrain piping.

(e) The internal sand filter pump must be electrically linked to the sand filter dosing apparatus to prevent effluent from entering the sand filter if the internal sand filter pump fails.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615, 454.775 & 454.780
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0302
Recirculating Gravel Filter (RGF)

(1) Siting and absorption area construction criteria.

(a) RGFs approved for treatment standard 1 may be sited and sized as follows.

(A) In areas with a temporary water table, in accordance with specifications for sand filters in areas with temporary groundwater in OAR 340-071-0290.

(B) In areas with permanent groundwater, where 4 feet of separation can be maintained between the bottom of the trench and groundwater and the other criteria in OAR 340-071-0290 can be met.

(C) On sites meeting criteria for standard onsite systems in OAR 340-071-0220 or for pressurized systems in OAR 340-071-0275.

(b) RGFs used in conjunction with approved disinfection and approved nitrogen reduction processes and expected to meet treatment standard 2 may be sited and sized as follows.

(A) On sites meeting the criteria for treatment standard 1 in subsection (a) of this section.

(B) In areas with a permanent water table, in accordance with specifications for sand filters in areas with a permanent water table in OAR 340-071-0290.

(c) Any type of absorption area permitted for a sand filter system, including the gravel-less absorption method, may be permitted for an RGF system.

(2) Design criteria.

(a) Filter design and dosing.

(A) The basal or bottom area of the filter must be sized based on a maximum organic load. For residential strength wastewater that has been pretreated through a septic tank, the maximum hydraulic load allowable is 5 gal/ft2/day.

(B) For BOD5 waste strengths stronger than residential strength wastewater but not exceeding 400 mg/L, the filter size must be increased proportionately.

(C) Higher strength wastewaters must be pretreated or will require special consideration. In no case may the concentration of greases and oil applied exceed 30 mg/L.

(b) Filter media.

(A) Where CBOD5 removal must be at least 85 percent based upon the raw sewage concentration applied to the septic tank and nitrification of wastewater is necessary, a filter media must consist of 3 feet of very fine washed gravel, 100 percent passing a 3/8-inch sieve with an effective size between 3 and 5 millimeters and a uniformity coefficient of 2 or less. Washed means that negligible fines (less than 1.0 percent) pass a No. 10 sieve.

(B) Where additional removal of BOD5 and denitrification is intended or required, a treatment media may consist of 2 feet of very coarse washed sand, 100 percent passing a 3/8-inch sieve with an effective size between 1.5 and 2.5 millimeters and a uniformity coefficient of 2 or less. Washed means that negligible fines (less than 4.0 percent) pass the No. 100 sieve.

(C) Sieves of 3/8 inch, 1/4 inch, and Nos. 4, 6, 8, 10, 50, and 100 must be used in gradation analysis.

(D) The permittee must provide fresh samples of the intended media for each project before shipment to the project site. A laboratory gradation analysis must be performed and the gradation data plotted on semi-log paper as a gradation curve. Lab data, gradation curve, and a 5-pound sample of the media must be submitted to the agent for approval. Only approved media may be used.

(c) Filter media must be overlain by a 3-inch bed of 1/2-inch to 3/4-inch washed gravel. The media and gravel may only lightly cover the distribution piping. Unless otherwise authorized, each orifice must be covered by an orifice shield to prevent aerial spray drift.

(d) Filter dosing must use a low pressure distribution piping system operating under adequate head to pressurize the system. The operating head must be a minimum of 5 feet at the remotest orifice and have no more than 10 percent flow variation between the nearest and remotest orifice in an individual unit. Each lateral pipe end must terminate with a screwed plug or cap accessible for removal and flushing. Wherever practical, a valved backflush system must be installed to flush groups of laterals back to a septic tank or elsewhere.

(e) Pressure-distribution piping must be spaced 2 feet center to center in a parallel grid. Orifice spacing must be every 2 feet on laterals. Piping grid edges should be within 1 foot of the filter basal edge.

(f) Filter media must be underlain by a 6-inch bed of a 1/2 to 3/4-inch washed gravel underdrain media. No filter fabric may cover the underdrain media.

(g) Perforated collection pipes must meet requirements in OAR 340-073-0060(2) and be bedded in the underdrain media. Pipes must be at least 4 inches in diameter with no filter fabric wrap. At least 15 lineal feet of collection pipe is required for each 225 square feet of filter basal area.

(h) The filter container must be watertight to suit the design conditions. Underflow must be contained. Groundwater must be excluded. A concrete container may be used. Other materials may be used if equivalent function, workmanship, watertightness, and at least a 20-year service life can be expected.

(3) Recirculation/dilution tank.

(a) A recirculation tank receives septic tank effluent and underflow from the filter. A pumping system at this tank delivers flow to the filter dose piping network according to a project design. The recirculation tank volume measured from tank floor to tank soffit must be at least equal to the projected daily sewage flow volume.

(b) The recirculation ratio at design flow must be at least 4. Recirculation ratio is the daily volume of recycle divided by design daily volume of the wastewater. A fabricated "T" or "Splitter T" float valve located in the recirculation tank must be used whenever possible. Minimum recirculation tank liquid volume must be at least 80 percent of the gross tank volume when a float valve is used. Alternatively, where required and reasonable, a splitter basin using orifice or weir control may be used to divide underflow 20 percent to the absorption field and 80 percent to recycle on a daily basis. This alternative must use orifice control wherever possible. Minimum recirculation tank liquid volume must be at least 50 percent of the required tank volume when a splitter basin is used.

(c) Evaluation of and design for overflow and surge control at the recirculation tank must be included in the design plans.

(d) An audible or visual high water alarm must be included in the recirculation tank immediately below the overflow level. A latching electrical relay must retain the audible or visual alarm until acknowledged by a site attendant.

(e) Parallel pump start/stop electric controls (usually floats) must be installed to correct any unforeseen high liquid level event and keep sewage contained. This pump start function precludes overflow and must operate in parallel with the start/stop function of a timer and must not interfere with or depend upon a timer position.

(f) All areas of the filter must be wetted 48 times a day or every 30 minutes to achieve the recirculation ratio of at least 4 unless otherwise authorized by the agent.

(g) Testing must demonstrate the recirculation tank is watertight. Testing must be witnessed by the designer. Test protocol must be included in the design plans.

(h) Access onto the filter must be restricted by a fence or other effective means. Surface water entry onto the filter must be prevented by design and construction.

(i) Access openings to the recirculation tank must be provided at each end. Larger tanks must have additional openings. The smallest dimension of any access must be 18 inches. Larger openings must be provided if partially obstructed with piping or other objects. Provisions must be made to remove dregs (settleable solids). Pumps must be readily removable and replaceable without demolition of piping or other components.

(4) Operation and Maintenance standards. The owner of an onsite system using an RGF must ensure the RGF and all other components of the onsite system are properly operated and timely maintained or decommissioned.

(5) Operation and maintenance manual. The designer of an RGF system must ensure that comprehensive and detailed operation and maintenance instructions are provided to the onsite system owner at the time of installation. The instructions must emphasize operating and maintaining the entire system within the parameter ranges for which it is designed. The information must be presented in a manner that can be easily under-stood by the owner and include at a minimum:

(a) As-built plans with the name and contact number of the installer;

(b) A description of how the process functions, including diagrams illustrating basic system design and flow path;

(c) A maintenance schedule for all critical components;

(d) Requirements and recommended procedures for periodic removal of residuals from the system;

(e) A detailed procedure for visually evaluating the function of system components;

(f) A description of olfactory and visual techniques for confirming correct process parameters and system performance;

(g) A recommended method for collecting and transporting effluent samples;

(h) Safety concerns that may need to be addressed; and

(i) Emergency contact numbers for maintenance providers and pumpers.

(6) Service contracts. The owner of an RGF system must maintain a contract, in accordance with OAR 340-071-0130(23), with a maintenance provider to serve and maintain the onsite system. A service contract must be entered before the system is installed and must be maintained until the system is decommissioned.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615, 454.780, 468B.050 & 468B.055
Hist.: DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0325
Gray Water Waste Disposal Sumps

(1) Criteria for approval.

(a) Hand-carried graywater may be disposed of in graywater waste disposal sumps that serve facilities, including but not limited to recreation parks, camp sites, or construction sites, if the projected daily graywater flow does not exceed 10 gallons per unit. Graywater or other sewage may not be piped to the graywater waste disposal sump. Where projected daily sewage flow exceeds 10 gallons per unit, graywater must be disposed of in facilities meeting requirements of OAR 340-071-0320(2).

(b) Graywater sumps may be used where the agent determines they will not create a nuisance or public health hazard.

(c) Up to four graywater waste disposal sumps may be constructed on the same property and at the same time for each construction permit. The sumps must meet minimum separation distances in Table 8.

(2) In campgrounds or other public use areas, graywater waste disposal sumps must be identified as "sink waste disposal" by placard or sign in letters at least 3 inches in height and in a color contrasting with the background.

(3) Design and construction details for the graywater waste disposal sumps must be submitted with the permit application. At a minimum, the sump design concepts must include a receiving chamber with screen, settling chamber with tee fitting that extends about a third of the depth of the clear zone, and an absorption facility. The absorption facility may be a shallow seepage chamber or absorption trench, depending on site conditions or other considerations.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.610, 454.615 & 454.775
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0335
Cesspools and Seepage Pits

(1) A person may not construct new cesspool sewage disposal systems in Oregon.

(2) Seepage pit sewage disposal systems may be used only to serve existing sewage loads and replace existing failing seepage pit and cesspool systems on lots that are too small to accommodate a standard system or other alternative onsite system.

(3) Construction requirements.

(a) Each seepage pit must be installed in a location to facilitate future connection to a sewerage system when such facilities become available.

(b) Maximum depth of seepage pits is 35 feet below ground surface.

(c) The seepage pit depth must terminate at least 4 feet above the water table.

(4) Notwithstanding the permit duration specified in OAR 340-071-0160(5), a permit issued pursuant to this rule may be effective for a period of less than one year from the date of issue if specified by the agent.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615 & 454.775
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 21-1981(Temp), f. & ef. 9-1-81; DEQ 6-1982(Temp), f. & ef. 3-19-82; DEQ 8-1982, f. & ef. 4-20-82; DEQ 1-1985(Temp), f. & ef. 1-2-85; DEQ 2-1985, f. & ef. 2-1-85; DEQ 8-1986(Temp), f. & ef. 4-29-86; DEQ 16-1986, f. & ef. 9-16-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0340
Holding Tanks

(1) Criteria for approval. Except as provided in section (5) of this rule, installation of a holding tank system requires a construction-installation or WPCF permit. A construction-installation permit may be issued for sites that meet all the following conditions.

(a) Permanent use.

(A) The site cannot be approved for installation of a standard subsurface system.

(B) No community or areawide sewerage system is available or expected to be available within five years.

(C) The tank is intended to serve a small industrial or commercial building or an occasional use facility such as a county fair or a rodeo.

(D) Unless otherwise allowed by DEQ, the projected daily sewage flow is not more than 200 gallons.

(E) Setbacks required for septic tanks can be met.

(b) Temporary use: A holding tank may be installed in an area under the control of a city or other legal entity authorized to construct, operate, and maintain a community or area-wide sewerage system if:

(A) The application for permit includes a copy of a legal commitment from the legal entity to extend a community or area-wide sewerage system meeting the requirements of this division to the property covered by the application within five years from the date of the application; and

(B) The proposed holding tank complies with other applicable requirements in OAR chapter 340, divisions 071 and 073.

(2) Operations and maintenance. At all times the holding tank is being used, the owner of the tank must maintain a service contract with a sewage disposal service licensed under OAR 340-071-0600 to provide for regular inspection and pumping of the holding tank.

(3) Design and construction requirements. Except as provided in section (5) of this rule, holding tanks must comply with the following requirements.

(a) Plans and specifications for each holding tank proposed to be installed must be submitted to the agent for review and approval.

(b) Each tank must:

(A) Have a minimum liquid capacity of 1,500 gallons;

(B) Comply with tank standards in OAR 340-073-0025;

(C) Be located and designed to facilitate removal of contents by pumping

(D) Be equipped with both an audible and a visual alarm placed in locations acceptable to the agent to indicate when the tank is 75 percent full. Only the audible alarm may be user cancelable;

(E) Have no overflow vent at an elevation lower than the overflow level of the lowest fixture served; and

(F) Be designed for antibuoyancy if test hole examination or other observations indicate seasonally high groundwater may float the tank when empty.

(4) Special requirements. The application for a holding tank permit must include:

(a) A copy of a contract with a licensed sewage disposal service that requires the tank to be pumped periodically at regular intervals or as needed and the contents treated in a manner and at a facility approved by the agent; and

(b) Evidence that the owner or operator of the proposed treatment facility will accept the pumpings for treatment.

(5) Portable holding tanks may be temporarily placed at sites having limited duration events such as county fairs or construction projects or at temporary restaurants if the following requirements are met.

(a) The tanks must be owned and serviced by a licensed sewage disposal service with sewage pumping equipment having a 550-gallon or larger tank and meeting all other requirements in OAR 340-071-0600(11).

(b) Tank placement and use must comply with all local planning, building, and health requirements.

(c) Only domestic sewage may be discharged into the tank.

(d) The tank must be maintained in a sanitary manner to prevent a health hazard or nuisance.

(e) The tank must not be buried.

(f) A person may not use the tank to serve a dwelling, recreation vehicle, or any other structure having sleeping accommodations, except that a portable holding tank may be used temporarily to serve a contractor's job shack or night watchman's trailer.

(g) The tank must meet the following standards.

(A) The tank must be watertight with no overflow vent lower than the overflow level of the lowest fixture served.

(B) Tank capacity may not exceed 1,000 gallons unless otherwise authorized by the agent.

(C) The tank must be structurally sound and made of durable, noncorrosive materials.

(D) The tank must be designed and constructed to provide a secure, watertight connection of the building sewer pipe.

(E) The tank must be marked with the name and phone number of the licensed sewage disposal service responsible for maintaining the tank.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 13-1997(Temp), f. & cert. ef. 6-23-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0345

Alternative Treatment Technologies (ATTs)

(1) Criteria for approval. Construction-installation permits may be issued for onsite systems incorporating alternative treatment technologies (ATTs) for single family dwellings and commercial facilities if the following criteria are met.

(a) DEQ has listed the ATT, including brand and model or type where applicable, for use in onsite systems pursuant to section (2) of this rule.

(b) The ATT meets the performance and model selection criteria specified for the proposed use in section (4) of this rule.

(c) The site meets the appropriate siting criteria in section (8) of this rule, and the agent has approved the site.

(d) The owner of the property served by the onsite system incorporating the ATT has a written service contract as required in section (14) of this rule.

(2) ATT listing and delisting.

(a) DEQ will maintain a list of ATTs that meet the performance requirements in section (3) of this rule.

(b) Any person may submit an application for listing an ATT. The application must include:

(A) Documentation that the ATT meets the performance requirements in section (3) of this rule;

(B) Documentation that the ATT has been tested to NSF/ANSI as a class 1 or equivalent residential wastewater treatment system;

(C) A guide for inspecting the ATT installation;

(D) A plan for training agents on inspection of the ATT and training and certifying system installers on installation of the ATT;

(E) A plan for training and certifying maintenance providers on system maintenance for the ATT;

(F) Documentation that the ATT complies with sections (5)-(7) and (9) of this rule; and

(G) The alternative technology review fee in OAR 340-071-0140(5).

(c) DEQ will approve applications to list ATTs that DEQ determines meet the performance requirements in section (3) of this rule under normal operating conditions. ATTs will be listed by brand and model or type for the treatment standards they achieve.

(d) DEQ may approve ATTs that vary from standards in OAR chapter 340, division 073.

(e) Beginning July 1, 2015, DEQ may remove ATTs from the list if it determines the requirements for approval in subsection (c) of this section are no longer satisfied or if:

(A) Ten percent or more of systems under 10 years of age fail;

(B) The manufacturer fails to submit the annual report in section (g) of this rule by the date specified by DEQ; or

(C) The manufacturer fails to submit the annual compliance determination fee in OAR 340-071-0140(5) by the date specified by DEQ; or

(D) The manufacturer goes out of business.

(f) All ATT listings will expire on June 30, 2016 and will be removed from the list. To renew the ATT listing and remain on the list, the manufacturer of the ATT must submit an application for each ATT model by July 1, 2015. The application must include, but is not limited to:

(A) A current list of each ATT sold in the State of Oregon including the model number, serial number, and the property address the ATT is located;

(B) A current list of all maintenance providers that are certified by the manufacturer;

(C) The material plan review fee in OAR 340-071-0140(5).

(g) Annual manufacturer report. Unless otherwise authorized in writing by DEQ, the manufacturer must submit an annual report for each ATT model. The report must include, but is not limited to:

(A) A list of each ATT sold in Oregon for the reporting period including the model number, serial number, certified maintenance provider name, status of service contract, and the property address the ATT is located;

(B) A current list of all maintenance providers that are certified by the manufacturer;

(C) The annual compliance determination fee in OAR 340-071-0140(5).

(h) Any person adversely affected by DEQ's listing or delisting decision may appeal that decision through the contested case hearing procedures in ORS Chapter 183 and OAR chapter 340, division 011.

(3) Performance testing and standards for listing ATTs.

(a) Product testing. ATTs must be tested according to the product standards and testing protocols of NSF/ANSI Standard No. 40 for residential wastewater treatment systems – 2013, NSF/ANSI Standard No. 245 for nitrogen reduction — 2012, or another NSF/ANSI protocol approved by DEQ. For purposes of demonstrating performance to the fecal coliform concentration in treatment standard 2, the ATT shall be followed by a nonchlorinating disinfection device that has been tested according to NSF/ANSI Standard No. 46 – 2012, or the ATT be tested by collecting and analyzing influent and effluent grab samples at a minimum frequency of three days per week and the same duration (26 consecutive weeks) and hydraulic loadings (design and stress loadings) as the NSF/ANSI sample collection requirements for the BOD5, CBOD5, and TSS parameters. The testing must be performed by an ANSI accredited, third-party testing and certification organization whose accreditation is specific to onsite wastewater treatment products, or have been studied under the La Pine National Demonstration Project.

(b) Product performance. An ATT must produce effluent quality equal to or better than treatment standard 1 or 2 defined in section 0100.

(4) ATT model type and size selection. The model, type, and size of the ATT proposed for a system must be consistent with manufacturer recommendations and match the daily design wastewater flow anticipated from the dwelling or facility.

(5) Access ports.

(a) At a minimum, the ATT must have ground-level access ports sized and located to facilitate installation, removal, sampling, examination, maintenance, and servicing of components or compartments that require routine maintenance or inspection. Access ports must facilitate:

(A) Visually inspecting and removing mechanical or electrical components;

(B) Removing components that require periodic cleaning or replacement;

(C) Visually inspecting and collecting samples; and

(D) Removing (manual or pumping) accumulated residuals.

(b) Access ports must be protected against unauthorized intrusion. Acceptable protective measures include but are not limited to padlocks or covers that can be removed only with tools.

(6) Malfunction, failure sensing, and signaling equipment.

(a) The system must be designed to prevent the passage of untreated waste into the absorption field if the plant malfunctions.

(b) The ATT must possess a mechanism or process capable of detecting:

(A) Failure of electrical and mechanical components that are critical to the treatment process; and

(B) High liquid level conditions above the normal operating specifications.

(c) The ATT must possess a mechanism or process capable of notifying the system owner of failures. The mechanism must have circuits separate from pump circuits and deliver a visible and audible signal.

(A) The visual alarm signal must be conspicuous at a distance of 50 feet from the system and its appurtenances.

(B) The audible alarm signal strength must be between 70 and 90 dbA at 5 feet and discernible at a distance of 50 feet from the system and its appurtenances.

(C) The visual and auditory signals must continue to function in the event of electrical, mechanical equipment, or hydraulic malfunction of the system. The audible signal may be disabled for service as long as the visual signal remains active while cause for the alarm is identified and alleviated.

(d) A clearly visible label or plate with instructions for obtaining service must be permanently located near the failure signal.

(7) Data plate.

(a) The ATT must have permanent and legible data plates located on:

(A) The front of the electrical control box if the ATT has an electrical control box or panel; and

(B) The tank, aeration equipment assembly, or riser at a location accessed during maintenance cycles and inspections.

(b) Each data plate must include:

(A) Manufacturer's name and address;

(B) Model number;

(C) Serial number (required on one data plate only);

(D) Rated daily hydraulic capacity of the system; and

(E) The performance expectations as determined by performance testing and evaluation.

(8) Siting and absorption area construction criteria.

(a) ATTs approved for treatment standard 1 may be sited and sized as follows.

(A) In areas with a temporary water table, in accordance with specifications for sand filters in areas with temporary groundwater in OAR 340-071-0290.

(B) In areas with permanent groundwater, where 4 feet of separation can be maintained between the bottom of the trench and groundwater and the other criteria in OAR 340-071-0290 can be met.

(C) On sites meeting criteria for standard onsite systems in OAR 340-071-0220 or for pressurized systems in OAR 340-071-0275.

(b) ATTs used in conjunction with approved disinfection and approved nitrogen reduction processes and approved for treatment standard 2 may be sited and sized as follows.

(A) On sites meeting the criteria for treatment standard 1 in subsection (a) of this section.

(B) In areas with a permanent water table, in accordance with specifications for sand filters in areas with a permanent water table in OAR 340-071-0290.

(c) Any type of absorption area permitted for a sand filter system, including the gravel-less absorption method, may be permitted for an ATT system.

(9) Limited warranty. The ATT manufacturer must:

(a) Warrant all components of the ATT to be free from defects in material and workmanship for a minimum of two years from the date of installation; and

(b) Fulfill the terms of the warranty by repairing or exchanging any components that the manufacturer determines may be defective.

(10) Installation. ATTs must be installed in accordance with the manufacturer's instructions and this division. The installer must be certified by the ATT manufacturer to install the system and provide written certification to the agent that the ATT component was installed in accordance with the manufacturer's instructions and this rule.

(11) Sampling ports. A sampling port must be designed, constructed, and installed to provide easy access for collecting a free falling or undisturbed sample from the effluent stream. The sampling port may be located within the ATT or other system component (such as a pump chamber) if the wastewater stream being sampled is representative of the effluent stream from the ATT.

(12) Operation and maintenance standards. The owner of an ATT system must ensure the ATT and all components of the onsite system are properly operated and timely maintained or decommissioned and the effluent standards in section (3) of this rule are met.

(13) Owner's manual. The designer of each onsite system using an ATT must provide a comprehensive owner's manual prepared by the manufacturer or designer to the system owner, manufacturer's representative, installer, and if requested, the agent before or at the time of installation. The manual may be a collection of individual system component manuals and must include information on system specifications, system installation, operation and maintenance, and troubleshooting and repair. The information must be presented in a manner that can be easily under-stood by the owner.

(14) Service contracts.

(a) The owner of an ATT system must maintain a contract, in accordance with OAR 340-071-0130(23), with a maintenance provider to serve and maintain the onsite system. A service contract must be entered before the system is installed and must be maintained until the system is decommissioned.

(b) A maintenance provider must be certified by the manufacturer to provide service on an ATT.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0360

Absorption Trenches in Saprolite

(1) General conditions for approval. An onsite system construction-installation permit may be issued for a single family dwelling on a site with soil shallow to saprolite if requirements in either subsection (a) or (b) of this section can be met.

(a) If slope does not exceed 30 percent:

(A) The saprolite is sufficiently weathered so that it can be textured, crushed, or broken with hand pressure to a depth of 24 inches and can be dug from a test pit wall with a spade or other hand tool to a depth of 48 inches; and

(B) Clay films or iron coatings with moist values of 5 or less and moist chromas of 4 or more, organic coatings with moist values of 3 or less and moist chromas of 2 or more, or both occur on fracture surfaces of the saprolite to a depth of 48 inches.

(b) If slope exceeds 30 percent but not 45 percent:

(A) The saprolite is sufficiently weathered so that it can be textured, crushed, or broken with hand pressure to a depth of 24 inches and can be dug from a test pit wall with a spade or other hand tool to a depth of 60 inches; and

(B) Clay films or iron coatings with moist values of 5 or less and moist chromas of 4 or more, organic coatings with moist values of 3 or less and moist chromas of 2 or more, or both occur on fracture surfaces of the saprolite to a depth of 60 inches.

(c) For saprolite derived from granite or other deposits where clay films or iron coatings are not present, a soil absorption test and the degree of consolidation may be used to predict hydraulic conductivity of the saprolite. Agents may approve sites where conductivity is sufficiently high to ensure adequate drainage. Test methods must be acceptable to DEQ.

(2) Construction Requirements.

(a) Standard absorption trenches must be installed where slope does not exceed 30 percent.

(A) The trenches must be installed at a minimum depth of 24 inches and a maximum depth of 30 inches below the natural soil surface and contain 12 inches of filter material and a minimum of 12 inches of native soil backfill.

(B) The trenches must be sized at a minimum of 100 linear feet per 150 gallons projected daily sewage flow.

(b) Seepage trenches must be installed where slope exceeds 30 percent but not 45 percent.

(A) Seepage trenches must be installed at a minimum depth of 30 inches and at a maximum depth of 36 inches below the natural soil surface and contain a minimum of 18 inches of filter material and 12 inches of native soil backfill.

(B) Seepage trenches must be sized at a minimum of 75 linear feet per 150 gallons of projected daily sewage flow.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615 & 454.775

Hist.: DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986, f. & ef. 8-6-86; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0400

Geographic Area Special Considerations.

(1) River Road — Santa Clara Area, Lane County.

(a) Within the areas described in subsection (b) of this section, an agent may approve sites or issue construction-installation permits for new onsite wastewater treatment systems if both of the following conditions are met.

(A) The lot and proposed system comply with all rules in effect at the time the site is approved or the permit is issued.

(B) The system alone or in combination with other new sources will not contribute more than 16.7 pounds of nitrate-nitrogen per acre per year to the local groundwater. To ensure compliance, the applicant must own or control adequate land through easements or equivalent.

(b) Subsection (a) of this section applies to all of the following area generally known as River Road — Santa Clara and defined by the boundary submitted by the Board of County Commissioners for Lane County. The area is bounded on the south by the City of Eugene, on the west by the Southern Pacific Railroad, on the north by Beacon Drive, and on the east by the Willamette River and includes all or portions of T16S, R4W, Sections 33, 34, 35, 36; T17S, R4W, Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25; and T17S, R1E, Sections 6, 7, 18, Willamette Meridian.

(c) Appropriate local agencies within this area may petition the commission to repeal or modify this rule. Such petition must provide reasonable evidence either that development using onsite wastewater treatment systems will not cause unacceptable degradation of groundwater quality or

surface water quality or that degradation of groundwater or surface water quality will not occur as a result of the modification or repeal requested.

(d) This section does not apply to any construction-installation permit application based on a site approval issued by the agent pursuant to ORS 454.755(1)(b) before March 20, 1981.

(2) General North Florence Aquifer, North Florence Dunal Aquifer Area, Lane County.

(a) Within the area described in subsection (b) of this section, an agent may approve sites or issue construction-installation permits for new onsite systems under either of the following circumstances.

(A) The lot and proposed system comply with all rules in effect at the time the site is approved or the permit is issued.

(B) The lot and proposed system comply with paragraph (A) of this subsection except for the projected daily sewage loading rates, and the agent determines the system in combination with all other previously approved systems owned or legally controlled by the applicant will not contribute to the local groundwater more than 58 pounds of nitrate-nitrogen per year per acre owned or controlled by the applicant.

(b) Subsection (a) of this section applies to the following area designated the General North Florence Aquifer of the North Florence Dunal Area and defined by the hydrologic boundaries identified in the June 1982, 208 North Florence Dunal Aquifer Study. The area is bounded on the west by the Pacific Ocean; on the southwest and south by the Siuslaw River; on the east by the North Fork of the Siuslaw River and the ridge line at the approximate elevation of four hundred (400) feet above mean sea level directly east of Munsel Lake, Clear Lake, and Collard Lake; and on the north by Mercer Lake, Mercer Creek, Sutton Lake, and Sutton Creek and includes all or portions of T17S, R12W, Sections 27, 28, 33, 34, 35, 36, and T18S, T12W, sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27; W.M., Lane County, except that portion defined as the Clear Lake Watershed, which is the area beginning at a point known as Tank One, located in Section One, Township 18 South, Range 12 West, of the Willamette Meridian, Lane County, Oregon: run thence S. 67° 50' 51.5" E. 97.80 ft. to the True Point of Beginning; run thence S. 05° 40' 43.0" W. 1960.62 ft. to a point; run thence S. 04° 58' 45.4" E. 1301.91 ft. to a point; run thence S. 52° 44' 01.0" W. 231.21 ft. to a point; run thence S. 15° 20' 45.4" E. 774.62 ft. to a point; run thence S. 31°44' 14.0" W. 520.89.ft. to a point; run thence S. 00° 24' 43.9" W. 834.02 ft. to a point; run thence S. 07° 49' 01.8" W. 1191.07 ft. to a point; run thence S. 50° 26' 06.3" W. 731.61 ft. to a point; run thence S. 02° 51' 10.5" W. 301.37 ft. to a point; run thence 36° 37' 58.2" W. 918.41 ft. to a point; run thence S. 47° 12' 26.3" W. 1321.86 ft. to a point; run thence S. 72° 58' 54.2" W. 498.84 ft. to a point; run thence S. 85° 44' 21.3" W. 955.64 ft. to a point; Which is N. 11° 39' 16.9" W. 5434.90 ft. from a point known as Green Two (located in Section 13 in said Township and Range); run thence N. 58° 09' 44.1" W. 1630.28 ft. to a point; run thence N. 25° 23' 10.1" W. 1978.00 ft. to a point; run thence N. 16° 34' 21.0" W. 1731.95 ft. to a point; run thence N. 06° 13' 18.0" W. 747.40 ft. to a point; run thence N. 03° 50' 32.8" E. 671.51 ft. to a point; run thence N. 59° 33'18.9" E. 1117.02 ft. to a point; run thence N. 59° 50' 06.0" E. 1894.56 ft. to a point; run thence N. 48° 28' 40.0" E. 897.56 ft. to a point; run thence N. 31° 29' 50.7" E. 920.64 ft. to a point; run thence N. 19° 46' 39.6" E. 1524.95 to a point; run thence S. 76° 05' 37.1" E. 748.95 ft. to a point; run thence S. 57° 33' 30.2" E. 445.53 ft. to a point; run thence S. 78° 27' 44.9" E. 394.98 ft. to a point; run thence S. 61° 55' 39.0" E. 323.00 ft. to a point; run thence N. 89° 04' 46.8" E, 249.03 ft. to a point; run thence S. 67° 43' 17.4" E. 245.31 ft. to a point; run thence S. 79° 55' 09.8" E. 45.71 ft. to a point; run thence S. 83° 59' 27.6" E. 95.52 ft. to a point; run thence N. 42° 02' 57.2" E. 68.68 ft. to a point; run thence S. 80° 41' 24.2" E. 61.81 ft. to a point; run thence S. 10° 47' 03.5" E. 128.27 ft. to the True Point of Beginning; and containing all or portions of T17S, R12W, Sections 35 and 36; and T18S, R12W, Sections 1, 2, 11 and 12; W.M., Lane County.

(3) Lands overlaying the Alsea Dunal Aquifer.

(a) Within the area set forth in subsection (c) of this section, the agent may approve a site or issue a permit to construct a single onsite system on lots that were lots of record before January 1, 1981, or on lots in partitions or subdivisions that have received preliminary planning, zoning, and onsite wastewater treatment system approval before January 1, 1981, if one of the following can be met.

(A) At the time the site is approved or the permit is issued, the lot complies with OAR 340-071-0100 through 340-071-0360 and 340-071-0410 through 340-071-0520.

(B) The site meets all of the following conditions when a pressurized seepage bed is used.

(i) Groundwater levels are not closer than 4 feet from the ground surface or closer than 3 feet from the bottom of the seepage bed.

(ii) The seepage bed is constructed in accordance with OAR 340-071-0275(4) and (5).

(iii) The seepage bed is sized on the basis of 200 square feet of bottom area per 150 gallons projected daily sewage flow.

(iv) Projected daily sewage flows are limited to 375 gallons per lot, except for lots approved in a site evaluation for a larger flow.

(v) All setbacks identified in Table 1 can be met, except that lots of record before May 1, 1973, must maintain a minimum 50-feet separation to public surface waters.

(vi) Sufficient area exists on the lot to install a seepage bed and a replacement seepage bed, or the area reserved for replacement is waived pursuant to the exception in OAR 340-071-0150(4)(a)(C).

(C) The site meets all of the following conditions when a bottomless sand filter is used.

(i) Groundwater levels are not closer than 1 foot from the ground surface and not closer than 1 foot from the bottom of the sand filter.

(ii) Sewage flows are limited to 375 gallons per day per lot, except for lots approved in a site evaluation for larger flows.

(iii) The sand filter is sized at 1 square foot of bottom area for each gallon of projected daily sewage flow.

(iv) The design and construction requirements in OAR 340-071-0295(3) and (4) must be met. A bottomless sand filter unit does not require a watertight floor, but does require watertight walls unless otherwise authorized by the agent.

(v) All setbacks identified in Table 1 can be met, except that lots of record before May 1, 1973, must maintain a minimum 50 feet separation to public surface waters.

(vi) Sufficient area exists on the lot to install an initial and replacement bottomless conventional sand filter, or the area for replacement is not required under OAR 340-071-0150(4)(a)(C).

(b) An agent may approve a site or issue a construction-installation permit for a new onsite system within the area set forth in subsection (c) of this section on lots created on or after January 1, 1981, if all rules in this division can be met.

(c) The Alsea Dunal Aquifer is defined as all the land bounded on the East by Highway 101, on the west by the Pacific Ocean, and from Driftwood Beach Wayside South to the southern tip of the Alsea Bay Spit.

(d) If groundwater monitoring in the Alsea Dunal Aquifer indicates unacceptable levels of degradation or if development of the aquifer as a source of drinking water is necessary or desirable, sewage collection and off-site treatment facilities must be installed unless further study demonstrates that such facilities are not necessary or effective to protect the beneficial use.

(4) Christmas Valley Townsite, Lake County.

(a) Within the area set forth in subsection (b) of this section, the agent may consider the shallow groundwater table, if present, in the same manner as a temporary water table when issuing site evaluation reports and construction-installation permits.

(b) The Christmas Valley Townsite is defined as all land within the Christmas Valley Townsite plat located within Sections 9, 10, 11, 14, 15 and 16 of Township 27 South, Range 17 East, Willamette Meridian, in Lake County.

(5) Clatsop Plains Aquifer, Clatsop County. The Clatsop Plains Groundwater Protection Plan, prepared by R.W. Beck and Associates and adopted by Clatsop County, provides a basis for continued use of onsite wastewater treatment systems while protecting the quality of groundwater for future water supplies. For the plan to be successful, the following components must be accomplished.

(a) By January 1, 1983, Clatsop County must identify and set aside aquifer reserve areas for future water supply development containing a minimum of 2-1/2 square miles. The reserve areas must be controlled so that the potential for groundwater contamination from nitrogen and other possible pollutants is kept to a minimum;

(b) The agent may approve sites and issue construction permits for new onsite systems within the area generally known as the Clatsop Plains as described in subsection (c) of this section if the conditions in paragraph (A) and paragraph (B), (C), or (D) of this subsection are met.

(A) The lot or parcel was created in compliance with the appropriate comprehensive plan for Gearhart (adopted by County Ordinance 80-3), Seaside (adopted by County Ordinance 80-10), Warrenton (adopted by County Ordinance 82-15), or Clatsop County (adopted through Ordinance No. 79-10).

(B) The lot or parcel does not violate any rule of this division.

(C) Lot or parcel does not violate DEQ's Water Quality Management Plan or any rule in this division, except that the projected maximum sewage loading rate may exceed the ratio of 450 gallons per 1/2 acre per day. In this case, the onsite system must be either a sand filter system or a pressurized distribution system with a design sewage flow not to exceed 450 gallons per day.

(D) Use of standard onsite systems to serve single family dwellings within planned developments or clustered-lot subdivisions complies with the following requirements:

(i) The planned development or clustered-lot subdivision is not located within Gearhart, Seaside, Warrenton, or their urban growth boundaries.

(ii) The lots do not violate any rule of this division, except the projected maximum sewage loading rate may exceed the ratio of 450 gallons per acre per day.

(iii) DEQ is provided satisfactory evidence through a detailed groundwater study that the use of standard systems will not constitute a greater threat to groundwater quality than would occur with the use of sand filter systems or pressurized distribution systems.

(c) The area generally known as Clatsop Plains is bounded by the Columbia River to the North; the Pacific Ocean to the west; the Necanicum River, Neawanna Creek, and County Road 157 on the south; and the Carnahan Ditch-Skipanon River and the foothills of the Coast Range to the east.

(6) Within areas east of the Cascade Range where the annual precipitation does not exceed 20 inches, the agent may issue a construction-installation permit authorizing installation of a standard system to serve a single family dwelling if the requirements in subsections (a) and (b) of this section are met.

(a) Minimum site criteria.

(A) The parcel or lot is 10 acres or larger.

(B) The slope gradient does not exceed 30 percent.

(C) The soils are diggable with a backhoe to a depth of at least 24 inches.

(D) The site complies with the provisions of OAR 340-071-0220(1)(b), (f), (g), (h), (i), and (j).

(b) Minimum construction requirements.

(A) The system must contain at least 225 linear feet of absorption trench for projected sewage flows not exceeding 450 gallons per day. Larger sewage flows must be sized on the basis of 75 linear feet per each 150 gallons of projected flow.

(B) The system must be constructed and backfilled in compliance with OAR 340-071-0220(3), (4), (5), (7), (8), (9), (10), (11), and (12).

(c) The owner or owner's authorized representative may submit a single application to the agent for both a site evaluation report and a construction-installation permit. Such application must be submitted in accordance with OAR 340-071-0160 or 340-071-0162 and include the applicable evaluation and permit fees in OAR 340-071-0140.

(d) The agent may waive the pre-cover inspection for a system installed pursuant to this section if the system installer submits the following information to the agent at the time construction of the system is complete:

(A) A detailed, accurate as-built plan of the constructed system;

(B) A list of all material used in the construction of the system; and

(C) A written certification on a form acceptable to DEQ that the construction was in accordance with the permit and rules in this division and OAR chapter 340, division 73.

(e) The Agent may waive the site evaluation for a single family dwelling if the requirements in this subsection are met. These conditions are set forth in an addendum to the memorandum of agreement (contract) between the County and DEQ.

(A) Minimum site criteria.

(i) The lot or parcel is 80 acres or larger.

(ii) The separation distance between the proposed onsite system and the nearest dwelling not served by the proposed system is at least 1/4 mile.

(iii) The nearest property line to the proposed system is at least 100 feet; the nearest domestic water source is at least 200 feet; and the nearest public surface water is at least 200 feet.

(iv) In the opinion of the agent, topographical and soils information submitted with the application, including but not limited to slope, terrain, landform, and rock outcrops, demonstrates that the property can be approved for an onsite system in accordance with this division.

(B) Minimum construction requirements.

(i) Sizing requirements of Tables 4 and 5 must be followed as closely as possible. In all cases the system must contain at least 225 linear feet of absorption trench for projected sewage flows not exceeding 450 gallons per day. Larger sewage flows must be sized on the basis of 75 linear feet per each 150 gallons of projected flow.

(ii) The system must be constructed and backfilled as closely as possible to the requirements in OAR 340-071-0220. The agent may waive watertight testing of tanks in the system.

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

Stat. Auth.: ORS 183.335, 454.625, 468.020, 468B.010 & 468B.020

Stats. Implemented: ORS 454.610 & 454.615

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 17-1981, f. & ef. 7-10-81; DEQ 2-1982, f. & ef. 1-28-82; DEQ 16-1982, f. & ef. 8-31-82; DEQ 20-1982, f. & ef. 10-19-82; DEQ 3-1983, f. & ef. 4-18-83; DEQ 8-1983, f. & ef. 5-25-83; DEQ 15-1986, f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 20-1996(Temp), f. & cert. ef. 10-14-96; DEQ 4-1997, f. & cert. ef. 3-7-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0415

For Cause Variances

(1) An applicant may request variances from any rule or standard in this division.

(2) Variances. Variance officers appointed by the director may, after a public hearing, grant variances from any rule in this division to permit applicants.

(3) To grant a variance, the variance officer must find that:

(a) Strict compliance with the rule or standard is inappropriate; or

(b) Special physical conditions render strict compliance unreasonable, burdensome, or impractical.

(4) Applications.

(a) A separate application for each site considered for a variance must be submitted to DEQ or contract county as appropriate.

(b) Each application must be signed by the owner of the property served by the system and include:

(A) A site evaluation report, unless waived by the variance officer;

(B) Plans and specifications for the proposed system;

(C) The variance from onsite system rule fee in OAR 340-071-0140; and

(D) Other information the variance officer determines is necessary for a decision.

(5) An applicant for a variance is not required to pay the application fee if at the time of filing the applicant:

(a) Is 65 years of age or older;

(b) Is a resident of Oregon;

(c) Has an annual household income, as defined in ORS 310.630, of $15,000 or less; and

(d) Has not previously applied for a variance under this section.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.657, 454.660 & 454.662

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 9-1984, f. & ef. 5-29-84; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0420

Hardship Variances

(1) In cases of extreme and unusual hardship, the commission may, after a public hearing, grant hardship variances from rules or standards in this division to applicants for onsite permits.

(2) Applications.

(a) Applicants must submit applications for hardship variances to DEQ.

(b) The application must document that:

(A) A for cause variance under 340-071-0415 has been denied; and

(B) An extreme or unusual hardship exists.

(3) The commission may consider the following factors in reviewing an application for a variance based on hardship:

(a) Applicant's advanced age or poor health;

(b) Applicant's need to care for aged, incapacitated, or disabled relatives; and

(c) Environmental impacts from the variance.

(4) Hardship variances granted by the commission may include conditions such as:

(a) Limiting permits to the life of the applicant;

(b) Limiting the number of permanent residents using the system; and

(c) Use of experimental systems for specified periods of time.

(5) DEQ will strive to aid and accommodate the needs of applicants for hardship variances.

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.657

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0425
Variance Officers

(1) To qualify for appointment as a variance officer, an individual must:

(a) Have the equivalent of five years of full time experience in onsite wastewater treatment methods since January 1, 1974; three years must have been in Oregon; and

(b) Have attended a seminar, workshop, or short course pertaining to soils and their relationship to onsite wastewater treatment.

(2) Contract counties may request appointment of county staff as variance officers.

Stat. Auth.: ORS 454.625
Stats. Implemented: ORS 454.660
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0435
Variance Permit Issuance, Inspections, Certificate of Satisfactory Completion

(1) The variance officer or, for hardship variances, DEQ must notify the appropriate agent in writing of each variance granted.

(2) Agents must issue system construction-installation permits, perform inspections, and issue Certificates of Satisfactory Completion for systems that comply with the conditions of a variance decision.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.660
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0445
Variance Administrative Review

DEQ may review all records and files of variance officers to determine compliance with these rules.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.660
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0520
Large Systems

Unless otherwise authorized by DEQ, large systems must comply with the following requirements.

(1) Large system absorption facilities must be designed with distribution to the cells by means of pumps or siphons.

(2) The absorption area must be divided into relatively equal units. Each unit may receive no more than 1300 gallons of effluent per day.

(3) The replacement (repair) absorption area must be divided into relatively equal units, with a replacement absorption area unit located adjacent to an initial absorption area unit.

(4) Effluent distribution must alternate between the absorption area units.

(5) Each system must have at least two pumps or siphons.

(6) The applicant must provide a written assessment of the impact of the proposed system upon the quality of public waters and public health, prepared by a registered geologist, a certified engineering geologist qualified as a hydrogeologist, or a subordinate under the direction of either, except as specifically exempted in ORS 672.535.

(7) The owners of all new and existing large systems must register those systems with DEQ as Underground Injection Control (UIC) systems in accordance with OAR chapter 340, division 044. Large systems receiving domestic waste are regulated under this division. Drainfields receiving nondomestic waste are also regulated under the UIC rules.

Stat. Auth.: ORS 454.625 & 468.020
Stats. Implemented: ORS 454.615 & 468B.080
Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 8-1983, f. & ef. 5-25-83; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0600
Sewage Disposal Service Licenses

(1) License required. A person may not perform sewage disposal services or advertise or represent himself as being in the business of performing such services without a valid license issued by DEQ to perform those services. A separate license is required for each business, organization, or other person conducting sewage disposal services.

(2) Types of licenses. DEQ may issue three types of sewage disposal service licenses.

(a) Installer license. An installer license is required for any person to construct or install onsite systems or parts of onsite systems or to perform the grading, excavating, or earth-moving work associated with the construction or installation of onsite systems.

(b) Pumper license. A pumper license is required for any person to pump out or clean onsite systems, including portable toilets or any part thereof, and to dispose of the material derived from the pumping out or cleaning of onsite systems or portable toilets.

(c) Installer/pumper license. The combined installer/pumper license authorizes a person to perform the work authorized by the installer and the pumper licenses.

(3) Duration of license. The duration of a sewage disposal service license may not exceed three years following the date of issuance. DEQ may issue licenses for periods of less than three years to stagger expiration dates. DEQ will provide licensees written notice of the expiration date assigned and date application for renewal is due.

(4) Certification requirement.

(a) Each business with an installer or installer/pumper license must identify at least one person certified under OAR 340-071-0650 who will supervise installation of onsite systems for the licensee.

(b)Applicants must submit evidence of the certification required by this section to DEQ with their application.

(5) New, renewal, and reinstatement licenses. Persons applying for new, renewal, or reinstatement of existing licenses must submit the following to DEQ for each license.

(a) A complete license application form.

(b) Evidence of a surety bond or equivalent security approved by DEQ in the penal sum of $15,000 for each installer or installer/pumper license or $5000 for each pumper license and evidence that the security or bond will be continued through the license cycle and satisfies all other requirements of section (7) of this rule.

(c) The applicable license fee in OAR 340-071-0140(6).

(d) Evidence of certification as required in section (4) of this rule.

(e) For pumper licenses:

(A) A completed Sewage Pumping Equipment Description/Inspection form documenting inspection by an agent of all pumping equipment to be used for work under the license; and

(B) Upon request by DEQ, summary origin-destination pumping information for pumping services.

(6) Transfer or amendment of license. DEQ may amend or transfer a valid sewage disposal service license to reflect changes in business name, ownership, or entity (e.g., from individual to partnership or corporation). Persons applying for a license transfer or amendment must submit the following to DEQ:

(a) A complete application to transfer or amend the license with the applicable license fee in OAR 340-071-0140(6);

(b) A rider to an existing bond or a new form of security as required in subsection (5)(b) of this rule;

(c) The valid sewage disposal service license (not suspended, revoked, or expired) being transferred or amended;

(d) For business name changes, a new Sewage Pumping Equipment Description/Inspection form for each vehicle to be used for work under the license; and

(e) For installer licenses, evidence of certification as required in section (4) of this rule.

(7) Security requirements.

(a) Security required by this rule may be any of the following.

(A) A surety bond executed in favor of the State of Oregon on a form approved by the Attorney General and provided by DEQ. The bond must be issued by a surety company licensed by the Insurance Commissioner of Oregon. A surety bond must require at least 45 days notice to DEQ before cancellation is effective and must otherwise remain in effect for at least two years following termination of the sewage disposal service license, except as provided in subsection (c) of this section.

(B) An insured savings account irrevocably assigned to DEQ with interest earned by such account made payable to the depositor.

(C) Negotiable securities of a character approved by the State Treasurer irrevocably assigned to DEQ with interest earned on deposited securities made payable to the depositor.

(b) Any deposit of cash or negotiable securities under ORS 454.705 must remain in effect for at least 2 years following termination of the sewage disposal service license except as provided in subsection (c) of this section. A claim against such security deposits must be submitted in writing to DEQ with an authenticated copy of:

(A) The court judgment or order requiring payment of the claim; or

(B) Written authority by the depositor for DEQ to pay the claim.

(c) When proceedings under ORS 454.705 have been commenced while the security required is in effect, such security must be held until final disposition of the proceedings is made. At that time claims will be referred for consideration of payment from the security so held.

(8) Licensee responsibilities. Each licensee:

(a) Is responsible for violations of any statute, rule, or order of the commission or DEQ pertaining to the licensed business.

(b) Is responsible for any act or omission of any servant, agent, employee, or representative of such licensee in violation of any statute, rule, or order pertaining to the license privileges.

(c) Must deliver written notice, before completing licensed services, to each person:

(A) The rights of the recipient included in ORS 454.705(2); and

(B) The name and address of the surety company that has executed the bond required by ORS 454.705(1); or

(C) A statement that the licensee has deposited cash or negotiable securities for the benefit of DEQ to compensate any person injured by failure of the licensee to comply with ORS 454.605 to 454.745 and rules of this division.

(d) Inform DEQ of changes that affect the license, such as changes in the business, ownership, or entity (e.g., changes from individual to partnership or corporation).

(9) Misuse of license.

(a) A sewage disposal service licensee may not allow anyone to perform sewage disposal services under its license except employees of the licensee.

(b) A licensee may not:

(A) Display or cause or permit to be displayed any license that is fictitious, revoked, suspended, or fraudulently altered;

(B) Fail or refuse to surrender to DEQ any license that has been suspended or revoked.

(C) Give false or fictitious information or knowingly conceal a material fact or otherwise commit a fraud in any license application or any other activities associated with the license.

(10) Denial, suspension, or revocation of licenses.

(a) DEQ may refuse to grant, renew, or reinstate or may suspend or revoke any sewage disposal service license in accordance with procedures in ORS 183.310 to 183.540 if it finds:

(A) A material misrepresentation or false statement in connection with a license application;

(B) Failure to comply with any provisions of ORS 454.605 through 454.785, the rules of the commission, or an order of the commission or DEQ;

(C) Failure to maintain in effect at all times the required bond or other approved equivalent security in the full amount specified in these rules; or

(D) Nonpayment by drawee of any instrument tendered by the applicant as payment of a license fee.

(b) Whenever a license is suspended or revoked or expires, the licensee must remove the license from display and remove all DEQ-issued labels from equipment used for work under the license. Within 14 days after suspension or revocation, the licensee must surrender the suspended or revoked license and certify in writing to DEQ that all DEQ-issued labels have been removed from all equipment.

(c) A sewage disposal service business may not be considered for relicensure for a period of at least 1 year after revocation of its license.

(d) A suspended license may be reinstated if:

(A) The licensee submits to DEQ a complete application for reinstatement of license accompanied by the applicable license fee in OAR 340-071-0140(6);

(B) The grounds for suspension have been corrected; and

(C) The original license would not have otherwise expired.

(11) Requirements for pumping vehicles and equipment. A licensee who pumps onsite systems must ensure that all pumping vehicles and equipment comply with the following requirements.

(a) Tanks used for pumping or transporting septage must:

(A) Have a liquid capacity of at least 550 gallons, except that tanks for equipment used exclusively for pumping chemical toilets not exceeding 80 gallons capacity must have a liquid capacity of at least 150 gallons;

(B) Be of watertight metal construction;

(C) Be fully enclosed; and

(D) Have suitable covers to prevent spillage.

(b) Vehicles used for pumping or transporting septage must be equipped with either a vacuum or other type of pump that is self-priming and will not allow seepage from the diaphragm or other packing glands.

(c) The sewage hose on vehicles must be drained, capped, and stored in a manner that will not create a public health hazard or nuisance.

(d) The discharge nozzle must be:

(A) Provided with either a camlock quick coupling or threaded screw cap;

(B) Sealed by threaded cap or quick coupling when not in use;

(C) Located to minimize flow or drip onto any portion of the vehicle;

(D) Protected from accidental damage or breakage.

(e) Pumping equipment must not have spreader gates unless permitted to land apply alkaline-stabilized septage in accordance with chapter 340, division 050.

(f) Each vehicle must at all times be supplied with a pressurized wash-water tank, disinfectant, and implements for cleanup.

(g) Except as specified in subsection (h) of this section or otherwise authorized in writing by the agent, pumping equipment must be used exclusively for pumping sewage disposal facilities.

(h) The following may be pumped or serviced using pumping equipment without written authorization, whether or not they are connected to an onsite system or a centralized community sewer system: pump stations, lift stations, food grease tanks, vaults or tanks used for domestic sewage not contaminated with industrial or hazardous waste, and spills and backups of uncontaminated domestic sewage.

(i) Chemical toilet pumping equipment may not be used for any other purpose if the pump tank has a liquid capacity of less than 550 gallons.

(j) Equipment must be maintained in a reasonably clean condition at all times and must be operated in a manner that does not create a public health hazard or nuisance.

(12) Vehicle identification. The onsite sewage disposal services licensee must identify vehicles as follows.

(a) The licensee's name or assumed business name must be displayed on both sides of the vehicle or the attached tank and on both sides of a tank trailer.

(A) Letters must be at least 3 inches high unless otherwise authorized by DEQ.

(B) Letters must be in a color contrasting with the background.

(b) Tank capacity must be printed on both sides of the tank.

(A) Letters must be at least 3 inches high unless otherwise authorized by DEQ.

(B) Letters must be in a color contrasting with the background.

(c) Labels issued by DEQ for each current license period must be displayed at all times at the front and rear and on each side of the vehicle. Labels must be returned to DEQ when a vehicle is no longer being used in conjunction with pumping under a sewage disposal service license.

(13) Septage management requirements. The licensee and all persons managing septage:

(a) Must avoid spilling sewage or septage during pumping, cleaning, or transport and must immediately clean up any spill and disinfect the spill area.

(b) Must dispose of septage and sewage only in disposal facilities approved by DEQ.

(c) At all times during pumping, transport, or disposal of septage, must possess origin-destination records for sewage disposal services rendered.

(d) Must maintain on file for at least 3 years complete origin-destination records for sewage disposal services rendered. The records must be made available for review upon the request of DEQ. Origin-destination records must include the following information for each pumping, transport, and disposal occurrence:

(A) Source of septage, including name and address;

(B) Specific type of material pumped;

(C) Quantity of material pumped;

(D) Name and location of disposal site where septage was deposited;

(E) Quantity of material deposited; and

(F) The license numbers or vehicle numbers assigned by the licensee for all vehicles or trailers used for pumping, transport, and disposal.

(e) Must transport septage in a manner that will not create a public health hazard or nuisance.

(f) Must possess a current septage management plan approved by DEQ. The plan must be kept current, with any revisions approved by DEQ before implementation.

(g) Must comply with the approved septage management plan and the septage management plan approval letter issued by DEQ.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 454.615, 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.625 & 468.020

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 32-1981(Temp), f. & ef. 12-8-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 15-1986,

f. & ef. 8-6-86; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 10-1996(Temp), f. & cert. ef. 7-16-96; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

340-071-0650

Training and Certification Requirements for System Installers and Maintenance Providers

(1) Certification required.

(a) A person who supervises or is responsible for construction or installation of onsite systems must be a certified installer unless the person is the permittee for construction or installation of the system or the permittee's regular employee.

(b) A maintenance provider who inspects, maintains, or certifies or supervises maintenance on onsite systems using alternative treatment technologies, recirculating gravel filters, sand filters, or pressurized distribution systems must be certified as a maintenance provider.

(2) Training and certification programs. DEQ may enter interagency agreements to provide a program to train and certify onsite system installers, maintenance providers, and other onsite maintenance providers as described in this rule.

(3) Initial training and certification.

(a) Each initial training course for certification must provide the minimum training described in this section. One day of training equals 8 hours including a total of 30 minutes of break time and a 1-hour lunch.

(b) Course instructors must have academic credentials or field experience in the course discipline and experience as instructors.

(c) Installer training.

(A) The training course for installers must include at least 8 hours of lectures, demonstrations, hands-on training, course review, and exam. DEQ encourages use of audiovisual materials to complement lectures where appropriate.

(B) Installer training must at a minimum adequately address the following topics:

(i) Working knowledge of onsite rules.

(ii) Working understanding of permits.

(iii) Basic math skills.

(iv) Technical drawing.

(v) Field layout of onsite system.

(vi) Installation requirements.

(vii) Job safety practices.

(d) Maintenance provider training.

(A) The training course for maintenance providers must include at least 8 hours of lectures, demonstrations, hands-on training, course review, and exam. DEQ encourages use of audiovisual materials to complement lectures where appropriate.

(B) Maintenance provider training must adequately address the following topics:

(i) Working knowledge of onsite rules.

(ii) Working understanding of permits.

(iii) Basic math skills.

(iv) Technical drawing.

(v) Onsite system processes.

(vi) System operation and maintenance.

(vii) Job safety practices.

(4) Examinations and certification.

(a) The training provider must administer an open book examination to persons seeking certification. A person seeking initial certification in a discipline must complete the initial training and pass the examination for that discipline, except that installers certified by DEQ before December 31, 2003, are not required to take the examination.

(b) Each examination must be approved by DEQ and include questions that adequately cover the topics in the training course for that discipline. Applicants must answer 70 percent correctly to pass.

(c) The training provider must issue a certification to each person who completes the training course and passes the required examination.

(d) Each certification must include the following:

(A) A unique certificate number.

(B) Full name of the person certified.

(C) Dates of the training course.

(D) Date of the examination.

(E) An expiration date three years after the certification issuance date.

(F) The name, address, and telephone number of the training provider that issued the certificate.

(G) A statement that the person receiving the certification has completed the requisite training and examination for the discipline certified.

(f) Certified persons must have proof of certification at the location where they are conducting work requiring certification.

(5) Recertification.

(a) For each discipline, the training provider or DEQ must review and approve continuing education courses and other training for recertification. Training approved for each discipline must cover topics related to that discipline, including the topics addressed in section (1) of this rule.

(b) For each discipline, the training provider must extend recertification to each certified person who completes 18 hours of approved continuing education following his most recent certification and to each formerly certified person who completes these requirements within six months after his certification expires.

(6) Suspension or revocation of certification.

(a) DEQ may suspend or revoke the certification of any person for the following reasons:

(A) Performing work requiring certification at a job site without physically possessing a current certification.

(B) Permitting the duplication or use of one's own certification by another.

(C) Obtaining certification from a person not accredited to provide the certification.

(D) Violation of requirements in this division.

(E) Failure to pay civil penalties assessed for violations of this division.

(b) DEQ must notify the person whose certification is being revoked or suspended of the reasons for the action and any conditions that must be met before the certification will be reinstated.

(c) A person may appeal a suspension or revocation by requesting a contested case hearing in accordance with OAR chapter 340, division 011.

(d) A person whose certification has been revoked may not be recertified and may not apply for a new certification for twelve months after the revocation date or under exceptional circumstances as approved by DEQ.

Stat. Auth.: ORS 454.615, 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.625 & 468.020

Hist.: DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14

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Rule Caption: Update Clean Fuels Program to clarify rule language and reduce regulatory burden on smaller businesses

Adm. Order No.: DEQ 15-2013(Temp)

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Certified to be Effective: 1-1-14 thru 6-30-14

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Subject: This temporary rule eliminates unnecessary requirements and reduce the administrative burden on smaller businesses participating in the Clean Fuels Program.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-253-0040

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Baseline carbon intensity value" is 90.38 gCO2e per MJ for gasoline and gasoline substitutes and 90.00 gCO2e per MJ for diesel fuel and diesel substitutes. These values are based on the mix of regulated and opt-in fuels supplied for use as a transportation fuel in Oregon in 2010.

(2) "Biodiesel" has the same meaning as defined under OAR 603-027-0410.

(3) "Biogas" means natural gas that meets the purity requirements under OAR 860-023-0025 and is produced from the breakdown of organic material in the absence of oxygen. Biogas production processes include, but are not limited to, anaerobic digestion, anaerobic decomposition and thermo-chemical decomposition:

(a) Applied to biodegradable biomass materials, such as manure, sewage, municipal solid waste, and waste from energy crops; and

(b) Used to produce landfill gas and digester gas.

(4) "Biogas compressed natural gas" means compressed natural gas consisting solely of compressed biogas.

(5) "Biogas liquefied natural gas" means liquefied natural gas consisting solely of liquefied biogas.

(6) "Biomass" has the same meaning as defined under OAR 603-027-0410.

(7) "Biomass-Based diesel" or "Renewable diesel" has the same meaning as defined under OAR 603-027-0410.

(8) "Blendstock" means a component blended with one or more other components to produce a finished fuel used in a motor vehicle.

(9) "Carbon intensity" means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO2e per MJ).

(10) "Compressed natural gas" means either biogas or fossil natural gas that meets the standards listed under OAR 860-023-0025 compressed to a pressure greater than ambient pressure.

(11) "Diesel fuel" has the same meaning as defined under OAR 603-027-0410.

(12) "Diesel substitute" means any fuel, other than diesel fuel, that may be used in light-duty or heavy-duty vehicles, and off-road vehicles that typically use diesel as a fuel. Diesel substitutes include but are not limited to liquefied natural gas used in a heavy duty motor vehicle and biodiesel used in a heavy duty motor vehicle.

(13) "Electricity bundled services supplier" means any person or entity that provides charging infrastructure and provides access to vehicles charging under contract with a charging service recipient or charging equipment owner.

(14) "Electric utility" has the same meaning as defined in ORS 757.600.

(15) "Ethanol" or "Denatured fuel ethanol" has the same meaning as defined under OAR 603-027-0410.

(16) "Feedstock" means the material a fuel is made from.

(17) "Finished fuel" means a transportation fuel used directly in a motor vehicle without additional chemical or physical processing.

(18) "Finished hydrogen fuel" means a finished fuel that consists of:

(a) Hydrogen; or

(b) A blend of hydrogen and another fuel.

(19) "Fossil compressed natural gas" means compressed natural gas derived solely from petroleum or fossil sources such as oil fields and coal beds.

(20) "Fossil liquefied natural gas" means liquefied natural gas derived solely from petroleum or fossil sources such as oil fields and coal beds.

(21) "Fuel type" or "Fuel pathway" means any unique fuel feedstock and production process combination.

(22) "Gasoline" has the same meaning as defined under OAR 603-027-0410.

(23) "Gasoline substitute" means any fuel, other than gasoline, that may be used in light-duty vehicles that typically use gasoline as a fuel. Gasoline substitutes include but are not limited to electricity used in a light-duty motor vehicle and natural gas used in a light-duty motor vehicle.

(24) "Heavy duty motor vehicle" has the same meaning as defined under OAR 340-256-0010.

(25) "Import" means to bring a blendstock or a finished fuel from outside Oregon into Oregon.

(26) "Importer" means the person who imports a blendstock or a finished fuel from outside Oregon into Oregon:

(a) With respect to any imported liquid fuel, it means the person who owns the fuel in the stationary storage tank into which the fuel was first transferred after it was imported into Oregon; or

(b) With respect to any biogas, it means the person who owns the imported biogas upon receipt at a pipeline in Oregon through which the biogas is delivered in Oregon.

(27) "Light-duty motor vehicle" has the same meaning as defined under OAR 340-256-0010.

(28) "Lifecycle greenhouse gas emissions" means the:

(a) Aggregate quantity of greenhouse gas emissions including direct and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels;

(b) Full fuel lifecycle including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the finished fuel by the consumer; and

(c) Mass values for all greenhouse gases as adjusted to account for their relative global warming potential.

(29) "Liquefied natural gas" means biogas or fossil natural gas converted to liquid form.

(30) "Liquefied petroleum gas" or "propane" has the same meaning as defined under OAR 603-027-0395.

(31) "Motor vehicles" has the same meaning as defined under OAR 603-027-0410.

(32) "Natural gas" means a mixture of gaseous hydrocarbons and other compounds from either fossil or biogas sources, with at least 80 percent methane by volume, and typically sold or distributed by utilities such as any utility company regulated by the Oregon Public Utility Commission.

(33) "Opt-in party" means a person who is not a regulated party and who elects to register with DEQ under OAR 340-253-0100(4).

(34) "Oregon producer" means:

(a) With respect to any liquid fuel, the person who makes the liquid blendstock or finished fuel at the Oregon production facility; or

(b) With respect to any biogas produced in Oregon, the person who refines the biogas to pipeline quality.

(35) "Oregon production facility" means a facility located in Oregon that:

(a) Produces any liquid blendstock or finished fuel other than liquefied natural gas; or

(b) Converts, compresses, liquefies, refines, treats or otherwise processes natural gas into compressed natural gas or liquefied natural gas that is ready for use as a transportation fuel in a motor vehicle without further physical or chemical processing.

(36) "OR-GREET" means the Greenhouse gases, Regulated Emissions, and Energy in Transportation (GREET) Argonne National Laboratory model modified and maintained for Oregon. Copies of OR-GREET are available from DEQ upon request.

(37) "Physical pathway" means the way a fuel is transported from the fuel producer to Oregon, including any combination of truck routes, rail lines, pipelines, marine vessels and any other transportation method.

(37) "Private access fueling facility" means an Oregon fueling facility that restricts access by use of a card or key-activated fuel dispensing device to dispensing fuel to nonretail customers.

(38) "Product transfer document" means an invoice, bill of lading, purchase contract, or any other proof of fuel ownership transfer.

(39) "Public access fueling facility" means an Oregon fueling facility that is not a private access fueling facility.

(40) "Regulated party" means a person identified as a regulated party under OAR 340-253-0310 through 340-253-0340. Regulated parties must comply with the requirements under OAR 340-253-0100.

(41) "Shortfall(s)" means a state in which the carbon intensity of a fuel is higher than the baseline carbon intensity value for gasoline and gasoline substitutes or diesel fuel and diesel substitutes. Shortfalls are expressed in units of metric tons of carbon dioxide equivalent (CO2e) and are calculated under OAR 340-253-1020.

(42) "Small Oregon importer" means any person who imports 250,000 gallons or less of fuel in a given calendar year into Oregon.

(43) "Surplus(es)" means a state in which the carbon intensity of a fuel is lower than the baseline carbon intensity value for gasoline or diesel fuel and their substitutes. Surpluses are expressed in units of metric tons of carbon dioxide equivalent (CO2e) and are calculated under OAR 340-253-1020.

(44) "Transportation fuel" means any fuel used or intended for use in motor vehicles as defined under OAR 603-027-0410.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0060
Acronyms

The following acronyms apply to this division:

(1) "ASTM" means ASTM International (formerly American Society for Testing and Materials).

(2) "BTU" means British thermal unit.

(3) "DEQ" means Oregon Department of Environmental Quality.

(4) "EQC" means Oregon Environmental Quality Commission.

(5) "FEIN" means federal employer identification number

(6) "gCO2e" means grams of carbon dioxide equivalent.

(7) "gge" means gasoline gallon equivalents.

(8) "MJ" means megajoule.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0100
Oregon Clean Fuels Program

(1) Applicability.

(a) All regulated parties under section (3) that import or produce in Oregon any regulated fuel, as defined under OAR 340-253-0200, are subject to this rule.

(b) Any person may become an opt-in party by registering with DEQ under section (4) of this rule. All opt-in parties under section (3) that import or produce in Oregon any opt-in fuel, as defined under OAR 340-253-0200, are subject to this rule.

(2) Requirements. Beginning January 1, 2013:

(a) Regulated and opt-in parties, except for small Oregon importers of finished fuels, must register under section (4) of this rule, keep records under section (5) of this rule, and submit reports under sections (6) and (7) of this rule; and

(b) Small Oregon importers of finished fuels must register under section (4) of this rule and are exempt from keeping records under section (5) of this rule and submitting reports under sections (6) and (7) of this rule.

(3) Regulated party or opt-in party. The following rules designate regulated and opt-in parties, by type of fuel:

(a) OAR 340-253-0310 for gasoline, diesel fuel, biodiesel, biomass-based diesel, ethanol, and any other liquid fuel except liquefied natural gas and liquefied petroleum gas;

(b) OAR 340-253-0320 for natural gas including compressed natural gas, liquefied natural gas, biogas and liquefied petroleum gas;

(c) OAR 340-253-0330 for electricity; and

(d) OAR 340-253-0340 for hydrogen fuel or a hydrogen blend.

(4) Registration.

(a) After January 1, 2013, but no later than June 30, 2013, each regulated party must submit a complete application under OAR 340-253-0500 to register with DEQ for each fuel type the party imports or produces in Oregon on or before July 1, 2013, and that it plans to continue to import or produce in Oregon after July 1, 2013.

(b) Beginning on July 1, 2013, each regulated party must submit a complete application under OAR 340-253-0500 to register with DEQ for each fuel type, on or before the date upon which it begins to import or produce in Oregon such fuel.

(c) To become an opt-in party a person must submit a complete application under OAR 340-253-0500 to register with DEQ.

(5) Records.

(a) Beginning on July 1, 2013, each regulated party must develop and retain all records required under OAR 340-253-0600.

(b) Beginning on the latter of either July 1, 2013, or the date that an opt-in party submits a complete application, as determined by DEQ, under subsection (4)(c) of this rule, each opt-in party must develop and retain all records required under OAR 340-253-0600.

(6) Quarterly report. Beginning on January 1, 2014, each regulated and opt-in party must submit quarterly reports under OAR 340-253-0630. Reports must be submitted to DEQ for:

(a) January through March of each year, by May 31;

(b) April through June of each year, by August 31;

(c) July through September of each year, by November 30; and

(d) October through December of each year, by February 28 of the following year.

(7) Annual report. Each regulated party and opt-in party must submit an annual report each year under OAR 340-253-0650. The report must be submitted to DEQ by April 30 of each year to report for the prior calendar year; except for 2013, when the reporting period is from July 1 through December 31.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0250

Exempt Fuels and Fuel Uses

(1) Exempt fuels. The following fuels are exempt from the definition of regulated fuels under OAR 340-253-0200(2)(h):

(a) A fuel supplied in Oregon if all providers supply an aggregate volume of less than 360,000 gge per year in Oregon. The party must:

(A) Demonstrate that the exemption applies; and

(B) Obtain exemption approval from DEQ in writing.

(b) A fuel produced from a research, development or demonstration facility as defined under OAR 330-090-0110 if the annual production volume is either 10,000 gallons or less, or no more than 50,000 gallons and the fuel producer uses the entire volume for its own motor vehicles. The party must:

(A) Demonstrate that the exemption applies; and

(B) Obtain exemption approval from DEQ in writing.

(2) Exempt fuels based on fuel uses. Fuels are exempt from the definition of regulated fuels under OAR 340-253-0200(2)(h) if:

(a) The fuel is supplied for use in the following motor vehicles:

(A) Aircraft;

(B) Racing activity vehicles under ORS 801.404;

(C) Military tactical vehicles and tactical support equipment;

(D) Railroad locomotives;

(E) Ocean-going vessels defined under OAR 856-010-0003, except for vessel under fishery or recreational endorsement under title 46 United States Code, chapter 121;

(F) Motor vehicles registered as farm vehicles under ORS 805.300;

(G) Farm tractors, as defined under ORS 801.265;

(H) Implements of husbandry, as defined under ORS 801.310; or

(I) Motor trucks, as defined under ORS 801.355, used primarily to transport logs; and

(b) The regulated or opt-in party documents that the fuel was supplied for use in a motor vehicle listed in subsection (a), as required under OAR 340-253-0600. Documentation that the fuel was transferred through a dedicated source to one of the motor vehicles identified in subsection (a) is sufficient. If not transferred through a dedicated source, all documentation must be on an individual fuel transaction basis.

(3) Fuel possession. Any fuel user or seller may possess any fuel regardless of its carbon intensity value, including but not limited to owners of the motor vehicles listed under subsection (2)(a).

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0310

Regulated Parties for Gasoline, Diesel Fuel, Biodiesel, Biomass-based Diesel and Ethanol and Other Regulated Fuels Except for Liquefied Natural Gas

(1) Applicability. This rule applies to all liquid blendstocks and liquid finished fuels listed under OAR 340-253-0200(2) except liquefied natural gas.

(2) Regulated party. The regulated party is the Oregon producer or importer of the fuel.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0320

Regulated Parties and Opt-in Parties for Compressed Natural Gas, Biogas, Liquefied Natural Gas and Liquefied Petroleum Gas

(1) Fossil compressed natural gas. For fossil compressed natural gas, the opt-in party is the owner of the fueling equipment at the facility where the fossil compressed natural gas is dispensed for use in motor vehicles.

(2) Biogas compressed natural gas. For biogas compressed natural gas that is dispensed directly into motor vehicles in Oregon without first being blended with fossil compressed natural gas, the opt-in party is the Oregon producer or importer of the biogas.

(3) Fossil liquefied natural gas. For fossil liquefied natural gas:

(a) For fuel that is a regulated fuel under OAR 340-253-0200(2)(c), the regulated party is the owner of the liquefied natural gas when it is transferred to the facility where the liquefied natural gas is dispensed for use into motor vehicles; or

(b) For fuel that is an opt-in fuel under OAR 340-253-0200(3)(e), the opt-in party is the owner of the liquefied natural gas when it is transferred to the facility where the liquefied natural gas is dispensed for use into motor vehicles.

(4) Biogas liquefied natural gas. For biogas liquefied natural gas that is dispensed directly into motor vehicles in Oregon without first being blended with fossil liquefied natural gas, the opt-in party is the Oregon producer or importer of the biogas liquefied natural gas.

(5) Biogas compressed natural gas added to fossil compressed natural gas. For blends of these fuels, the opt-in parties for each of the component fuel types of the blended fuel remains the same as provide in sections (1) through (4).

(6) Biogas liquefied natural gas added to fossil liquefied natural gas. For blends of these fuels, the regulated and opt-in parties for each of the component fuel types of the blended fuel remains the same as provide in sections (1) through (4).

(7) Liquefied petroleum gas. For liquefied petroleum gas, the opt-in party is the owner of the fueling equipment at the facility where the liquefied petroleum gas is dispensed for use into motor vehicles.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0340
Opt-in Parties for Hydrogen Fuel or Hydrogen Blends

Opt-in party. The opt-in party for a volume of finished hydrogen fuel is the Oregon producer or importer of the finished hydrogen fuel.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0400
Fuel Carbon Intensity Values

(1) Statewide carbon intensity values.

(a) A regulated or opt-in party must use the statewide average carbon intensity value in Table 1 or 2 under OAR 340-253-3010 or -3020, as applicable, for the following fuels:

(A) Clear gasoline;

(B) Gasoline blended with 10% ethanol;

(C) Clear diesel fuel;

(D) Diesel fuel blended with 5% biodiesel or biomass-based diesel;

(E) Compressed fossil natural gas derived from natural gas not imported to North America in liquefied form;

(F) Liquefied petroleum gas; and

(G) Electricity, unless an electricity provider meets the conditions under subsection (1)(b) and proposes a different carbon intensity value.

(b) The opt-in party for electricity may propose a carbon intensity value different from the statewide average carbon intensity value if the electricity provider:

(A) Only provides electricity for transportation; and

(B) Is exempt from the definition of public utility under ORS 757.005 (1)(b)(G), and is not regulated by the Oregon Public Utility Commission.

(c) Every three years, DEQ must review the statewide average carbon intensity values in Table 1 or 2 under OAR 340-253-3010 or -3020 and must:

(A) Consider the crude oil and other energy sources, production processes and flaring rates and other considerations that might affect the lifecycle carbon intensity of fuel used in Oregon; and

(B) Propose the EQC revise and update statewide average carbon intensity values in Table 1 or 2 under OAR 340-253-3010 or -3020 if DEQ determines that values should be changed by more than 5.0 gCO2e per MJ or 10 percent.

(2) Carbon intensity values for established pathways. Except as provided in section (3), regulated and opt-in parties must use the carbon intensity values for ethanol, biodiesel, biomass-based diesel, liquefied natural gas, biogas compressed natural gas, biogas liquefied natural gas, hydrogen, liquefied petroleum gas and any fossil compressed natural gas produced from natural gas that arrives in North America in liquefied form that best matches each fuel's carbon intensity, as listed in Table 1 or 2 under OAR 340-253-3010 or -3020, as applicable.

(3) Individual carbon intensity values.

(a) Directed by DEQ. A regulated or opt-in party must obtain an individual carbon intensity value for a fuel, if DEQ:

(A) Determines the fuel's carbon intensity is not adequately represented by any of the carbon intensity values for established pathways in Table 1 or 2 under OAR 340-253-3010 or -3020; and

(B) Directs the regulated or opt-in party to obtain an individual carbon intensity value under OAR 340-253-0450.

(b) Election of the party. A regulated or opt-in party may propose an individual carbon intensity value for a fuel if:

(A) The fuel's carbon intensity, when compared to the carbon intensity value for the most similar fuel type in Table 1 or 2 under OAR 340-253-3010 or -3020, as applicable, changes by at least 5.0 gCO2e per MJ or 10 percent;

(B) The party has the capacity and intent to provide more than one million gge per year of the fuel in Oregon unless all providers of that fuel type supply less than one million gge per year in total; and

(C) The party applies for and obtains DEQ approval under OAR 340-253-0450.

(c) New fuel or feedstock. A regulated or opt-in party must obtain approval for an individual carbon intensity value under OAR 340-253-0450 for any fuel not included in Table 1 or 2 under OAR 340-253-3010 or -3020 and for any fuel made from a feedstock not represented in a carbon intensity value in Table 1 or 2 under OAR 340-253-3010 or -3020. The party must submit a modification to the original registration under OAR 340-253-0500(5) within 30 days,

(d) Process change notification. The regulated or opt-in party must notify DEQ and obtain approval for an individual carbon intensity value under OAR 340-253-0450 for any changes to the fuel production process, if the fuel's carbon intensity value changes by more than 5.0 gCO2e per MJ or 10 percent. The party must submit a modification to the original registration under OAR 340-253-0500(5) within 30 days.

(4) OR-GREET. The regulated or opt-in party must calculate all carbon intensity values using the approved version of OR-GREET, or a DEQ-approved comparable model for any fuel that cannot be modeled with OR-GREET. Any variations from the approved version of OR-GREET must be documented as described under OAR 340-253-0450(1) and submitted to DEQ for approval.

(5) Calculation requirements. When a regulated or opt-in party calculates a carbon intensity value of:

(a) Fuels made from biomass feedstock, the party may assume that the combustion and growing components of the fuel's lifecycle greenhouse gas emissions have net zero lifecycle carbon dioxide emissions.

(b) Fuels made from petroleum feedstock, including waste petroleum feedstock, the party may not assume that the combustion of the fuel has net zero carbon dioxide emissions.

(c) Fuels made from waste feedstock, the party may assume that the lifecycle greenhouse gas emissions analysis of the carbon intensity value begins when the original product becomes waste.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0500
Registration

(1) Registration information. To register, a regulated or opt-in party must submit the following to DEQ:

(a) Company information including physical and mailing addresses, phone and fax numbers, e-mail addresses, primary and legal contact names and any applicable DEQ or EPA ID numbers.

(b) The fuel type(s) that will be imported or produced in Oregon.

(c) The producer of the biofuel, including each producer's physical address and the EPA company and facility ID numbers, for each fuel type.

(d) The proposed carbon intensity value, for each fuel type. The proposed carbon intensity value must be:

(A) A statewide carbon intensity value for any fuel listed under OAR 340-253-0400(1);

(B) An individual carbon intensity value listed in Table 1 or 2 under OAR 340-253-3010 or -3020; or

(C) An individual carbon intensity value under OAR 340-253-0450.

(e) The volume estimated to be imported or produced in Oregon in a calendar year, for each fuel type.

(f) Other information requested by DEQ related to registration.

(2) Completeness of submittal. DEQ must review the information submitted under section (1) to determine if the submission is complete.

(a) If DEQ determines the submission is incomplete, DEQ must notify the party of the information needed to complete the submission. The party must provide the requested information within 30 calendar days from the date on the request.

(b) If DEQ determines the submission is complete, DEQ must notify the party in writing of the completeness determination.

(c) If DEQ does not notify the party in writing of the completeness determination within 30 calendar days of receipt of the registration application, the application is automatically deemed complete.

(3) Determination of carbon intensity values. DEQ must review the proposed carbon intensity values to determine if they are accurate. DEQ must review proposed carbon intensity values as follows:

(a) For a proposed carbon intensity value listed in Table 1 or 2 under OAR 340-253-3010 or -3020, DEQ must review whether the fuel type accurately matches the fuel and fuel production process of the proposed carbon intensity value listed.

(b) For a proposed individual carbon intensity value, DEQ must approve the carbon intensity value or notify the party which carbon intensity value to use under OAR 340-253-0450.

(4) Registration approval. DEQ must notify the party in writing of its registration approval. The notification must include confirmation of the carbon intensity value for each fuel type to be used in calculating surpluses and shortfalls under OAR 340-253-1020.

(5) Modifications to registration.

(a) The party must submit an amended registration to DEQ within 30 days of any change occurring to information described in section (1), including any change that would result in a different carbon intensity value.

(b) DEQ may require a party to submit an amended registration based on new information that DEQ obtains from any source.

(6) Opting out. To opt-out, an opt-in party must notify DEQ in writing. Regulated parties may not opt-out.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0600
Records

(1) All regulated and opt-in parties, except for small Oregon importers of finished fuels. Each regulated and opt-in party, except for small Oregon importers of finished fuels, must retain the following records for at least five years:

(a) Copies of all data and reports submitted to DEQ;

(b) Records of each fuel transaction made including:

(A) Fuel name, choosing the most applicable name from a list developed and provided by DEQ,

(B) Fuel application, choosing the most applicable choice from a list developed and provided by DEQ;

(C) Fuel pathway code, choosing the most applicable code from a list developed and provided by DEQ;

(D) Transaction date;

(E) Transaction type, choosing the most applicable type from a list developed and provided by DEQ;

(F) Transaction quantity;

(i) In gallons for liquid fuels including gasoline, diesel fuel, ethanol, biomass-based diesel, liquefied natural gas and liquefied petroleum gas;

(ii) In standard cubic feet for compressed natural gas;

(iii) In kilowatt-hours for electricity; and

(iv) In kilograms for hydrogen fuel.

(G) Transaction identification number;

(H) Business partner, choosing the most applicable name from a list developed and provided by DEQ;

(I) Physical pathway code, choosing the most applicable code from a list developed and provided by DEQ;

(J) Product transfer documents;

(K) Exempt status documentation under OAR 340-253-0250, if fuel is excluded from surplus and shortfall calculations under OAR 340-253-1010; and

(L) For fuel that is exported outside Oregon, where the party is the exporter of record.

(c) Records used to calculate surpluses and shortfalls;

(d) Other records used to determine compliance with the Oregon Clean Fuels Program; and

(e) Any other records identified by DEQ and related to the volume, distribution or carbon content of fuel produced or imported by a party.

(2) Oregon producers and importers of one or more non-petroleum blendstocks. In addition to section (1), each Oregon producer and importer of one or more non-petroleum blendstocks must retain the following records for at least five years:

(a) DEQ-approved carbon intensity, for each fuel type, choosing the most appropriate choice from a list developed and provided by DEQ;

(b) Name of the biofuel producer, including each producer's physical address, EPA company ID and facility ID number, for each fuel type, choosing the most appropriate choice from a list developed and provided by DEQ; and

(3) Review. All data, records and calculations used by a regulated or opt-in party to comply with the Oregon Clean Fuels Program are subject to verification by DEQ. The party must provide records retained under section (1) within 60 calendar days after the date DEQ requests a review of the records, unless otherwise specified.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

40-253-0630
Quarterly Reports

Quarterly reports must include the following information, in a format provided or approved by DEQ:

(1) For each fuel type imported or produced in Oregon:

(a) Total volume; and

(b) DEQ-approved carbon intensity.

(2) Surpluses and shortfalls as calculated under OAR 340-253-1020, including the;

(a) Amount of surpluses and shortfalls generated during the quarter; and

(b) Quarterly and year-to-date net balance calculations under OAR 340-253-1030 for gasoline and gasoline substitutes and diesel and diesel substitutes.

(3) The volumes of any exempt fuels or fuels transferred to exempt users under OAR 340-253-0250; and

(4) Volumes exported outside Oregon.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-0650
Annual Reports

Annual reports must include the following information, in a format provided or approved by DEQ:

(1) Company name of the regulated or opt-in party;

(2) For each fuel type imported or produced in Oregon during the calendar year:

(a) Total volume; and

(b) DEQ-approved carbon intensity.

(3) Surpluses or shortfalls as calculated under OAR 340-253-1020, including the;

(a) Amount of surpluses and shortfalls carried over from the previous year; and

(b) Amount of surpluses and shortfalls generated during the year.

(4) Net balance calculations under OAR 340-253-1030 for gasoline and gasoline substitutes and diesel and diesel substitutes;

(5) The volumes of any exempt fuels or fuels transferred to exempt users under OAR 340-253-0250; and

(6) Volumes exported outside Oregon.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-3000
Tables used for the Oregon Clean Fuels Program

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-3010
Table 1 — Oregon Carbon Intensity Lookup Table for Gasoline and Gasoline Substitutes

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

340-253-3020
Table 2 — Oregon Carbon Intensity Lookup Table for Diesel Fuel and Diesel Substitutes

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14

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Rule Caption: Corrections and Clarifications to Toxics Water Quality Standards
Adm. Order No.: DEQ 16-2013
Filed with Sec. of State: 12-23-2013
Certified to be Effective: 12-23-13
Notice Publication Date: 9-1-2013
Rules Amended: 340-040-0020, 340-040-0080, 340-041-0009
Subject: The EQC amended Bacteria and Groundwater rules to correct reference errors based on the repeal of Table 20. These rules now

generally reference the toxics criteria values contained in the Toxic Substances rule rather than citing specific table numbers.
Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-040-0020
General Policies

(1) Groundwater is a critical natural resource providing domestic, industrial, and agricultural water supply; and other legitimate beneficial uses; and also providing base flow for rivers, lakes, streams, and wetlands.

(2) Groundwater, once polluted, is difficult and sometimes impossible to clean up. Therefore, the EQC shall employ an anti-degradation policy to emphasize the prevention of groundwater pollution, and to control waste discharges to groundwater so that the highest possible water quality is maintained.

(3) All groundwaters of the state shall be protected from pollution that could impair existing or potential beneficial uses for which the natural water quality of the groundwater is adequate. Among the recognized beneficial uses of groundwater, domestic water supply is recognized as being the use that would usually require the highest level of water quality. Existing high quality groundwaters which exceed those levels necessary to support recognized and legitimate beneficial uses shall be maintained except as provided for in these rules.

(4) Numerical groundwater quality reference levels and guidance levels are listed in Tables 1 through 3 of this Division. These levels have been obtained from the Safe Drinking Water Act, and indicate when groundwater may not be suitable for human consumption or when the aesthetic quality of groundwater may be impaired. They will be used by the Department and the public to evaluate the significance of a particular contaminant concentration, and will trigger necessary regulatory action. These levels should not be construed as acceptable groundwater quality goals because it is the policy of the EQC to maintain and preserve the highest possible water quality.

(5) For pollutant parameters for which numerical groundwater quality reference levels or guidance levels have not been established, or for evaluating adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses. Such information shall include, but not be limited to, values set forth in OAR 340-041-0033.

(6) The Department shall develop, implement and conduct a comprehensive groundwater quality protection program. The program shall contain strategies and methods for problem prevention, problem abatement and the control of both point and nonpoint sources of groundwater pollution. The Department shall seek the assistance of federal, state, and local governments in implementing the program.

(7) In order to assure maximum reasonable protection of public health, the public shall be informed that groundwater, and most particularly local flow systems or water table aquifers, may not be suitable for human consumption due either to natural or human-caused pollution problems, and shall not be assumed to be safe for domestic use unless quality testing demonstrates a safe supply. The Department shall work cooperatively with the Water Resources Department and the Health Division in identifying areas where groundwater pollution may affect beneficial uses.

(8) It is the policy of the EQC that groundwater quality be protected throughout the state. The Department will concentrate its groundwater quality protection implementation efforts in areas where practices and activities have the greatest potential for degrading groundwater quality, and where potential groundwater quality pollution would have the greatest adverse impact on beneficial uses.

(9) The Department, as lead agency for groundwater quality protection, shall work cooperatively with the Water Resources Department, the lead agency for groundwater quantity management, to characterize the physical and chemical characteristics of the aquifers of the state. The Department will seek the assistance and cooperation of the Water Resources Department to design an ambient monitoring program adequate to determine representative groundwater quality for significant groundwater flow systems. The Department shall assist and cooperate with the Water Resources Department in its groundwater studies. The Department shall also seek the advice, assistance, and cooperation of local, state, and federal agencies to identify and resolve ground-water quality problems.

(10) It is the intent of the EQC to see that groundwater problems associated with areawide on-site sewage disposal are corrected by developing and implementing areawide abatement plans. In order to accomplish this, all available and appropriate statutory and administrative authorities will be utilized, including but not limited to: permits, special permit conditions, penalties, fines, EQC orders, compliance schedules, moratoriums, Department orders, and geographic area rules (OAR 340-071-0400). It is recognized, however, that in some cases the identification, evaluation and implementation of abatement measures may take time and that continued degradation may occur while the plan is being developed and implemented. The EQC may allow short-term continued degradation only if the beneficial uses, public health, and groundwater resources are not significantly affected, and only if the approved abatement plan is being implemented on a schedule approved by the Department.

(11) In order to minimize groundwater quality degradation potentially resulting from point source activities, point sources shall employ the highest and best practicable methods to prevent the movement of pollutants to groundwater. Among other factors, available technologies for treatment and waste reduction, cost effectiveness, site characteristics, pollutant toxicity and persistence, and state and federal regulations shall be considered in arriving at a case-by-case determination of highest and best practicable methods that protect public health and the environment.

(12) In regulating point source activities that could result in the disposal of wastes onto or into the ground in a manner which allows potential movement of pollutants to groundwater, the Department shall utilize all available and appropriate statutory and administrative authorities, including but not limited to: permits, fines, EQC orders, compliance schedules, moratoriums, Department orders, and geographic area rules. Groundwater quality protection requirements shall be implemented through the Department's Water Pollution Control Program, Solid Waste Disposal Program, On-Site Sewage Disposal System Construction Program, Hazardous Waste Facility (RCRA) Program, Underground Injection Control Program, Emergency Spill Response Program, or other programs, whichever is appropriate.

Stat. Auth.: ORS 468 & 468B
Stats. Implemented: ORS 468.020, 468.035, 468B.155 & 468B.165
Hist.: DEQ 24-1981, f. & ef. 9-8-81; DEQ 13-1984, f. & ef. 7-13-84; DEQ 27-1989, f. & cert. ef. 10-27-89, Renumbered from 340-041-0029; DEQ 4-1996, f. & cert. ef. 3-7-96; DEQ 16-2013, f. & cert. ef. 12-23-13

340-040-0080
Numerical Groundwater Quality Reference Levels and Guidance Levels

(1) The numerical groundwater quality reference levels and guidance levels contained in **Tables 1** through **3** of this Division are to be considered by the Department and the public in weighing the significance of a particular chemical concentration, and in determining the level of remedial action necessary to restore contaminated groundwater for human consumption. They are not to be construed as acceptable groundwater quality management goals. They are to be used by the Director and the EQC in establishing permit-specific and remedial action concentration limits according to the requirements of OAR 340-040-0030 through 340-040-0060.

(2) The Department shall periodically review information as it becomes available for establishing new numerical groundwater quality reference levels and guidance levels, and to ensure consistency with other statutorily mandated standards.

(3) Human consumption is recognized as the highest and best use of groundwater, and the use which usually requires the highest level of water quality. The numerical groundwater quality reference levels listed in Tables 1 and 2 of this Division reflect the suitability of groundwater for human consumption.

(4) The numerical groundwater quality guidance levels listed in **Table 3** of this Division are for contaminants which do not adversely impact human health at the given concentrations. At considerably higher concentrations, human health implications may exist. These guidance levels are for contaminants that primarily affect the aesthetic qualities relating to the public acceptance of drinking water. The aesthetic degradation of groundwater may impair its beneficial use.

(5) For pollutant parameters for which numerical groundwater quality reference levels or guidance levels have not been established and listed in **Tables 1** through **3**, or for evaluating adverse impacts on beneficial uses other than human consumption, the Department shall make use of the most current and scientifically valid information available in determining at what levels pollutants may affect present or potential beneficial uses. Such information shall include, but not be limited to, values set forth in OAR 340-041-0033.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468 & 468B
Stats. Implemented: ORS 468.020, 468.035, 468B.155 & 468B.165
Hist.: DEQ 24-1981, f. & ef. 9-8-81; DEQ 13-1984, f. & ef. 7-13-84; DEQ 27-1989, f. & cert. ef. 10-27-89, Renumbered from 340-041-0029; DEQ 16-2013, f. & cert. ef. 12-23-13

340-041-0009
Bacteria

(1) Numeric Criteria: Organisms of the coliform group commonly associated with fecal sources (MPN or equivalent membrane filtration using a representative number of samples) may not exceed the criteria described in paragraphs (a) and (b) of this paragraph:

(a) Freshwaters and Estuarine Waters Other than Shellfish Growing Waters:

(A) A 30-day log mean of 126 E. coli organisms per 100 milliliters, based on a minimum of five (5) samples;

(B) No single sample may exceed 406 E. coli organisms per 100 milliliters.

(b) Marine Waters and Estuarine Shellfish Growing Waters: A fecal coliform median concentration of 14 organisms per 100 milliliters, with not more than ten percent of the samples exceeding 43 organisms per 100 ml.

(2) Raw Sewage Prohibition: No sewage may be discharged into or in any other manner be allowed to enter the waters of the State, unless such sewage has been treated in a manner approved by the Department or otherwise allowed by these rules;

(3) Animal Waste: Runoff contaminated with domesticated animal wastes must be minimized and treated to the maximum extent practicable before it is allowed to enter waters of the State;

(4) Bacterial pollution or other conditions deleterious to waters used for domestic purposes, livestock watering, irrigation, bathing, or shellfish propagation, or otherwise injurious to public health may not be allowed;

(5) Effluent Limitations for Bacteria: Except as allowed in subsection (c) of this section, upon NPDES permit renewal or issuance, or upon request for a permit modification by the permittee at an earlier date, effluent discharges to freshwaters, and estuarine waters other than shellfish growing waters may not exceed a monthly log mean of 126 E. coli organisms per 100 ml. No single sample may exceed 406 E. coli organisms per 100 ml. However, no violation will be found, for an exceedance if the permittee takes at least five consecutive re-samples at four-hour intervals beginning as soon as practicable (preferably within 28 hours) after the original sample was taken and the log mean of the five re-samples is less than or equal to 126 E. coli. The following conditions apply:

(a) If the Department finds that re-sampling within the timeframe outlined in this section would pose an undue hardship on a treatment facility, a more convenient schedule may be negotiated in the permit, provided that the permittee demonstrates that the sampling delay will result in no increase in the risk to water contact recreation in waters affected by the discharge;

(b) The aquatic life criteria for chlorine established in the water quality toxic substances rule under OAR 340-041-0033 must be met at all times outside the assigned mixing zone;

(c) For sewage treatment plants that are authorized to use recycled water pursuant to OAR 340, division 55, and that also use a storage pond as a means to dechlorinate their effluent prior to discharge to public waters, effluent limitations for bacteria may, upon request by the permittee, be based upon appropriate total coliform limits as required by OAR 340, division 55:

(i) Class C limitations: No two consecutive samples may exceed 240 total coliform per 100 milliliters.

(ii) Class A and Class B limitations: No single sample may exceed 23 total coliform per 100 milliliters.

(iii) No violation will be found for an exceedance under this paragraph if the permittee takes at least five consecutive re-samples at four hour intervals beginning as soon as practicable (preferably within 28 hours) after the original sample(s) were taken; and in the case of Class C recycled water, the log mean of the five re-samples is less than or equal to 23 total coliform per 100 milliliters or, in the case of Class A and Class B recycled water, if the log mean of the five re-samples is less than or equal to 2.2 total coliform per 100 milliliters.

(6) Sewer Overflows in winter: Domestic waste collection and treatment facilities are prohibited from discharging raw sewage to waters of the State during the period of November 1 through May 21, except during a storm event greater than the one-in-five-year, 24-hour duration storm. However, the following exceptions apply:

(a) The Commission may on a case-by-case basis approve a bacteria control management plan to be prepared by the permittee, for a basin or specified geographic area which describes hydrologic conditions under which the numeric bacteria criteria would be waived. These plans will identify the specific hydrologic conditions, identify the public notification and education processes that will be followed to inform the public about an event and the plan, describe the water quality assessment conducted to determine bacteria sources and loads associated with the specified hydrologic conditions, and describe the bacteria control program that is being implemented in the basin or specified geographic area for the identified sources;

(b) Facilities with separate sanitary and storm sewers existing on January 10, 1996, and which currently experience sanitary sewer overflows due to inflow and infiltration problems, must submit an acceptable plan to the Department at the first permit renewal, which describes actions that will be taken to assure compliance with the discharge prohibition by January 1, 2010. Where discharges occur to a receiving stream with sensitive beneficial uses, the Department may negotiate a more aggressive schedule for discharge elimination;

(c) On a case-by-case basis, the beginning of winter may be defined as October 15, if the permittee so requests and demonstrates to the Department's satisfaction that the risk to beneficial uses, including water contact recreation, will not be increased due to the date change.

(7) Sewer Overflows in summer: Domestic waste collection and treatment facilities are prohibited from discharging raw sewage to waters of the State during the period of May 22 through October 31, except during a storm event greater than the one-in-ten-year, 24-hour duration storm. The following exceptions apply:

(a) For facilities with combined sanitary and storm sewers, the Commission may on a case-by-case basis approve a bacteria control management plan such as that described in subsection (6)(a) of this rule;

(b) On a case-by-case basis, the beginning of summer may be defined as June 1 if the permittee so requests and demonstrates to the Department's satisfaction that the risk to beneficial uses, including water contact recreation, will not be increased due to the date change;

(c) For discharge sources whose permit identifies the beginning of summer as any date from May 22 through May 31: If the permittee demonstrates to the Department's satisfaction that an exceedance occurred between May 21 and June 1 because of a sewer overflow, and that no increase in risk to beneficial uses, including water contact recreation, occurred because of the exceedance, no violation may be triggered, if the storm associated with the overflow was greater than the one-in-five-year, 24-hour duration storm.

(8) Storm Sewers Systems Subject to Municipal NPDES Stormwater Permits: Best management practices must be implemented for permitted storm sewers to control bacteria to the maximum extent practicable. In addition, a collection-system evaluation must be performed prior to permit issuance or renewal so that illicit and cross connections are identified. Such connections must be removed upon identification. A collection system evaluation is not required where the Department determines that illicit and cross connections are unlikely to exist.

(9) Storm Sewers Systems Not Subject to Municipal NPDES Stormwater Permits: A collection system evaluation must be performed of non-permitted storm sewers by January 1, 2005, unless the Department determines that an evaluation is not necessary because illicit and cross connections are unlikely to exist. Illicit and cross-connections must be removed upon identification.

(10) Water Quality Limited for Bacteria: In those water bodies, or segments of water bodies identified by the Department as exceeding the relevant numeric criteria for bacteria in the basin standards and designated as water-quality limited under section 303(d) of the Clean Water Act, the requirements specified in section 11 of this rule and in OAR 340-041-0061(11) must apply.

(11) In water bodies designated by the Department as water-quality limited for bacteria, and in accordance with priorities established by the Department, development and implementation of a bacteria management plan may be required of those sources that the Department determines to be contributing to the problem. The Department may determine that a plan is not necessary for a particular stream segment or segments within a water-quality limited basin based on the contribution of the segment(s) to the problem. The bacteria management plans will identify the technologies, best management practices and/or measures and approaches to be implemented by point and nonpoint sources to limit bacterial contamination. For point sources, their National Pollutant Discharge Elimination System permit is their bacteria management plan. For nonpoint sources, the bacteria management plan will be developed by designated management agencies (DMAs) which will identify the appropriate best management practices or measures and approaches.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048
Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 6-2008, f. & cert. ef. 5-5-08; DEQ 10-2011, f. & cert. ef. 7-13-11; DEQ 16-2013, f. & cert. ef. 12-23-13

Rule Caption: Corrections and Clarifications to Toxics Water Quality Standards
Adm. Order No.: DEQ 17-2013
Filed with Sec. of State: 12-23-2013
Certified to be Effective: 4-18-14
Notice Publication Date: 9-1-2013
Rules Amended: 340-041-0033
Subject: The EQC amended water quality standards rules for toxic substances to correct and clarify the standards. Revisions to water quality standards require EPA approval before the revisions become effective for Clean Water Act programs.

The rules include the following:

Correct several toxic pollutant criteria that EPA recently disapproved and address other minor revisions to the Toxic Substances rule. EPA disapproved criteria for 11 pesticides based on potentially conflicting information in regards to how the frequency and duration components of these criteria are expressed. DEQ expects that clarifying this aspect of the criteria will lead to EPA approval of 36 pesticide criteria values associated with 11 pesticides.

Correct an error in the expression of freshwater selenium criteria.

Re-propose freshwater and saltwater arsenic criteria and chromium VI saltwater criteria that were inadvertently left off the criteria table during a 2007 rulemaking.

Correct typographical errors made during the 2011 Human Health Toxics Rulemaking.

Move all effective aquatic life criteria from Tables 20, 33A, and 33B into a new aquatic life criteria table, Table 30, and to refer to the new table in the Toxic Substances rule language. As a result, Tables 20, 33A, and 33B are no longer needed and would be repealed under this proposal.

Delete aluminum from Table 30 to reflect EPA's disapproval of the freshwater criteria for aluminum because the disapproval renders the criteria ineffective and there are no other criteria for aluminum. DEQ anticipates adopting revised freshwater criteria for aluminum in a future rulemaking process.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-041-0033
Toxic Substances

(1) Amendments to sections (1-5) and (7) of this rule (OAR 340-041-0033) and associated revisions to Tables 20, 33A, 33B, 33C, and 40 become effective on April 18, 2014. The amendments do not become applicable for purposes of ORS chapter 468B or the federal Clean Water Act, however, unless approved by EPA pursuant to 40 CFR 131.21 (4/27/2000).

(2) Toxic Substances Narrative. Toxic substances may not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations that may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare or aquatic life, wildlife, or other designated beneficial uses.

(3) Aquatic Life Numeric Criteria. Levels of toxic substances in waters of the state may not exceed the applicable aquatic life criteria listed in Table 30.

(4) Human Health Numeric Criteria. The criteria for waters of the state listed in Table 40 are established to protect Oregonians from potential adverse health effects associated with long-term exposure to toxic substances associated with consumption of fish, shellfish, and water.

(5) To establish permit or other regulatory limits for toxic substances for which criteria are not included in Table 30 or Table 40, the department may use the guidance values in Table 31, public health advisories, and other published scientific literature. The department may also require or conduct bio-assessment studies to monitor the toxicity to aquatic life of complex effluents, other suspected discharges, or chemical substances without numeric criteria.

(6) Establishing Site-Specific Background Pollutant Criteria: This provision is a performance based water quality standard that results in site-specific human health water quality criteria under the conditions and procedures specified in this rule section. It addresses existing permitted discharges of a pollutant removed from the same body of water. For waterbodies where a discharge does not increase the pollutant's mass and does not increase the pollutant concentration by more than 3%, and where the water body meets a pollutant concentration associated with a risk level of 1 x 10-4, DEQ concludes that the pollutant concentration continues to protect human health.

(a) Definitions: For the purpose of this section (OAR 340-041-0033(6)):

(A) "Background pollutant concentration" means the ambient water body concentration immediately upstream of the discharge, regardless of whether those pollutants are natural or result from upstream human activity.

(B) An "intake pollutant" is the amount of a pollutant that is present in public waters (including groundwater) as provided in subsection (C), below, at the time it is withdrawn from such waters by the discharger or other facility supplying the discharger with intake water.

(C) "Same body of water": An intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(i) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

(ii) There is a direct hydrological connection between the intake and discharge points; and

(I) The department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(II) An intake pollutant from groundwater may be considered to be from the "same body of water" if the department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to past or present human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes.

(iii) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

(b) Applicability

(A) Site-specific criteria may be established under this rule section only for carcinogenic pollutants.

(B) Site-specific criteria established under this rule section apply in the vicinity of the discharge for purposes of establishing permit limits for the specified permittee.

(C) The underlying waterbody criteria continue to apply for all other Clean Water Act programs.

(D) The site-specific background pollutant criterion will be effective upon department issuance of the permit for the specified permittee.

(E) Any site-specific criteria developed under this procedure will be re-evaluated upon permit renewal.

(c) A site-specific background pollutant criterion may be established where all of the following conditions are met:

(A) The discharger has a currently effective NPDES permit;

(B) The mass of the pollutant discharged to the receiving waterbody does not exceed the mass of the intake pollutant from the same body of water, as defined in section (6)(a)(C) above, and, therefore, does not increase the total mass load of the pollutant in the receiving water body;

(C) The discharger has not been assigned a TMDL wasteload allocation for the pollutant in question;

(D) The permittee uses any feasible pollutant reduction measures available and known to minimize the pollutant concentration in their discharge;

(E) The pollutant discharge has not been chemically or physically altered in a manner that causes adverse water quality impacts that would not occur if the intake pollutants were left in-stream; and,

(F) The timing and location of the pollutant discharge would not cause adverse water quality impacts that would not occur if the intake pollutant were left in-stream.

(d) The site-specific background pollutant criterion must be the most conservative of the following four values. The procedures deriving these values are described in the sections (6)(e) of this rule.

(A) The projected in-stream pollutant concentration resulting from the current discharge concentration and any feasible pollutant reduction measures under (c)(D) above, after mixing with the receiving stream.

(B) The projected in-stream pollutant concentration resulting from the portion of the current discharge concentration associated with the intake pollutant mass after mixing with the receiving stream. This analysis ensures that there will be no increase in the mass of the intake pollutant in the receiving water body as required by condition (c)(B) above.

(C) The projected in-stream pollutant concentration associated with a 3% increase above the background pollutant concentration as calculated:

(i) For the mainstem Willamette and Columbia Rivers, using 25% of the harmonic mean flow of the waterbody.

(ii) For all other waters, using 100% of the harmonic mean flow or similar critical flow value of the waterbody.

(D) A criterion concentration value representing a human health risk level of 1 x 10-4. This value is calculated using EPA's human health criteria derivation equation for carcinogens (EPA 2000), a risk level of 1 x 10-4, and the same values for the remaining calculation variables that were used to derive the underlying human health criterion.

(e) Procedure to derive a site-specific human health water quality criterion to address a background pollutant:

(A) The department will develop a flow-weighted characterization of the relevant flows and pollutant concentrations of the receiving waterbody, effluent and all facility intake pollutant sources to determine the fate and transport of the pollutant mass.

(i) The pollutant mass in the effluent discharged to a receiving waterbody may not exceed the mass of the intake pollutant from the same body of water.

(ii) Where a facility discharges intake pollutants from multiple sources that originate from the receiving waterbody and from other waterbodies, the department will calculate the flow-weighted amount of each source of the pollutant in the characterization.

(iii) Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration and mass of the intake water pollutant shall be determined at the point where the water enters the water supplier's distribution system.

(B) Using the flow weighted characterization developed in Section (6)(e)(A), the department will calculate the in-stream pollutant concentration following mixing of the discharge into the receiving water. The resultant concentration will be used to determine the conditions in Section (6)(d)(A) and (B).

(C) Using the flow weighted characterization, the department will calculate the in-stream pollutant concentration based on an increase of 3% above background pollutant concentration. The resultant concentration will be used to determine the condition in Section (6)(d)(C).

(i) For the mainstem Willamette and Columbia Rivers, 25% of the harmonic mean flow of the waterbody will be used.

(ii) For all other waters, 100% of the harmonic mean flow or similar critical flow value of the waterbody will be used.

(D) The department will select the most conservative of the following values as the site-specific water quality criterion.

(i) The projected in-stream pollutant concentration described in Section 6(e)(B);

(ii) The in-stream pollutant concentration based on an increase of 3% above background described in Section (6)(e)(C); or

(iii) A water quality criterion based on a risk level of 1 x 10-4.

(f) Calculation of water quality based effluent limits based on a site-specific background pollutant criterion:

(A) For discharges to receiving waters with a site-specific background pollutant criterion, the department will use the site-specific criterion in the calculation of a numeric water quality based effluent limit.

(B) The department will compare the calculated water quality based effluent limits to any applicable aquatic toxicity or technology based effluent limits and select the most conservative for inclusion in the permit conditions.

(g) In addition to the water quality based effluent limits described in Section (6)(f), the department will calculate a mass-based limit where necessary to ensure that the condition described in Section (6)(c)(B) is met. Where mass-based limits are included, the permit shall specify how compliance with mass-based effluent limitations will be assessed.

(h) The permit shall include a provision requiring the department to consider the re-opening of the permit and re-evaluation of the site-specific background pollutant criterion if new information shows the discharger no longer meets the conditions described in subsections (6)(c) and (e).

(i) Public Notification Requirements.

(A) If the department proposes to grant a site-specific background pollutant criterion, it must provide public notice of the proposal and hold a public hearing. The public notice may be included in the public notification of a draft NPDES permit or other draft regulatory decision that would rely on the criterion and will also be published on the water quality standards website;

(B) The department will publish a list of all site-specific background pollutant criteria approved pursuant to this rule. A criterion will be added to this list within 30 days of its effective date. The list will identify: the permittee; the site-specific background pollutant criterion and the associated risk level; the waterbody to which the criterion applies; the allowable pollutant effluent limit; and how to obtain additional information about the criterion.

(7) Arsenic Reduction Policy: The inorganic arsenic criterion for the protection of human health from the combined consumption of organisms and drinking water is 2.1 micrograms per liter. While this criterion is protective of human health and more stringent than the federal maximum contaminant level (MCL) for arsenic in drinking water, which is 10 micrograms per liter, it nonetheless is based on a higher risk level than the Commission has used to establish other human health criteria. This higher risk level recognizes that much of the risk is due to naturally high levels of inorganic arsenic in Oregon's waterbodies. In order to maintain the lowest human health risk from inorganic arsenic in drinking water, the Commission has determined that it is appropriate to adopt the following policy to limit the human contribution to that risk.

(a) The arsenic reduction policy established by this rule section does not become applicable for purposes of ORS chapter 468B or the federal Clean Water Act unless and until the numeric arsenic criteria established by this rule are approved by EPA pursuant to 40 CFR 131.21 (4/27/2000).

(b) It is the policy of the Commission that the addition of inorganic arsenic from new or existing anthropogenic sources to waters of the state within a surface water drinking water protection area be reduced the maximum amount feasible. The requirements of this rule section (OAR 340-041-0033(7)) apply to sources that discharge to surface waters of the state with an ambient inorganic arsenic concentration equal to or lower than the applicable numeric inorganic arsenic criteria for the protection of human health.

(c) The following definitions apply to this section (OAR 340-041-0033(7)):

(A) "Add inorganic arsenic" means to discharge a net mass of inorganic arsenic from a point source (the mass of inorganic arsenic discharged minus the mass of inorganic arsenic taken into the facility from a surface water source).

(B) A "surface water drinking water protection area," for the purpose of this section, means an area delineated as such by DEQ under the source water assessment program of the federal Safe Drinking Water Act, 42 U.S.C.¦ 300j 13. The areas are delineated for the purpose of protecting public or community drinking water supplies that use surface water sources. These delineations can be found at DEQ's drinking water program website.

(C) "Potential to significantly increase inorganic arsenic concentrations in the public drinking water supply source water" means:

(i) to increase the concentration of inorganic arsenic in the receiving water for a discharge by 10 percent or more after mixing with the harmonic mean flow of the receiving water; or

(ii) as an alternative, if sufficient data are available, the discharge will increase the concentration of inorganic arsenic in the surface water intake water of a public water system by 0.021 micrograms per liter or more based on a mass balance calculation.

(d) Following the effective date of this rule, applications for an individual NPDES permit or permit renewal received from industrial dischargers located in a surface water drinking water protection area and identified by DEQ as likely to add inorganic arsenic to the receiving water must include sufficient data to enable DEQ to determine whether:

(A) The discharge in fact adds inorganic arsenic; and

(B) The discharge has the potential to significantly increase inorganic arsenic concentrations in the public drinking water supply source water.

(e) Where DEQ determines that both conditions in subsection (d) of this section (7) are true, the industrial discharger must develop an inorganic arsenic reduction plan and propose all feasible measures to reduce its inorganic arsenic loading to the receiving water. The proposed plan, including proposed measures, monitoring and reporting requirements, and a schedule for those actions, will be described in the fact sheet and incorporated into the source's NPDES permit after public comment and DEQ review and approval. In developing the plan, the source must:

(A) Identify how much it can minimize its inorganic arsenic discharge through pollution prevention measures, process changes, wastewater treat-

ment, alternative water supply (for groundwater users) or other possible pollution prevention and/or control measures;

(B) Evaluate the costs, feasibility and environmental impacts of the potential inorganic arsenic reduction and control measures;

(C) Estimate the predicted reduction in inorganic arsenic and the reduced human health risk expected to result from the control measures;

(D) Propose specific inorganic arsenic reduction or control measures, if feasible, and an implementation schedule; and

(E) Propose monitoring and reporting requirements to document progress in plan implementation and the inorganic arsenic load reductions.

(f) In order to implement this section, DEQ will develop the following information and guidance within 120 days of the effective date of this rule and periodically update it as warranted by new information:

(A) A list of industrial sources or source categories, including industrial stormwater and sources covered by general permits, that are likely to add inorganic arsenic to surface waters of the State.

(i) For industrial sources or source categories permitted under a general permit that have been identified by DEQ as likely sources of inorganic arsenic, DEQ will evaluate options for reducing inorganic arsenic during permit renewal or evaluation of Stormwater Pollution Control Plans.

(B) Quantitation limits for monitoring inorganic arsenic concentrations.

(C) Information and guidance to assist sources in estimating, pursuant to subsection (e)(C) of this section, the reduced human health risk expected to result from inorganic arsenic control measures based on the most current EPA risk assessment.

(g) It is the policy of the Commission that landowners engaged in agricultural or development practices on land where pesticides, fertilizers, or soil amendments containing arsenic are currently being or have previously been applied, implement conservation practices to minimize the erosion and runoff of inorganic arsenic to waters of the State or to a location where such material could readily migrate into waters of the State.

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

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04; DEQ 17-2010, f. & cert. ef. 12-21-10; DEQ 8-2011, f. & cert. ef. 6-30-11; DEQ 10-2011, f. & cert. ef. 7-13-11; DEQ 17-2013, f. 12-23-13, cert. ef. 4-18-14

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Rule Caption: Updates to OAR Chapter 340, Divisions 11, 12 and 200

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Rules Amended: 340-011-0005, 340-011-0010, 340-011-0024, 340-011-0029, 340-011-0046, 340-011-0053, 340-011-0061, 340-011-0310, 340-011-0330, 340-011-0340, 340-011-0360, 340-011-0370, 340-011-0380, 340-011-0390, 340-011-0500, 340-011-0510, 340-011-0515, 340-011-0520, 340-011-0525, 340-011-0530, 340-011-0535, 340-011-0540, 340-011-0545, 340-011-0550, 340-011-0555, 340-011-0565, 340-011-0570, 340-011-0573, 340-011-0575, 340-011-0580, 340-011-0585, 340-012-0026, 340-012-0028, 340-012-0030, 340-012-0038, 340-012-0041, 340-012-0045, 340-012-0053, 340-012-0054, 340-012-0055, 340-012-0060, 340-012-0065, 340-012-0066, 340-012-0067, 340-012-0068, 340-012-0071, 340-012-0072, 340-012-0073, 340-012-0074, 340-012-0079, 340-012-0081, 340-012-0082, 340-012-0083, 340-012-0097, 340-012-0130, 340-012-0135, 340-012-0140, 340-012-0145, 340-012-0150, 340-012-0155, 340-012-0160, 340-012-0162, 340-012-0165, 340-012-0170, 340-200-0040

Rules Repealed: 340-011-0605, 340-012-0027

Subject: The EQC adopted the following changes to chapter 340 of the Oregon Administrative Rules.

Division 011 amendments:

• Align with the Oregon Attorney General Model Rules under OAR 340-003-0501 through 0690. The Model Rules that apply to Environmental Quality Commission proceedings became effective Jan. 31, 2012.

• Address procedures for filing and serving documents in contested cases and other general contested case proceedings.

• Establish a new fee for onsite septic system program public records requests. This would allow DEQ to recover the costs of fulfilling such requests.

• Repeal OAR 340-011-0605 that became obsolete in 2007 with the passage of Measure 49. Measure 49 substantially reduced the impact of Measure 37 and the required director's review.

• Make minor housekeeping changes, including clarification of the lay representative rule at OAR 340-011-0510(1).

Division 012 amendments implement 2009 Oregon legislation that increased DEQ's civil penalty statutory maximums, many last updated in 1973. Other proposed changes include aligning violation classification and magnitudes with DEQ program priorities, providing greater mitigating credit for correcting violations, and housekeeping that includes eliminating duplicative text.

Division 200 amendments update the Oregon Clean Air Act State Implementation Plan. Section 110 of the Clean Air Act, 42 U.S.C. §7410 requires state and local air

Oregon Department of Environmental Quality pollution control agencies to adopt federally-approved control strategies to minimize air pollution. The resulting body of regulations is a State Implementation Plan or SIP. By incorporating updated civil penalties and violations, these proposed rules would be a revision to Oregon's SIP. DEQ must submit rule changes to EPA and EPA must approve the rules as meeting the requirements of the Clean Air Act. If the Oregon Environmental Quality Commission amends the proposed rule, DEQ will submit SIP revisions to EPA for approval.

Key Amendments

Civil penalty matrices (OAR 340-012-0140)

• Increase the top base penalty in the current $8,000 penalty matrix to $12,000

• Increase the top base penalty in the current $6,000 penalty matrix to $8,000

• Increase the top base penalty in the current $2,500 penalty matrix to $3,000

• No changes to the current $1,000 penalty matrix

Change to factors in the civil penalty formula (OAR 340-012-0145) by:

• Increasing credit for the "C" factor to apply mitigating credit for a violator's efforts to correct violations

• Expanding the use of the "M" factor to assign a broader range of penalty aggravation when considering the mental state of the violator

Increase additional or alternate penalties for violations that pose an extreme hazard to public health or cause extensive environmental damage (OAR 340-012-0155)

• Base penalties in this category would increase from $50,000 to $100,000 to a new range of $100,000 to $200,000 depending on whether violations are caused intentionally, recklessly or flagrantly.

Increase administrative penalty maximums to $100,000 for certain spill violations of oil or hazardous materials

• Penalties for intentionally or negligently spilling hazardous materials into waters of the state, or intentionally or negligently failing to clean up spills of oil or hazardous materials would increase from a maximum of $10,000 per day to a maximum of $100,000 per day. Penalties for intentionally or negligently spilling oil into waters of the state would increase from a maximum of $20,000 per day to a maximum of $100,000 per day. Final penalties would be determined according to a new formula and additional factors not in the current rule.

Establish a base fee for onsite septic system program public records requests

Regulated parties

The rules do not impose new requirements upon regulated entities. Division 011 includes rules that supplement the Oregon Attorney General Model Rule for administrative procedures. Division 011 applies to any person involved in a contested case proceeding in front of the Environmental Quality Commission. The rules outline the contested case hearings processes. Division 012 outlines the processes

DEQ must follow in assessing penalties or issuing other formal enforcement actions. These rules do not contain any requirements for regulated entities.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-011-0005
Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.

(1) "Commission" means the Environmental Quality Commission.

(2) "DEQ" means the Department of Environmental Quality.

(3) "Director" means the director of DEQ or the director's authorized delegates.

(4) " Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.

(5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and chapter 137, division 004, as in effect on January 1, 2006.

(6) "Participant" means the person named in the notice of a right to a contested case hearing and requested a hearing, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under 137-003-0540, and DEQ.

(7) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.341
Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0010
Notice of Rulemaking

(1) Notice of intent to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183, 468A.327 and sections (2) and (3) of this rule.

(2) To the extent required by ORS Chapter 183 or 468A.327, before adopting, amending or repealing any permanent rule, DEQ will give notice of the rulemaking:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 14 days before a hearing;

(b) By providing a copy of the notice to persons on DEQ's mailing lists established pursuant to ORS 183.335(8), to the legislators specified in 183.335(15), and to the persons or association that requested the hearing (if any):

(A) At least 21 days before a hearing granted or otherwise scheduled pursuant to ORS 183.335(3); or

(B) At least 14 days before a hearing before the Commission if granted or otherwise scheduled under OAR 340-011-0029(3);

(c) In addition to the news media on the list referenced in (b), to other news media the Director may deem appropriate.

(3) In addition to meeting the requirements of ORS 183.335(1), the notice provided pursuant to section (1) of this rule shall contain the following:

(a) Where practicable and appropriate, a copy of the rule proposed to be adopted, amended or repealed with changes highlighted;

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that the person's interest may be affected;

(c) If a hearing has been granted or scheduled, whether the presiding officer will be the Commission, a member of the Commission, an employee of DEQ, or an agent of the Commission;

(d) The manner in which persons not planning to attend the hearing may offer for the record written comments on the proposed rule.

Stat. Auth.: ORS 183 & ORS 468, 468A.327
Stats. Implemented: ORS 183.025 & 183.335
Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2008, f. & cert. ef. 2-25-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0024
Rulemaking Process

The rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-001-0005 through 137-001-0060. As used in those rules, the terms, "agency," "governing body," and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "DEQ" where context requires.

Stat. Auth.: ORS 183 & 468
Stats. Implemented: ORS 183.025 & 183.335
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88 (and corrected 9-30-88); DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0029
Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements

(1) In order to clearly identify the relationship between the proposed adoption, amendment or repeal of rules and applicable federal requirements, and to facilitate consideration and rulemaking by the Environmental Quality Commission, DEQ, must:

(a) Prepare a statement of whether the intended action imposes requirements different from, or in addition to, any applicable federal requirements and, if so, a written explanation of:

(A) The public health, environmental, scientific, economic, technological, administrative or other reasons, as appropriate, for differing from or adding to applicable federal requirements; and

(B) Alternatives considered, if any, and the reasons that the alternatives were not pursued.

(b) Include the statement in the notice of intended action pursuant to ORS 183.335(1) and any additional notice given prior to a rulemaking hearing pursuant to OAR 340-011-0010(2).

(c) Include the statement in the final staff report presented to the Commission when rule adoption, amendment or repeal is recommended.

(2) The statement prepared under section (1)(a) of this rule must be based upon information available to DEQ at the time the statement is prepared.

(3) An opportunity for an oral hearing before the Commission regarding the statement prepared under section (1)(a) of this rule must be granted, and notice given in accordance with OAR 340-011-0010(2)(b)(B), if:

(a) The rulemaking proposal applies to a source subject to the Oregon Title V Operating Permit Fees under OAR 340 division 220;

(b) The request for a hearing is received within 14 days after the notice of intended action is issued under ORS 183.335(1), from 10 persons or from an association having no fewer than 10 members;

(c) The request describes how the persons or association that made the request will be directly harmed by the rulemaking proposal; and

(d) The notice of intended action under ORS 183.335(1) does not indicate that an oral hearing will be held before the Commission.

(4) Nothing in this rule applies to temporary rules adopted pursuant to OAR 340-011-0042.

(5) The Commission delegates to DEQ the authority to prepare and issue any statement required under ORS 468A.327.

Stat. Auth.: ORS 468.020, ORS 468A.327
Stats. Implemented: ORS 183.025 & 183.335
Hist.: DEQ 28-1994, f. & cert. ef. 11-17-94; DEQ 1-2008, f. & cert. ef. 2-25-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0046
Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rule of Procedure set forth in OAR 137-001-0070. As used in that rule, the term "agency" generally refers to the Commission but may refer to DEQ if context requires.

Stat. Auth.: ORS 183.335 & 468.020
Stats. Implemented: ORS 183.390
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0053
Periodic Rule Review

Periodic review of agency rules shall be accomplished once every five years in accordance with ORS 183.405 and the Attorney General's Model Rule OAR 137-001-0100.

Stat. Auth.: ORS 183.335 & 468.020
Stats. Implemented: ORS 183.405
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0061

Declaratory Ruling: Institution of Proceedings, Consideration of Petition and Disposition of Petition

The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-002-0010 through 137-002-0060. As used in those rules, the terms "agency," "governing body, and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "DEQ" where context requires.

Stat. Auth.: ORS 183.335 & 468.020
Stats. Implemented: ORS 183.410
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0310

Purpose

Increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying DEQ records. OAR 340-011-0310 et seq. allows DEQ to recover its costs for providing these services, as authorized by Oregon statute. Furthermore, these rules serve to ensure that all DEQ records remain available for viewing and intact for future use.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020
Stats. Implemented: ORS 192.410 - 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0330

Requests for Review or to Obtain Copies of Public Records

(1) The right to review records includes the right to review the original record where practicable. It does not provide the right to the requestor to locate the record himself or to review the original record when it contains exempt material.

(2) Request to review or copy public records should be made to, and will be handled by, the appropriate DEQ staff maintaining the records requested. For questions, contact DEQ's general information number listed in the phone book and website at www.oregon.gov/deq.

(3) Requests for DEQ records should be as specific as possible, including type of record, subject matter, approximate record date, and relevant names of parties. Whenever possible, the request should include the site location or county of the facility if known. If the request is unclear or overly burdensome, DEQ may request further clarification of the request. If DEQ cannot identify specific records responsive to a record request, DEQ may provide general files or distinct sections of records that are likely to contain the requested records.

(4) Requests to either review or obtain copies of records may be made in writing, by telephone or in-person. DEQ may require a request to be made in writing if needed for clarification or specification of the record request.

(a) Each DEQ office will establish daily hours during which the public may review DEQ's records. The hours maintained in each office will be determined by staff and equipment available to accommodate record review and reproduction.

(b) Pursuant to ORS 192.430(1) and this rule, each DEQ office shall designate and provide a supervised space, if available, for viewing records. This space will accommodate at least one reviewer at a time.

(c) DEQ accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(d) DEQ's ability to accommodate in-person requests may be limited by staff and equipment availability. Additionally prior to making records available for public review, DEQ will ascertain whether the record requested is exempt from public disclosure under ORS chapter 192 and other applicable law.

(5) Time to provide requested records: DEQ will respond to a record request as quickly as reasonable. This time frame will vary depending on the volume of records requested, staff availability to respond to the record request, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel. If DEQ determines that it will require more than 30 days to respond to a record request, it will inform the requestor of the estimated time necessary to comply with the record request.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020
Stats. Implemented: ORS 192.420 & 192.430
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0340

Costs for Record Review and Copying

(1) Outside Copying/Loaning Records — In order to protect the integrity of DEQ records, no records may be loaned or taken off-premises by non- DEQ staff unless DEQ has a contract with the person removing the records.

(2) Hardcopy Records:

(a) Persons Requesting to Make Copies Themselves: Requestors are allowed to use their own equipment to make copies of requested records depending on the facilities available within each DEQ office. Use of non-DEQ equipment within a DEQ office will not be allowed without staff being present. Staff time will be charged at $30.00 per hour. DEQ office may determine that use of non-DEQ equipment will not be allowed based on:

(A) Staff time available to oversee the copying; and

(B) Space limitations for the equipment.

(b) Reimbursement of DEQ staff time: An hourly rate of $30.00 will be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. DEQ may charge for the cost of searching for records regardless of whether DEQ was able to locate the requested record.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate (as of August 2013, $159 for attorneys, $79 for paralegals) will be assessed for any Department of Justice time spent reviewing records to delete exempt material.

(d) Copy Charges: The fee schedule listed below is reasonably calculated to reimburse DEQ for the actual costs of making records available and providing copies of records. The per-page copy charge includes 15 minutes of staff time for routine file searches.

(A) Department Administrative Rule sets:

(i) Complete set: $35.00;

(ii) Update Service: $115.00 (per annum);

(iii) Individual Divisions: $0.05 (per page).

(B) Hardcopy (black and white, letter or legal size): $0.25 per page. Costs for other sized or color copies will be DEQ's actual cost plus staff time.

(C) Additional charges:

(i) Fax charges: $0.50 (per page);

(ii) Document certification: $2.50 (per certificate);

(iii) Invoice processing: $5.00 (per invoice);

(iv) Express Mailing: actual or minimum of $9.00;

(v) Archive Retrieval: actual or minimum of $10.00;

(vi) Onsite wastewater management program public record request: $7.50 base fee.

(e) Whenever reasonable, DEQ will provide double-sided copies of a record request. Each side of a double-sided copy will constitute one page.

(3) Electronic Records:

(a) Copies of requested electronic records may be provided in the format or manner maintained by DEQ. DEQ will perform all downloading, reproducing, formatting and manipulating of records. Public access to DEQ computer terminals may be possible as such terminals become available in the future.

(b) Reimbursement of DEQ staff time: An hourly rate of $40.00 will be assessed for any staff time spent locating records, reviewing records to delete exempt material, supervising the inspection of records, downloading and manipulating records, certifying records and mailing records. DEQ may charge for the cost of searching for records regardless of whether DEQ was able to locate the requested records.

(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate (as of August 2013, $159 for attorneys, $79 for paralegals)will be assessed for any Department of Justice time spent reviewing records to delete exempt material.

(d) Hardcopy printouts (black and white; legal or letter size): $0.25 per page. Costs for other sized or color copies will be DEQ's actual cost plus staff time.

(e) Compact disks (CDs) and digital video disks (DVDs): $3.00 each.

(f) Additional charges:

(A) Fax charges: $0.50 (per page);

(B) Document certification: $2.50 (per certificate);

(C) Invoice processing: $5.00 (per invoice);

(D) Express Mailing: actual or minimum of $9.00;

(E) Archive Retrieval: actual or minimum of $10.00.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020

Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0360
Collecting Fees

(1) Method: Payment may be made in the form of cash, check, or money order. Make checks payable to "Department of Environmental Quality."

(2) Billing: Requestors wishing to be billed may make such arrangements at the time of record request. Purchase orders will only be accepted for orders $10.00 or more.

(3) Receipts: A receipt may be given, upon request, for charges incurred.

(4) Reasonable costs associated with responding to a request to review or copy a record not specifically addressed by these rules may be assessed including the actual costs for DEQ to have another person make copies of the records.

(5) Prepayment of Copy Costs: Depending on the volume of the records requested, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel, DEQ may preliminarily estimate the charges for responding to a record request and require prepayment of the estimated charges. If the actual charges are less than the prepayment, any overpayment will be refunded to the requestor.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020
Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0370
Certification of Copies of Records

Certification of both hard and electronic copies of records will be provided. DEQ will only certify that on the date copied, the copy was a true and correct copy of the original record. DEQ cannot certify as to any subsequent changes or manipulation of the record.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020
Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0380
Fee Waivers and Reductions

(1) Ordinarily there will be no charge for one copy of a public record:

(a) When the material requested is currently being distributed as part of the public participation process such as a news release or public notice.

(b) When the material requested has been distributed through mass mailing and is readily available to DEQ at the time of request.

(c) When the records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity. Even if a person qualifies under this subsection, DEQ may still charge for either record review or copying based on the following factors:

(A) Any financial hardship on DEQ;

(B) The extent of time, expense and interference with DEQ's regular business;

(C) The volume of the records requested; or

(D) The necessity to segregate exempt from non-exempt materials.

(2) Public Interest Annual Fee Waivers:

(a) An approved annual fee waiver allows the requestor to either review or obtain one copy of a requested record at no charge. Fee waivers are effective for a one year period.

(b) A person including members of the news media and non-profit organizations may be entitled to an annual fee waiver provided that a Fee Waiver Form is completed and approved by DEQ. The form must identify the person's specific ability to disseminate information of the kind maintained by DEQ to the general public and that such information is generally in the interest of and benefit to the public within the meaning of the Public Records Law. Additional information may be requested by DEQ prior to granting any fee waiver.

(c) Even if a person has a fee waiver, DEQ may charge for either record review or copying based on the following factors:

(A) Any financial hardship on DEQ;

(B) The extent of time, expense and interference with DEQ's regular business;

(C) The volume of the records requested;

(D) The necessity to segregate exempt from non-exempt materials; and

(E) The extent to which the record request does not further the public interest or the particular needs of the requestor.

(3) Case-by-Case Waivers or Reductions: A person that does not request, or is not approved for an annual waiver, may request a waiver or a reduction of record review or reproduction costs on a case-by-case basis.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020
Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0390
Exempt Records

All records held by DEQ are public records unless exempt from disclosure under ORS Chapter 192 or other applicable law. If DEQ determines that all or part of a requested public record is exempt from disclosure, DEQ will notify the requestor and the reasons why DEQ considers the record exempt.

Stat. Auth.: ORS 192.410 - 192.505 & 468.020
Stats. Implemented: ORS 192.501 & 192.502
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0500
Contested Case Proceedings Generally

Except as otherwise provided in OAR 340, division 011, contested cases will be governed by the Rules of the Office of Administrative Hearings, specifically OAR 137-003-0501 through 0700.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.341
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0098 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0510
Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other DEQ personnel as approved by the director, are authorized to appear on behalf of DEQ and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and issuance, revocation, modification, or denial of licenses, permits, certifications, or other authorizations, including general permit coverage or registrations.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of DEQ or commission in contested case hearings.

(3) When DEQ determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument.

Stat. Auth.: ORS 183.341, 183.452 & 468.020
Stats. Implemented: ORS 183.452
Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0515
Authorized Representative of a Participant other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR 137-003-0555.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.457
Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0520
Liability for the Acts of a Person's Employees

A person is legally responsible for not only its direct acts but also the acts of its employee when the employee is acting within the scope of the employment relationship, regardless of whether the person expressly authorizes the act in question. The mental state ("M" factor under OAR 340-012-0145) of an employee can be imputed to the employer. Nothing in this rule prevents DEQ from issuing a formal enforcement action to an employee for violations occurring during the scope of the employee's employment.

Stat. Auth.: ORS 183.341 & 468.020
Stat. Implemented: ORS 468.005, 468.130 & 468.140
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0525
Service and Filing of Documents

(1) Service will be made either personally or by certified mail. Service is perfected when received by the named person, if by personal service, or when mailed, if sent by mail. Service may be made upon:

(a) The named person;

(b) Any other person designated by law as competent to receive service of a summons or notice for that person; or

(c) The person's attorney or other authorized representative.

(2) A person holding a license or permit issued by DEQ or commission, or who has submitted an application for a license or permit, will be conclusively presumed able to be served at the address given in the license or permit application, as it may be amended from time to time.

(3) Filing of a document can be accomplished by personal service, facsimile, mail or electronically. A participant filing any document shall at the same time, provide a copy of the document to all other participants.

(4) Regardless of other provisions in this rule, documents served or filed by DEQ or commission through the U.S. Postal Service by regular mail to a person's last known address are presumed to have been received, subject to evidence to the contrary.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.413 & 183.415
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0097 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0530
Requests for Hearing

(1) Unless a request for hearing is not required by statute or rule, or the requirement to file a request for hearing is waived in the formal enforcement action, a person has 20 calendar days from the date of service of the notice of a right to a contested case hearing in which to file a written request for hearing unless another timeframe is allowed by statute or rule.

(2) The request for hearing must include a written response that admits or denies all factual matters alleged in the notice, and alleges any and all affirmative defenses and the reasoning in support thereof. Due to the complexity, factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. New matters alleged in the request for hearing are denied by DEQ unless admitted in subsequent stipulation.

(3) An amended request for hearing may be accepted by DEQ if DEQ determines that the filing of an amended request will not unduly delay the proceeding or unfairly prejudice the participants. The participant must provide DEQ with a written explanation why an amended request for hearing is needed.

(4) A late request for hearing will be accepted by DEQ if:

(a) The request is postmarked within 20 calendar days of service of the notice, and;

(b) DEQ receives the late request for hearing within 60 days of the date the notice became final upon default.

(5) A late request for hearing may be accepted by DEQ if:

(a) Either the request is received by DEQ before entry of a default order or within 60 days of the date the notice became final upon default, and;

(b) There was good cause for the failure to timely request a hearing.

(6) The person must provide DEQ with a written explanation why the request for hearing was late. If the person fails to provide the written explanation, DEQ must not accept the late request for hearing. DEQ may require that the explanation be supported by an affidavit.

(7) The filing of a late request for hearing does not stay the effect of any final order.

(8) DEQ will deny a late request for hearing that is filed more than 60 days after the notice became final by default.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.415, 183.464, 183.482, 183.745 & 183.484
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0107 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0535
Final Orders by Default

(1) If a person fails to request a hearing within the time allowed and no further evidence is necessary to make a prima facie case, the notice of a right to a contested case hearing will become final by operation of law as provided in OAR 137-003-0672.

(2) If the person fails to request a hearing within the time allowed and DEQ determines that evidence, in addition to the evidence in DEQ's record, is necessary to make a prima facie case, DEQ will proceed to a contested case hearing for the purpose of establishing a prima facie case.

(3) If the participant files a timely request for hearing but either: withdraws the request; or, after being provided notice of the time and place of the hearing, either fails to appear at a hearing or notifies either the administrative law judge or DEQ, in writing, that the participant does not intend to appear at the hearing, DEQ will enter and serve a final order by default.

(4) If more than one person is named in the notice of a right to a contested case hearing and any person defaults as provided in this rule, the notice will become final as it pertains to any person in default.

Stat. Auth.: ORS 183.335 & 468.020
Stat. Impl.: ORS 183.415 & 183.090
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0540
Consolidation or Bifurcation of Contested Case Hearings

Proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding or bifurcated into separate proceedings, at DEQ's discretion. Additionally, DEQ, at its discretion, may consolidate or bifurcate contested case hearings involving the same fact or set of facts constituting the violation.

Stat. Author ORS 183.341 & 468.020
Stat. Implemented: ORS 183.415
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0035 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0545
Burden and Standard of Proof in Contested Case Hearings; DEQ Interpretation of Rules and Statutory Terms

(1) The participant who asserts a fact or position is the proponent of that fact or position and has the burden of presenting evidence to support that fact or position, unless the burden is specifically allocated differently by a statute or rule.

(2) All findings in a proposed or final order must be based on a preponderance of evidence in the record unless another standard is specifically required by statute or rule.

(3) In reviewing DEQ's interpretation of a DEQ rule as applied in a formal enforcement action, an administrative law judge must follow DEQ's interpretation if that interpretation is both plausible and reasonably consistent with the wording of the rule and the underlying statutes. The administrative law judge may state, on the record, an alternative interpretation for consideration on appeal.

(4) With the exception of exact terms that do not require interpretation, an administrative law judge shall give DEQ's interpretation of statutory terms the appropriate deference in light of DEQ's expertise with the subject matter, DEQ's experience with the statute, DEQ's involvement in the relevant legislative process, and the degree of discretion accorded DEQ by the legislature.

Stat. Author ORS 183.341 & 468.020
Stat. Implemented: ORS 183.450
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0550
Discovery

(1) Motions for discovery will only be granted if the motion establishes that:

(a) The participant seeking the information attempted to obtain the information through an informal process. If the participant is seeking information from a public agency, the participant must make a public record request prior to petitioning for discovery; and

(b) The discovery request is reasonably likely to produce information that is generally relevant and necessary to the matters alleged in the notice of a right to a contested case hearing and the request for hearing, or is likely to facilitate resolution of the case.

(2) An administrative law judge is not authorized to order depositions, admissions, interrogatories or site visits unless DEQ authorizes the same in writing in the specific case.

Stat. Author ORS 183.341 & 468.020
Stat. Implemented: ORS 183.425, 183.440 & 183.450
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0555
Subpoenas

(1) Subpoenas for the attendance of witnesses or production of documents at a contested case hearing will be issued in accordance with OAR 137-003-0585.

(2) Copies of the subpoena must be provided to the administrative law judge and all participants at the time of service to the person to whom the subpoena is issued.

(3) Service of a subpoena for the attendance of a witness must be completed by personal service unless the witness has indicated that he is willing to appear and the subpoena is mailed at least 10 days prior to the hearing. Personal service should be effected at least 7 days prior to the hearing.

(4) Service of a subpoena for the production of documents at a contested case hearing may be effected by regular mail provided that it is done sufficiently in advance of the hearing to allow reasonable time to produce the documents.

(5) Service of a subpoena for both the attendance of a witness and production of documents must be completed as provided under section (3) of this rule.

(6) Any witness who appears at a hearing under a subpoena will receive fees and mileage as set forth in ORS 44.415(2).

Stat. Author ORS 183.341 & 468.020
Stat. Implemented: ORS 183.425, 183.440 & 468.120
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0565
Immediate Review

Immediate review under OAR 137-003-0640 is not allowed.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.341
Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0124 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0570
Permissible Scope of Hearing

(1) The scope of a contested case hearing will be limited to those matters that are relevant and material to either proving or disproving the matters alleged in the notice and request for hearing. Equitable remedies will not be considered by an administrative law judge.

(2) The administrative law judge may not reduce or mitigate a civil penalty below the amount established by the application of the civil penalty formula contained in OAR 340, division 12.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.450 & 468.130
Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0131 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0573
Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant.

(2) Within 15 days after a proposed contested case order is served, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645 and recommend changes to the order. The motion must be filed with the administrative law judge and a copy provided to all participants.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is filed with the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for the purpose of filing a timely Petition for Commission Review under 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

Stat. Auth.: ORS 468.020, 183.341, 183,452
Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452
Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0575
Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of DEQ.

(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(3) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; DEQ's Answer to Respondent's Exceptions and Brief).

(4) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (4)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (4)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b) and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (4) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (4)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(5) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (4)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(6) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by ORS 183.650 and OAR 137-003-0665.

(7) All documents filed with the commission under this rule must also be copied upon each participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.460, 183.464 & 183.470
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-

2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0580
Petitions for Reconsideration or Rehearing

(1) A participant is not required to seek either reconsideration or rehearing of a final order prior to seeking judicial review.

(2) Any petition for reconsideration or rehearing must be received by DEQ within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for reconsideration or rehearing are those in OAR 137-003-0675.

(3) A petition for reconsideration or rehearing does not stay the effect of the final order.

(4) The director, on behalf of the commission, shall issue orders granting or denying petitions for reconsideration and rehearing.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.480 & 183.482
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-011-0585
Petitions for a Stay of the Effect of a Final Order

(1) A petition to stay the effect of any final order must be received by DEQ within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for a stay are those in OAR 137-003-0690 through 0700.

(2) If a participant submits a petition for reconsideration or rehearing or a late request for hearing, the petition for a stay must accompany that petition.

(3) A petition for a stay must contain all the elements set forth in OAR 137-003-0690 and be served upon all participants as set forth in 137-003-0690(4).

(4) Any participant may seek to intervene in the stay proceeding as set forth in OAR 137-003-0695 by filing a response to the petition for a stay with DEQ.

(5) The director, on behalf of the commission, shall issue an order granting or denying the petition for a stay within 30 days of receipt of the petition.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.480 & 183.482
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0026
Policy

(1) The goals of enforcement are to:

(a) Protect the public health and the environment;

(b) Obtain and maintain compliance with applicable environmental statutes and DEQ's rules, permits and orders;

(c) Deter future violators and violations; and

(d) Ensure an appropriate and consistent statewide enforcement program.

(2) DEQ shall endeavor by conference, conciliation and persuasion to solicit compliance.

(3) DEQ endeavors to address all alleged violations in order of priority, based on the actual or potential impact to human health or the environment, using increasing levels of enforcement as necessary to achieve the goals set forth in section (1) of this rule.

(4) DEQ subjects violators who do not comply with an initial enforcement action to increasing levels of enforcement until they come into compliance.

(5) DEQ endeavors to issue a formal enforcement action within six months from completion of the investigation of the violation.

Stat. Auth.: ORS 459.995, 466, 467, 468.020, 468.996, 468A & 468B
Stats. Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880 - 895, 468.090 - 140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0028
Scope of Applicability

Amendments to OAR 340-012-0026 to 340-012-0170 shall only apply to formal enforcement actions issued by DEQ on or after the effective date of such amendments and not to any contested cases pending or formal enforcement actions issued prior to the effective date of such amendments.

Stat. Auth.: ORS 454, 459.995, 466, 467, 468.020 & 468.996
Stats. Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880 - 895, 468.090 - 140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92, Renumbered from 340-012-0080; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0030
Definitions

All terms used in this division have the meaning given to the term in the appropriate substantive statute or rule or, in the absence of such definition, their common and ordinary meaning unless otherwise required by context or defined below:

(1) "Alleged Violation" means any violation cited in a written notice issued by DEQ or other government agency.

(2) "Class I Equivalent," which is used to determine the value of the "P" factor in the civil penalty formula, means two Class II violations, one Class II and two Class III violations, or three Class III violations.

(3) "Commission" means the Environmental Quality Commission.

(4) "Compliance" means meeting the requirements of the applicable statutes, and commission or DEQ rules, permits or orders.

(5) "Conduct" means an act or omission.

(6) "Director" means the director of DEQ or the director's authorized deputies or officers.

(7) "DEQ" means the Department of Environmental Quality.

(8) "Expedited Enforcement Offer" (EEO) means a written offer by DEQ to settle an alleged violation pursuant to the expedited procedure described in OAR 340-012-0170(2).

(9) "Field Penalty" as used in this division, has the meaning given that term in OAR chapter 340, division 150.

(10) "Final Order and Stipulated Penalty Demand Notice" means a written notice issued to a respondent by DEQ demanding payment of a stipulated penalty pursuant to the terms of an agreement entered into between the respondent and DEQ.

(11) "Flagrant" or "flagrantly" means the respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.

(12) "Formal Enforcement Action" (FEA) means a proceeding initiated by DEQ that entitles a person to a contested case hearing or that settles such entitlement, including, but not limited to, Notices of Civil Penalty Assessment and Order, Final Order and Stipulated Penalty Demand Notices, department or commission orders originating with the Office of Compliance and Enforcement, Mutual Agreement and Orders, accepted Expedited Enforcement Offers, Field Penalties, and other consent orders.

(13) "Intentional" means the respondent acted with a conscious objective to cause the result of the conduct.

(14) "Magnitude of the Violation" means the extent and effects of a respondent's deviation from statutory requirements, rules, standards, permits or orders.

(15) "Negligence" or "Negligent" means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

(16) "Notice of Civil Penalty Assessment and Order" means a notice provided under OAR 137-003-0505 to notify a person that DEQ has initiated a formal enforcement action that includes a financial penalty and may include an order to comply.

(17) "Pre-Enforcement Notice" (PEN) means an informal written notice of an alleged violation that DEQ is considering for formal enforcement.

(18) "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, trusts, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the federal government and its agencies.

(19) "Prior Significant Action" (PSA) means any violation cited in an FEA, with or without admission of a violation, that becomes final by payment of a civil penalty, by a final order of the commission or DEQ, or by judgment of a court.

(20) "Reckless" or "Recklessly" means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

(21) "Residential Owner-Occupant" means the natural person who owns or otherwise possesses a single family dwelling unit, and who occupies that dwelling at the time of the alleged violation. The violation must involve or relate to the normal uses of a dwelling unit.

(22) "Respondent" means the person named in a formal enforcement action (FEA).

(23) "Systematic" means any violation that occurred or occurs on a regular basis.

(24) "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof and includes both acts and omissions.

(25) "Warning Letter" (WL) means an informal written notice of an alleged violation for which formal enforcement is not anticipated.

(26) "Willful" means the respondent had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

Stat. Auth.: ORS 468.020 & 468.130

ORS 459.376, 459.995, 465.900, 468.090-140, 466.880 - 466.895, 468.996 - 468.997, 468A.990 -468A.992 & 468B.220

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0038

Warning Letters, Pre-Enforcement Notices, and Notices of Permit Violation

(1) A Warning Letter (WL) may contain an opportunity to correct noncompliance as a means of avoiding formal enforcement. A WL generally will identify the alleged violation(s) found, what needs to be done to comply, and the consequences of further noncompliance. WLs will be issued under the direction of a manager or authorized representative. A person receiving a WL may provide information to DEQ to clarify the facts surrounding the alleged violation(s). If DEQ determines that the conduct identified in the WL did not occur, DEQ will withdraw or amend the WL, as appropriate, within 30 days. A WL is not an FEA and does not afford any person a right to a contested case hearing.

(2) A Pre-Enforcement Notice (PEN) generally will identify the alleged violations found, what needs to be done to comply, the consequences of further noncompliance, and the formal enforcement process that may occur. PENs will be issued under the direction of a manager or authorized representative. A person receiving a PEN may provide information to DEQ to clarify the facts surrounding the alleged violations. If DEQ determines that the conduct identified in the PEN did not occur, DEQ will withdraw or amend the PEN, as appropriate, within 30 days. Failure to send a PEN does not preclude DEQ from issuing an FEA. A PEN is not a formal enforcement action and does not afford any person a right to a contested case hearing.

(3) Notice of Permit Violation (NPV):

(a) Except as provided in subsection (3)(e) below, an NPV will be issued for the first occurrence of an alleged Class I violation of an air, water or solid waste permit issued by DEQ, and for repeated or continuing alleged Class II or Class III violations of an air, water, or solid waste permit issued by DEQ when a WL has failed to achieve compliance or satisfactory progress toward compliance.

(b) An NPV must be in writing, specify the violation and state that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to DEQ within five working days of receipt of the NPV:

(A) A written response from the permittee certifying that the permittee is complying with all terms and conditions of the permit from which the violation is cited. The response must include a description of the information on which the permittee's certification relies sufficient to enable DEQ to determine that compliance has been achieved. The certification must be signed by a Responsible Official based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" means one of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(iii) For a municipality, state, federal, or other public agency: either a principal executive officer or appropriate elected official.

(B) A written proposal, acceptable to DEQ, describing how the permittee will bring the facility into compliance with the permit. At a minimum, an acceptable proposal must include the following:

(i) A detailed plan and time schedule for achieving compliance in the shortest practicable time;

(ii) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permittee is in compliance with the permit; and

(iii) A statement that the permittee has reviewed all other conditions and limitations of the permit and no other violations of the permit were discovered; or

(C) For a water quality permit violation, a written request to DEQ that DEQ follow procedures described in ORS 468B.032. Notwithstanding the requirement for a response to DEQ within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the NPV.

(c) If a compliance schedule approved by DEQ under paragraph (3)(b)(B) provides for a compliance period of more than six months, the compliance schedule must be incorporated into a final order that provides for stipulated penalties in the event of any failure to comply with the approved schedule. The stipulated penalties may be set at amounts equivalent to the base penalty amount appropriate for the underlying violation as set forth in OAR 340-012-0140;

(d) If the NPV is issued by a regional authority, the regional authority may require that the permittee submit information in addition to that described in subsection (3)(b).

(e) DEQ may assess a penalty without first issuing an NPV if:

(A) The violation is intentional;

(B) The water or air violation would not normally occur for five consecutive days;

(C) The permittee has received an NPV or an FEA with respect to any violation of the permit within the 36 months immediately preceding the alleged violation;

(D) The permittee is subject to the Oregon Title V operating permit program and violates any rule or standard adopted under ORS Chapter 468A or any permit or order issued under Chapter 468A; or

(E) The requirement to provide an NPV would disqualify a state program from federal approval or delegation. The permits and permit conditions to which this NPV exception applies include:

(i) Air Contaminant Discharge Permit (ACDP) conditions that implement the State Implementation Plan under the federal Clean Air Act;

(ii) Water Pollution Control Facility (WPCF) permit or rule authorization conditions that implement the Underground Injection Control program under the federal Safe Drinking Water Act;

(iii) National Pollutant Discharge Elimination System (NPDES) Permit conditions; and

(iv) Municipal Landfill Solid Waste Disposal Permit conditions that implement Subtitle D of the federal Solid Waste Disposal Act.

(f) For purposes of section (3), a permit renewal or modification does not result in the requirement that DEQ provide the permittee with an additional advance notice before formal enforcement if the permittee has received an NPV, or other FEA, with respect to the permit, within the 36 months immediately preceding the alleged violation.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 459.376, 468.090 - 468.140, 468A.990 & 468B.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 25-1979, f. & ef. 7-5-79; DEQ 22-1984, f. & ef. 11-8-84; DEQ 16-1985, f. & ef. 12-3-85; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; Renumbered from 340-012-0040, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0041

Formal Enforcement Actions

(1) FEAs may require that the respondent take action within a specified timeframe or may assess civil penalties. DEQ may issue an NPV or FEA whether or not it has previously issued a WL or PEN related to the issue or violation. Unless specifically prohibited by statute or rule, DEQ may issue an FEA without first issuing an NPV.

(2) A Notice of Civil Penalty Assessment and Order may be issued for the occurrence of any class of violation that is not limited by the NPV requirement of OAR 340-012-0038(3).

(3) An Order may be in the form of a commission or department order, including any written order that has been consented to in writing by the parties thereto, including but not limited to, a Mutual Agreement and Order (MAO).

(4) A Final Order and Stipulated Penalty Demand Notice may be issued according to the terms of any written final order that has been consented to in writing by the parties thereto, including, but not limited to, a MAO.

(5) A pre-enforcement offer to settle may be made pursuant to DEQ's expedited enforcement procedures in OAR 340-012-0170(2) or Field Penalty procedures prescribed by OAR chapter 340, division 150.

(6) The enforcement actions described in sections (2) through (5) of this rule in no way limit DEQ or commission from seeking any other legal or equitable remedies, including revocation of any DEQ-issued license or permit, provided by ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, and 468B.

Stat. Auth.: ORS 454.625, 459.376, 465.400-410, 466.625, 467.030, 468.020, 468A.025, 468A.045 & 468B.035
Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0045
Civil Penalty Determination Procedure

DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: BP + [(0.1 x BP) x (P + H + O + M + C)] + EB.

(1) BP is the base penalty and is determined by the following procedure:

(a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0097.

(b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.

(3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468.992, 468A.990, 468B.025, 468B.220 & 468B.450
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0053
Classification of Violations that Apply to all Programs

(1) **Class I**:

(a) Violating a requirement or condition of a commission or department order, consent order, agreement, consent judgment (formerly called judicial consent decree) or compliance schedule contained in a permit;

(b) Submitting false, inaccurate or incomplete information to DEQ where the submittal masked a violation, caused environmental harm, or caused DEQ to misinterpret any substantive fact;

(c) Failing to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree); or

(d) Using fraud or deceit to obtain DEQ approval, permit, certification, or license.

(2) **Class II**: Violating any otherwise unclassified requirement.

Stat. Auth.: ORS 468.020 & 468.130
Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0054
Air Quality Classification of Violations

(1) **Class I**:

(a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;

(c) Exceeding a Plant Site Emission Limit (PSEL);

(d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;

(e) Exceeding a hazardous air pollutant emission limitation;

(f) Failing to comply with an Emergency Action Plan;

(g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD);

(h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;

(i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;

(j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonably Available Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emission Rate (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;

(k) Causing emissions that are a hazard to public safety;

(l) Violating a work practice requirement for asbestos abatement projects;

(m) Improperly storing or openly accumulating friable asbestos material or asbestos-containing waste material;

(n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;

(o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;

(p) Failing to hire a licensed contractor to conduct an asbestos abatement project;

(q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1);

(r) Failing to install certified vapor recovery equipment;

(s) Delivering for sale a noncompliant vehicle by an automobile manufacturer in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;

(t) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257;

(u) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements set forth in OAR 340 division 257;

(v) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257; or

(w) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

(2) **Class II**:

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) or registration without first obtaining such permit or registration, unless otherwise classified;

(b) Violating the terms or conditions of a permit or license, unless otherwise classified;

(c) Modifying a source in such a way as to require a permit modification from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Exceeding an opacity limit, unless otherwise classified;

(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

(f) Failing to timely submit a complete ACDP annual report;

(g) Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;

(h) Failing to timely submit a complete permit application or permit renewal application;

(i) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;

(j) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).

(k) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;

(l) Failing to provide timely, accurate or complete notification of an asbestos abatement project;

(m) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;

(n) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620; or

(o) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257.

(3) **Class III**:

(a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;

(c) Modifying a source in such a way as to require construction approval from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Failing to revise a notification of an asbestos abatement project when necessary, unless otherwise classified;

(e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; or

(f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0055

Water Quality Classification of Violations

(1) **Class I**:

(a) Causing pollution of waters of the state;

(b) Reducing the water quality of waters of the state below water quality standards;

(c) Discharging any waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit;

(d) Operating a discharge source or conducting a disposal activity without first obtaining an individual permit or applying for coverage under a general permit for that discharge or disposal activity;

(e) Failing to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition, which results in a non-permitted discharge to public waters;

(f) Failing to take appropriate action, as required by the municipal wastewater treatment works owner's DEQ-approved pretreatment-compliance oversight program, against an industrial discharger to the municipal treatment works who violates any pretreatment standard or requirement, if the violation impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment;

(g) Making unauthorized changes, modifications, or alterations to a facility operating under a Water Pollution Control Facility (WPCF) or National Pollutant Discharge Elimination System (NPDES) permit;

(h) Allowing operation or supervision of a wastewater treatment and collection system without proper certification, by the permittee and/or owner;

(i) Applying biosolids or domestic septage to a parcel of land that does not have DEQ approval for land application;

(j) Applying biosolids that do not meet the pollutant, pathogen or one of the vector attraction reduction requirements of 40 CFR 503.33(b)(1) through (10);

(k) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) The discharge level (except for pH and bacteria) exceeds the limitation by 50 percent or more;

(B) The discharge is outside the permitted pH range by more than 2 pH units;

(C) The discharge exceeds a bacteria limit as a result of an inoperative disinfection system where there is no disinfection; or

(D) The discharge of recycled water exceeds a bacteria limit by more than five times the limit.

(l) Violating a water quality based effluent limitation in an NPDES permit;

(m) Violating a WPCF permit limitation in a designated groundwater management area if the exceedance is of a parameter for which the groundwater management area was established;

(n) Failing to report an effluent limitation exceedance;

(o) Failing to collect monitoring data required in Schedule B of the permit;

(p) Contracting for operation or operating a prohibited Underground Injection Control (UIC) system other than a cesspool that only disposes of human waste;

(q) Operating an Underground Injection Control (UIC) system that causes a data verifiable violation of federal drinking water standards in an aquifer used as an underground source of drinking water; or

(r) Failing to substantially implement a stormwater plan in accordance with an NPDES permit.

(2) **Class II**:

(a) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) The discharge level (except for pH and bacteria) exceeds the limitation by 20 percent or more, but less than 50 percent, for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TTS), or by 10 percent or more, but less than 50 percent, for all other limitations;

(B) The discharge is outside the permitted pH range by more than 1 pH unit but less than or equal to 2 pH units;

(C) The discharge exceeds a bacteria limit by a factor of five or more, unless otherwise classified; or

(D) The discharge of recycled water exceeds a bacteria limit by an amount equal to or less than five times the limit;

(b) Failing to timely submit a report or plan as required by rule, permit, or license, unless otherwise classified;

(c) Causing any wastes to be placed in a location where such wastes are likely to be carried into waters of the state by any means;

(d) Violating any management, monitoring, or operational plan established pursuant to a waste discharge permit, unless otherwise classified;

(e) Failing to timely submit or implement a Total Maximum Daily Load (TMDL) Implementation Plan, by a Designated Management Agency (DMA), as required by department order; or

(f) Failing to comply with the requirements in OAR 340-044-0018(1) to obtain authorization by rule to construct and operate an underground injection system.

(3) **Class III**:

(a) Failing to submit a complete discharge monitoring report;

(b) Violating a technology-based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) The discharge (except for pH and bacteria) exceeds the limitation by less than 20 percent for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by less than 10 percent for all other limitations;

(B) The discharge is outside the permitted pH range by 1 pH unit or less; or

(C) The discharge (except for recycled water) exceeds a bacteria limit by less than five times the limit;

(c) Failing to achieve a removal efficiency established in an NPDES or WPCF permit;

(d) Failing to register an Underground Injection Control (UIC) system, except for a UIC system prohibited by rule; or

(e) Failing to follow the owner's DEQ-approved pretreatment program procedures, where such failure did not result in any harm to the treatment works and was not a threat to the public health or the environment.

Stat. Auth.: ORS 468.020 & 468B.015

Stats. Implemented: ORS 468.090 - 468.140, 468B.025, 468B.220 & 468B.305

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0060
Onsite Sewage Disposal Classification of Violations

(1) **Class I**:

(a) Performing sewage disposal services without a current license;

(b) Installing or causing to be installed an onsite wastewater treatment system or any part thereof, or repairing or causing to be repaired any part thereof, without first obtaining a permit;

(c) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by DEQ;

(d) Owning, operating or using an onsite wastewater treatment system that is discharging sewage or effluent to the ground surface or into waters of the state; or

(e) Failing to comply with statute, rule, license, permit or order requirements regarding notification of a spill or upset condition, which results in a non-permitted discharge to public waters.

(2) **Class II**:

(a) Failing to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice at the site;

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization or permit;

(c) Operating or using an onsite wastewater treatment system or part thereof without first obtaining a Certificate of Satisfactory Completion or WPCF permit;

(d) Advertising or representing oneself as being in the business of performing sewage disposal services without a current license;

(e) Placing into service, reconnecting to or changing the use of an onsite wastewater treatment system in a manner that increases the projected daily sewage flow into the system without first obtaining an authorization notice, construction permit, alteration permit, repair permit or WPCF permit;

(f) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a DEQ-approved system, unless failure results in sewage discharging to the ground surface or to waters of the state;

(g) Allowing, by a licensed sewage disposal business, an uncertified installer to supervise or be responsible for the construction or installation of a system or part thereof;

(h) Failing to submit an annual maintenance report by a service provider of alternative treatment technologies;

(i) Failing to report that a required operation and maintenance contract has been terminated, by a service provider of alternative treatment technologies;

(j) Exceeding an effluent limit concentration in a WPCF permit for discharge to a soil absorption system;

(k) Exceeding the maximum daily flow limits in a WPCF permit to an onsite system;

(l) Failing to collect monitoring data required in Schedule B of a WPCF permit;

(m) Making unauthorized changes, modifications, repairs or alterations to a facility operating under a WPCF permit;

(n) Violating any management, monitoring or operational plan established pursuant to a WPCF permit unless otherwise classified; or

(o) Failing to timely submit a report or plan as required by rule, permit or license unless otherwise classified.

(3) **Class III**:

(a) Failing to obtain an operation and maintenance contract from a certified service provider, by an owner of an alternative treatment technology, recirculating gravel filter or commercial sand filter; or

(b) Placing an existing onsite wastewater treatment system into service or changing the dwelling or type of commercial facility, without first obtaining an authorization notice, where the design flow of the system is not exceeded.

Stat. Auth.: ORS 454.050, 454.625 & 468.020
Stats. Implemented: ORS 454.635, 454.645 & 468.090 - 468.140
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 3-2005, f. 2-10-05, cert. ef. 3-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0065
Solid Waste Management Classification of Violations

(1) **Class I**:

(a) Establishing or operating a disposal site without first obtaining a registration or permit;

(b) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to DEQ and obtaining DEQ approval;

(c) Disposing of or authorizing the disposal of a solid waste at a location not permitted by DEQ to receive that solid waste;

(d) Violating a lagoon freeboard limit that results in the overflow of a sewage sludge or leachate lagoon;

(e) Accepting for treatment, storage, or disposal at a solid waste disposal site, without approval from DEQ, waste defined as hazardous waste, waste from another state which is hazardous under the laws of that state, or wastes prohibited from disposal by statute, rule, permit, or order;

(f) Failing to properly construct, maintain, or operate in good functional condition, groundwater, surface water, gas or leachate collection, containment, treatment, disposal or monitoring facilities in accordance with the facility permit, DEQ approved plans, or DEQ rules;

(g) Failing to collect, analyze or report groundwater, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or DEQ rules;

(h) Mixing for disposal or disposing of recyclable material that has been properly prepared and source separated for recycling;

(i) Failing to establish or maintain financial assurance as required by statute, rule, permit or order;

(j) Failing to comply with the terms of a permit terminated due to a failure to submit a timely application for renewal; or

(k) Operating a composting facility in a manner that causes a discharge to surface water of pollutants, leachate or stormwater when that discharge is not authorized by a NPDES permit.

(2) **Class II**:

(a) Failing to accurately report the amount of solid waste disposed, by a permitted disposal site or a metropolitan service district;

(b) Failing to timely or accurately report the weight and type of material recovered or processed from the solid waste stream;

(c) Failing to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, or limitation of working face size;

(d) Operating a Household Hazardous Waste (HHW) collection event or temporary site without first obtaining DEQ approval or without complying with an approved plan for a HHW collection event;

(e) Receiving or managing waste in violation of or without a DEQ-approved Special Waste Management Plan; or

(f) Unless otherwise specifically classified, operating a composting facility in a manner that fails to comply with the facility's registration, permit, DEQ-approved plans or DEQ rules.

(3) **Class III**:

(a) Failing to post required signs;

(b) Failing to control litter;

(c) Failing to notify DEQ of any name or address change; or

(d) Violating any labeling requirement under ORS 459A.675-685.

Stat. Auth.: ORS 459.045 & 468.020
Stats. Implemented: ORS 459.205, 459.376, 459.995 & 468.090 - 468.140
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2009, f. & cert. ef. 9-14-09; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0066
Solid Waste Tire Management Classification of Violations

(1) **Class I**:

(a) Establishing or operating a waste tire storage site without first obtaining a permit;

(b) Disposing of waste tires or tire-derived products at an unauthorized site;

(c) Violating the fire safety requirements of a waste tire storage site permit;

(d) Hauling waste tires without first obtaining a waste tire carrier permit; or

(e) Failing to establish and maintain financial assurance as required by statute, rule, permit or order.

(2) **Class II**: Failing to maintain written records of waste tire generation, storage, collection, transportation, or disposal.

(3) **Class III:**

(a) Failing to keep required records on use of vehicles;

(b) Failing to post required signs;

(c) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires; or

(d) Hauling waste tires in a vehicle not identified in a waste tire carrier permit or failing to display required decals as described in a permittee's waste tire carrier permit.

Stat. Auth.: ORS 459.785 & 468.020
Stats. Implemented: ORS 459.705 - 459.790, 459.992 & 468.090 - 468.140
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0067
Underground Storage Tank (UST) Classification of Violations

(1) **Class I**:

(a) Failing to investigate or confirm a suspected release;

(b) Failing to establish or maintain the required financial responsibility mechanism;

(c) Failing to obtain the appropriate general permit registration certificate before installing or operating an UST;

(d) Failing to install spill and overfill protection equipment that will prevent a release, or failing to demonstrate to DEQ that the equipment is properly functioning;

(e) Failing to install, operate or maintain a method or combination of methods for release detection such that the method can detect a release from any portion of the UST system;

(f) Failing to protect from corrosion any part of an UST system that routinely contains a regulated substance;

(g) Failing to permanently decommission an UST system;

(h) Failing to obtain approval from DEQ before installing or operating vapor or groundwater monitoring wells as part of a release detection method;

(i) Installing, repairing, replacing or modifying an UST system in violation of any rule adopted by DEQ;

(j) Failing to conduct testing or monitoring, or to keep records where the failure constitutes a significant operational compliance violation;

(k) Providing, offering or supervising tank services without the appropriate license; or

(l) Failing to assess the excavation zone of a decommissioned or abandoned UST when directed to do so by DEQ.

(2) **Class II**:

(a) Continuing to use a method or methods of release detection after period allowed by rule has expired;

(b) Failing to have a trained UST system operator for an UST facility after March 1, 2004;

(c) Failing to apply for a modified general permit registration certificate;

(d) Failing to have an operation certificate for each compartment of a multi-chambered or multi-compartment UST when at least one compartment or chamber has an operation certificate;

(e) Installing, repairing, replacing or modifying an UST or UST equipment without providing the required notifications;

(f) Failing to decommission an UST in compliance with the statutes and rules adopted by DEQ, including, but not limited to, performance standards, procedures, notification, general permit registration and site assessment requirements;

(g) Providing tank services at an UST facility that does not have the appropriate general permit registration certificate;

(h) Failing to obtain the identification number and operation certificate number before depositing a regulated substance into an UST, by a distributor;

(i) Failing, by a distributor, to maintain a record of all USTs into which it deposited a regulated substance;

(j) Allowing tank services to be performed by a person not licensed by DEQ;

(k) Failing to submit checklists or reports for UST installation, modification or suspected release confirmation activities;

(l) Failing to complete an integrity assessment before adding corrosion protection;

(m) Failing by an owner or permittee to pass the appropriate national examination before performing tank services; or

(n) Failing to provide the identification number or operation certificate number to persons depositing a regulated substance into an UST.

(3) **Class III**: Failing to notify the new owner or permittee of DEQ's general permit registration requirements, by a person who sells an UST.

Stat. Auth.: ORS 466.720, 466.746, 466.882, 466.994 & 468.020
Stats. Implemented: ORS 466.706 - 466.835, 466.994 & 468.090 - 468.140
Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0068
Hazardous Waste Management and Disposal Classification of Violations

(1) **Class I**:

(a) Failing to make a complete and accurate hazardous waste determination of a residue as required by OAR 340-102-0011;

(b) Failing to meet Land Disposal Restriction (LDR) requirements when disposing of hazardous waste;

(c) Operating a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status;

(d) Treating, storing or accumulating hazardous waste in a hazardous waste management unit, as defined in 40 CFR 260.10, that does not meet the unit design or unit integrity assessment criteria for the hazardous waste management unit;

(e) Accepting, transporting or offering for transport hazardous waste without a uniform hazardous waste manifest;

(f) Transporting, or offering for transport, hazardous waste to a facility not authorized or permitted to manage hazardous waste;

(g) Failing to comply with management requirements for ignitable, reactive, or incompatible hazardous waste;

(h) Illegally treating or disposing of a hazardous waste;

(i) Failing to submit Land Disposal Restriction notifications;

(j) Failing to have and maintain a closure plan or post closure plan for a TSD facility or for each regulated hazardous waste management unit, as defined in 40 CFR 260.10, by the owner or operator of facility or unit;

(k) Failing to carry out closure or post closure plan requirements, by an owner or operator of a TSD facility, such that the certification for completing closure or post closure work is not submitted, or is incomplete, inaccurate, or non-compliant with the approved plans;

(l) Failing to establish or maintain financial assurance or hazard liability requirements in 40 CFR 264.147 or 40 CFR 265.147, by an owner or operator of a TSD facility;

(m) Failing to follow emergency procedures in a Contingency Plan or other emergency response requirements during an incident in which a hazardous waste or hazardous waste constituent is released to the environment or the incident presents a risk of harm to employees, emergency responders or the public;

(n) Failing to comply with the export requirements in 40 CFR 262.52 for hazardous wastes;

(o) Failing to properly install a groundwater monitoring system in compliance with permit requirements, by an owner or operator of a TSD facility;

(p) Failing to properly control volatile organic hazardous waste emissions, by a large-quantity hazardous waste generator or TSD facility, when such failure could result in harm to employees, the public or the environment;

(q) Failing to inspect, operate, monitor, keep records or maintain in compliance with a permit: hazardous waste landfill units, incineration equipment, Subpart X treatment equipment, hazardous waste treatment units, pollution abatement equipment for hazardous waste treatment or disposal, or hazardous waste monitoring equipment;

(r) Failing to immediately clean up spills or releases or threatened spills or releases of hazardous waste, by any person having ownership or control over hazardous waste; or

(s) Failing to submit an exception report.

(2) **Class II**:

(a) Failing to place an accumulation start date on a container used for accumulation or storage of hazardous waste;

(b) Failing to label a tank having a capacity of 100 gallons or more, or containers equaling more than 110 gallon capacity used for accumulation or storage of hazardous waste;

(c) Failing to post required emergency response information next to the telephone, by a small quantity generator;

(d) Accumulating hazardous waste more than thirty (30) days beyond the specified accumulation time frame;

(e) Failing to submit a manifest discrepancy report;

(f) Shipping hazardous waste on manifests that do not comply with DEQ rules;

(g) Failing to prevent the unknown or unauthorized entry of a person or livestock into the waste management area of a TSD facility;

(h) Failing to conduct required inspections at hazardous waste generator accumulation sites or hazardous waste permitted storage areas;

(i) Failing to prepare a contingency plan;

(j) Failing to comply with the requirements of a groundwater monitoring program, unless otherwise classified;

(k) Failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;

(l) Generating, treating, storing or disposing of hazardous waste without complying with the Personnel Training requirements;

(m) Failing to keep containers of hazardous waste closed, except when adding or removing wastes;

(n) Failing to comply with the requirements for management of containers, including satellite accumulation, other than the requirements for ignitable, reactive or incompatible waste, by a hazardous waste generator or storage facility;

(o) Failing to comply with the preparedness, prevention, contingency plan or emergency procedure requirements, unless otherwise classified;

(p) Failing to manage universal waste and waste pesticide residue in compliance with the universal waste management requirements or waste pesticide requirements;

(q) Failing to obtain a hazardous waste EPA identification number when required;

(r) Failing to comply with 40 CFR 264 or 265 Subparts J, W or DD standards, other than unit design or unit integrity assessment;

(s) Failing to comply with 40 CFR 264 or 265 Subparts AA, BB or CC standards for hazardous waste generator and TSD facilities, unless otherwise classified; or

(t) Failing to timely submit an annual report, by a hazardous waste generator, TSD facility, or hazardous waste recycling facility.

(3) **Class III**:

(a) Accumulating hazardous waste up to thirty (30) days beyond the specified accumulation time frame;

(b) Failing to label containers equaling 110 gallon capacity or less used for the accumulation or storage of hazardous waste;

(c) Failing to label a tank having less than 100 gallon capacity used for the accumulation or storage of hazardous waste;

(d) Failing to maintain on site, a copy of the one-time notification regarding hazardous waste that meets treatment standards by a hazardous waste generator; or

(e) Failing to submit a contingency plan to all police, fire, hospital and local emergency responders.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 459.995, 466.070 - 466.080, 466.625 & 468.020
Stats. Implemented: ORS 466.635 - 466.680, 466.990 - 466.994 & 468.090 - 468.140
Hist.: DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 9-1986, f. & ef. 5-1-86; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0071
Polychlorinated Biphenyl (PCB) Classification of Violations

(1) **Class I**:

(a) Treating, storing or disposing of PCBs anywhere other than a permitted PCB disposal facility or a location authorized by DEQ; or

(b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit or DEQ authorization.

(2) **Class II**: Violating any other requirement related to the treatment, storage, generation or disposal of PCBs is classified under OAR 340-012-0053.

Stat. Auth.: ORS 459.995, 466.625, 467.030, 468.020 & 468.996
Stats. Implemented: ORS 466.255, 466.265 - 466.270, 466.530 & 466.990 - 466.994
Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0072
Used Oil Management Classification of Violations

(1) **Class I**:

(a) Using used oil as a dust suppressant, pesticide, or otherwise spreading used oil directly in the environment;

(b) Burning a used oil mixture where the used oil mixture has less than 5,000 Btu/pound;

(c) Offering for sale used oil as specification used oil fuel when the used oil does not meet used oil fuel specifications;

(d) Selling off-specification used oil fuel to a facility not meeting the definition of an industrial boiler or furnace;

(e) Burning off-specification used oil in a device that does not meet the definition of an industrial boiler or furnace and is not otherwise exempt;

(f) Failing to make an on-specification used oil fuel determination when required, by a used oil generator, transporter, burner or processor;

(g) Storing or managing used oil in a surface impoundment;

(h) Failing to determine whether used oil exceeds the permissible halogen content, by a used oil transporter, burner or processor;

(i) Failing to perform required closure on a used oil tank or container, by a used oil processor or re-refiner;

(j) Failing to maintain required secondary containment at a used oil transfer facility or by a processor, burner, or marketer of used oil; or

(k) Failing to immediately clean up spills or releases or threatened spills or releases of used oil, by any person having ownership or control over the used oil.

(2) **Class II**:

(a) Failing to obtain a one-time written notification from a burner before shipping off-specification used oil fuel, by a used oil generator, transporter, processor or re-refiner;

(b) Failing to develop, follow and maintain records of a written waste analysis plan, by a used oil processor;

(c) Failing to close or cover a used oil tank or container;

(d) Failing to timely submit annual used oil handling reports, by a used oil processor;

(e) Failing to label each container or tank used for the accumulation or storage of used oil on site, unless otherwise classified;

(f) Failing to keep a written operating record at the facility, by a used oil processor;

(g) Failing to prepare and maintain an up-to-date preparedness and prevention plan, by a used oil processor; or

(h) Transporting, processing, re-refining, burning or marketing used oil without first obtaining an EPA ID number.

(3) **Class III**:

(a) Failing to label one container or tank in which used oil was accumulated on site, if five or more tanks or containers are present;

(b) Failing to label up to two containers used for the accumulation or storage of used oil on site; or

(c) Failing to label a tank having less than 100 gallon capacity when used for the accumulation or storage of used oil on site.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 459.995, 468.020, 459A.590, 459A.595 & 468.996
Stats. Implemented: ORS 459A.580 - 459A.585, 459A.590 & 468.090 - 468.140
Hist.: DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0073
Environmental Cleanup Classification of Violations

(1) Violating any otherwise unclassified environmental cleanup-related requirements is addressed under OAR 340-012-0053.

(2) **Class II**: Failing to provide information under ORS 465.250.

Stat. Auth.: ORS 465.280, 465.400 - 465.410, 465.435 & 468.020
Stats. Implemented: ORS 465.210 & 468.090 - 468.140
Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0074
Underground Storage Tank (UST) Cleanup Classification of Violations

(1) **Class I**:

(a) Failing to report a confirmed release from an UST;

(b) Failing to initiate or complete the investigation or cleanup, or to perform required monitoring, of a release from an UST;

(c) Failing to conduct free product removal;

(d) Failing to properly manage petroleum contaminated soil; or

(e) Failing to mitigate fire, explosion or vapor hazards.

(2) **Class II**:

(a) Failing to report a suspected release from an UST;

(b) Failing to timely submit reports or other documentation from the investigation or cleanup of a release from an UST; or

(c) Failing to timely submit a corrective action plan or submitting an incomplete corrective action plan.

Stat. Auth.: ORS 466.746, 466.994 & 468.020
Stats. Implemented: ORS 466.706 - 466.835 & 466.994
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0079
Heating Oil Tank (HOT) Classification of Violations

(1) **Class I**:

(a) Failing to report a release from an HOT as required by OAR 340-163-0020(4) when the failure is discovered by DEQ;

(b) Failing to initiate and complete the investigation or cleanup of a release from an HOT;

(c) Failing to initiate and complete free product removal;

(d) Failing to certify that heating oil tank services were conducted in compliance with all applicable regulations, by a service provider;

(e) Failing, by a responsible party or service provider, to conduct corrective action after DEQ rejects a certified report; or

(f) Providing or supervising HOT services without first obtaining the appropriate license.

(2) **Class II**:

(a) Failing to submit a corrective action plan;

(b) Failing to properly decommission an HOT;

(c) Failing to hold and continuously maintain insurance as required by OAR 340-163-0050;

(d) Failing to have a supervisor present when performing HOT services;

(e) Failing to timely report a release from an HOT as required by 340-163-0020(4) when the failure is reported to DEQ by the responsible person or the service provider; or

(f) Offering to provide heating oil tank services without first obtaining the appropriate service provider license.

Stat. Auth.: ORS 466.746, 466.858 - 466.994 & 468.020
Stats. Implemented: ORS 466.706, 466.858 - 466.882, 466.994 & 468.090 - 468.140
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0081
Oil and Hazardous Material Spill and Release Classification of Violations

(1) **Class I**:

(a) Failing to immediately clean up spills or releases or threatened spills or releases of oil or hazardous materials, by any person having ownership or control over the oil or hazardous materials;

(b) Failing to immediately notify the Oregon Emergency Response System (OERS) of the type, quantity and location of a spill of oil or hazardous material; and corrective and cleanup actions taken and proposed to be taken if the amount of oil or hazardous material released exceeds the reportable quantity or will exceed the reportable quantity within 24 hours;

(c) Spilling or releasing any oil or hazardous materials which enters waters of the state;

(d) Failing to activate alarms, warn people in the immediate area, contain the oil or hazardous material or notify appropriate local emergency personnel;

(e) Failing to immediately implement a required plan; or

(f) Failing to take immediate preventative, repair, corrective, or containment action in the event of a threatened spill or release.

(2) **Class II**:

(a) Failing to submit a complete and detailed written report to DEQ of a spill of oil or hazardous material;

(b) Failing to use the required sampling procedures and analytical testing protocols for oil and hazardous materials spills or releases;

(c) Failing to coordinate with DEQ during the emergency response to a spill after being notified of DEQ's jurisdiction;

(d) Failing to immediately report spills or releases within containment areas when reportable quantities are exceeded and exemptions are not met under OAR 340-142-0040;

(e) Failing to immediately manage any spill or release of oil or hazardous materials consistent with the National Incident Management System (NIMS);

(f) Improperly or without approval of DEQ, treating, diluting or disposing of spill, or spill-related waters or wastes; or

(g) Using chemicals to disperse, coagulate or otherwise treat a spill or release of oil or hazardous materials without prior DEQ approval.

(3) **Class III**:

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to DEQ upon request; or

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records, and oil transfer procedures available to DEQ upon request.

Stat. Auth.: ORS 466.625 & 468.020
Stats. Implemented: ORS 466.635 - 466.680, 466.992 & 468.090 - 468.140
Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 7-2003, f. & cert. ef. 4-21-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0082
Contingency Planning Classification of Violations

(1) **Class I**:

(a) Failing to immediately implement the oil spill prevention and emergency response contingency plan or other applicable contingency plan, after discovering a spill;

(b) Operating an onshore or offshore facility without an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(c) Entering into the waters of the state, by a covered vessel without an approved or conditionally approved oil spill prevention and emergency response contingency plan or purchased coverage under an umbrella oil spill prevention and emergency response contingency plan;

(d) Failing to implement prevention measures identified in the facility or covered vessel spill prevention plan that directly results in a spill;

(e) Failing to maintain equipment, personnel and training at levels described in an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(f) Failing to establish and maintain financial assurance as required by statute, rule or order; or

(g) Failing by the owner or operator of an oil terminal facility, or covered vessel, to take all appropriate measures to prevent spills or overfilling during transfer of petroleum or hazardous material products.

(2) **Class II**:

(a) Failing to submit an oil spill prevention and emergency response contingency plan to DEQ at least 90 calendar days before beginning operations in Oregon, by any onshore or offshore facility or covered vessel;

(b) Failing to have available on site, a simplified field document summarizing key notification and action elements of a required vessel or facility contingency plan;

(c) Failing, by a plan holder, to submit and implement required changes to a required vessel or facility contingency plan following conditional approval;

(d) Failing, by a covered vessel or facility contingency plan holder, to submit the required vessel or facility contingency plan for re-approval at least ninety (90) days before the expiration date of the required vessel or facility contingency plan;

(e) Failing to submit spill prevention strategies as required; or

(f) Failing to obtain DEQ approval of the management or disposal of spilled oil or hazardous materials, or materials contaminated with oil or hazardous material, that are generated during spill response.

(3) **Class III**:

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to DEQ upon request;

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records and oil transfer procedures available to DEQ upon request;

(c) Failing to have at least one copy of the required vessel or facility contingency plan in a central location accessible at any time by the incident commander or spill response manager;

(d) Failing to have the covered vessel field document available to all appropriate personnel in a conspicuous and accessible location;

(e) Failing to notify DEQ within 24 hours of any significant changes that could affect implementation of a required vessel or facility contingency plan; or

(f) Failing to distribute amended page(s) of the plan changes to DEQ within thirty (30) calendar days of the amendment.

Stat. Auth.: ORS 468B.350
Stats. Implemented: ORS 468B.345
Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0083
Ballast Water Management Classification of Violations

(1) **Class I**:

(a) Discharging ballast water in violation of OAR 340-143-0010;

(b) Failing to report ballast water management information required by OAR 340-143-0020 or 340-143-0040(2) to DEQ;

(c) Failing to develop and maintain a vessel-specific ballast water management plan in accordance with OAR 340-143-0020(5); or

(d) Failing to make a ballast water log or record book available in accordance with OAR 340-143-0020(6)(b).

(2) **Class II**:

(a) Failing to report ballast water management information to DEQ at least 24 hours before entering waters of the state in accordance with OAR 340-143-0020(1); or

(b) Failing to maintain a complete ballast water log or record book in accordance with OAR 340-143-0020(6).

Stat. Auth.: ORS 783.600 - 783.992
Stats. Implemented: ORS 783.620
Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0097
Dry Cleaning Classification of Violations

(1) **Class I**:

(a) Discharging dry cleaning wastewater to a sanitary sewer, storm sewer, septic system, or boiler into waters of the state;

(b) Failing to have a secondary containment system under and around each dry cleaning machine or each tank or container of stored solvent;

(c) Failing to report a release outside of a containment system of more than one pound of dry cleaning solvent (approximately one cup if perchloroethylene) released in a 24-hour period;

(d) Failing to timely repair the cause of a release within a containment system of dry cleaning solvent;

(e) Failing to immediately clean up a release or repair the cause of a release outside of a containment system of dry cleaning solvents or waste water contaminated with solvent;

(f) Illegally treating or disposing of hazardous waste generated at a dry cleaning facility;

(g) Transporting, delivering or designating on a manifest, delivery of hazardous waste generated at a dry cleaning facility to a destination facility not authorized or permitted to manage hazardous waste;

(h) Failing to use closed, direct-coupled delivery, by a person delivering perchloroethylene to a dry cleaning facility; or

(i) Failing to have closed, direct-coupled delivery for perchloroethylene, by a dry cleaning operator.

(2) **Class II**:

(a) Failing to place or store hazardous waste generated at a dry cleaning facility in properly labeled and closed containers;

(b) Accumulating hazardous waste beyond the specified accumulation time period;

(c) Failing, by a dry cleaning owner or operator, to prominently post the Oregon Emergency Response System telephone number so the number is immediately available to all employees of the dry cleaning facility;

(d) Failing to immediately clean up a release within a containment system of dry cleaning solvent or hazardous waste;

(e) Failing to remove all dry cleaning solvent or solvent containing residue or to disconnect utilities from the dry cleaning machine within 45 days of the last day of dry cleaning machine operations; or

(f) Failing to timely submit an annual report to DEQ, by a dry cleaning owner or operator.

(3) **Class III**: Failing to notify DEQ of change of ownership or operator or closure at a dry cleaning business or dry cleaning store.

Stat. Auth.: ORS 466.070 - 466.080, 466.625 & 468.020
Stats. Implemented: ORS 466.635 - 466.680, 466.990, 466.994 & 468.090 - 468.140
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0130
Determination of Violation Magnitude

(1) The appropriate magnitude of each civil penalty is determined by first applying the selected magnitude in OAR 340-012-0135. If none is applicable, the magnitude is moderate unless evidence shows that the magnitude is major under paragraph (3) or minor under paragraph (4).

(2) The person against whom the violation is alleged has the opportunity and the burden to prove that a magnitude under paragraph (1), (3) or (4) of this rule is more probable than the alleged magnitude, regardless of whether the magnitude is alleged under OAR 340-012-0130 or 340-012-0135.

(3) The magnitude of the violation is major if DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, DEQ may consider any single factor to be conclusive.

(4) The magnitude of the violation is minor if DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation.

Stat. Auth.: ORS 468.020 & 468.130
Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0135
Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows:

(a) Opacity limit violations:

(A) Major — Opacity measurements or readings of 20 percent opacity or more over the applicable limit, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate — Opacity measurements or readings greater than 10 percent opacity and less than 20 percent opacity over the applicable limit; or

(C) Minor — Opacity measurements or readings of 10 percent opacity or less over the applicable limit.

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major — if a Lowest Achievable Emission Rate (LAER) or Best Achievable Control Technology (BACT) analysis shows that additional controls or offsets are or were needed, otherwise apply OAR 340-012-0130.

(c) Exceeding an emission limit established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD): Major — if exceeded the emission limit by more than 50 percent of the limit, otherwise apply OAR 340-012-0130.

(d) Exceeding an emission limit established pursuant to federal National Emission Standards for Hazardous Air Pollutants (NESHAPs): Major — if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply OAR 340-012-0130.

(e) Air contaminant emission limit violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate (SER) amounts listed in OAR 340-200-0020 (Tables 2 and 3).

(A) Major:

(i) Exceeding the annual emission limit as established by permit, rule or order by more than the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by more than the applicable short-term SER.

(B) Moderate:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the annual SER; or

(ii) Exceeding the short-term (less than one-year) emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the applicable short-term SER.

(C) Minor:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount less than 50 percent of the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount less than 50 percent of the applicable short-term SER.

(f) Violations of Emergency Action Plans: Major — Major magnitude in all cases.

(g) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor — Refinishing 10 or fewer on road motor vehicles per year.

(h) Asbestos violations — These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:

(A) Major — More than 260 linear feet or more than 160 square feet of asbestos-containing material or asbestos-containing waste material;

(B) Moderate — From 40 linear feet up to and including 260 linear feet or from 80 square feet up to and including 160 square feet of asbestos-containing material or asbestos-containing waste material; or

(C) Minor — Less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(i) Open burning violations:

(A) Major — Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate — Initiating or allowing the initiation of open burning of 10 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if DEQ lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor — Initiating or allowing the initiation of open burning of less than 10 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if DEQ finds that one or more of the following are true, or decreased one level if DEQ finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(j) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:

(A) Major — Exceeding the limit by more than 10 percent; or

(B) Moderate — Exceeding the limit by 10 percent or less.

(2) Magnitudes for selected Water Quality violations will be determined as follows:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: D = ((QR /4) + QI)/ QI, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants: CS/D was more than CAcute, where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and CAcute is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD5 discharges: (BOD5)/D is more than 10, where BOD5 is the concentration of the five-day Biochemcial Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: D = ((QR /4)+ QI)/ QI, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: D = ((QR/4) + QI)/ QI, where QR is the receiving stream flow and QI is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water quality standards:

(A) Major:

(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;

(ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;

(iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;

(iv) Increased or decreased pH by one or more pH units from the standard; or

(v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.

(B) Moderate:

(i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;

(ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;

(iii) Increased the concentration of toxic pollutants by more than 10 percent but less than 100 percent of the chronic standard;

(iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or

(v) Increased turbidity by more than 20 but less than 50 NTU over background.

(C) Minor:

(i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;

(ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;

(iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;

(iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or

(v) Increased turbidity by 20 NTU or less over background.

(c) The selected magnitude under (2)(a) or (b) may be increased one or more levels if the violation:

(i) Occurred in a water body that is water quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;

(ii) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;

(iii) Violated a bacteria standard either in shellfish growing waters or during the period from June 1 through September 30; or

(iv) Resulted in a documented fish or wildlife kill.

(3) Magnitudes for selected Solid Waste violations will be determined as follows:

(a) Operating a solid waste disposal facility without a permit or disposing of solid waste at an unpermitted site:

(A) Major — The volume of material disposed of exceeds 400 cubic yards;

(B) Moderate — The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or

(C) Minor — The volume of materials disposed of is less than 40 cubic yards.

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste disposed:

(A) Major — The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate — The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor — The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected Hazardous Waste violations will be determined as follows:

(a) Failure to make a hazardous waste determination;

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams; or

(C) Minor — Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment, storage and disposal violations of OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

(i) Treatment, storage, or disposal of more than 55 gallons or 330 pounds of hazardous waste; or

(ii) Treatment, storage, or disposal of at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Treatment,storage, or disposal of 55 gallons or 330 pounds or less of hazardous waste; or

(ii) Treatment, storage, or disposal of less than one quart or 2.2 pounds of acutely hazardous waste.

(c) Hazardous waste management violations classified in OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), (s) and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving less than one quart or 2.2 pounds of acutely hazardous waste.

(C) Minor:

(i) Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows:

(a) Used Oil violations set forth in OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (h):

(A) Major — Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate — Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor — Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations set forth in OAR 340-012-0072(1)(a) through (e), (g) and (k).

(A) Major — A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate — A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor — A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.065 & 468A.045

Stats. Implemented: ORS 468.090 - 468.140 & 468A.060

Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) $12,000 Penalty Matrix:

(a) The $12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(b) The base penalty values for the $12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — $12,000;

(ii) Moderate — $6,000;

(iii) Minor — $3,000.

(B) Class II:

(i) Major — $6,000;

(ii) Moderate — $3,000;

(iii) Minor — $1,500.

(C) Class III: $1,000.

(3) $8,000 Penalty Matrix:

(a) The $8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(b) The base penalty values for the $8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — $8,000.

(ii) Moderate — $4,000.

(iii) Minor — $2,000.

(B) Class II:

(i) Major — $4,000.

(ii) Moderate — $2,000.

(iii) Minor — $1,000.

(C) Class III: $ 700.

(4) $3,000 Penalty Matrix:

(a) The $3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(b) The base penalty values for the $3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — $3,000;

(ii) Moderate — $1,500;

(iii) Minor — $750.

(B) Class II:

(i) Major — $1,500;

(ii) Moderate — $750;

(iii) Minor — $375.

(C) Class III: $250.

(5) $1,000 Penalty Matrix:

(a) The $1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.

(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.

(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(J) Any violation of a statute, rule or order relating to the opportunity to recycle.

(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.

(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(b) The base penalty values for the $1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — $1,000;

(ii) Moderate — $500;

(iii) Minor — $250.

(B) Class II:

(i) Major — $500;

(ii) Moderate — $250;

(iii) Minor — $125.

(C) Class III: $100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0145

Determination of Aggravating or Mitigating Factors

(1) Each of the aggravating or mitigating factors is determined, as described below, and then applied to the civil penalty formula in OAR 340-012-0045.

(2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first formal enforcement action (FEA) in which it is cited is issued.

(a) Except as otherwise provided in this section, the values for "P" and the finding that supports each are as follows:

(A) 0 if no PSAs or there is insufficient information on which to base a finding under this section.

(B) 1 if the PSAs included one Class II violation or two Class III violations; or

(C) 2 if the PSAs included one Class I violation or Class I equivalent.

(D) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.

(b) The value of "P" will not exceed 10.

(c) If any of the PSAs were issued under ORS 468.996, the final value of "P" will be 10.

(d) In determining the value of "P," DEQ will:

(A) Reduce the value of "P" by:

(i) 2 if all the FEAs in which PSAs were cited were issued more than three years before the date the current violation occurred.

(ii) 4 if all the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred.

(B) Include the PSAs:

(i) At all facilities owned or operated by the same respondent within the state of Oregon; and

(ii) That involved the same media (air, water or land) as the violations that are the subject of the current FEA.

(e) In applying subsection (2)(d)(A), the value of "P" may not be reduced below zero.

(f) PSAs that are more than ten years old are not included in determining the value of "P."

(3) "H" is the respondent's history of correcting PSAs. The values for "H" and the finding that supports each are as follows:

(a) -2 if the respondent corrected all prior violations cited as PSAs.

(b) -1 if the violations were uncorrectable and the respondent took reasonable efforts to minimize the effects of the violations cited as PSAs; or

(c) 0 if there is no prior history or if there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

(d) The sum of values for "P" and "H" may not be less than 1 unless the respondent took extraordinary efforts to correct or minimize the effects of all PSAs. In no case may the sum of the values of "P" and "H" be less than zero.

(4) "O" is whether the violation was repeated or ongoing. A violation can be repeated independently on the same day, thus multiple occurrences may occur within one day. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the "O"factor. Each separate violation is also a separate occurrence when determining the "O" factor. The values for "O"and the finding that supports each are as follows:

(a) 0 if there was only one occurrence of the violation, or if there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

(b) 2 if there were more than one but less than seven occurrences of the violation.

(c) 3 if there were from seven to 28 occurrences of the violation.

(d) 4 if there were more than 28 occurrences of the violation.

(e) DEQ may, at its discretion, assess separate penalties for each occurrence of a violation. If DEQ does so, the O factor for each affected violation will be set at 0. If DEQ assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.

(5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:

(a) 0 if there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).

(b) 2 if the respondent had constructive knowledge (reasonably should have known) of the requirement.

(c) 4 if the respondent's conduct was negligent.

(d) 8 if the respondent's conduct was reckless or the respondent acted or failed to act intentionally with actual knowledge of the requirement.

(e) 10 if respondent acted flagrantly.

(6) "C" is the respondent's efforts to correct or mitigate the violation. The values for "C" and the finding that supports each are as follows:

(a) -5 if the respondent made extraordinary efforts to correct the violation or to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.

(b) -4 if the respondent made extraordinary efforts to ensure that the violation would not be repeated.

(c) -3 if the respondent made reasonable efforts to correct the violation, or took reasonable affirmative efforts to minimize the effects of the violation.

(d) -2 if the respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation.

(e) -1 if the respondent made reasonable efforts to ensure that the violation would not be repeated.

(f) 0 if there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g) or if the violation or the effects of the violation could not be corrected or minimized.

(g) 2 if the respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 994, 468.090 - 140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0150

Determination of Economic Benefit

(1) The Economic Benefit (EB) is the approximate dollar value of the benefit gained and the costs avoided or delayed (without duplication) as a result of the respondent's noncompliance. The EB will be determined using the U.S. Environmental Protection Agency's BEN computer model. DEQ may make, for use in the model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent.

(2) Upon request of the respondent, DEQ will provide the name of the version of the model used and respond to any reasonable request for infor-

mation about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply to all respondents unless a specific respondent can demonstrate that the standard value does not reflect the respondent's actual circumstance.

(3) DEQ need not calculate EB if DEQ makes a reasonable determination that the EB is de minimis or if there is insufficient information on which to make an estimate under this rule.

(4) DEQ may assess EB whether or not it assesses any other portion of the civil penalty using the formula in OAR 340-012-0045.

(5) DEQ's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred or been repeated for more than one day, DEQ may treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140
Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.210, 466.990, 466.994, 467.050, 467.990, 468.090 - 468.140 & 468.996
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0155
Additional or Alternate Civil Penalties

(1) DEQ may assess additional civil penalties for the following violations as specified below:

(a) DEQ may assess a civil penalty of up to $250,000 to any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705–459.790, Chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to 459.205–459.426, 459.705–459.790, Chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to public health or that causes extensive damage to the environment. When determining the civil penalty to be assessed under this subsection, the director will use the procedures set out below:

(A) The following base penalties apply:

(i) $100,000 if the violation was caused intentionally;

(ii) $150,000 if the violation was caused recklessly;

(iii) $200,000 if the violation was caused flagrantly.

(B) The civil penalty is calculated using the following formula: BP + [(.1 x BP) (P + H + O + C)] + EB.

(b) Any person who intentionally or negligently causes or permits the discharge of oil or hazardous materials into waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous materials into waters of the state will incur a civil penalty not to exceed $100,000 dollars for each violation. The amount of the penalty is determined as follows:

(A) The class and magnitude of the violation are determined according to OAR 340-012-0045, then the base penalty is determined according to OAR 340-012-0140.

(B) The multiplier for the base penalty is determined by adding the following values:

(i) 2 points if the violation was caused negligently; or 3 points if the violation was caused recklessly; or 4 points if the violation was caused intentionally with actual knowledge that a violation would occur; and

(ii) 1 point if the oil or hazardous material is or contains any constituent listed as a "hazardous substance" in 40 CFR 302; or 2 points if the oil or hazardous material is or contains any constituent listed as an "extremely hazardous substance" under 40 CFR 355; and

(iii) 2 points if the volume of the oil or hazardous material spilled, lost to the environment, or not cleaned up exceeds 1,000 gallons; and

(iv) 1 point if the violation impacted an area of particular environmental value where oil or hazardous materials could pose a greater threat than in other non-sensitive areas, for example, sensitive environments such as those listed in OAR 340-122-0115(50), drinking water sources, and cultural sites.

(C) The base penalty from paragraph (A) is multiplied by the sum of the points from paragraph (B) to determine the adjusted base penalty. The civil penalty formula in OAR 340-012-0045 is applied using the adjusted base penalty for the BP factor.

(c) Any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the applicable penalty matrix in 340-012-0140(2) and the civil penalty formula contained in 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) Any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste except for the fact that it is not discarded, useless or unwanted. will incur a civil penalty according to the schedule set forth in ORS 496.705 for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in ORS 496.705 that are property of the state.

(e) DEQ may assess a civil penalty of $500 to any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050.

(2) Civil penalties for certain violations are subject to the following maximums in lieu of the maximum daily penalty provided in OAR 340-012-160(4):

(a) DEQ may assess a civil penalty of up to $1,000 for each day of violation to any person that fails to comply with the prohibitions on the sale or distribution of cleaning agents containing phosphorus in ORS 468B.130.

(b) DEQ may assess a civil penalty of up to $500 for each violation of each day to any person that fails to comply with Toxics Use Reduction and Hazardous Waste Reduction Act requirements of ORS 465.003 to 465.034.

(c) DEQ may assess a civil penalty of up to $500 for each violation of ORS 459.420 to 459.426. Each battery that is improperly disposed of is a separate violation, and each day an establishment fails to post the notice required by ORS 459.426 is a separate violation.

(d) DEQ may assess a civil penalty of up to $500 for each violation of the requirement to provide the opportunity to recycle as required by ORS 459A.005.

(3) DEQ may assess the civil penalties below in lieu of civil penalties calculated pursuant to OAR 340-012-0045:

(a) DEQ will assess a Field Penalty as specified under OAR 340-150-0250 unless DEQ determines that an owner, operator or permittee is not eligible for the Field Penalty.

(b) DEQ may assess Expedited Enforcement Offers as specified under OAR 340-012-0170(2).

Stat. Auth.: ORS 465, 466, 468.020, 468.130, 468.996 & 783.992
Stats. Implemented: ORS 465.021, 466.785, 466.835, 466.992, 468.090 - 468.140, 468.996, 468B.220, 468B.450 & 783.992
Hist.: DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0049, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0160
DEQ Discretion Regarding Penalty Assessment

(1) In addition to the authority described in section (4) below, DEQ has the discretion to increase a base penalty determined under OAR 340-012-0140 to that derived using the next highest penalty matrix. Factors that may be taken into consideration in increasing a base penalty include the respondent's compliance history, the likelihood of future violations, the degree of environmental or human health impact, the deterrence impact and other similar factors.

(2) In determining a civil penalty, the director may reduce any penalty by any amount the director deems appropriate if the respondent has voluntarily disclosed the violation to DEQ. In deciding whether a violation has been voluntarily disclosed, the director may take into account any considerations the director deems appropriate, including whether the violation was:

(a) Discovered through an environmental auditing program or a systematic compliance program;

(b) Voluntarily discovered;

(c) Promptly disclosed;

(d) Discovered and disclosed independent of the government or a third party;

(e) Corrected and remedied;

(f) Prevented from recurring;

(g) Not repeated;

(h) Not the cause of significant harm to human health or the environment; and

(i) Disclosed and corrected in a cooperative manner.

(3) For the violation of spilling oil or hazardous materials into waters of the state, if the respondent exceeds relevant DEQ regulations pertaining to spill preparation and takes all other reasonably expected precautions to prevent spills and be prepared for spill response, DEQ may reduce the penalty for the spill by 10%. Depending on circumstances, such precautions may include, without limitation, employee safety training, company poli-

cies designed to reduce spill risks, availability of spill response equipment or staff, or use of alternative non-toxic oils.

(4) Regardless of any other penalty amount listed in this division, the director has the discretion to increase the penalty to $25,000 per violation per day of violation based upon the facts and circumstances of the individual case.

(5) DEQ may issue separate civil penalties to each potentially liable person for any violation or violations, regardless of whether the violations arise out of the same facts or circumstances, given compliance objectives, including the level of deterrence needed.

Stat. Auth.: ORS 468.020 & 468.130
Stats. Implemented: ORS 183.745, 459.376, 459.995, 465.900, 465.992, 466.990, 466.994, 468.090-468.140, 468.996, 468B.450
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0162
Inability to Pay the Penalty

(1) After a penalty is assessed, DEQ may reduce a penalty based on the respondent's inability to pay the full penalty amount. In order to do so, DEQ must receive information regarding the respondent's financial condition on a form required by DEQ along with any additional documentation requested by DEQ.

(2) If the respondent is currently unable to pay the full penalty amount, the first option is to place the respondent on a payment schedule with interest. DEQ may reduce the penalty only after determining that the respondent is unable to meet a payment schedule of a length DEQ determines is reasonable.

(3) In considering the respondent's ability to pay a civil penalty, DEQ may use the U.S. Environmental Protection Agency's ABEL, INDIPAY or MUNIPAY computer models to evaluate a respondent's financial condition or ability to pay the full civil penalty amount. Upon request of the respondent, DEQ will provide the respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model;

(4) DEQ, at its discretion, may refuse to reduce an assessed civil penalty. In exercising this discretion, DEQ may take into consideration any factor related to the violations or the respondent, including but not limited to the respondent's mental state, whether the respondent has corrected the violation or taken efforts to ensure the violation will not be repeated, whether the respondent's financial condition poses a serious concern regarding the respondent's ability to remain in compliance, the respondent's future ability to pay, and the respondent's real property or other assets.

Stat. Auth.: ORS 468.020 & 468.130
Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.220 - 468B.450
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0165
Stipulated Penalties

Nothing in OAR chapter 340, division 12 affects the ability of the commission or DEQ to include stipulated penalties in a Mutual Agreement and Order, Consent Order, Consent Judgment or any other order or agreement issued under ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B.

Stat. Auth.: ORS 454.625, 459.995, 468.020 & 468.996
Stats. Implemented: ORS 183.090 & 183.415
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; Renumbered from 340-012-0048, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 1-2014, f. & cert. ef. 1-6-14

340-012-0170
Compromise or Settlement of Civil Penalty by DEQ

(1) DEQ may compromise or settle a civil penalty assessed in a formal enforcement action at any amount that DEQ deems appropriate. In determining whether a penalty should be compromised or settled, DEQ may take into account the following:

(a) New information obtained through further investigation or provided by the respondent that relates to the penalty determination factors contained in OAR 340-012-0045;

(b) The effect of compromise or settlement on deterrence;

(c) Whether the respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether the respondent has had any previous penalties which have been compromised or settled;

(e) Whether the respondent has the ability to pay the civil penalty as determined by OAR 340-012-0162;

(f) Whether the compromise or settlement would be consistent with DEQ's goal of protecting human health and the environment; and

(g) The relative strength or weakness of DEQ's evidence.

(2) Expedited Enforcement Offers:

(a) DEQ may pursue informal disposition of any alleged violation by making an expedited enforcement offer.

(b) The decision as to whether to make an expedited enforcement offer with respect to any alleged violation is within DEQ's sole discretion, except as otherwise provided in this section (2).

(c) In determining whether to make an expedited enforcement offer, DEQ must consider the amount of the economic benefit gained by the alleged violator as a result of the noncompliance; whether the alleged violator has been the subject of a formal enforcement action or been issued a warning letter or pre-enforcement notice for the same or similar violations; whether the alleged violation is isolated or ongoing; and the mental state of the alleged violator.

(d) DEQ will not make an expedited enforcement offer to settle a Class I violation that has been repeated within the previous three years or to settle a violation that would be a major magnitude violation under OAR 340-012-0130(3) regardless of whether a selected magnitude under 340-012-0135 applies.

(e) The penalty amount for an alleged violation cited in an expedited enforcement offer will be 40% of the moderate base penalty listed in OAR 340-012-0140 under the applicable matrix and the applicable classification.

(f) Participation in the expedited enforcement program is voluntary. An alleged violator to whom DEQ makes an expedited enforcement offer is under no obligation to accept the offer.

(g) A person to whom an expedited enforcement offer is made has 30 calendar days from the date of the offer to accept the offer by paying the total amount stipulated in the expedited enforcement offer, or by making a payment toward the total amount if DEQ has approved a payment plan. The expedited enforcement offer payment and acceptance are deemed submitted when received by DEQ.

(h) By submitting payment to DEQ of the total amount stipulated in the expedited enforcement offer or a payment toward the total amount if DEQ has approved a payment plan, the alleged violator accepts the expedited enforcement offer, consents to the issuance of a final order of the commission which may include a compliance schedule, and agrees to waive any right to appeal or seek administrative or judicial review of the expedited enforcement offer, the final order, or any violation cited therein.

(i) Expedited enforcement offers incorporated into final orders of the commission will be treated as prior significant actions in accordance with OAR 340-012-0145.

(j) DEQ may initiate a formal enforcement action for any violation not settled by acceptance of the expedited enforcement offer.

Stat. Auth.: ORS 459, 466, 467, 468.020 & 468.130, 183.415, 183.745
Stats. Implemented: ORS 468.130-140, 183.415, 183.470, 183.745, 459.376, 459.995, 465.900, 466.990, 466.994, 468.035, 468.090 - 140 & 468B.220
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88, Renumbered from 340-012-0075; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0047, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 1-2014, f. & cert. ef. 1-6-14

340-200-0040
State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on December 11, 2013.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, DEQ shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020, 468A.035 & 468A.070

Stats. Implemented: ORS 468A.035
Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert.ef 12-10-12; DEQ 10-2012, f. & cert. ef. 12-11-12; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 11-2013, f. & cert. ef. 11-7-13; DEQ 12-2013, f. & cert. ef. 12-19-13; DEQ 1-2014, f. & cert. ef. 1-6-14

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Amendments to Rules for Commercial and Recreational Groundfish Rules.
Adm. Order No.: DFW 136-2013
Filed with Sec. of State: 12-19-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 635-004-0215, 635-004-0275, 635-004-0320, 635-004-0350, 635-004-0360, 635-006-0210, 635-006-0213, 635-039-0080, 635-039-0090
Subject: The amended rules modify commercial and sport groundfish regulations and establish annual groundfish management measures for 2014. These modifications were developed through the Pacific Fisheries Management Council process, which involves advisory committees and public comment. Department staff also conducted several public meetings to discuss proposed changes to federal and state groundfish regulations. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0215
Definitions

As used in Division 004 regulations:

(1) "Animals living intertidally on the bottom" means any benthic animal with a natural range that includes intertidal areas, regardless of where harvest occurs, and includes but is not limited to, starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates, and crabs except Dungeness crab.

(2) "Board" means the Commercial Fishery Permit Board.

(3) "Buy" includes offer to buy, barter, exchange or trade.

(4) "Coastal Pelagic Species" means all species of ocean food fish and shellfish defined as Coastal Pelagic Species in the Fishery Management Plan for U.S. West Coast Fisheries for Coastal Pelagic Species and in the Federal Coastal Pelagic Species Regulations, Title 50, Part 660, and include:

(a) Jack mackerel (Trachurus symmetricus);

(b) Jack smelt (Atherinopsis californiensis);

(c) Krill (all species in order Euphausiacea);

(d) Market squid (Loligo opalescens);

(e) Northern anchovy (Engraulis mordax);

(f) Pacific herring (Clupea harengus pallasi);

(g) Pacific mackerel (Scomber japonicus); and

(h) Pacific sardine (Sardinops sagax).

(5) "Commercial harvest cap" means the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries.

(6) "Commercial landing cap" means the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries.

(7) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.

(8) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(9) "Department" means the State Department of Fish and Wildlife.

(10) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.

(11) "Dive gear" means gear used while a fisher is submerged underwater in order to take food fish, and includes but is not limited to one or more of the following pieces of equipment: SCUBA or other surface supplied air source (hookah gear), dive mask, snorkel, air cylinders, weight belt, wetsuit and fins.

(12) "Exclusive Economic Zone" means the zone between 3-200 nautical miles offshore of the United States.

(13) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:

(a) "Fixed gear" means longline, trap or pot, setnet, and stationary hook-and-line gears;

(b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;

(c) "Hook-and-line" means one or more hooks attached to one or more lines;

(d) "Lampara net" means a surrounding or seine net with the sections of netting made and joined to create bagging, and is hauled with purse rings;

(e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(f) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(g) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(h) "Purse seine" means an encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets;

(i) "Seine" means any non-fixed net other than a trawl net or gillnet and includes all types of purse seines;

(j) "Setline" means a bottom longline used in rivers and estuaries for targeting white sturgeon;

(k) "Set net" means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;

(l) "Spear" means a sharp, pointed, or barbed instrument on a shaft;

(m) "Trammel net" means a gillnet made with two or more walls joined to a common float line;

(n) "Trawl gear" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels, and includes but is not limited to beam trawl, bobbin or roller trawl, bottom trawl, pelagic trawl and Danish and Scottish seine gear;

(o) "Troll" means fishing gear that consists of 1 or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which

lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation; and

(p) "Vertical hook and line" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(14) "Fishing trip" means a period of time between landings when fishing is conducted.

(15) "Food Fish" means any animal over which the State Fish and Wildlife Commission has jurisdiction, pursuant to ORS 506.036.

(16) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660 and includes:

(a) All species of rockfish, thornyheads, and scorpionfish that occur off Wahington, Oregon, or California (genera Sebastes, Scorpaena, Scorpaenodes, and Sebastolobus);

(b) Arrowtooth flounder (Atheresthes stomias);

(c) Big skate (Raja binoculata);

(d) Butter sole (Isopsetta isolepis);

(e) Cabezon (Scorpaenichthys marmoratus);

(f) California skate (Raja inornata);

(g) Curlfin sole (Pleuronichthys decurrens);

(h) Dover sole (Microstomus pacificus);

(i) English sole (Parophrys vetulus);

(j) Finescale codling (Antimora microlepis);

(k) Flathead sole (Hippoglossoides elassodon);

(l) Kelp greenling (Hexagrammos decagrammus);

(m) Leopard shark (Triakis semifasciata);

(n) Lingcod (Ophiodon elongatus);

(o) Longnose skate (Raja rhina);

(p) Pacific cod (Gadus macrocephalus);

(q) Pacific rattail (Coryphaenoides acrolepis);

(r) Pacific sanddab (Citharichthys sordidus);

(s) Pacific whiting (Merluccius productus);

(t) Petrale sole (Eopsetta jordani);

(u) Ratfish (Hydrolagus colliei);

(v) Rex sole (Glyptocephalus zachirus);

(w) Rock sole (Lepidopsetta bilineata);

(x) Sablefish (Anoplopoma fimbria);

(y) Sand sole (Psettichthys melanostictus);

(z) Soupfin shark (Galeorhinus zyopterus);

(aa) Spiny dogfish (Squalus acanthias);

(bb) Starry flounder (Platichthys stellatus); and

(cc) Starry rockfish (Sebastes constellatus).

(17) "Harvest guideline" means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery.

(18) "Highly Migratory Species" means all species of ocean food fish defined as highly migratory species in the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species and in the Federal Highly Migratory Species Regulations, Title 50, Part 660, and includes:

(a) Bigeye thresher shark (Alopias superciliosus);

(b) Bigeye tuna (Thunnus obesus);

(c) Blue shark (Prionace glauca);

(d) Common thresher shark (Alopias vulpinus);

(e) Common Mola (Mola mola);

(f) Dorado (Coryphaena hippurus);

(g) Escolar (Lepidocybium flavobrunneum);

(h) Lancetfishes (Alepisauridae species);

(i) Louvar (Luvarus imperialis);

(j) North Pacific albacore tuna (Thunnus alalunga);

(k) Northern bluefin tuna (Thunnus thynnus);

(l) Pacific swordfish (Xiphias gladius);

(m) Pelagic sting ray (Dasyetis violacea);

(n) Pelagic thresher shark (Alopias pelagicus);

(o) Shortfin mako shark (Isurus oxyrinchus);

(p) Skipjack tuna (Katsuwonus pelamis);

(q) Striped marlin (Tetrapturus audax);

(r) Wahoo (Acathocybium solandri); and

(s) Yellowfin tuna (Thunnus albacares).

(19) "Inland waters" means all waters of the state except the Pacific Ocean.

(20) "Intertidal" means the area in Oregon coastal bays, estuaries, and beaches between mean extreme low water and mean extreme high water boundaries.

(21) "Land, landed, or landing" means either of the following:

(a) For fisheries where food fish were taken by use of a vessel, "land, landed or landing" means to begin transfer of food fish from a vessel. Once transfer begins, all food fish aboard the vessel are counted as part of that landing, except:

(A) Anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation; and

(B) For vessels participating in the federal trawl rationalization program, the portion of catch that is intended to be delivered to Washington or California is not considered part of that landing.

(b) For fisheries where food fish were taken without use of any vessel, "land, landed or landing" means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:

(A) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and

(B) Once transfer begins, all food fish from the harvest area are counted as part of that landing.

(22) "Length" or "Length Overall" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions such as a dive step or platform.

(23) "Length, total" of a fish is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length.

(24) "Nearshore species" includes (See ORS 506.011):

(a) Black and yellow rockfish (Sebastes chrysolmelas);

(b) Brown Irish lord (Hemilepidotus spinosus);

(c) Brown rockfish (Sebastes auriculatus);

(d) Buffalo sculpin (Enophrys bison);

(e) Cabezon (Scorpaenichthys marmoratus);

(f) Calico rockfish (Sebastes dalli);

(g) China rockfish (S. nebulosus);

(h) Copper rockfish (S. caurinus);

(i) Gopher rockfish (S. carnatus);

(j) Grass rockfish (S. rastelliger);

(k) Kelp greenling (Hexagrammos decagrammus);

(l) Kelp rockfish (Sebastes atrovirens);

(m) Olive rockfish (S. serranoides);

(n) Painted greenling (Oxylebius pictus);

(o) Quillback rockfish (Sebastes maliger);

(p) Red Irish lord (Hemilepidotus hemilepidotus);

(q) Rock greenling (Hexagrammos lagocephalus);

(r) Tiger rockfish (Sebastes nigrocinctus);

(s) Treefish (S. serriceps);

(t) Vermillion rockfish (S. miniatus); and

(u) Whitespotted greenling (Hexagrammos stelleri).

(25) "Ocean food fish" means all saltwater species of food fish except salmon, halibut, and shellfish whether found in fresh or salt water.

(26) "Other nearshore rockfish" includes:

(a) Black and yellow rockfish (Sebastes chrysolmelas);

(b) Brown rockfish (S. auriculatus);

(c) Calico rockfish (S. dalli);

(d) China rockfish (S. nebulosus);

(e) Copper rockfish (S. caurinus);

(f) Gopher rockfish (S. carnatus);

(g) Grass rockfish (S. rastelliger);

(h) Kelp rockfish (S. atrovirens);

(i) Olive rockfish (S. serranoides);

(j) Quillback rockfish (S. maliger); and

(k) Treefish (S. serriceps).

(27) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except the Columbia River boundary with the Pacific Ocean is as specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(28) "Permit holder" means a person or entity that owns an individual permit or owns the vessel to which a vessel permit is attached. A lessee of a permit is not a permit holder.

(29) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.

(30) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type of smoking, reducing, loining, steaking, pickling or filleting.

(31) "Resident" means an actual bona fide resident of this state for at least one year, as specified in ORS 508.285.

(32) "Rockfish" includes all species in the following genera:

(a) Sebastes; and

(b) Sebastolobus.

(33) "Salmon" means all anadromous species of salmon, including but not limited to:

(a) Oncorhynchus gorbuscha, commonly known as humpback, humpies or pink salmon.

(b) Oncorhynchus keta, commonly known as chum or dog salmon.

(c) Oncorhynchus kisutch, commonly known as coho or silver salmon.

(d) Oncorhynchus nerka, commonly known as sockeye, red or blueback salmon.

(e) Oncorhynchus tshawytscha, commonly known as Chinook salmon.

(34) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS Chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.

(35) "Sell" includes to offer or possess for sale, barter, exchange or trade.

(36) "Smelt" means all species in the family Osmeridae.

(37) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(38) "Transport" means transport by any means, and includes offer or receive for transportation.

(39) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:

(a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:

(A) Period 1: January through February;

(B) Period 2: March through April;

(C) Period 3: May through June;

(D) Period 4: July through August;

(E) Period 5: September through October; and

(F) Period 6: November through December.

(b) "Daily trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(c) "Monthly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.

(d) "Weekly trip limit" means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in seven (7) consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(40) "Undue hardship" means death, serious illness requiring extended care by a physician, permanent disability, or other circumstances beyond the individual's control.

(41) "*Unlawful* to buy" means that it is *unlawful* to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or *unlawfully* imported or otherwise *unlawfully* brought into this state.

(42) "Vessel" means any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish for commercial purposes, and has the same meaning as 'boat' as specified in ORS 506.006.

(43) "Vessel operator" means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel owner or permit holder or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.

(44) "Vessel owner" means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. A vessel owner does not include a leasehold interest.

(45) "Waters of this state" means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

(46) "Week" means the period beginning at 00:01 hours local time on Sunday and ending at 24:00 hours local time on the following Saturday.

Stat. Auth.: ORS 496.138, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 37, f. & ef. 1-23-76, Renumbered from 625-010-0545; FWC 49-1979, f. & ef. 11-1-79, Renumbered from 635-036-0270; FWC 10-1983, f. & ef. 3-1-83; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 17-1987(Temp), f. & ef. 5-7-87; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 28-1989(Temp), f. 4-25-89, cert. ef. 4-26-89; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 32-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 70-2005, f. & cert. ef. 7-8-05; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 156-2009, f. 12-29-09, cert. ef. 1-1-10; Renumbered from 635-004-0020, DFW 75-2012, f. 6-28-12; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

635-004-0275

Scope, Inclusion, and Modification of Rules

(1) The commercial groundfish fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking groundfish. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subparts C, D, E and F (October 1, 2013 ed.);

(b) Federal Register Vol. 78, No. 2, dated January 3, 2013 (78 FR 580).

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable groundfish fishing requirements. Where federal regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0280 through 635-004-0365 for additions or modifications to federal groundfish regulations.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 78-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 10-27-12; DFW 106-2012(Temp), f. 8-15-12, cert. ef. 9-1-12 thru 12-31-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 96-2013(Temp), f. 8-27-13, cert. ef. 9-1-13 thru 12-31-13; DFW 132-2013(Temp), f. & cert. ef. 12-9-13 thru 6-7-14; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

635-004-0320

Renewal of Permit

(1) Black Rockfish/Blue Rockfish/Nearshore Fishery Permits may be renewed the following year:

(a) By submitting a $100.00 fee (plus $2.00 license agent fee) and a complete application to the Department date-stamped or postmarked by January 1 of the year the permit is sought for renewal; and

(b) If the provisions specified in ORS 508.957 have been met.

(2) An application for renewal of a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit shall be considered complete if it is legible, has

all information requested in the form, and is accompanied by the required fee in full.

(3) Permits issued under this rule expire on December 31 of each year. If an owner of a vessel with a permit does not submit a complete renewal application by January 1 of the permit year sought, the owner may renew the permit by submitting a complete renewal application after January 1 but before April 1 of the permit year sought if the owner pays a $150.00 late fee in addition to the fee required under section (1)(a) of this rule.

(4) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application may not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129, 506.306 & 508.945
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

635-004-0350
Harvest and Landing Caps

(1) The commercial harvest caps for black rockfish and cabezon are:

(a) Black rockfish: 139.2 metric tons; and

(b) Cabezon: 30.2 metric tons.

(2) The commercial landing caps for black rockfish, blue rockfish and other nearshore species are:

(a) Black rockfish, 137.9 metric tons;

(b) Black rockfish and blue rockfish combined: 141.9 metric tons;

(c) Other nearshore rockfish, 14.3 metric tons;

(d) Cabezon, 30.0 metric tons; and

(e) Greenling, 23.4 metric tons.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

635-004-0360
Incidental Catch in Other Fisheries

A vessel may land black rockfish, blue rockfish, and nearshore species without a permit or endorsement required by OAR 635-004-0300 if the vessel operator:

(1) For only one landing per day, lands no more than 15 pounds of a combination of black rockfish, blue rockfish and nearshore species, as defined in OAR 635-004-0215, and if the black rockfish, blue rockfish and nearshore species:

(a) Make up 25 percent or less of the total poundage of the landing; and

(b) Are taken with legal groundfish fishing gear.

(2) Operates a vessel that holds a valid Black Rockfish/Blue Rockfish Permit without a Nearshore Endorsement and:

(a) For only one landing per day, lands no more than 15 pounds of nearshore species, as defined in OAR 635-004-0215;

(b) The nearshore species make up 25 percent or less of the total poundage of the landing; and

(c) The nearshore species are taken with gear that is legal to use in the Black Rockfish/Blue Rockfish/Nearshore Fishery.

(3) Operates a vessel in the ocean troll salmon fishery pursuant to ORS 508.801 to 508.825 and the vessel lands black rockfish, blue rockfish or a combination of black and blue rockfish in the same landing in which the vessel lands a salmon under the permit required by 508.801 to 508.825. The black and blue rockfish landed under this subsection must be landed dead. A vessel that lands black rockfish or blue rockfish under this section may land up to 100 pounds of black and blue rockfish in aggregate, per landing. When the aggregate incidental catch of black and blue rockfish in the salmon troll fishery reaches 3,000 pounds in a calendar year, a vessel that lands black rockfish or blue rockfish under this section may not land more than 15 pounds of black and blue rockfish in aggregate, per trip.

(4) Operates a vessel in the west coast groundfish trawl fishery pursuant to federal regulations and lands no more than 1,000 pounds of black and blue rockfish in aggregate per calendar year, and if the black and blue rockfish:

(a) Make up 25 percent or less of the total poundage of each landing; and

(b) Are landed dead.

(5) Is a nonprofit aquarium or has contracted with a nonprofit aquarium to land black rockfish, blue rockfish or nearshore fish for the purpose of displaying or conducting research on the black rockfish, blue rockfish or nearshore fish.

(6) Does not exceed trip limits as established in OAR 635-004-0355, and 635-004-0365.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 112-2003, f. & cert. ef. 11-14-03; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; DFW 142-2008, f. & cert. ef. 11-21-08; Renumbered from 635-004-0170, DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

635-006-0210
Fish Receiving Ticket — All Fish

(1) Except as provided in OAR 635-006-0211, for each purchase of food fish or shellfish by a licensed wholesale fish dealer, wholesale fish bait dealer, food fish canner, or shellfish canner from a commercial fisher or commercial bait fisher, the dealer or canner shall prepare at the time of landing a Fish Receiving Ticket, or a separate document in lieu of a Fish Receiving Ticket provided the original dock ticket is attached to the completed dealer copy of the Fish Receiving Ticket subsequently submitted to ODFW. Fish dealers shall be required to account for all Fish Receiving Tickets received from the Department. Fish Receiving Tickets shall be issued numerical sequence.

(2) Fish Receiving Tickets shall include the following:

(a) Fish dealer's name and license number, including the buying station and location if the food fish or shellfish were received at any location other than the licensed premises of the fish dealer;

(b) Date of landing;

(c) His or her name from whom purchase is made. If not landed from a vessel, then his or her commercial license number shall be added. If received from a Columbia River treaty Indian, his or her tribal affiliation and enrollment number as shown on the official identification card issued by the U.S. Department of Interior, Bureau of Indian Affairs, or tribal government, shall be used in lieu of an address or commercial fishing license;

(d) Boat name, boat license number, and federal document or State Marine Board number from which catch made;

(e) For groundfish harvested in the limited entry fixed gear fishery, the federal limited entry fixed gear permit number associated with the landing or portion of landing, which shall be provided by the vessel operator to the preparer of the fish ticket;

(f) Port of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip;

(g) Fishing gear used by the fisher;

(h) For salmon and Dungeness crab, zone or area of primary catch;

(i) Species or species group, as determined by the Department, of food fish or shellfish received;

(j) Pounds of each species or species group, as determined by the Department, received:

(A) Pounds must be determined and reported based on condition of the fish when landed, either dressed or round. Dressed pounds may only be used for species with a conversion factor listed at OAR 635-006-0215(3)(g). Measures must be taken using a certified scale.

(B) Pounds shall include "weighbacks" by species. "Weighbacks" are those fish or shellfish with no commercial value. The following species or species groups are exempt from fish ticket requirements when considered "weighbacks":

(i) Sponges;

(ii) Sea Pens;

(iii) Sea Whips;

(iv) Black Corals;

(v) Sea Fans;

(vi) Anemone;

(vii) Jellyfish;

(viii) Whelks;

(ix) Squids other than Humboldt and market;

(x) Octopus other than Pacific giant octopus;

(xi) Mysids;

(xii) Shrimps other than pink shrimp, coonstripe prawns, and spot prawns;

(xiii) Crabs other than Dungeness, tanner, box, Oregon hair, and red rock crabs;

(xiv) Sea Stars including Brittle Stars;

(xv) Urchins;

(xvi) Sand dollars;

(xvii) Sea cucumbers;

(xviii) Eels other than hagfish;

(xix) Blacksmelts;
(xx) Spookfish;
(xxi) Stomiformes including Viperfish and Blackdragons;
(xxii) Slickheads;
(xxiii) Flatnoses;
(xxiv) Lancetfishes;
(xxv) Barricudinas;
(xxvi) Myctophids;
(xxvii) Tomcod;
(xxviii) Eelpouts including Bigfin, Two line, Black, and Snakehead;
(xxix) Dreamers;
(xxx) Anglerfish;
(xxxi) King of the Salmon;
(xxxii) Melamphids;
(xxxiii) Whalefish;
(xxxiv) Oxeye oreo;
(xxxv) Sculpins other than cabezon, buffalo sculpin, red Irish lord, and brown Irish lord;
(xxxvi) Poachers;
(xxxvii) Snailfish;
(xxxviii) Pricklebacks;
(xxxix) Gunnels;
(xl) Scabbardfish;
(xli) Lancetfish;
(xlii) Ragfish;
(xliii) Slender sole;
(xliv) Deepsea sole;
(xlv) Rays including Pacific and electric Rays and Devilfish;
(xlvi) Wolffishes including wolf eels.

(k) For Columbia River sturgeon the exact number of fish received and the actual round weight of that number of fish;

(l) Price paid per pound for each species received;

(m) Signature of the individual preparing the Fish Receiving Ticket;

(n) Signature of the vessel operator making the landing;

(o) Species name, pounds and value of fish retained by fisher for take home use.

(3) Except as provided in OAR 635-006-0212 and 635-006-0213, the original of each Fish Receiving Ticket covering food fish and shellfish received shall be forwarded within five working days of the date of landing to the Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Drive SE, Salem, OR 97302 or through the Pacific States Marine Fisheries Commission West Coast E-Ticket system or as required by Title 50 of the Code of Federal Regulations, part 660 Subpart C. All fish dealer amendments must be conducted in the same system in which the ticket was initially submitted.

(4) Wholesale fish bait dealers landing small quantities of food fish or shellfish may request authorization to combine multiple landings on one Fish Receiving Ticket and to deviate from the time in which Fish Receiving Tickets are due to the Department. Such request shall be in writing, and written authorization from the Department shall be received by the wholesale fish bait dealer before any such deviations may occur.

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.036, 506.109, 506.119, 506.129, 508.530 & 508.535
Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0135, Renumbered from 635-036-0580; FWC 1-1986, f. & ef. 1-10-86; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-91; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 16-1995(Temp), f. & cert. ef. 2-16-95; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; DFW 10-2004, f. & cert. ef. 2-13-04; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

635-006-0213
Fish Receiving Ticket — Limited Fish Seller Permit

(1) This regulation is in addition to, and not in lieu of the provisions contained in OAR 635-006-0210.

(2) For food fish or shellfish sold under a Limited Fish Seller Permit, the Limited Fish Seller shall complete daily entries of fish sold on a Fish Receiving Ticket. Fish Receiving Tickets are prenumbered in books of 50 tickets. Limited Fish Sellers shall account for all Fish Receiving Tickets received from the Department. Fish Receiving Tickets shall be issued in numerical sequence. The Fish Receiving Ticket shall include, for each day's sales:

(a) Limited Fish Seller's name and license number;

(b) Date of sales;

(c) Boat name and federal document or State Marine Board number from which catch made;

(d) For groundfish harvested in the limited entry fixed gear fishery, the federal limited entry fixed gear permit number associated with the landing or portion of landing;

(e) Port of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip;

(f) Fishing gear used;

(g) Species or species group of fish or shellfish sold;

(h) Quantity in pounds;

(i) Price received per pound;

(j) Signature of the individual preparing the fish ticket;

(k) Name of wholesale fish dealer to whom other food fish or shellfish were sold from the same fishing trip.

(l) For troll-caught salmon, Fish Receiving Ticket shall show the number of days fished during the trip in which the salmon were caught.

(3) The original of each Fish Receiving Ticket covering fish and shellfish sold per trip shall be forwarded within ten working days following the landing to the Department.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.530, 508.535 & 508.550
Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550
Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

635-039-0080
Purpose and Scope

(1) The purpose of division 39 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 39 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled 2014 Oregon Sport Fishing Regulations;

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2013 ed.), as amended;

(c) Title 50 of the Code of Federal Regulations, Part 660, Subpart G (October 1, 2013 ed.), as amended;

(d) Federal Register Vol. 78, No. 2, dated January 3, 2013 (78 FR 580);

(e) Federal Register Vol. 78, No. 51, dated March 15, 2013 (78 FR 16423); and

(f) Federal Register Vol. 78, No. 89, dated May 8, 2013 (78 FR 26708).

(3) Therefore, persons must consult all publications referenced in this rule in addition to division 11 and 39 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 25-2013(Temp), f. 4-2-13, cert. ef. 5-1-13 thru 5-31-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

635-039-0090
Inclusions and Modifications

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year. The sport harvest caps are:

(a) Black rockfish, 440.8 metric tons.

(b) Cabezon, 16.8 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (Sebastes chrysolmelas); brown (S. auriculatus); calico (S. dalli); China (S. nebulosus); copper (S. caurinus); gopher (S. carnatus); grass (S. rastelliger); kelp (S. atrovirens); olive (S. serranoides); quillback (S. maliger); and treefish (S. serriceps).

(4) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. The sport landing caps are:

(a) Black rockfish and blue rockfish combined, 481.8 metric tons.

(b) Other nearshore rockfish, 13.6 metric tons.

(c) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the 2014 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2014:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the 2014 Oregon Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than one be a cabezon. Retention of the following species is prohibited:

(A) Yelloweye rockfish;

(B) Canary rockfish; and

(C) Cabezon from January 1 through June 30.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a), (5)(b) and (5)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (5)(a) and (5)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 71. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

(A) Cape Lookout (45°20'30" N latitude); and

(B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2013 ed.). Within the YRCA, it is *unlawful* to fish for, take, or retain species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(h) Effective April 1, 2013, the annual bag and possession limit for white sturgeon is two (2) fish and catch-and-release angling for white sturgeon is allowed year-round. Effective January 1, 2014, all waters within the Marine Zone are closed to the retention of white sturgeon and catch-and-release angling is allowed year-round.

(6) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp) , f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 90-2012(Temp), f. 7-17-12, cert. ef. 9-20-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 112-2013(Temp), f. & cert. ef. 9-27-13 thru 12-31-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14

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Rule Caption: Amend Rules Related to 2014 Oregon Sport Fishing Regulations

Adm. Order No.: DFW 137-2013

Filed with Sec. of State: 12-19-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 7-1-2013

Rules Amended: 635-011-0100, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134

Subject: Amended rules to adopt changes to the sport fishing regulations for finfish, shellfish, and marine invertebrates for 2014. Housekeeping and Technical corrections were made to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-011-0100
General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2014 Oregon Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to

time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 153-2011(Temp), f. 11-7-11, cert. ef. 11-15-11 thru 5-12-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 142-2012(Temp), f. 11-6-12, cert. ef. 11-15-12 thru 5-12-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 130-2013(Temp), f. 12-9-13, cert. ef. 12-10-13 thru 6-8-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-013-0004
Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in Code of Federal Regulations, Title 50, Part 660, Subparts A and H, and the **2014 Oregon Sport Fishing Regulations**.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H, and the **2014 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2014 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by Federal Regulations (CFR, Title 50, Part 660, Subparts A and H).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; Administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp) f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert .ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-014-0080
Purpose and Scope

(1) The purpose of division 14 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 14 incorporates by reference the **2014 Oregon Sport Fishing Regulations**. Therefore, persons must consult the 2014 Oregon Sport Fishing Regulations in addition to division 11 and division 14 to determine all applicable sport fishing requirements for the Northwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-014-0090
Inclusions and Modifications

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations** pamphlet.

(2) Notwithstanding all other requirements provided in the **2014 Oregon Sport Fishing Regulations** pamphlet, the following additional rules apply to adult salmon angling in waters of the Northwest Zone:

(a) All waters of the Necanicum River Basin, Nehalem River Basin (including North Fork), Tillamook Bay Basin, (including the Miami, Kilchis, Wilson, Trask, and Tillamook rivers), and the Nestucca River Basin (including the Little Nestucca and Three Rivers) Salmon River, Siletz River (including Drift Creek), and Yaquina River that are open for Chinook salmon are limited to no more than 2 adult non fin-clipped Chinook salmon per day, and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone with a 10 adult non fin-clipped Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31 except in the Nehalem Basin where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between July 1 and December 31.

(b) Within the Nehalem River Basin (including the North Fork) the following additional rules apply:

(A) Mainstem closed to all salmon angling upstream of Foss Road (CC) Bridge (RM 15.5) July 1 through December 31.

(B) Nehalem Bay tidewater from the jetty tips upstream to Miami-Foley Bridge on South Fork and North Fork Road Bridge on the North Fork is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 700 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than one total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone with a one adult non adipose fin-clipped coho salmon seasonal aggregate limit (estucca River and Tillamook Bay Basin).

(c) Within the Tillamook Bay Basin the following additional rules apply:

(A) Tillamook Bay tidewater from the jetty tips upstream to Highway 101 Bridge on Miami, Kilchis, Wilson, and Trask rivers and Burton Bridge on Tillamook River is open on Fridays and Saturdays only for non adipose fin-clipped coho salmon from September 20 through the earlier of November 30 or attainment of an adult coho salmon quota of 500 non adipose fin-clipped coho salmon.

(B) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than one total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone with a one adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nestucca River and Nehalem River Basin).

(d) Within the Nestucca River Basin (including the Little Nestucca River and Three Rivers) the following rules apply:

(A) Mainstem Nestucca River upstream of First Bridge (RM 15.8) near Beaver closed to all salmon angling August 1 through December 31.

(B) Nestucca Bay tidewater (excluding Little Nestucca tidewater) from the bay mouth upstream to the Cloverdale Bridge (RM 7.1) is open on Sundays and Mondays only for non adipose fin-clipped coho salmon from September 15 through the earlier of November 25 or attainment of an adult coho salmon quota of 200 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than one total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone with a one adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nehalem River and Tillamook Bay Basin).

(e) Within the Siletz River Basin the following additional rules apply:

(A) Mainstem and tributaries above an ODFW marker sign approximately 1,200 feet upstream of Ojalla Bridge (RM 31) closed to Chinook August 1–December 31; Drift Creek (Siletz River Basin) upstream of the confluence with Quarry Creek at RM 8 is closed for Chinook salmon from August 1 through December 31;

(B) Siletz River and Bay upstream to an ODFW marker sign approximately 1,200 feet upstream of Ojalla Bridge (RM 31) is open for non adipose fin-clipped coho salmon from September 15 through November 30; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Yaquina River, Alsea River, Siuslaw River, Umpqua River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(f) Within the Yaquina River Basin the following additional rules apply:

(A) All waters of the Yaquina River upstream of the confluence of the Yaquina River and Big Elk Creek at RM 18.3 and all waters of Big Elk Creek (Yaquina River Basin) are closed for Chinook salmon from August 1 through December 31;

(B) The Yaquina River and Bay upstream to the confluence of the Yaquina River and Big Elk Creek are open for non adipose fin-clipped coho salmon from September 15 through November 30; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Siletz River, Alsea River, Siuslaw River, Umpqua River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(g) Within the Alsea River Basin the following additional rules apply:

(A) All waters of Drift Creek (Alsea River Basin) within the Drift Creek Wilderness Area and upstream are closed for Chinook salmon from August 1 through December 31;

(B) All waters of Five Rivers are closed for Chinook salmon from August 1 through December 31.

(C) The Alsea River and Bay upstream to the USFS River Edge Boat Landing are open for non adipose fin-clipped coho salmon from September 15 through November 30; and

(D) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Siletz River, Yaquina River, Siuslaw River, Umpqua River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(h) Within the Siuslaw River Basin the following additional rules apply:

(A) All waters of the Siuslaw River upstream of the confluence with Lake Creek at RM 30.0 are closed for Chinook salmon from August 1 through December 31;

(B) All waters of Lake Creek are closed for Chinook salmon August 1 through October 15 and all waters of Lake Creek upstream from the mouth of Indian Creek (RM 2.5) and downstream of Fish Creek (RM 17) are closed for angling for Chinook salmon the entire year and closed to all angling from September 1 through November 30;

(C) The Siuslaw River and Bay upstream to the confluence of the Siuslaw River with Lake Creek is open for non adipose fin-clipped coho salmon from September 15 through November 30; and

(D) Lake Creek upstream to the mouth of Indian Creek (RM 2.5) is open to non adipose fin-clipped coho salmon from October 16 through November 30;

(E) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Yaquina River, Alsea River, Siletz River, Umpqua River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(i) Beaver Creek (at Ona Beach between Newport and Waldport) from footbridge west of Highway 101 upstream to the confluence of South Fork Beaver Creek (Ona Beach) open on Saturdays and Sundays ONLY for non adipose fin-clipped coho salmon from November 1-30 or until attainment of an adult coho quota of 150 fish. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 non adipose fin-clipped salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho season aggregate limit (Siletz River, Yaquina River, Alsea River, Siuslaw River, Umpqua River, Floras Creek/New River, Coos River, and Coquille River).

(3) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon, steelhead, or trout in the following areas:

(a) Within the Youngs Bay Select Area (Clatsop County) from the Highway 101 Bridge upstream to markers at the confluence of the Youngs and Klaskanine rivers including the lower Lewis and Clark River upstream to the Alternate Highway 101 Bridge, and the lower Walluski River upstream to the Highway 202 Bridge.

(b) In Gnat Creek (Clatsop County) from the railroad bridge upstream to the Aldrich Point Road Bridge.

(4) Effective January 1, 2013, the annual bag limit for white sturgeon is one (1) fish. Effective April 1, 2013, the annual bag and possession limit for white sturgeon is two (2) fish. Catch-and-release angling for white sturgeon is allowed year-round. Effective January 1, 2014, all waters within the Northwest Zone are closed to the retention of white sturgeon and catch-and-release angling is allowed year-round.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f, 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert, ef, 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW

57-2011(Temp), f. 5-27-11, cert. ef. 6-1-11 thru 6-30-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 139-2011(Temp), f. 10-3-11, cert. ef. 10-6-11 thru 12-31-11; DFW 141-2011(Temp), f. 10-6-11, cert. ef. 10-10-11 thru 12-31-11; DFW 143-2011(Temp), f. 10-10-11, cert. ef. 10-11-11 thru 12-31-11; DFW 148-2011(Temp), f. 10-20-11, cert. ef. 10-21-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 53-2012(Temp), f. 5-29-12, cert. ef. 6-1-12 thru 10-31-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 63-2012(Temp), f. & cert. ef. 6-12-12 thru 10-31-12; DFW 71-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 11-30-12; DFW130-2012(Temp), f. 10-10-12, cert. ef. 10-13-12 thru 12-31-12; DFW 135-2012(Temp), f. 10-22-12, cert. ef. 10-24-12 thru 12-31-12; DFW 139-2012(Temp), f. 10-30-12, cert. ef. 10-31-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 43-2013(Temp), f. 5-29-13, cert. ef. 6-1-13 thru 10-31-13; DFW 50-2013, f. 6-10-13, cert. ef. 7-1-13; DFW 60-2013(Temp), f. 6-24-13, cert. ef. 6-30-13 thru 9-30-13; Administrative correction 11-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-016-0080
Purpose and Scope

(1) The purpose of division 16 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 16 incorporates by reference the **2014 Oregon Sport Fishing Regulations**. Therefore, persons must consult the 2014 Oregon Sport Fishing Regulations in addition to division 11 and 16 to determine all applicable sport fishing requirements for the Southwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-016-0090
Inclusions and Modifications

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other requirements provided in the 2014 Oregon Sport Fishing Regulations, the following restrictions apply to angling in waters of the Southwest Zone:

(a) Within the Umpqua River Basin the following additional rules apply: Open for non adipose fin-clipped coho salmon in the Mainstem Umpqua River and Bay from the mouth to Scottsburg Bridge at RM 27.5 from September 15 through the earlier of November 30 or attainment of an adult coho quota of 3,000 non adipose fin-clipped coho. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Siletz River, Yaquina River, Alsea River, Siuslaw River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(b) Within the Coos River Basin the following additional rules apply:

(A) All waters of the South Fork Coos River upstream from the head of tidewater at Dellwood at RM 10.0 are closed for all salmon angling from August 1 through December 31 and closed for steelhead from August 1 through November 14; and

(B) Open for non adipose fin-clipped coho salmon upstream to the head of tide at Dellwood at RM 10.0 on the South Coos River and to the East Fork/West Fork Millicoma confluence from September 15 through November 30. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Siletz River, Umpqua River, Yaquina River, Alsea River, Siuslaw River, Beaver Creek (Ona Beach), Floras Creek/New River, and Coquille River).

(c) Within the Coquille River Basin the following additional rules apply: Open for non adipose fin-clipped coho salmon in Coquille River and Bay upstream to the Highway 42S bridge (Sturdivant Park) at RM 24.0 from September 15 through November 30. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Siletz River, Umpqua River, Yaquina River, Alsea River, Siuslaw River, Beaver Creek (Ona Beach), Floras Creek/New River, and Coos River).

(d) Within the Tenmile Lakes Basin the following additional rules apply: North and South Tenmile Lakes (Coos County) upstream from Hilltop Bridge are open for non adipose fin-clipped coho salmon from October 1 through December 31. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon, and no more than 5 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone. Only one rod per angler may be used while angling for coho. Streams that empty into North and South Tenmile Lakes are not open to coho salmon angling, nor is the canal that connects North and South Tenmile Lakes.

(e) Within the Floras Creek/New River Basin the following additional rules apply:

(A) All waters of Floras Creek/New River Basin that are open for Chinook salmon are limited to no more than one adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of the Sixes River, Elk River, and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31; and

(B) Floras Creek/New River from the Bureau of Land Management boat ramp at Storm Ranch upstream to the confluence with the Floras Lake outlet open on Fridays, Saturdays, and Sundays ONLY for non adipose fin-clipped coho salmon from November 1-30 or until attainment of an adult coho quota of 200 fish. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon, and no more than 2 non adipose fin-clipped salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho season aggregate limit (Siletz River, Yaquina River, Beaver Creek (Ona Beach), Alsea River, Siuslaw River, Umpqua River, Coos River, and Coquille River).

(f) Within the Sixes River Basin the following additional rules apply: All waters of the Sixes River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of Floras Creek/New River, Elk River and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(g) Within the Elk River Basin the following additional rules apply: All waters of the Elk River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of Floras Creek/New River, Sixes River and Elk River Ocean Terminal Area. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(h) All waters of the Chetco River mainstem upstream of the powerline crossing at RM 2.2 are closed to angling from August 1 through November 1.

(i) All waters of the Winchuck River mainstem, including tidewater, are closed to angling from August 1 through November 1.

(3) Effective April 1, 2013, the annual bag and possession limit for white sturgeon is two (2) fish and catch-and-release angling for white sturgeon is allowed year-round. Effective January 1, 2014, all waters within the Southwest Zone are closed to the retention of white sturgeon and catch-and-release angling is allowed year-round.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-

1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, certe. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 65-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 5-31-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 143-2010(Temp), f. 10-8-10, cert. ef. 10-10-10 thru 12-31-10; DFW 152-2010(Temp), f. 10-27-10, cert. ef. 10-30-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 31-2011(Temp), f. 4-18-11, cert. ef. 5-1-11 thru 10-27-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 137-2011(Temp), 9-30-11, cert. ef. 10-1-11 thru 12-31-11; DFW 145-2011(Temp), f. 10-11-11, cert. ef. 10-12-11 thru 12-31-11; DFW 149-2011(Temp), f. 10-20-11, cert. ef. 10-22-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 138-2012(Temp), f. 10-29-12, cert. ef. 10-31-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 50-2013, f. 6-10-13, cert. ef. 7-1-13; DFW 124-2013(Temp), f. 10-29-13, cert. ef. 11-1-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-017-0080

Purpose and Scope

(1) The purpose of division 17 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 17 incorporates by reference the **2014 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2014 Oregon Sport Fishing Regulations** in addition to division 11 and 17 to determine all applicable sport fishing requirements for the Willamette Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-017-0090

Inclusions and Modifications

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Sandy River (Multnomah/Clackamas Co.) mainstem and tributaries upstream from ODFW markers at the mouth of the Salmon River, including the Salmon River:

(a) Open for adipose fin-clipped steelhead and non-adipose fin-clipped steelhead harvest July 1–August 31.

(b) Angling restricted to artificial flies and lures with a single point hook no larger than 1/2 inch gap (size 1) and multiple point hook no larger than 3/8 inch gap (size 4).

(c) No limit on size or number of brook trout taken. Catch limits on other trout species do not apply to brook trout.

(4) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon, steelhead, or trout in the mainstem Willamette River downstream of Willamette Falls (including Multnomah Channel and the Gilbert River) and in the lower Clackamas River upstream to the Highway 99E Bridge.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp) f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 61-2010, f. & cert. ef. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; DFW 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; DFW 96-2010(Temp), f. 7-7-10, cert. ef. 7-8-10 thru 10-31-10; DFW 123-2010(Temp), f. 8-26-10, cert. ef. 9-1-10 thru 12-31-10; DFW 134-2010(Temp), f. 9-22-10, cert. ef. 9-23-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 158-2011(Temp), f. 12-14-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 89-2012(Temp), f. 7-17-12, cert. ef. 7-26-12 thru 8-31-12; DFW 99-2012(Temp). f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 67-

2013(Temp), f. 7-3-13, cert. ef. 7-11-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-017-0095
Sturgeon Season

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) Effective January 1, 2014, all waters within the Willamette Zone are closed to the retention of white sturgeon, except for the Willamette River upstream of Willamette Falls.

(3) Catch-and-release angling for white sturgeon is allowed year-round except as described below in sections (4) and (6).

(4) Bank angling is prohibited from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(5) Retention of green sturgeon is prohibited all year in all areas.

(6) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the Lake Oswego-Oak Grove Railroad Bridge.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10; DFW 154-2010(Temp), f. & cert. ef. 11-8-10 thru 12-31-10; DFW 163-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 10-2011(Temp), f. 2-10-11, cert. ef. 2-17-11 thru 6-29-11; DFW 22-2011(Temp), f. 3-16-11, cert. ef. 3-17-11 thru 6-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 9-2012(Temp), f. 2-6-12, cert. ef. 2-17-12 thru 4-30-12; DFW 17-2012(Temp), f. 2-22-12, cert. ef. 2-23-12 thru 4-30-12; Administrative correction, 5-25-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 13-2013(Temp), f. 2-13-13, cert. ef. 2-14-13 thru 7-31-13; DFW 17-2013(Temp), f. 2-27-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 79-2013(Temp), f. 7-23-13, cert. ef. 7-25-13 thru 12-31-13; DFW 103-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-018-0080
Purpose and Scope

(1) The purpose of division 18 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 18 incorporates by reference the **2014 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2014 Oregon Sport Fishing Regulations** in addition to division 11 and division 18 to determine all applicable sport fishing requirements for the Central Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-018-0090
Inclusions and Modifications

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) Hood River Basin (Hood River Co.) mainstem and tributaries not listed: Emergency regulations opening Chinook angling may be adopted after the printing of the **2014 Oregon Sport Fishing Regulations**. Up-to-date changes can be obtained by calling 1-503-947-6000 or at our internet site: http://www.dfw.state.or.us/resources/fishing/reg_changes/central.asp.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96, FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp) f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11; DFW 42-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 93-2011(Temp), f. 7-13-11, cert. ef. 8-1-11 thru 10-31-11; DFW 123-2011(Temp), f. 9-2-11, cert. ef. 9-3-11 thru 12-31-11; DFW 160-2011(Temp), f. 12-20-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 34-2012(Temp), f. 4-13-12, cert. ef. 4-15-12 thru 7-31-12; DFW 55-2012(Temp), f. & cert. 6-4-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 88-2012(Temp), f. 7-16-12, cert. ef. 8-1-12 thru 10-31-12; Administrative correction 11-23-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 16-2013(Temp), f. 2-25-13, cert. ef. 4-15-13 thru 6-30-13; DFW 75-2013(Temp), f. 7-15-13, cert. ef. 8-1-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-019-0080
Purpose and Scope

(1) The purpose of division 19 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 19 incorporates by reference the **2014 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2014 Oregon Sport Fishing Regulations** in addition to division 11 and 19 to determine all applicable sport fishing requirements for the Northeast Zone.

Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: 496.162, 506.129
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-019-0090
Inclusions and Modifications

The **2014 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp) f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-23-12 thru 9-1-12; DFW 50-2012(Temp), f. 5-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12; DFW 70-2012(Temp), f. 6-26-12, cert. ef. 6-27-12 thru 9-1-12; DFW 72-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 86-2012(Temp), f. 7-10-12, cert. ef. 7-15-12 thru 9-1-12; Administrative correction 9-20-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 153-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 4-30-13; DFW 31-2013(Temp), f. 5-14-13, cert. ef. 5-16-13 thru 6-30-13; DFW 39-2013(Temp), f. 5-22-13, cert. ef. 5-24-13 thru 11-19-13; DFW 46-2013(Temp), f. 5-30-13, cert. ef. 6-1-13 thru 11-26-13; DFW 62-2013(Temp), f. 6-26-13, cert. ef. 7-5-13 thru 12-31-13; DFW 74-2013(Temp), f. 7-15-13, cert. ef. 7-19-13 thru 9-1-13; Administrative correction 11-1-13; DFW 121-2013(Temp), f. 10-24-13, cert. ef. 11-1-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-021-0080
Purpose and Scope

(1) The purpose of division 21 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 21 incorporates by reference the **2014 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2014 Oregon Sport Fishing Regulations** in addition to division 11 and 21 to determine all applicable sport fishing requirements for the Southeast Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-021-0090
Inclusions and Modifications

The **2014 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325, 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp) f. 8-19-02,cert. ef 8-20-02 thru 11-1-0 2 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09; Administrative correction 9-29-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 52-2010(Temp), f. 4-30-10, cert. ef. 5-1-10 thru 9-30-10; DFW 60-2010(Temp), f. 5-13-10, cert. ef. 5-22-10 thru 9-30-10; DFW 67-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 9-30-10; DFW 78-2010(Temp), f. 6-10-10, cert. ef. 6-11-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 50-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 60-2012(Temp), f. 6-11-12, cert. ef. 6-13-12 thru 9-1-12; DFW 114-2012(Temp), f. 8-30-12, cert. ef. 9-1-12 thru 2-27-13; DFW 117-2012(Temp), f. 9-5-12, cert. ef. 9-7-12 thru 2-27-13; DFW 122-2012(Temp), f. 9-21-12, cert. ef. 9-21-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 61-2013(Temp), f. 6-24-13, cert. ef. 7-1-13 thru 12-27-13; DFW 93-2013(Temp), f. 8-22-13, cert. ef. 8-24-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-023-0080
Purpose and Scope

(1) The purpose of division 23 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 23 incorporates by reference the **2014 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2014 Oregon Sport Fishing Regulations** in addition to division 11 and 23 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-023-0090
Inclusions and Modifications

The **2014 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(1) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon, steelhead, or trout in the mainstem Columbia River from Buoy 10 upstream to the Oregon-Washington border located upstream of McNary Dam (river mile 309.5).

(2) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon or steelhead or trout in the following areas:

(a) Within the Youngs Bay Select Area (Clatsop County) from the Highway 101 Bridge upstream to markers at the confluence of the Youngs and Klaskanine rivers including the lower Lewis and Clark River upstream

to the Alternate Highway 101 Bridge, and the Walluski River upstream to the Highway 202 Bridge.

(b) Within the Knappa/Blind Slough Select Area (Clatsop County) from markers at the west end of Minaker Island upstream to markers at the mouth of Blind Slough, continuing upstream to the railroad bridge in Blind Slough.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f.8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999 f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp). f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp) f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02,cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03. cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-023-0095
Sturgeon Season

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) In 2013, the mainstem Columbia River and Oregon tributaries upstream to the mainline railroad bridges from the Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls, Multnomah Channel, and the Gilbert River, is open to the retention of white sturgeon with a fork length of 38-54 inches, three days per week, Thursdays through Saturdays, during the following periods:

(a) January 1 through July 31; and

(b) October 20 through December 31.

(3) In 2013, the mainstem Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30;

(b) May 12 through July 8 (or until guideline is met).

(4) During the fishing period as identified in subsection (3)(a) of this rule, only white sturgeon with a fork length of 38–54 inches may be retained.

(5) During the fishing periods as identified in subsection (3)(b) of this rule, only white sturgeon with a fork length of 41–54 inches may be retained.

(6) Effective January 1, 2013, the annual bag limit for white sturgeon is one (1) fish.

(7) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream 9 miles to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore westerly to a boundary marker on the Washington shore upstream of Fir Point from May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(8) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43–54 inches, seven days per week from February 1 through July 31.

(9) Retention of green sturgeon is prohibited all year in all areas.

(10) Catch-and-release angling is allowed year-round except as described above in sections (7)(a) through (7)(d).

(11) Effective January 1, 2014, the mainstem Columbia River from the mouth at Buoy 10 upstream to Bonneville Dam, including Oregon tributaries upstream to the mainline railroad bridges, is closed to the retention of white sturgeon.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert .ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-1 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru

12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 97-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 12-31-12; DFW 129-2012(Temp), f. 10-3-12, cert. ef. 10-20-12 thru 12-31-12; DFW 140-2012(Temp), f. 10-31-12, cert. ef. 11-4-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 154-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 2-28-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 47-2013(Temp), f. 5-30-13, cert. ef. 6-14-13 thru 9-30-13; DFW 59-2013(Temp), f. 6-19-13, cert. ef. 6-21-13 thru 10-31-13; DFW 64-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 10-31-13; DFW 104-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 126-2013(Temp), f. 10-31-13, cert. ef. 11-12-13 thru 12-31-13; DFW 135-2013(Temp), f. 12-12-13, cert. ef. 1-1-14 thru 1-31-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-023-0125
Spring Sport Fishery

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1 through March 31 from the mouth at Buoy 10 upstream to the I-5 Bridge with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2014 Oregon Sport Fishing Regulations**.

(3) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through June 15 it is *unlawful* when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10; DFW 45-2010(Temp), f. 4-21-10, cert. ef. 4-24-10 thru 7-31-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 55-2010(Temp), f. 5-7-10, cert. ef. 5-8-10 thru 7-31-10; Suspended by DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11; DFW 30-2011(Temp), f. 4-15-11, cert. ef. 4-16-11 thru 6-15-11; DFW 33-2011(Temp), f. & cert. ef. 4-21-11 thru 6-15-11; DFW 39-2011(Temp), f. 5-5-11, cert. ef. 5-7-11 thru 6-15-11; DFW 48-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 6-15-11; DFW 55-2011(Temp), f. 5-25-11, cert. ef. 5-27-11 thru 6-15-11; DFW 59-2011(Temp), f. & cert. ef. 6-2-11 thru 6-15-11; Administrative correction 6-28-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 8-2012(Temp), f. 2-6-12, cert. ef. 2-15-12 thru 6-15-12; DFW 31-2012(Temp), f. 4-5-12, cert. ef. 4-6-12 thru 6-15-12; DFW 33-2012(Temp), f. 4-12-12, cert. ef. 4-14-12 thru 6-15-12; DFW 45-2012(Temp), f. 5-1-12, cert. ef. 5-2-12 thru 7-31-12; DFW 47-2012(Temp), f. 5-15-12, cert. ef. 5-16-12 thru 7-31-12; DFW 49-2012(Temp), f. 5-18-12, cert. ef. 5-19-12 thru 7-31-12; DFW 51-2012(Temp), f. 5-23-12, cert. ef. 5-26-12 thru 7-31-12; Suspended by DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 26-2013(Temp), f. 4-4-13, cert. ef. 4-5-13 thru 7-1-13; DFW 38-2013(Temp), f. 5-22-13, cert. ef. 5-25-13 thru 7-1-13; DFW 49-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 6-30-13; Administrative correction, 7-18-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-146-19-13, cert. ef. 6-21-13 thru 10-31-13; DFW 64-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 10-31-13; DFW 104-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 126-2013(Temp), f. 10-31-13, cert. ef. 11-12-13 thru 12-31-13; DFW 135-2013(Temp), f. 12-12-13, cert. ef. 1-1-14 thru 1-31-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-023-0128
Summer Sport Fishery

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the 2014 Oregon Sport Fishing Regulations:

(a) Effective June 16 through July 31 the mainstem Columbia River is open to the retention of adipose fin-clipped jack and adult Chinook salmon from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(b) The combined daily bag limit for adult salmon and steelhead is two fish. Only adipose fin-clipped fish may be retained.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 65-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; DFW 95-2011(Temp), f. 7-15-11, cert. ef. 7-18-11 thru 7-31-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 64-2012(Temp), f. 6-12-12, cert. ef. 6-16-12 thru 7-31-12; [DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; Temporary Suspended by DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12]; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 55-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 66-2013(Temp), f. & cert. ef. 6-27-13 thru 7-31-13; DFW 70-2013(Temp), f. 7-11-13, cert. ef. 7-13-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-023-0130
Fall Sport Fishery

(1) The **2014 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the 2014 Oregon Sport Fishing Regulations:

(a) Effective August 1 through December 31, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, the combined bag limit for adult Chinook salmon, adipose fin-clipped coho salmon, and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook salmon; except: retention of Chinook salmon is prohibited during September 1 through December 31;

(b) Effective August 1 through December 31, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam, the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook salmon; except: retention of Chinook salmon is only allowed during August 1 through September 11 or until the harvest guideline is achieved, in the area bounded by a line projected from the Warrior Rock Lighthouse on the Oregon shore to Red Buoy #4 to a marker on the lower end of Bachelor Island, Washington, downstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162
Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-

2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 133-2009(Temp), f. 10-20-09, cert. ef. 10-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10, DFW 131-2010(Temp), f. 9-21-10, cert. ef. 9-22-10 thru 10-31-10; DFW 145-2010(Temp). f. 10-13-10, cert. ef. 10-15-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 100-2011(Temp), f. 7-27-11, cert. ef. 8-1-11 thru 12-31-11; DFW 127-2011(Temp), f. 9-14-11, cert. ef. 9-16-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 81-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; DFW 92-2013(Temp), f. 8-22-13, cert. ef. 8-23-13 thru 12-31-13; DFW 100-2013(Temp), f. 9-12-13, cert. ef. 9-13-13 thru 12-31-13; DFW 107-2013(Temp), f. 9-25-13, cert. ef 9-26-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

635-023-0134
Snake River Fishery

The **2014 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2014 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10; DFW 107-2010(Temp), f. 7-26-10, cert. ef. 7-31-10 thru 8-4-10; Administrative correction, 8-18-10; DFW 119-2010(Temp), f. 8-18-10, cert. ef. 9-1-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 29-2011(Temp), f. 4-12-11, cert. ef. 4-23-11 thru 10-19-11; DFW 118-2011(Temp), f. 8-23-11, cert. ef. 9-1-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 35-2012(Temp), f. 4-16-12, cert. ef. 4-22-12 thru 9-30-12; DFW 93-2012(Temp), f. 7-24-12, cert. ef. 8-5-12 thru 9-30-12; DFW 109-2012(Temp), f. 8-21-12, cert. ef. 9-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 29-2013(Temp), f. 4-25-13, cert. ef. 5-4-13 thru 9-30-13; DFW 76-2013(Temp), f. 7-16-13, cert. ef. 7-21-13 thru 9-30-13; DFW 94-2013(Temp), f. 8-23-13, cert. ef. 9-1-13 thru 11-30-13; Administrative correction, 12-19-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14

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Rule Caption: Establishes 2014 seasons and regulations for game mammals
Adm. Order No.: DFW 138-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 12-20-13
Notice Publication Date: 9-1-2013
Rules Amended: 635-065-0001, 635-065-0011, 635-065-0015, 635-065-0090, 635-065-0401, 635-065-0501, 635-065-0705, 635-065-0740, 635-065-0760, 635-065-0765, 635-066-0000, 635-066-0010, 635-067-0000, 635-067-0041, 635-072-0000
Subject: Establishes the 2014 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas and other rules including general hunting and controlled hunt regulations.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-065-0001
Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 65 incorporates, by reference, the requirements for hunting game mammals set out in the document entitled 2014 Oregon Big Game Regulations, into Oregon Administrative Rules. Therefore, persons must consult the "2014 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for game mammals. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district, and headquarters offices, and website of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0011
Mandatory Reporting Penalty

All big game tag holders, except for bighorn sheep and Rocky Mountain goat, and all turkey tag holders are required to report hunting effort and harvest.

(1) Reporting deadlines for 2013-14 seasons are as follows:

(a) January 31, 2014: For hunts ending between April 1 and December 31, 2013.

(b) April 15, 2014: For hunts ending between January 1 and March 31, 2014.

(2) Any person with any deer or elk tag for hunts and seasons listed in the 2013 Oregon Big Game Regulations pamphlet, issued through the Point of Sale (POS) system, that fails to report by deadlines established in OAR 635-065-0011(1) will not be able to obtain a license to hunt game mammals or game birds in Oregon without paying a penalty.

(a) The penalty will be assessed beginning December 1, 2014 with purchase of a 2015 license.

(b) The penalty fee amount will be $25.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 10-2013, f. & cert. ef. 2-7-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0015
General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

(a) One valid general season black bear tag;

(b) one valid additional general black bear tag valid in management units 20–30;

(c) one valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) one valid 700 series "leftover" controlled bear tag;

(e) one valid cougar (mountain lion) tag;

(f) one valid eastern additional general cougar (mountain lion) tag;

(g) one valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 90, and except as provided in 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid deer bow tag;

(b) One valid western Oregon deer tag;

(c) One valid 100 series controlled buck hunt tag;

(d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)–(4)(c) and (4)(e);

(e) One valid 100 series "left over" controlled deer tag;

(f) One valid 600 series "left over" controlled deer tag;

(5) Except as provided in OAR chapter 635, division 90, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid Cascade elk tag;

(b) one valid Coast First Season elk tag;

(c) one valid Coast Second Season elk tag;

(d) one valid Rocky Mountain elk — first season tag,

(e) one valid Rocky Mountain elk — second season tag;

(f) one valid elk bow tag;

(g) one valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015(5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) In addition to the tags described in OAR 635-065-0015(3), (4), and (5), a person during an annual hunting season may obtain or possess

only one valid "Mandatory Hunter Reporting Incentive Tag" per annual hunting season. If the Department awards a hunter such a tag through the controlled hunt draw authorized by 635-060-0030(5), the following requirements will apply:

(a) On or before July 15, 2013 the hunter must inform the Department which species the tag is to be issued for (pronghorn antelope, deer, or elk) and purchase the tag. Tags not purchased by July 15 will be offered to an alternate hunter with a tag sale deadline of July 31, 2013.

(b) Hunting hours, hunt dates, bag limit and hunt area for Mandatory Hunter Reporting Incentive Tags will be the same as those listed in OAR 635-090-150(3) for deer or (4) for elk, or 635-067-0028(2) for pronghorn.

(c) Bag limit: one pronghorn antelope or one deer or one elk.

(d) Oregon Department of Fish and Wildlife employees are not eligible for a Mandatory Hunter Reporting Incentive Tag.

(8) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(9) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(10) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(11) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception:

(a) Members of the uniformed services returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the Department.

(b) Notwithstanding the deadlines for tag purchases provided by rule and in the hunting regulation synopses, any person who qualifies to purchase a tag but fails to make the purchase by the deadline, may purchase the tag late if the person:

(A) Submits a written affidavit certifying that the person has not yet hunted during the season for which the tag is sought to the Department's Licensing Services Office;

(B) The request must be received by the Department before the end of the season for the particular tag; and

(C) Pays the Department the fee for a duplicate tag, in addition to the usual tag fee.

(D) A tag purchased for a season that has not begun may be canceled and replaced with a tag for an ongoing season using the process outlines in 635-065-0015(b)(A) and (B) provided the original tag is surrendered with the affidavit and the fee for a duplicate tag is paid to the Department.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp) f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 106-2009(Temp), f. & cert. ef. 9-2-09 thru 3-1-10; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 26-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 58-2010(Temp), f. & cert. ef. 5-12-10 thru 11-8-10; DFW 70-2010(Temp), f. & cert. ef. 5-18-10 thru 11-10-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0090
Disabled Hunter Seasons and Bag Limits

(1) ORS 496.018 provides that in order to be considered a person with a disability under the wildlife laws, a person shall provide to the Fish and Wildlife Commission either written certification from a licensed physician, certified nurse practitioner, or licensed physician assistant of certain specified disabilities or written proof that the U.S. Department of Veterans Affairs or the Armed Forces shows the person to be at least 65 percent disabled. To implement that statute, this rule provides for the issuance of an "Oregon Disabilities Hunting and Fishing Permit" by the Department.

(2) To obtain an "Oregon Disabilities Hunting and Fishing Permit," a person shall submit to the Department a completed form specified by the Department. If the completed form accurately provides all required information, the Department shall issue an "Oregon Disabilities Hunting and Fishing Permit". Permits are valid for two calendar years. To renew a permit, the holder must submit a new, updated application form.

(3) The Department may revoke, suspend or decline to issue or renew an "Oregon Disabilities Hunting and Fishing Permit" for failure to submit accurate information. The holder or applicant may request a contested case hearing to appeal such an action.

(4) A person who possesses an Oregon Disabilities Hunting and Fishing Permit issued by the Department is qualified for expanded bag limits as follows:

(a) Season/Tag — Bag Limit:

(A) General or controlled buck deer — One deer.

(B) In the following units: Biggs, Columbia Basin (Except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Vinson at the intersection of Hwy 74 and Butter Creek Road, west on Hwy 74 to Sandhollow Rd, north on Sandhollow Rd to Baseline Rd, west ½ mile to Sandhollow Rd, north on Sandhollow Rd to Hwy 207, north and east on State Hwy 207 to Butter Creek Junction, south on Butter Creek Rd to Hwy 74 at Vinson), Hood, Indigo, Maupin, McKenzie, Melrose, Santiam, Willamette.

(b)(A) General or controlled bull elk — Legal bull or antlerless elk.

(B) In the following units: Applegate, Beatys Butte, Beulah, Biggs, Catherine Creek, Chesnimnus, Columbia Basin (Except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Vinson at the intersection of Hwy 74 and Butter Creek Road, west on Hwy 74 to Sandhollow Rd, north on Sandhollow Rd to Baseline Rd, west ½ mile to Sandhollow Rd, north on Sandhollow Rd to Hwy 207, north and east on State Hwy 207 to Butter Creek Junction, south on Butter Creek Rd to Hwy 74 at Vinson), Dixon (outside National Forest Lands within the unit), Evans Creek (outside National Forest Lands within the unit), East Fort Rock (that portion east of Hwy 97), Fossil, Grizzly, Hood, Imnaha, Indigo (outside National Forest Lands within the unit), Juniper, Lookout Mountain, Malheur River, Maupin, McKenzie (outside National Forest Lands within the unit), Melrose, Murderers Creek, Northside, Ochoco, Owyhee, Paulina, Pine Creek, Ritter portion of the Heppner unit (that part of unit 48 south and east of the North Fork John Day River), Rogue (outside National Forest Lands within the unit), Saddle Mountain, Santiam (outside National Forest Lands within the unit, Scappoose, Silvies, Siuslaw, Sixes, Sled Springs, Steens Mountain, Stott Mountain, South Sumpter (that part of Unit 51 south of Burnt Rvr Canyon Rd from Durkee to junction State Hwy 245 and Hwy 245 from junction Burnt Rvr Canyon Rd to Unity), Wagontire, White River, Whitehorse, Willamette, Wilson.

(c) Controlled pronghorn antelope:

(A) Buck only hunts — One pronghorn.

(B) In the following units: Beatys Butte, Biggs, Columbia Basin, Fort Rock, Grizzly, Juniper, Keating, Lookout Mountain, Malheur River, Maupin, Maury, Murderers Creek, Northside, Ochoco, Paulina, Silver Lake, Silvies, Steens Mountain, Sumpter, Wagontire, Warner. For hunts with bag limits other than one buck or one bull, the bag limit remains as shown in the Oregon Big Game Regulations.

(5) The Oregon Disabilities Hunting and Fishing Permit is valid only with a general season or controlled bull elk, buck deer, or pronghorn antelope tag for the area and time period being hunted. The permit must be carried on the person while hunting.

(6) An able-bodied companion may accompany a person with an Oregon Disabilities Hunting and Fishing Permit and kill any animal wounded by the permit holder. The wounded animal must be killed using a legal weapon for the season and species designated on the tag. The companion must immediately attach the permit holder's tag to the carcass of the animal. The companion is not required to possess a hunting license or tag.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 29-1987, f. & ef. 6-19-87; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0401
Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11:59 pm, Pacific Time, October 3, 2014.

(2) No deer bow tag shall be issued after 11:59 pm, Pacific Time, August 29, 2014.

(3) No General Season bear tag shall be issued after 11:59 pm, Pacific Time, October 3, 2014.

(4) SW Additional Bear Tags may be purchased anytime during the bear hunting season, after a General Season Bear tag has been purchased. An unused bear tag must be in the hunter's position at the time they are hunting.

(5) No General Season cougar tag shall be issued after 11:59 pm, Pacific Time, October 3, 2014.

(6) Additional Cougar Tags may be purchased anytime during the cougar hunting season, after a General Season Cougar tag has been purchased. An unused cougar tag must be in the hunter's position at the time they are hunting.

(7) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11:59 pm, Pacific Time, October 28, 2014.

(8) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11:59 pm, Pacific Time, November 7, 2014.

(9) No Coast First Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 14, 2014.

(10) No Coast Second Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 21, 2014.

(11) No Cascade Elk Rifle Tag shall be issued after 11:59 pm, Pacific Time, October 17, 2014.

(12) No elk bow tag shall be issued after 11:59 pm, Pacific Time, August 29, 2014.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-065-0010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 70-2007(Temp), f. & cert. ef. 8-13-07 thru 2-9-08; DFW 103-2007(Temp), f. & cert. ef. 9-27-07 thru 3-24-08; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0501

Exchange of Deer and Elk Tags

(1) Tags may be exchanged only prior to the seasons for which both of the tags to be exchanged are valid. No tag may be exchanged after the start of the season for which it is valid.

(2) Exchanges of tags and duplicate tags may be obtained only through the Department's regional offices or Salem headquarters.

(3) A fee of $15.00 (plus a $2.00 license agent is charged to replace a tag. However, a $10 license agent fee will be charged for each nonresident annual hunting license, nonresident annual deer tag, nonresident annual elk tag, nonresident annual black bear tag, nonresident annual mountain goat tag, nonresident annual mountain sheep tag and nonresident annual antelope tag issued. If the fee paid for the tag that was lost, destroyed or stolen was less than $15, the same fee shall be charged for the duplicate tag. A fee of $5.00 (plus a $2.00 license agent is charged to exchange a tag. However, a $10.00 license agent fee will be charged for nonresident deer and elk tags.

(4) A "leftover" controlled hunt deer tag may only be exchanged for a general season deer tag, but only if the person does not already possess a deer tag authorized by OAR 635-065-0015(4)(a), (b), or (c).

(5) A "leftover" controlled hunt elk tag may only be exchanged for a general season elk tag but only if the person does not already possess an elk tag authorized by OAR 635-065-0015(5)(a), (b), (c), (d), (e), (f), (g) or (h).

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-65-022; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 52-2001(Temp) f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0705

Muzzleloading Rifles

During controlled muzzleloader only seasons:

(1) Hunters shall use any long gun that:

(a) Is fired from the shoulder;

(b) Is loaded from the muzzle;

(c) Has an open ignition system;

(d) Is a single shot except for muzzleloading shotguns that may be double barreled;

(e) Scopes (permanent or detachable), and sights that use batteries, artificial light or power, are not allowed during muzzleloader-only seasons or during 600 series hunts where there is a weapon restriction of "shotgun/muzzleloader only" or "archery/muzzleloader only". However, this restriction does not apply to a visually impaired hunter who has a visual acuity of ≤20/200 with lenses or visual field of ≤ 20 degrees, provided that the hunter holds an Oregon Disabilities Hunting and Fishing Permit. Open and peep sights made from alloys, plastic, or other materials that do not have the properties described above are legal. Open or iron sights that make use of fiber optics or fluorescent paint are also legal.

(2) Only conical bullets made of lead, lead alloy, or federally-approved nontoxic shot material, with a length that does not exceed twice the diameter, and round balls made of lead, lead alloy, or federally-approved nontoxic shot material, used with cloth, paper or felt patches are allowed during muzzleloader-only seasons and 600 series hunts where there is a weapon restriction of shotgun/muzzleloader only or archery/muzzleloader only. It is illegal to hunt with non-lead bullets except for those made of federally-approved nontoxic shot material, jacketed bullets, sabots, and bullets with plastic or synthetic tips or bases.

(3) Hunters shall use only flint or percussion caps as a source of ignition.

(4) Hunters shall use only loose or granular black powder or black powder substitutes as propellants.

(5) Any .40 calibers or larger muzzleloader as described in OAR 635-065-0705(1)–(4) to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(6) Any .50 caliber or larger muzzleloader as described in OAR 635-065-0705(1)–(4) to hunt bighorn sheep, Rocky Mountain goat, or elk.

(7) Hunters shall use only number 1 or larger buckshot or bullets as described in OAR 635-065-0705(2) for hunting deer, black bear or cougar (mountain lion).

(8) Hunters shall use only single projectiles as described in OAR 635-065-0705(2) for hunting pronghorn antelope, elk, bighorn sheep, or Rocky Mountain goat.

(9) Hunters may only use a legal muzzleloading firearm as described in OAR 635-065-0705. During centerfire firearms seasons where muzzleloaders are also a legal firearm, hunters may:

(a) Use any .40 caliber or larger muzzleloading firearm to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(b) Use any .50 caliber or larger muzzleloading firearm to hunt bighorn sheep, Rocky Mountain goat, or elk.

(c) Use any muzzleloader ignition type (excepting matchlock), any sight, any propellant, or any bullet type.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 21-1985, f. & ef. 5-7-85; FWC 43-1985, f. & ef. 8-22-85; FWC 11-1987, f. & ef. 3-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0740

Hunting Prohibited

It is *unlawful*:

(1) To hunt with a centerfire or muzzleloading rifle during the standard eastern Oregon controlled deer buck season (September 28–October 9, 2013) Cascade bull elk season, Coast bull elk seasons, or Rocky Mountain bull or either-sex elk seasons, [or the standard Rocky Mountain unit's

antlerless elk seasons (November 16–November 24, 2013) without a valid, unused tag for that species, time period and area on their person. EXCEPTIONS:

(a) Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

(b) Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (Canis latrans) in the Juniper, Beatys Butte, East Beulah, Whitehorse and Owyhee units and in the Wagontire Unit south of the Lake County Road 5–14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (November 16–November 24, 2013).

(c) Hunters who have a tag for one of the hunts listed in this paragraph may hunt bear and/or cougar within the time period and area for which their deer or elk tag is valid (used or unused) provided they have a valid unused bear and/or cougar tag.

(d) Hunters are not required to have an elk tag to hunt bear or cougar in the Applegate WMU during elk seasons.

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (3) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the Department.

(7) To hunt protected wildlife except:

(a) by a permit or during an authorized season established by the commission.

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

(9) To engage in computer-assisted hunting (Internet hunting) or provide or operate facilities for computer-assisted hunting in Oregon. As used in this act, "computer-assisted hunting" (Internet hunting) means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a firearm, bow, or any other weapon to hunt any game bird, wildlife, game mammal, or other mammal, and "facilities for computer-assisted remote hunting" means real property and improvements on the property associated with hunting, including hunting blinds, offices and rooms equipped to facilitate computer-assisted remote hunting. Nothing in subsection (9) of this section prohibits the use computer-assisted hunting by employees or agents of county, state or federal agencies while acting in their official capacities.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0760
Other Restrictions

It is *unlawful*:

(1) To take or hold in captivity the young of any game mammal.

(2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.

(3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.

(4) To resist game law enforcement officers.

(5) To refuse inspection of any license, tag or permit by an employee of the Department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his or her land while on that property.

(6) To refuse inspection, by an employee of the Oregon Department of Fish and Wildlife, or any person authorized to enforce wildlife laws, of any gear used for the purpose of taking wildlife.

(7) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.

(8) To disturb, damage, remove, alter or possess any official Department signs.

(9) To sell, lend, or borrow any big game tag.

(10) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below.

(11) There are two methods of posting road access information; negative marking in which closed roads are marked by signs, gates, berms, or other similar indicators, or positive marking in which open roads are marked by round green reflectors, orange carsonite posts, or similar indicators. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:

(a) North Coast Access Area: Three days prior to opening of general archery season through the close of all bull elk rifles seasons. — Applies to all gated, posted, and/or barrier closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units. Cooperators require: day use only on private lands, no ATV use on private and designated state lands, no vehicle may block any road gate.

(b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;

(c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;

(d) Luckiamute: Permanent Closure — Those parts of the Stott Mt./Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.

(e) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: Open roads in the Siuslaw NF lands south of US Hwy 20 and north of State Hwy 126 are designated on the Siuslaw NF Motor Vehicle Use Map. However; additional roads may be posted as closed as part of the Cooperative TMA or for administrative purposes.

(f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

(g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season. That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5-1/2 and 6 East;

(j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Wendling: opening of archery season through the end of the general firearms buck deer season including the youth weekend. Approximately 185 sq. mi in Unit 19 northeast of Springfield; north of Hwy 126, east of Marcola and Brush Creek Rds., and south of the Calapooia River Mainline. Roads open to motor vehicle use will be marked with orange road markers. Access may be closed due to fire danger.

(l) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue

Unit as follows: High Cascades Ranger District, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 116 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20 through March 31annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(r) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7-1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(v) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(x) Murderers Creek-Flagtail: Three days prior to the opening of the archery deer and elk seasons through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1 through April 14 annually except by permit — That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Meacham: Three days prior to the opening of the archery deer and elk seasons through May 31. Approximately 41 square miles in Units 49, 52 and 54 in townships 1 and 2 south, township 1 north, ranges 34, 35, and 36 east.

(cc) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(dd) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season and May 1 through June 30 encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(ee) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ff) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(gg) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(hh) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(ii) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(jj) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(kk) Hall Ranch: Three days prior to the opening of Rocky Mountain bull elk first season through April 30 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(ll) Little Catherine Creek: Three days prior to opening of archery season through May 31 — That part of the Catherine Creek Unit as follows: 22 square miles in Townships 3, 4 and 5 South, Ranges 40 and 41 East;

(mm) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(nn) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(oo) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(pp) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(qq) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(rr) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, and Range 48 East.

(ss) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(tt) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season — That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(uu) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(vv) Mehlorn: Permanent Closure: That part of the Pine Creek and Keating Units as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(ww) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(xx) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(yy) Summit Point: Permanent Closure: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(zz) Eagle Creek: December 1 — April 15: That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(aaa) Conroy Cliff: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32-1/2, 34, and 35 East;

(bbb) Devine Ridge-Rattlesnake: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32-1/2 East;

(ccc) Dairy Creek: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(ddd) Burnt Cabin: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(eee) Walker Rim; Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(fff) North Paulina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(ggg) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(hhh) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, and no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(iii) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(jjj) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 roads in Chesnimnus Unit are closed;

(kkk) Hells Canyon National Recreation Area: Permanent Closure — Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(lll) PO Saddle Road — Three days prior to opening of archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East.

(mmm) Whiskey Creek — Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows — 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

(nnn) South Boundary: Permanent Closure — That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

(ooo) JWTR: Permanent Closure — Applies to all gated, posted, or barrier-closed roads within the Rogue, Keno, Klamath Falls, Sprague, Interstate, Silver Lake, and Fort Rock Units within the land holdings of JWTR, LLC.

(ppp) Prineville Reservoir Wildlife Area: From November 15 or December 1 (as posted at each gate) through April 15 annually — That part of the Ochoco and Maury Units as follows: 5 square miles in Township 16 South, Range 17 East.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06; DFW 128-2006, f. 12-7-06, cert. ef. 6-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-065-0765

Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is *unlawful* to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is *unlawful* to possess the meat or carcass of any deer, elk, pronghorn antelope, bighorn sheep, or Rocky Mountain goat without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer, elk, pronghorn antelope, bighorn sheep, or Rocky Mountain goat is:

(a) the animal's scalp which shall include the attached eyes and ears, if animal is female; or ears, antlers or horns, and eyes if the animal is male, or;

(b) the head naturally attached to at least one quarter of the carcass or:

(c) reproductive organs (testicles, scrotum, or penis if male; vulva or udder (mammary) if female) naturally attached to one quarter of the carcass or to another major portion of meat.

(A) For hunts with antler or horn restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers or horns naturally attached shall accompany the carcass or major portions of meat.

(B) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, (testicles, scrotum, penis, vulva, udder, mammary), either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 90-2002(Temp), f. & cert. ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & cert. ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & cert. ef. 11-12-02; DFW 127-2002(Temp), f. & cert. ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 61-2003, f. & cert. ef. 7-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 111-2005(Temp), f. & cert. ef. 9-23-05 thru 10-31-05; Administrative correction 11-18-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 135-2008, f. & cert. ef. 10-17-08; DFW 2-2009, f. & cert. ef. 1-9-09; DFW 8-2010(Temp), f. & cert. ef. 1-25-10 thru 7-24-10; DFW 21-2010(Temp), f. & cert. ef. 2-26-10 thru 8-24-10; DFW 36-2010(Temp), f. & cert. ef. 3-30-10 thru 9-25-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 92-2012(Temp), f. & cert. ef. 7-23-12 thru 1-19-13; DFW 136-2012, f. & cert. ef. 10-24-12; DFW 137-2012(Temp), f. & cert. ef. 10-24-12 thru 4-22-13; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13; DFW 10-2013, f. & cert. ef. 2-7-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-066-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting set out in the document entitled "2014 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2014 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-066-0010
General Season Regulations

(1) Pursuant to ORS 497.112, annual black bear tag sales to nonresident black bear hunters for the general fall season shall be limited to no more than three percent of the total tag sales based on previous year's hunter densities.

(a) Tags shall be available at any authorized license agent and through the Salem Headquarters office on a first-come, first-served basis.

(b) The application procedure shall be as follows:

(A) An applicant may purchase a nonresident general black bear tag at any hunting license agent or;

(B) An applicant shall mail or fax copies, through the Salem Headquarters only, of his/her nonresident driver's license, adult nonresident hunting license, juvenile nonresident hunting license, or provide documentation which includes the following information:

(i) Applicant's full name and current address;

(ii) Applicant's date of birth;

(iii) Applicant's Social Security number;

(iv) Applicant's telephone number;

(c) An applicant shall include a fee of $180.50 (plus a $10.00 license agent fee) with the application.

(d) The applicant shall state the areas for which he/she is applying in order of choice.

(2) Open Area: The entire state is open, except that lands within one mile of the Rogue River between Grave Creek and Lobster Creek are closed to all black bear hunting. Nonresidents shall be restricted to hunting black bear only in specific areas as described below. Nonresident black bear tags shall be distributed by areas as described in the Black Bear Management Plan. These areas are described as follows:

(a) Northwest: All of wildlife management units: 10, 11, 12, 14, 15, 17, and 18.

(b) Southwest: All of wildlife management units: 20, 23, 24, 25, 26, 27, 28, and 29.

(c) Cascades: All of wildlife management units: 16, 19, 21, 22, 30, 31, 34, 39, 41, and 42 and those portions of wildlife management units 33 and 77 lying west of Highway 97.

(d) Eastern: All of wildlife management units: 32, 35, 38, 40, and 43 and those portions of wildlife management units 33 and 77 lying east of Highway 97; and all other wildlife management units to the east of these units.

(3) No person shall use dogs to hunt or pursue black bear.

(4) No person shall use bait to attract or hunt black bear.

(5) The skull of any bear taken must be presented to an ODFW office or designated collection site. The person who took the animal is responsible to have it presented, within 10 days of the kill, to be checked and marked. Skull must be unfrozen when presented for check-in. Check-in at ODFW offices must occur during normal business hours (8–5, Mon–Fri.). Hunters are required to check in the skull only, for the purpose of inspection, tagging and removal of a tooth for aging.

(6) When the bear skull is presented at check-in information that must be provided includes:

(a) date of harvest and location of harvest including Wildlife Management Unit, and

(b) complete hunter information including tag number as found on the bear tag; a completed "Wildlife Transfer Record Form" as found in the current year's Oregon Big Game Regulations is an alternative for providing the required information.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-067-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 67 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2014 Oregon Big Game Regulations, into Oregon Administrative Rules. Therefore, persons must consult the "2014 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 60. Permitted weapons and ammunition are established in OAR chapter 635, division 65. Controlled hunt tag numbers for 2013 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 67 by reference.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 85-2010(Temp), f. & cert. ef. 6-21-10 thru 12-17-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 138-2013, f. & cert. ef. 12-20-13

635-067-0041
Rocky Mountain Goat Raffle

(1) One Rocky Mountain goat tag will be raffled annually to an individual selected at a public drawing. The Department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The Rocky Mountain goat raffle tag shall be limited as follows:

(a) Bag Limit: One Rocky Mountain goat.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on September 1 and shall end on October 31.

(d) Open Area: Any area where Rocky Mountain goat hunts and tags have been authorized for the current year. The remainder of the state is closed to Rocky Mountain goat hunting.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase.

(A) One ticket package at a cost of $9.50 (plus a $2.00 license agent fee).

(B) Six ticket package at a cost of $49.50 (plus a $2.00 license agent fee).

(C) Thirteen ticket package at a cost of $99.50 (plus a $2.00 license agent fee).

(b) Raffle tickets will be made available during the dates specified in the current Big Game regulations to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by Department representatives at various gatherings of sportmen's groups.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the Department by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5 p.m. at the Salem headquarters office no later than two days before the drawing event. Completed

tickets delivered to the drawing event must be turning in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, and phone number.

(g) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the Department.

(h) The Department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the Department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., August 31, it will not be issued.

(i) License and Tag Requirements: A valid Rocky Mountain goat tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license or a juvenile Oregon hunting license.

(j) The Rocky Mountain goat tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

(k) The winner of the Rocky Mountain goat tag will be required to complete a Rocky Mountain goat hunting orientation course prior to their hunt. The hunter shall inform the Department as to where and when the hunt will be conducted.

(l) If the holder of the Rocky Mountain goat raffle tag is successful in taking a Rocky Mountain goat, that person shall present the animal to the Department for permanent marking within five days of taking of the animal.

Stat. Auth.: ORS 496.012, 496.138 & 496.146
Stats Implemented: ORS 496.012, 496.138 & 496.146
Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 130-2006(Temp), f. & cert. ef. 12-15-06 thru 6-13-06; Administrative Correction, 6-16-07; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 138-2013, f. & cert. ef. 12-20-13

635-072-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 72 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "2014 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2014 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western gray squirrel. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13

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Rule Caption: Establish Average Market Value of Food Fish for Determining Damages Related to Commercial Fishing Violations.
Adm. Order No.: DFW 1-2014
Filed with Sec. of State: 1-13-2014
Certified to be Effective: 1-13-14
Notice Publication Date: 12-1-2013
Rules Amended: 635-006-0232
Subject: Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-0232

Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2013 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:
(A) Anchovy, Northern $0.05.
(B) Cabezon $3.51.
(C) Carp $0.50 (2006 price).
(D) Cod, Pacific $0.56.
(E) Flounder, arrowtooth $0.11.
(F) Flounder, starry $0.37.
(G) Greenling $4.60.
(H) Grenadier $0.05.
(I) Hagfish $0.83.
(J) Hake, Pacific (Whiting) $0.11.
(K) Halibut, Pacific:
(i) Dressed weight with head on: ungraded, $5.54.
(ii) Round weight: ungraded, $5.80.
(L) Herring, Pacific $0.21 (2012 price).
(M) Lingcod $1.02.
(N) Mackerel, jack $0.03; Pacific $0.08 (2012 price).
(O) Opah $2.98 (2008 price).
(P) Pacific ocean perch, $0.46.
(Q) Pollock, Walleye $0.07.
(R) Rockfish:
(i) Black, $2.27.
(ii) Blue, $1.39.
(iii) Canary, $0.59.
(iv) Darkblotched, $0.53.
(v) Black and yellow, $5.56.
(vi) Brown, $2.50 (2012 price).
(vii) China, $5.53.
(viii) Copper, $3.69.
(ix) Gopher, $3.99.
(x) Grass, $4.00.
(xi) Quillback, $3.59.
(xii) Shelf, $0.33.
(xiii) Shortbelly, using trawl gear $0.50, using line and pot gear $1.96 (2008 price).
(xiv) Slope, using trawl gear, $0.47 using line and pot gear $1.04.
(xv) Tiger, $3.84.
(xvi) Vermilion, $2.26.
(xvii) Widow, $0.46.
(xviii) Yelloweye, using trawl gear $0.52, using line and pot gear $1.00.
(xix) Yellowtail, $0.53.
(S) Sablefish:
(i) Dressed-head-off weight: ungraded $2.57, extra small $1.87, small $2.41, medium $2.53 and large $2.98.
(ii) Round weight, ungraded $1.85, extra small $1.06, small $1.87, medium $2.27 and large $2.91.
(T) Salmon eggs, $2.37.
(U) Salmon, Chinook:
(i) Ocean dressed-head-on weight: ungraded $6.25, small $6.73, medium $5.54, and large $5.92.
(ii) Ocean frozen dressed-head-on weight: $5.50.
(iii) Ocean frozen dressed-head-off weight: $5.49.
(V) Salmon, coho, ocean dressed weight: mixed size, $2.56.
(W) Salmon, pink, ocean, dressed weight: ungraded, $1.35.
(X) Sanddab, Pacific $0.52.
(Y) Sardine, Pacific $0.09.
(Z) Shad, American:
(i) Coast, ungraded, midwater trawl, $0.22 (2012 price).
(ii) Columbia, ungraded, gillnet, setnet, and dipnet, $0.20.
(AA) Shark, blue $0.16 (2012 price), Pacific sleeper $0.62 (2000 price), shortfin mako $1.80 (2012 price), sixgill $0.05 (2007 price), soupfin $0.20 (2012 price), spiny dogfish $0.06, scalloped hammerhead $0.12 (2001 price), silky $0.18 (2001 price), thresher dressed weight $1.50 (1995 price) and round weight $0.60 (2012 price), and other species $0.02.

(BB) Skate, longnose $0.38.

(CC) Skates and Rays $0.33.

(DD) Smelt, Eulachon (Columbia River), $2.86 (2012 price) and other species $0.20 (2010 price).

(EE) Sole, butter $0.34, curlfin (turbot) $0.28, Dover $0.45, English $0.31, flathead $0.31, petrale $1.35, rex $0.36, rock $0.33 and sand $0.96 (2012 price).

(FF) Steelhead $0.81.

(GG) Sturgeon, green $0.98 (2009 price) and white $1.35.

(HH) Surfperch $1.00.

(II) Swordfish $4.00 (2008 price).

(JJ) Thornyhead (Sebastolobus), longspine $0.39 and shortspine $0.65.

(KK) Tuna, albacore $1.57, bluefin $2.46, bigeye $4.00 (2008 price), and yellowfin $2.00 (2011 price).

(LL) Walleye $3.08.

(MM) Wolf-eel $1.07.

(NN) Wrymouth $0.13.

(b) CRUSTACEANS:

(A) Crab: box $1.28 (2012 price), Dungeness bay $2.48 and ocean $4.12, rock $1.60 (2012 price) and Tanner $1.00 (2012 price).

(B) Crayfish $2.36 (2012 price).

(C) Shrimp: brine $1.00, coonstripe $3.56 (2012 price), ghost (sand) $2.47, mud $1.64, pink $0.50 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot $9.44.

(D) Water flea (Daphnia) $0.65 (2002 price).

(c) MOLLUSKS:

(A) Abalone, flat $21.09 (2008 price).

(B) Clams: butter $0.92, cockle $0.75, gaper $0.65, Manila littleneck $2.00 (2008 price), Nat. littleneck $0.63 (2012 price), razor $2.96, and softshell $0.50 (2009 price).

(C) Mussels, ocean $4.08.

(D) Octopus $0.90.

(E) Scallop, rock $0.70 (2005 price).

(F) Scallop, weathervane dressed weight (shucked) $5.73 (2002 price) and round weight $0.55 (2002 price).

(G) Squid, market $0.17 (2011 price).

(H) Squid, other species $0.25.

(d) OTHER INVERTEBRATES:

(A) Jellyfish $10.00 (2004 price).

(B) Sea anemone $1.00.

(C) Sea cucumber $3.25.

(D) Sea urchin, red $0.57 and purple $0.30 (2004 price).

(E) Sea stars $1.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds $300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09; DFW 5-2010, f. & cert. ef. 1-13-10; DFW 1-2011, f. & cert. ef. 1-10-11; DFW 162-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 2-29-12; DFW 11-2012, f. & cert. ef. 2-7-12; DFW 3-2013, f. & cert. ef. 1-14-13; DFW 1-2014, f. & cert. ef. 1-13-14

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Rule Caption: Allow permitless take of wolves caught in the act of depredating livestock or working dogs

Adm. Order No.: DFW 2-2014

Filed with Sec. of State: 1-14-2014

Certified to be Effective: 1-14-14

Notice Publication Date: 12-1-2013

Rules Amended: 635-110-0000, 635-110-0010, 635-110-0020, 635-110-0030

Rules Repealed: 635-110-0010(T)

Subject: These rules implement 2013 Oregon Laws Ch. 626 (HB 3452), which amended ORS 498.012 and authorized in certain circumstances take of a wolf or wolves caught in the act of biting, wounding, killing or chasing livestock or working dogs without a permit.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-110-0000

Wolf Conservation and Management Plan

The document entitled "Oregon Wolf Conservation and Management Plan" dated October 2010 is incorporated here by reference as administrative rule. (This incorporation by reference includes the body of the Plan plus its Appendix A. Other appendices are excluded.) Copies may be obtained at the Salem headquarters office of the Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Drive S.E., Salem, OR 97302. This document includes program direction, objectives and strategies to fulfill management, research, and habitat needs. It is also intended as an informational document to assist resource management agencies with their wildlife program. As of January 10, 2014, those portions of the plan which authorize harassment or take of wolves are pre-empted in a portion of Oregon by the endangered status of the gray wolf under the federal Endangered Species Act. In the portion of Oregon where federal protections are reduced to a level below that of Oregon law, this plan governs harassment and take of wolves in Oregon.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 498.012

Stats. Implemented: ORS 496.171-.496.192, 497.298, 497.308, 498.002, 498.006 & 498.012

Hist.: DFW 12-2005, f. & cert. ef. 3-9-05; DFW 148-2005, f. & cert. ef. 12-29-05; DFW 144-2010, f. & cert. ef. 10-11-10; DFW 2-2014, f. & cert. ef. 1-14-14

635-110-0010

Harassment and Take of Wolves during Phase I (Conservation)

NOTE: As of January 10, 2014, these rules are pre-empted in a portion of Oregon by the endangered status of the gray wolf under the federal Endangered Species Act. In the portion of Oregon where federal protections are reduced to a level below that of Oregon law, these rules govern harassment and take of wolves in Oregon.

(1) This rule describes the types of harassment and take of wolves allowed by persons outside ODFW during Phase I — (Conservation: 0–4 breeding pairs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes. For OAR 635-110-0010, 635-110-0020 and 635-110-0030, "livestock" means ratites, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl, any fur-bearing animal bred and maintained (commercially or otherwise) within pens, cages and hutches, bison and working dogs. "Working dogs" means guarding dogs and herding dogs.

(2) Non-injurious harassment.

(a) Subject to the conditions specified in paragraph (c), the following persons may use non-injurious harassment against wolves without a permit:

(A) Livestock producers (or their agents) on land they own or lawfully occupy; or

(B) Grazing permittees legally using public land under valid livestock grazing allotments.

(b) Non-injurious harassment means scaring off a wolf (or wolves) without doing bodily harm, and includes (but is not limited to) firing shots in the air, making loud noises or otherwise confronting the wolf (or wolves).

(c) Non-injurious harassment is allowed without a permit under this rule only if:

(A) The wolf (or wolves) is in the act of testing or chasing livestock, is attempting to test or chase livestock or is in close proximity of livestock;

(B) The person encounters the wolf (or wolves) unintentionally (i.e., the person is not stalking or searching for wolves);

(C) The harassment in fact does not result in injury to the wolf (or wolves); and

(D) The harassment is reported to ODFW within 48 hours.

(d) Any non-injurious harassment that does not meet each requirement of this rule requires a permit in advance from ODFW.

(3) Non-lethal injurious harassment.

(a) Subject to the conditions specified in paragraph (c), in addition to state or state authorized agents, the following persons may use non-lethal injurious harassment against wolves by permit:

(A) Livestock producers (or their agents) on land they own or lawfully occupy;

(B) Grazing permittees legally using public land under valid livestock grazing allotments.

(b) Non-lethal injurious harassment means scaring off a wolf (or wolves) without killing but with some injury to the wolf. Wolves may be pursued (unintentional encounters are not required).

(c) Non-lethal injurious harassment is allowed by permit from ODFW only if:

(A) ODFW confirms wolf depredation on livestock or other wolf-livestock conflict in the area. "Other wolf-livestock conflict" means loitering near, testing, chasing, or otherwise disrupting livestock;

(B) The applicant confers with ODFW to determine the most effective harassment method;

(C) ODFW considers the location of known den sites;

(D) The harassment in fact does not result in the death of a wolf;

(E) No identified circumstance exists that attracts wolf/livestock conflict; and

(F) The harassment is reported to ODFW within 48 hours.

(d) Permits for non-lethal injurious harassment remain valid for the livestock grazing season in which issued, provided the livestock operator complies with all applicable laws, including permit conditions. The agency shall inform harassment permit holders of non-lethal methods for minimizing wolf-livestock conflict and provide assistance upon request. Receiving future lethal control permits is contingent upon documentation of efforts to use non-lethal methods.

(4) Relocation. ODFW will authorize relocation by state personnel when a wolf (or wolves) becomes inadvertently involved in a situation, or is present in an area, that could result in conflict with humans or harm to the wolf, provided that ODFW has no reason to believe that the wolf actually attacked or killed livestock or pets. The relocation will be designed to prevent conflict with humans or reduce the possibility of harm to the wolf. The wolf (or wolves) would be relocated to suitable habitat at the direction of ODFW.

(5) Lethal take of wolves in the act of biting, wounding, killing or chasing livestock or working dogs.

(a) A person, or an agent as described in paragraph (b), may lethally take a wolf on land the person owns or lawfully occupies only if:

(A) The wolf is caught in the act of:

(i) Biting, wounding or killing livestock or working dogs; or

(ii) Chasing livestock or working dogs, if the person has first undertaken nonlethal actions as specified in (8)(b)(C) and (8)(c) of this rule, and the taking occurs during a time period in which ODFW has determined a situation of chronic depredation exists.; and

(B) No person has used bait or taken other intentional actions to attract wolves.

(b) A landowner or lawful occupant of land may authorize an agent to enter the land for the purpose of taking wolves pursuant to (5)(a) on the landowner or occupant's behalf. The authorization must be in writing, be carried by the agent when wolves are taken, and must include:

(A) The date of issuance of the authorization;

(B) The name, address, telephone number and signature of the person granting authorization;

(C) The name, address, and telephone number of the person to whom authorization is granted; and

(D) The expiration date of the authorization, which may not be later than one year from the issuance date.

(c) Any person who takes a wolf pursuant to (5)(a) and (5)(b) of these rules must make all reasonable efforts to preserve the scene, not remove or disturb the wolf carcass, and report the take to ODFW within 24 hours.

(6) Lethal take to address chronic livestock depredation. ODFW may authorize its personnel or authorized agents to use lethal force on a wolf or wolves it reasonably believes are responsible for chronic depredation upon livestock where each of the conditions in subsections (7) through (10) of this rule is satisfied. ODFW shall limit lethal force to the wolf or wolves it deems necessary to address the chronic depredation situation

(7) Conditions for Lethal Take by ODFW. ODFW's discretionary authority for use of lethal force pursuant to this rule may be exercised if ODFW:

(a) Designates an Area of Known Wolf Activity, the boundary of which may be adjusted as new data or information become available;

(b) Upon the designation of an Area of Known Wolf Activity, coordinates in a timely manner with potentially affected livestock producers and other relevant interests to provide information on:

(A) The provisions of the Oregon Wolf Conservation & Management Plan and associated rules,

(B) The current state of knowledge of wolf behavior, management, and conservation,

(C) Procedures for documenting and reporting wolf activity to ODFW, including depredations upon livestock, and

(D) Non-lethal measures, incentives and available assistance aimed at minimizing conflicts between wolves and livestock or domestic animals in the area of known wolf activity;

(c) Confirms an incident of depredation of livestock by a wolf or wolves;

(d) Within 14 working days of ODFW's confirmation of the first incident of depredation in an area:

(A) Designates an Area of Depredating Wolves, the boundary of which may be adjusted as new data or information become available;

(B) Concurrent with the designation of an Area of Depredating Wolves, prepares and publicly discloses an area-specific wolf-livestock conflict deterrence plan in coordination with potentially affected landowners, livestock producers and other relevant interests. The plan shall identify appropriate non-lethal measures according to which measures are likely to be most effective in a given circumstance, including the nature of the livestock operations, habitat, and landscape conditions specific to the area, as well as particular times of the year or period of livestock production. The plan shall be based on information compiled by ODFW before and/or during the planning effort on potentially successful conflict deterrence techniques, scientific research, and available financial resources and/or partnerships that may aid in the successful implementation of the plan. ODFW may update an area-specific conflict deterrence plan as new data become available.

(e) Confirms a total of at least 4 qualifying incidents of depredation of livestock within the previous 6 months by the same wolf or wolves.

(f) Issues and makes publicly available, prior to the exercise of lethal force, a written determination by the ODFW Director or director's designee to use lethal force to address a specified situation of chronic depredation, along with supporting findings that:

(A) The conditions of Sections 7, 8, and 9 of this rule have been satisfied;

(B) Livestock producers in the Area of Depredating Wolves have worked to reduce wolf-livestock conflict and are in compliance with wolf protection laws and the conditions of any harassment or take permits.

(C) The situation of wolf depredation upon livestock in the Area of Depredating Wolves is likely to remain chronic despite the use of additional non-lethal conflict deterrence measures; and

(D) The wolf or wolves identified for removal are those ODFW believes to be associated with the qualifying depredations, the removal of which ODFW believes will decrease the risk of chronic depredation in the Area of Depredating Wolves.

(8) Qualifying Contingencies and Counting Incidents:

(a) An incident of depredation is a single event resulting in the injury or death of one or more lawfully present livestock that is reported to ODFW for investigation, and upon investigation by ODFW or its agent(s), ODFW confirms to have been caused by a wolf or group of wolves.

(b) A qualifying incident of depredation is a confirmed incident of depredation for the purposes of this rule if:

(A) The depredation is outside of an Area of Known Wolf Activity or Area of Depredating Wolves. Only the first confirmed depredation by a wolf or wolves may count as a qualifying depredation,

(B) In an Area of Known Wolf Activity, the landowner or lawful occupant of the land where the depredation occurred had:

(i) At least seven days prior to the incident of depredation, removed, treated or disposed of all intentionally placed or known and reasonably accessible unnatural attractants of potential wolf-livestock conflict, such as bone or carcass piles or disposal sites, and

(ii) Prior to and on the day of the incident of depredation, been using at least one measure ODFW deems most appropriate from non-lethal deterrence measures identified pursuant to section (7)(b)(D) to protect calving operations, nursing cattle, sheep operations, or other reasonably protectable situations, not including open range situations. Once a confirmed depredation has occurred in an Area of Known Wolf Activity and while ODFW is in the process of designating an Area of Depredating Wolves and creating an area-specific conflict deterrence plan, only one additional confirmed depredation in an area may count as a qualifying depredation under this subsection.

(C) In an Area of Depredating Wolves, the landowner or lawful occupant of the land where the depredation occurred had:

(i) Complied with subsection (B) of this section, and

(ii) Prior to and on the day of the incident of depredation was implementing at least one non-lethal measure identified in the area-specific conflict deterrence plan developed under subsection (7)(d)(B) that is specific to the location, type of livestock operation, time of the year, and/or period of livestock production associated with the depredation. The conflict deterrence plan measure implemented by a landowner or lawful occupant must address wolf-livestock conflict in open range situations when that situation exists.

(c) Human presence, when used as a non-lethal measure under this rule, is presence which could reasonably be expected to deter wolf-livestock conflict under the circumstances and, regardless of the temporal

requirements of sections (7)(b)(B) and (C) of this rule, may be considered an appropriate non-lethal measure if it:

(A) Occurs at a proximate time prior to and in an area proximate to a confirmed depredation as determined by ODFW, and

(B) Indicates a timely response to wolf location information in situations of potential wolf-livestock conflict.

(9) Transparency and Public Disclosure.

(a) Except as provided in section (c) below, prior to using lethal force to address chronic wolf depredation, and in a timely fashion, ODFW shall document and make publicly available on at least its website:

(A) The determinations and supporting findings referenced in section (7)(f) of this rule;

(B) Information including but not limited to summaries of confirmed incidents of depredation and associated depredation investigation reports, maps of areas of known wolf activity and areas of depredating wolves, including changes and amendments to those maps, and area specific conflict deterrence plans; and

(C) Documentation of measures implemented pursuant to Section 8 of this rule. In documenting the removal of unnatural attractants and implementation of conflict deterrence measures, the Department may rely upon documented personal observation and/or written statements by the owner or lawful occupant of the land where qualifying incidents of depredation have occurred that confirm the non-lethal deterrence measures being utilized prior to and at the time of the qualifying depredation.

(b) In any signed statements and other information publicly disclosed pursuant to this section, the Department shall redact from public disclosure the personal information of landowners, lawful occupants, or other relevant individuals consistent with the Oregon public records law, ORS Chapter 192.

(c) In the case where the conditions in Section (7)(f) of this rule have been met but strict compliance with the public disclosure requirements of this section cannot be accomplished without a delay that impedes ODFW's ability to pursue an immediately available opportunity to remove the wolf or wolves it reasonably believes responsible for chronic depredation prior to another depredation event on livestock, this section is deemed satisfied if, prior to the use of lethal force, ODFW:

(A) Provides email or phone notification from the ODFW Director or designee to a list of interested stakeholders communicating the findings in Section 7(f) of this rule and the Department's intent to pursue immediate lethal action based on those findings,

(B) Has previously documented and disclosed, on at least the agency's website, the information referenced in subsections (a)(A)–(C) of this section with respect to all but the most recent qualifying depredation that resulted in ODFW's determination to pursue lethal action, and

(C) Provides the remaining information referenced in subsections (a)(A)–(C) of this rule in a timely manner with respect to the most recent qualifying incident that ODFW pursues with immediate lethal action.

(10) Duration of chronic depredation lethal take authority. Take authority issued pursuant to subsection (7) expires:

(a) When the wolf or wolves identified for lethal removal have been removed by ODFW or any other party.

(b) ODFW may reinstate its take authority if ODFW confirms one additional qualifying incident of depredation within two months after the last confirmed qualifying depredation by what it believes to be a member or members of the same wolf pack and non-lethal efforts specified in Section 8 have continued to be implemented by the owner or lawful occupant of land where the additional depredation occurs;

(c) 45 days after issuance of the take authority and determination referenced in section (7)(f), unless ODFW confirms, within that time period, another qualifying incident of depredation on livestock by what it believes to be the same wolf or wolves identified for lethal removal and non-lethal efforts specified in section (8) have continued to be implemented by the owner or lawful occupant of land where the additional depredation occurs; or

(d) If ODFW determines the wolf or wolves identified for lethal removal have left the Area of Depredating Wolves. To support this determination, data must show more than just a short-term or seasonal movement outside the area's boundary.

(e) Except as allowed under subsections (b) and (c) of this Section, any subsequent authorization or reinstatement of take authority by the Department must comply with sections (7) through (9) of this rule, and must be based upon at least one additional qualifying depredation.

(11) Lethal take in the case of extreme circumstances. Notwithstanding sections (7) and (8) of this rule, ODFW may authorize the use of lethal force in extreme circumstances.

(a) Extreme circumstances means:

(A) Four or more confirmed incidents of depredation of livestock by what ODFW reasonably believes to be the same wolf or wolves within seven days;

(B) ODFW determines, based on evidence it makes publicly available, that there were no intentionally placed or known and reasonably accessible unnatural attractants such as bone or carcass piles or disposal sites that contributed to the incidents of depredation, and that non-lethal measures are and will likely remain ineffective; and

(C) ODFW finds that depredation has rapidly escalated beyond the reasonable, available means of ODFW and affected livestock owners to stop additional livestock losses from occurring.

(b) A decision to utilize lethal force authority due to extreme circumstances shall be made by the ODFW director or director's designee, accompanied by the findings and determinations required in section (11)(a) made publically available on ODFW's website, and exercised within 14 days of the determination to exercise lethal force authority under this section, or of the last confirmed depredation, whichever comes later.

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

Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026

Hist.: DFW 12-2005, f. & cert. ef. 3-9-05; DFW 92-2010(Temp), f. & cert. ef. 6-29-10 thru 12-25-10; DFW 144-2010, f. & cert. ef. 10-11-10; DFW 42-2013(Temp), f. & cert. ef 5-23-13 thru 11-17-13; DFW 73-2013, f. & cert. ef. 7-12-13; DFW 115-2013(Temp), f. & cert. ef. 10-1-13 thru 3-29-14; Administrative correction, 12-19-13; DFW 2-2014, f. & cert. ef. 1-14-14

635-110-0020

Harassment and Take of Wolves During Phase II (Management)

NOTE: as of January 10, 2014, these rules are pre-empted in a portion of Oregon by the endangered status of the gray wolf under the federal Endangered Species Act. In the portion of Oregon where federal protections are reduced to a level below that of Oregon law, these rules govern harassment and take of wolves in Oregon.

(1) This rule describes the types of harassment and take of wolves allowed by persons outside ODFW (or ODFW or Wildlife Services acting as their agent) during Phase II — (Management: 5-7 breeding pairs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes.

(2) Non-injurious harassment of wolves is allowed under the same conditions as in Phase I (OAR 635-110-0010(2)).

(3) Non-lethal injurious harassment.

(a) Non-lethal injurious harassment is allowed without a permit on private land by livestock producers or their agents on land they own or lawfully occupy. Livestock producers are encouraged to use non-injurious techniques first. There must be no identified circumstance that attracts wolf-livestock conflict, and the harassment must be reported to ODFW within 48 hours.

(b) Non-lethal injurious harassment is allowed by permit on public land by grazing permittees who are legally using public land under valid livestock grazing allotments and upon the following conditions:

(A) ODFW confirms wolf depredation on livestock or other wolf-livestock conflict in the area. "Other wolf-livestock conflict" means loitering near, testing, chasing, or otherwise disrupting livestock;

(B) ODFW considers the location of known den sites;

(C) There is no identified circumstance at the site which attracts wolf/livestock conflict; and

(D) The harassment is reported to ODFW within 48 hours.

(c) As to non-lethal injurious harassment on either private or public land, pursuing wolves is allowed.

(4) Relocation of wolves will be considered under the same circumstances as in Phase I (OAR 635-110-0010(4)).

(5) Lethal take of wolves in the act of biting, wounding, killing or chasing livestock or working dogs.

(a) A person, or an agent as described in paragraph (b), may lethally take a wolf on land the person owns or lawfully occupies only if:

(A) The wolf is caught in the act of biting, wounding, killing or chasing livestock or working dogs; and

(B) No person has used bait or taken other intentional actions to attract wolves.

(b) A landowner or lawful occupant of land may authorize an agent to enter the land for the purpose of taking wolves pursuant to 5(a) on the landowner or occupant's behalf. The authorization must be in writing, be carried by the agent when wolves are taken, and must include:

(A) The date of issuance of the authorization;

(B) The name, address, telephone number and signature of the person granting authorization;

(C) The name, address, and telephone number of the person to whom authorization is granted; and

(D) The expiration date of the authorization, which may not be later than one year from the issuance date.

(c) Any person who takes a wolf pursuant to 5(a) of these rules must make all reasonable efforts to preserve the scene, not remove or disturb the wolf carcass, and report the take to ODFW within 24 hours.

(6) Lethal take to deal with chronic depredation.

(a) ODFW may authorize its personnel, authorized agents, or Wildlife Services, to use lethal force on wolves at a property owner or permittee's request if:

(A) ODFW confirms either:

(i) Two confirmed depredations by wolves on livestock in the area; or

(ii) One confirmed depredation followed by three attempted depredations (testing or stalking) in the area;

(B) The requester documents unsuccessful attempts to solve the situation through non-lethal means;

(C) No identified circumstance exists that attracts wolf-livestock conflict; and

(D) The requester has complied with applicable laws and the conditions of any harassment or take permit.

(b) Subject to the conditions specified in paragraph (c) and with a limited duration permit from ODFW, the following persons may use lethal force to deal with chronic depredation:

(A) Livestock producers (or their agents) on land they own or lawfully occupy; or

(B) Grazing permittees legally using public land.

(c) ODFW will issue a permit to use lethal force to deal with chronic depredation only if:

(A) ODFW confirms that the area has had at least two depredations by wolves on livestock;

(B) ODFW determines that wolves are routinely present on that property and present a significant risk to livestock;

(C) There is no identified circumstance at the site which attracts wolf/livestock conflict;

(D) The applicant is in compliance with applicable laws and the terms of any previous wolf permit;

(E) The applicant documents use of non-lethal methods; and

(F) Any wolf taken is considered property of the state and reported to ODFW within 48 hours.

(7) "Identified circumstance" means a condition which:

(a) ODFW determines, based upon its investigation of the situation, attracts wolves and fosters conflict between wolves and livestock; and

(b) ODFW advises the landowner, livestock producer or grazing permittee to remedy; but

(c) The landowner, livestock producer or grazing permittee fails to remedy.

(8) "In the area" means where ODFW has determined the presence of the depredating wolves.

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

Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026

Hist.: DFW 12-2005, f. & cert. ef. 3-9-05; DFW 144-2010, f. & cert. ef. 10-11-10; DFW 42-2013(Temp), f. & cert. ef 5-23-13 thru 11-17-13; DFW 73-2013, f. & cert. ef. 7-12-13; DFW 2-2014, f. & cert. ef. 1-14-14

635-110-0030

Harassment and Take of Wolves During Phase III

NOTE: as of January 10, 2014, these rules are pre-empted in a portion of Oregon by the endangered status of the gray wolf under the federal Endangered Species Act. In the portion of Oregon where federal protections are reduced to a level below that of Oregon law, these rules govern harassment and take of wolves in Oregon.

(1) This rule describes the types of harassment and take of wolves allowed by persons outside ODFW (or ODFW or Wildlife Services acting as their agent) during Phase III (more than 7 packs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes.

(2) Non-injurious harassment of wolves is allowed under the same conditions as in Phase I (OAR 635-110-0010(2)).

(3) Non-lethal injurious harassment is allowed under the same conditions as in Phase II (OAR 635-110-0020(3)), except that wolf depredation on livestock or other wolf-livestock conflict may be confirmed by either ODFW or Wildlife Services.

(4) Relocation of wolves will be considered under the same circumstances as in Phase I (OAR 635-110-0010(4)).

(5) Lethal take of wolves in the act of attacking livestock is allowed under the same conditions as for Phase II (OAR 635-110-0020(5)), except that wolf depredation on livestock may be confirmed by either ODFW or Wildlife Services.

(6) Lethal take of wolves to deal with chronic depredation is allowed under the same conditions as for Phase II (OAR 635-110-0020(6)), except that wolf depredation on livestock may be confirmed by either ODFW or Wildlife Services.

(7) The Commission will authorize controlled take of wolves by special permit in specific areas where necessary to address chronic wolf-livestock conflicts or ungulate population declines. "Chronic" means two livestock depredations have been confirmed by ODFW or Wildlife Services, or one depredation followed by three attempted depredations (testing or stalking). The Commission may also choose to authorize such controlled take on private lands where the landowner is willing to provide access.

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

Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026

Hist.: DFW 12-2005, f. & cert. ef. 3-9-05; DFW 144-2010, f. & cert. ef. 10-11-10; DFW 2-2014, f. & cert. ef. 1-14-14

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

Rule Caption: Medicaid Long Term Care Quality and Reimbursement Advisory Council (MLTCQRAC)
Adm. Order No.: SPD 49-2013
Filed with Sec. of State: 12-17-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 411-001-0100, 411-001-0110, 411-001-0118, 411-001-0120
Subject: The Department of Human Services (Department) is permanently amending the rules for the Medicaid Long Term Care Quality and Reimbursement Advisory Council (Council) in OAR chapter 411, division 001 to clarify the Council's role in advising the Department or the Oregon Health Authority in changes or modifications to the Medicaid reimbursement system that affect the reimbursement or quality of long term care and community-based services administered by the Department.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-001-0100

Purpose

(1) The purpose of the rules in OAR chapter 411, division 001 is to establish procedures for the operation of the Medicaid Long Term Care Quality and Reimbursement Advisory Council (Council).

(2) The Council was established by the 1995 Legislative Assembly and consists of 12 stakeholders including the Long Term Care Ombudsman, consumers, advocates, and providers. Council appointments are made by the Governor, the President of the Senate, the Speaker of the House, the Governor's Commission on Senior Services, and the Oregon Disabilities Commission as described in ORS 410.550.

(3) The Council is directed to advise the Department of Human Services or the Oregon Health Authority on changes or modifications to the Medicaid reimbursement system and the adverse and positive effects of the changes or modifications on the quality of long term care and community-based services and reimbursement for long term care and community-based services.

Stat. Auth.: ORS 410.070, 410.555

Stats. Implemented: ORS 410.550 - 410.555

Hist.: SSD 7-1996, f. 8-30-96, cert. ef. 9-1-96; SPD 18-2006, f. 5-12-06, cert. ef. 6-1-06; SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10; SPD 49-2013, f. 12-17-13, cert. ef. 1-1-14

411-001-0110

Definitions

(1) "Authority" means the Oregon Health Authority.

(2) "Council" means the Medicaid Long Term Care Quality and Reimbursement Advisory Council.

(3) "Department" means the Department of Human Services.

(4) "Medicaid Reimbursement System" means the method or methodology associated with reimbursing providers of long term care and community-based services under the Department. The Medicaid reimbursement system does not include rates established by collective bargaining, rates established by actuarial calculations, or rate increases that have been approved and funded by the Legislature.

(5) "Quality" means the degree to which long term care systems, services, and supplies for individuals and populations increase the likelihood of positive outcomes.

(6) "These Rules" mean the rules in OAR chapter 411, division 001.

Stat. Auth.: ORS 410.070 & 410.555
Stats. Implemented: ORS 410.550–410.555
Hist.: SSD 7-1996, f. 8-30-96, cert. ef. 9-1-96; SPD 18-2006, f. 5-12-06, cert. ef. 6-1-06; SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10; SPD 49-2013, f. 12-17-13, cert. ef. 1-1-14

411-001-0118
Council Scope and Operation

(1) At the beginning of each legislative session, the Council shall review the Governor's Recommended Budget for the Department. The Council may submit a recommendation in support or opposition of the Governor's Recommended Budget.

(2) The Department or Authority shall submit any proposed change or modification to the Medicaid reimbursement system to the Council for the Council's review and recommendation.

(3) Upon review of any proposed change or modification under section (2) of this rule, the Council shall issue a written advisory recommendation to the Department or Authority as described in OAR 411-001-0120.

(4) Prior to implementing any change or modification to the Medicaid reimbursement system, the Department or Authority shall submit the Council's written recommendation to the Legislative Assembly or to the Emergency Board if the Legislative Assembly is not in session.

(5) If the Council has a disagreement with any change or modification to the Medicaid reimbursement system, the Department or Authority shall obtain the approval of the Legislative Assembly or the Emergency Board if the Legislative Assembly is not in session, before instituting the proposed change or modification. A proposed change or modification with an estimated fiscal impact of $100,000 or less is exempt from this provision.

(6) The Department shall inform the Council of all rate changes within the Department's Aging and People with Disabilities Programs, including rates established by collective bargaining, rates established by actuarial calculations, and rate increases that have been approved and funded by the Legislature.

(7) The Council may review the Department's strategic initiatives in order to assess the likelihood of increased quality for individuals served by the Department.

Stat. Auth.: ORS 410.070 & 410.555
Stats. Implemented: ORS 410.550–410.555
Hist.: SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10; SPD 49-2013, f. 12-17-13, cert. ef. 1-1-14

411-001-0120
Council Operation

(1) Within 60 calendar days after receipt from the Department or Authority of any proposed change or modification to the Medicaid reimbursement system, the Council shall issue a written advisory recommendation to the Department or Authority. The 60-day period begins the day following delivery to the chairperson of the Council if a proposed change or modification is faxed, hand-delivered, or e-mailed. Otherwise, the 60-day period begins the third day after the date of mailing first class.

(2) A written advisory recommendation issued by the Council must state:

(a) Whether the Council supports or opposes the proposed change or modification;

(b) Whether the Council concludes that the proposed change or modification shall have an adverse or positive effect on the quality of long term care and community-based services provided under the Oregon Medicaid program; and

(c) The basis for the Council's recommendation, which must include:

(A) The reason for the Council's position;

(B) A list of the principal documents, reports, or studies, if any, relied upon in considering the proposed change or modification; and

(C) Other information deemed appropriate by the Council.

(3) Timeline for written recommendation.

(a) Notwithstanding section (1) of this rule, the Department or Authority may shorten the time within which the Council must issue a written recommendation if the Department or Authority decides to adopt a proposed change or modification by temporary rule and if the Department or Authority prepares a written statement in which the Department or Authority:

(A) Finds that failure to make proposed changes or modifications promptly is likely to result in serious prejudice to the public interest or to the interests of individuals receiving Department or Authority services, providers of long term care or community-based services, or other affected parties;

(B) Specifies reasons why the Department or Authority's failure to act promptly is likely to result in serious prejudice to those interests;

(C) States the need for the proposed change or modification and how the change or modification is intended to meet the need;

(D) Lists the principal documents, reports, or studies, if any, prepared or relied upon by the Department or Authority in evaluating the need for the proposed change or modification; and

(E) Cites the legal authority relied upon and bearing upon the adoption, amendment, or suspension of the rule if the proposed change or modification is to be made by administrative rule.

(b) However, the Department or Authority may not shorten the time for written recommendation to less than five business days.

(4) If the Department or Authority intends to adopt an administrative rule that directly or indirectly proposes a change or modification to the Medicaid reimbursement system, the Department or Authority may not proceed with notice requirements provided for in ORS 183.335 until the Department or Authority has received the Council's written recommendation as described in section (2) of this rule or the time permitted to the Council for issuance of a written recommendation has passed, whichever occurs first.

Stat. Auth.: ORS 410.070 & 410.555
Stats. Implemented: ORS 410.550–410.555
Hist.: SSD 7-1996, f. 8-30-96, cert. ef. 9-1-96; SPD 18-2006, f. 5-12-06, cert. ef. 6-1-06; SPD 18-2009, f. 12-23-09, cert. ef. 1-1-10; SPD 49-2013, f. 12-17-13, cert. ef. 1-1-14

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Rule Caption: Support Services for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: SPD 50-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 12-1-2013
Rules Amended: 411-340-0010, 411-340-0020, 411-340-0030, 411-340-0040, 411-340-0050, 411-340-0060, 411-340-0070, 411-340-0080, 411-340-0090, 411-340-0100, 411-340-0110, 411-340-0120, 411-340-0125, 411-340-0130, 411-340-0140, 411-340-0150, 411-340-0160, 411-340-0170, 411-340-0180
Rules Repealed: 411-340-0020(T), 411-340-0100(T), 411-340-0110(T), 411-340-0120(T), 411-340-0125(T), 411-340-0130(T), 411-340-0150(T)
Subject: The Department of Human Services is permanently amending the rules for support services for adults with intellectual or developmental disabilities in OAR chapter 411, division 340.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-340-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 340 prescribe standards, responsibilities, and procedures for support services brokerages to assist adults with intellectual or developmental disabilities to identify and address support needs and for providers paid with support services funds, including resources available through the state plan and waiver, to provide services so that an adult with an intellectual or developmental disability may live in his or her own home or in the family home.

(2) Services provided under these rules are intended to identify, strengthen, expand, and where required, supplement private, public, formal, and informal support available to adults with intellectual or developmental disabilities so that an adult with an intellectual or developmental disability may exercise self-determination in the design and direction of his or her life.

Stat. Auth.: ORS 409.050, 427.402, & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1750, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0020
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 340:

(1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any

subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(3) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group.

(5) "ADL" means "activities of daily living" as defined in this rule.

(6) "Administration of Medication" means the act of placing a medication in or on an individual's body by a person responsible for the individual's care and employed by, or under contract to, the individual or as applicable the individual's legal or designated representative or provider organization.

(7) "Administrative Review" means the formal process that is used when an individual, or as applicable the individual's legal or designated representative, is not satisfied with the decision made by a brokerage about a complaint involving the provision of services or a provider.

(8) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(9) "Alternative Resources" means possible resources, not including support services, for the provision of supports to meet an individual's needs. Alternative resources includes but is not limited to private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(10) "Annual Plan" means the written summary a personal agent completes for an individual who is not enrolled in waiver or Community First Choice services. An Annual Plan is not an Individual Support Plan and is not a plan of care for Medicaid purposes.

(11) "Attendant Care" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding, as described in OAR 411-340-0130.

(12) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(13) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to the brokerage services listed in OAR 411-340-0120(1); and if required

(b) For individuals who have not had a service level determined, access to an amount of support services funds used to assist with the purchase of supports listed in OAR 411-340-0130.

(14) "Basic Supplement" means an amount of support services funds in excess of the basic benefit to which an individual, who has not had a service level determined, may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory (Form DHS 0203).

(15) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by a brokerage to determine whether the individual, who has not had a service level determined, is eligible for a basic supplement.

(16) "Behavior Support Plan (BSP)" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause an individual's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(17) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to an individual's intellectual or developmental disability that prevents the individual from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(18) "Benefit Level" means the total annual amount of support services funds for which an individual, who has not had a service level determined, is eligible. The benefit level includes the basic benefit and any exceptions to the basic benefit financial limits.

(19) "Brokerage" means an entity or distinct operating unit within an existing entity that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with intellectual or developmental disabilities.

(20) "Brokerage Director" means the director of a publicly or privately-operated brokerage, who is responsible for administration and provision of services according to these rules, or the brokerage director's designee.

(21) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(22) "CDDP" means "community developmental disability program" as defined in this rule.

(23) "Certificate" means the document issued by the Department to a brokerage, or to a provider organization requiring certification under OAR 411-340-0170(2), that certifies the brokerage or provider organization is eligible to receive state funds for support services.

(24) "Choice" means an individual's expression of preference, opportunity for, and active role in decision-making related to services received and from whom, including but not limited to case management, providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated verbally, through sign language, or by other communication methods.

(25) "Choice Advising" means the impartial sharing of information about case management and other service delivery options available to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications identified in OAR 411-340-0150(5).

(26) "Chore Services" mean the services described in OAR 411-340-0130 that are needed to restore a hazardous or unsanitary situation in an individual's home to a clean, sanitary, and safe environment.

(27) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(28) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(29) "Community Living and Inclusion Supports" mean the services described in OAR 411-340-0130 designed to assist an individual in acquiring, retaining, and improving the self-help, socialization, and non-activities of daily living or instrumental activities of daily living skills necessary for the individual to reside successfully in home and community-based settings.

(30) "Community Nursing Services" mean the services described in OAR 411-340-0130 that include nurse delegation, training, and care coordination for an individual living in his or her own home.

(31) "Community Transportation" means the services described in OAR 411-340-0130 that enable an individual to gain access to community services, activities, and resources that are not medical in nature.

(32) "Complaint" means a verbal or written expression of dissatisfaction with services or providers.

(33) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated employment or community inclusion program. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a community developmental disability program. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in brokerages.

(34) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet an individual's support needs. Less costly alternatives include other programs available from the Department, the utilization of assistive devices, natural supports, architectural modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(35) "CPMS" means the Client Process Monitoring System. CPMS is the Department's computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(36) "Crisis" means:

(a) A situation that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160 are present for which no appropriate alternative resources are available.

(37) "Crisis Diversion Services" mean the services authorized and provided according to OAR 411-320-0160 that are intended to maintain an individual at home or in the family home while the individual is in emer-

gent status. Crisis diversion services may include short-term residential placement services indicated on an individual's Support Services Brokerage Crisis Addendum, as well as additional support as described in an Individual Support Plan.

(38) "Day" means a calendar day unless otherwise specified in these rules.

(39) "Department" means the Department of Human Services.

(40) "Designated Representative" means a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the individual's representative in connection with the provision of funded supports, who is not also a paid provider for the individual. An individual is not required to appoint a designated representative.

(41) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(42) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(43) "Emergent Status" means an individual has been determined to be eligible for crisis diversion services according to OAR 411-320-0160.

(44) "Employer-Related Supports" mean the activities that assist an individual, and when applicable the individual's legal or designated representative or family members, with directing and supervising provision of services described in the individual's Individual Support Plan. Employer-related supports include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools, such as job descriptions; and

(d) Fiscal intermediary services.

(45) "Entry" means admission to a Department-funded licensed or certified developmental disability service provider.

(46) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-340-0130 that are necessary to ensure the health, welfare, and safety of an individual in the individual's home, or that enable an individual to function with greater independence in the individual's home.

(47) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a licensed or certified provider organization.

(48) "Family":

(a) Means a unit of two or more people that includes at least one individual with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the individual with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting the individual with an intellectual or developmental disability when the individual is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining an individual's eligibility for brokerage services as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(49) "Family Training" means the training and counseling services described in OAR 411-340-0130 that are provided to an individual's family to increase the family's capacity to care for, support, and maintain the individual in the individual's home.

(50) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an individual, who employs people to provide services, supervision, or training in the individual's home or community according to the individual's Individual Support Plan.

(51) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(52) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(53) "General Business Provider" means an organization or entity selected by an individual, or as applicable the individual's legal or designated representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual, or as applicable the individual's legal or designated representative, to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(54) "Habilitation Services" mean the services designed to assist an individual in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in the individual's home and community-based settings.

(55) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. A hearing is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing and contested case hearing.

(56) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a certified foster home or licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site.

(57) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(58) "IADL" means "instrumental activities of daily living" as defined in this rule.

(59) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(60) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(61) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(62) "Independent Provider" means a person selected by an individual, or as applicable the individual's legal or designated representative, and paid with support services funds to personally provide services to the individual.

(63) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(64) "Individual Cost Limit" means the maximum annual benefit level available under the Support Services Waiver version OR.0375.R02.03. The support services waiver is available at http://www.oregon.gov/dhs/spd/qa/ssa_waiver_icfmr.pdf. Printed copies may be obtained by contacting the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, E-10, Salem, Oregon 97301.

(65) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, providers, and the frequency of services are reflected in an ISP. The ISP is the individual's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(66) "Instrumental Activities of Daily Living (IADL)" mean the activities other than activities of daily living required to continue independent living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(67) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(68) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(69) "ISP" means "Individual Support Plan" as defined in this rule.

(70) "K Plan" means "Community First Choice" as defined in this rule.

(71) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(72) "Level of Care" means an individual meets the following institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as an ICF/MR):

(a) The individual has a condition of an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets the eligibility criteria for developmental disability services as described in OAR 411-320-0080; and

(b) The individual has a significant impairment in one or more areas of adaptive functioning. Areas of adaptive functioning include self direction, self care, home living, community use, social, communication, mobility, or health and safety.

(73) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with an intellectual or developmental disability. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(74) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(75) "Natural Supports" means the voluntary resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community that are not paid for by the Department.

(76) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(77) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of an individual and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to a qualified provider or the individual's family. When a Nursing Care Plan exists, it is a supporting document for the individual's Individual Support Plan.

(78) "Occupational Therapy" means the services described in OAR 411-340-0130 that are provided by a professional licensed under ORS 675.240 that are defined under the approved state plan, except that the amount, duration, and scope specified in the state plan do not apply.

(79) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(80) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual with an intellectual or developmental disability that gathers and organizes information that helps an individual:

(A) Determine and describe choices about personal goals, activities, services, providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with the individual's cultural considerations, needs, and preferences.

(81) "Personal Agent" means a person who is a case manager for the provision of case management services, works directly with individuals and the individuals' legal or designated representatives and families to provide or arrange for support services as described in these rules, meets the qualifications set forth in OAR 411-340-0150(5), and is a trained employee of a brokerage or a person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited. A personal agent is an individual's person-centered plan coordinator as defined in the Community First Choice state plan.

(82) "Physical Therapy" means the services described in OAR 411-340-0130 that are provided by a professional licensed under ORS 688.020 that are defined under the approved state plan, except that the amount, duration, and scope specified in the state plan do not apply.

(83) "Plan of Care" means the written plan of Medicaid services an individual needs as required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(84) "Plan Year" means 12 consecutive months that, unless otherwise set according to the conditions of OAR 411-340-0120, begins on the start date specified in an individual's first authorized Individual Support Plan (ISP) after entry to a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial ISP.

(85) "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide individual-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources.

(86) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(87) "Prescription Medication" means any medication that requires a physician's prescription before the medication may be obtained from a pharmacist.

(88) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of service and support for an individual in the individual's home.

(89) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(90) "Progress Note" means a written record of an action taken by a personal agent in the provision of case management, administrative tasks, or direct services, to support an individual. A progress note may also be a recording of information related to an individual's services, support needs, or circumstances, which is necessary for the effective delivery of support services.

(91) "Protection" and "Protective Services" mean the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard an individual's person, property, and funds.

(92) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement.

(93) "Provider" means a person, organization, or business selected by an individual, or as applicable the individual's legal or designated representative, and paid with support services funds to provide support according to the individual's Individual Support Plan.

(94) "Provider Organization" means an entity selected by an individual, or as applicable the individual's legal or designated representative, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(95) "Provider Organization Director" means the director of a provider organization, who is responsible for the administration and provision of services according to these rules, or the provider organization director's designee.

(96) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(97) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(98) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties comprising the region agree are delivered more effectively or automatically on a regional basis.

(99) "Relief Care" means the intermittent services described in OAR 411-340-0130 that are provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(100) "Self-Administration of Medication" means an individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(101) "Self-Determination" means a philosophy and process by which individuals with intellectual or developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual with an intellectual or developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual with an intellectual or developmental disability, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that assists an individual with an intellectual or developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for the individual.

(102) "Self Direction" means that an individual, or as applicable the individual's legal or designated representative, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports and promoting personal choice and control over the delivery of waiver and state plan services.

(103) "Service Level" means the amount of services determined necessary to meet an individual's identified support needs.

(104) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor services, and to act as a proponent for individuals with intellectual or developmental disabilities. A services coordinator is an individual's person-centered plan coordinator as defined in the Community First Choice state plan.

(105) "Skills Training" means the activities described in OAR 411-340-0130 that are intended to maximize an individual's independence through training, coaching, and prompting the individual to accomplish activities of daily living, instrumental activities of daily living, community living and inclusion, supported employment, and health-related skills.

(106) "Social Benefit" means a service or financial assistance solely intended to assist an individual with an intellectual or developmental disability to function in society on a level comparable to that of a person who does not have an intellectual or developmental disability. Social benefits are pre-authorized by an individual's personal agent and provided according to the description and limits written in an individual's Individual Support Plan.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of intellectual or developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to a person with or without an intellectual or developmental disability; or

(C) Replace other governmental or community services available to an individual.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an individual's Individual Support Plan (ISP) or an advance payment in anticipation of an expense authorized in an individual's previously authorized ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home.

(107) "Special Diet" means the specially prepared food or particular types of food described in OAR 411-340-0130 that are specific to an individual's medical condition or diagnosis and needed to sustain an individual in the individual's home.

(108) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-340-0130 that enable an individual to increase the individual's ability to perform activities of daily living or to perceive, control, or communicate with the environment in which the individual lives.

(109) "Specialized Supports" means the treatment, training, consultation, or other unique services described in OAR 411-340-0130 that are provided by a social or sexual consultant to achieve outcomes in an Individual Support Plan that are not available through state plan services.

(110) "Speech, Hearing, and Language Services" mean the services described in OAR 411-340-0130 that are provided by a professional licensed under ORS 681.250 that are defined under the approved state plan, except that the amount, duration, and scope specified in the state plan do not apply.

(111) "State Plan" means Community First Choice or state plan personal care.

(112) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(113) "Support" means the assistance that an individual requires, solely because of the affects of the individual's intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(114) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120 as well as the uniquely determined activities and purchases arranged through the brokerage that:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by an individual or the individual's legal or designated representative (as applicable);

(c) Are provided in accordance with an individual's Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(115) "Support Services Brokerage Crisis Addendum" means the short-term plan that is required by the Department to be added to an Individual Support Plan to describe crisis diversion services an individual is to receive while the individual is in emergent status.

(116) "Support Services Expenditure Guideline" means a publication of the Department that describes allowable uses for support services funds. The Department's support services expenditure guideline is maintained on the Department's website (http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf). Printed copies may be obtained by contacting the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, E-10, Salem, Oregon 97301.

(117) "Support Services Funds" mean the public funds designated by the brokerage for assistance with the purchase of supports according to an Individual Support Plan.

(118) "Supported Employment Services" mean the services described in OAR 411-340-0130 that provide support for individuals for whom competitive employment is unlikely without ongoing support to perform in a

work setting. Supported employment services occur in a variety of settings, particularly work sites in which people without disabilities are employed.

(119) "These Rules" mean the rules in OAR chapter 411, division 340.

(120) "Transition Costs" mean the expenses described in OAR 411-340-0130, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as an ICF/MR) to a community-based home setting where the individual resides.

(121) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(122) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-340-0090.

(123) "Volunteer" means any person assisting a provider without pay to support the services and supports provided to an individual.

(124) "Waiver Services" means "home and community-based waiver services" as defined in this rule.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 3-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13; SPD 30-2013(Temp), f. & cert. ef. 7-2-13 thru 9-28-13; SPD 31-2013, f. 7-22-13, cert. ef. 8-1-13; SPD 32-2013(Temp), f. 7-22-13, cert. ef. 8-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0030

Certification of Support Services Brokerages and Provider Organizations

(1) CERTIFICATE REQUIRED.

(a) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage, or operate a brokerage without being certified by the Department under this rule.

(b) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a provider organization without either certification under this rule or current Department license or certification as described in OAR 411-340-0170(1).

(c) Certificates are not transferable or assignable and are issued only for the brokerage, or for the provider organization requiring certification under OAR 411-340-0170(2), and people or governmental units named in the application.

(d) Certificates issued on or after November 15, 2008 are effective for a maximum of five years.

(e) The Department shall conduct a review of the brokerage, or the provider organization requiring certification under OAR 411-340-0170(2), prior to the issuance of a certificate.

(2) CERTIFICATION. A brokerage, or a provider organization requiring certification under OAR 411-340-0170(2), must apply for an initial certificate and for a certificate renewal.

(a) The application must be on a form provided by the Department and must include all information requested by the Department.

(b) The applicant requesting certification as a brokerage must identify the maximum number of individuals to be served.

(c) To renew certification, the brokerage or provider organization must make application at least 30 days, but not more than 120 days, prior to the expiration date of the existing certificate. On renewal of brokerage certification, no increase in the maximum number of individuals to be served by the brokerage may be certified unless specifically approved by the Department.

(d) Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and extends the effective date of the existing certificate until the Department takes action upon the application for renewal.

(e) Failure to disclose requested information on the application or providing incomplete or incorrect information on the application may result in denial, revocation, or refusal to renew the certificate.

(f) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) CERTIFICATION EXPIRATION, TERMINATION OF OPERATIONS, OR CERTIFICATE RETURN.

(a) Unless revoked, suspended, or terminated earlier, each certificate to operate a brokerage or provider organization expires on the expiration date specified on the certificate.

(b) If a certified brokerage or provider organization is discontinued, the certificate automatically terminates on the date operation is discontinued.

(4) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION. The brokerage, or provider organization requiring certification under OAR 411-340-0170(2), must notify the Department in writing of any pending action resulting in a 5 percent or more change in ownership and of any pending change in the brokerage's or provider organization's legal entity, legal status, or management corporation.

(5) NEW CERTIFICATE REQUIRED. A new certificate for a brokerage or provider organization is required upon change in a brokerage's or provider organization's ownership, legal entity, or legal status. The brokerage or provider organization must submit a certificate application at least 30 days prior to change in ownership, legal entity, or legal status.

(6) CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may deny, revoke, or refuse to renew a certificate when the Department finds the brokerage or provider organization, the brokerage or provider organization director, or any person holding 5 percent or greater financial interest in the brokerage or provider organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and the brokerage or provider organization fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this rule, "inspection" means an on-site review of the service site by the Department for the purpose of investigation or certification);

(c) Has been convicted of a felony or any crime as described in OAR 407-007-0275;

(d) Has been convicted of a misdemeanor associated with the operation of a brokerage or provider organization;

(e) Falsifies information required by the Department to be maintained or submitted regarding services of individuals, program finances, or individuals' funds;

(f) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(g) Has been placed on the Office of Inspector General's list of excluded or debarred providers (http://exclusions.oig.hhs.gov/).

(7) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. Following a Department finding that there is a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in section (6) of this rule has occurred, the Department may issue a notice of certificate revocation, denial, or refusal to renew.

(8) IMMEDIATE SUSPENSION OF CERTIFICATE. When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the brokerage or provider organization may not continue operation.

(9) HEARING. An applicant for a certificate or a certificate holder may request a hearing pursuant to the contested case provisions of ORS chapter 183 upon written notice from the Department of denial, suspension, revocation, or refusal to renew a certificate. In addition to, or in lieu of a hearing, the applicant or certificate holder may request an administrative review by the Department's director. An administrative review does not preclude the right of the applicant or certificate holder to a hearing.

(a) The applicant or certificate holder must request a hearing within 60 days of receipt of written notice by the Department of denial, suspension, revocation, or refusal to renew a certificate. The request for a hearing

must include an admission or denial of each factual matter alleged by the Department and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certificate holder may have.

(b) In the event of a suspension pursuant to section (8) of this rule and during the first 30 days after the suspension of a certificate, the brokerage or provider organization may submit a written request to the Department for an administrative review. The Department shall conduct the review within 10 days after receipt of the request for an administrative review. Any review requested after the end of the 30-day period following certificate suspension is treated as a request for a hearing under subsection (a) of this section. If following the administrative review the suspension is upheld, the brokerage or provider organization may request a hearing pursuant to the contested case provisions of ORS chapter 183.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; SPD 10-2011, f. & cert. ef. 5-5-11; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0040
Abuse and Unusual Incidents in Support Services Brokerages and Provider Organizations

(1) ABUSE PROHIBITED. No adult or individual as defined in OAR 411-340-0020 shall be abused nor shall any employee, staff, or volunteer of the brokerage or provider organization condone abuse.

(a) Brokerages and provider organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an accused person in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) All employees of a brokerage or provider organization are mandatory reporters. The brokerage or provider organization must:

(A) Notify all employees of mandatory reporting status at least annually on forms provided by the Department; and

(B) Provide all employees with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) INCIDENT REPORTS.

(a) A brokerage or provider organization must prepare an incident report for instances of potential or suspected abuse or an unusual incident as defined in OAR 411-340-0020, involving an individual and a brokerage or provider organization employee. The incident report must be placed in the individual's record and must include:

(A) Conditions prior to or leading to the potential or suspected abuse or unusual incident;

(B) A description of the potential or suspected abuse or unusual incident;

(C) Staff response at the time; and

(D) Review by the brokerage administration and follow-up to be taken to prevent recurrence of the potential or suspected abuse or unusual incident.

(b) A brokerage or provider organization must send copies of all incident reports involving potential or suspected abuse that occurs while an individual is receiving brokerage or provider organization services to the CDDP.

(c) A provider organization must send copies of incident reports of all potential or suspected abuse or unusual incidents that occur while the individual is receiving services from a provider organization to the individual's brokerage within five working days of the potential or suspected abuse or unusual incident.

(3) IMMEDIATE NOTIFICATION

(a) The brokerage must immediately report to the CDDP, and the provider organization must immediately report to the CDDP with notification to the brokerage, any incident or allegation of potential or suspected abuse falling within the scope of OAR 407-045-0260.

(A) When an abuse investigation has been initiated, the CDDP must provide notice according to OAR 407-045-0290.

(B) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(b) In the case of emergency overnight hospitalization due to illness or injury to an individual, the brokerage or provider organization must immediately notify:

(A) The individual's legal representative, parent, next of kin, designated contact person, or other significant person (as applicable); and

(B) In the case of a provider organization, the individual's brokerage.

(c) In the event of the death of an individual, the brokerage or provider organization must immediately notify:

(A) The Medical Director of the Department;

(B) The individual's legal representative, parent, next of kin, designated contact person, or other significant person (as applicable);

(C) The CDDP; and

(D) In the case of a provider organization, the individual's brokerage.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1780, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; SPD 10-2011, f. & cert. ef. 5-5-11; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0050
Inspections and Investigations in Support Service Brokerages and Provider Organizations

(1) Support services brokerages and provider organizations certified under these rules must allow the following types of investigations and inspections:

(a) Quality assurance and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, CDDP, or proper authority perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, CDDP, or proper authority; and

(b) Submitted to the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, the Department, or CDDP has determined to initiate an investigation, the brokerage or provider organization may not conduct an internal investigation without prior authorization from the Department. For the purposes of this rule, an "internal investigation" is defined as:

(a) Conducting interviews with the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken.

(6) The Department or the CDDP shall conduct abuse investigations as set forth in OAR 407-045-0250 to 407-045-0360 and shall complete an abuse investigation and protective services report according to 407-045-0320.

(7) Upon completion of the abuse investigation by the Department, CDDP, or a law enforcement agency, a provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, in accordance with OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate brokerage or provider organization.

(9) The brokerage or provider organization may be required to submit to the Department a plan of improvement for any noncompliance found during an inspection pursuant to section (1)(a) of this rule.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1790, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp),

f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0060
Complaints in Support Services Brokerages

(1) COMPLAINTS. Brokerages must develop and implement written policies and procedures regarding individual complaints and a formal complaint process. These policies and procedures must at minimum address:

(a) Receipt of complaints. If a complaint is associated in any way with abuse, the recipient of the complaint must immediately report the issue to the CDDP and notify the brokerage director and, if applicable, the provider organization director. The brokerage must maintain a log of all complaints regarding the brokerage, provider organization, or independent provider that the brokerage receives from individuals, others acting on the behalf of individuals, and from provider organizations acting in accordance with OAR 411-340-0170(2)(a)(C)(v).

(A) The complaint log must, at a minimum, include the following:

(i) The date the complaint was received;

(ii) The name of the person taking the complaint;

(iii) The nature of the complaint;

(iv) The name of the person making the complaint, if known; and

(v) The disposition of the complaint.

(B) Brokerage personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint results in disciplinary action against a staff member, the documentation on the complaint must include a statement that disciplinary action was taken.

(b) Informal complaint resolution. An individual or a person acting on behalf of the individual must have an opportunity to informally discuss and resolve any allegation that a brokerage, provider organization, or independent provider has taken action that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or a person acting on behalf of the individual from pursuit of resolution through formal complaint processes.

(c) Investigation of the facts supporting or disproving the complaint.

(d) Taking appropriate actions. The brokerage must take steps to resolve the complaint within five working days following receipt of the complaint. If the complaint cannot be resolved informally, or if the individual or the person acting on behalf of the individual so chooses at any time, the individual or the person acting on behalf of the individual may request a formal resolution of the complaint and, if needed, must be assisted by the brokerage with initiating the formal complaint process.

(e) Review by the brokerage director. If a complaint involves brokerage staff or services and if the complaint is not resolved according to subsection (b) to (d) of this section or if the individual or the person acting on behalf of the individual requests one, a formal review must be completed by the brokerage director and a written response must be provided to the individual or the person acting on behalf of the individual within 30 days following receipt of the complaint.

(f) Agreement to resolve the complaint. Any agreement to resolve a complaint that has been formally reviewed by the brokerage director must be in writing and must be specifically approved by the individual or the person acting on behalf of the individual. The brokerage must provide the individual or the person acting on behalf of the individual with a copy of the agreement.

(g) Administrative review. Unless the individual is a Medicaid recipient and the individual or the person acting on behalf of the individual has elected to initiate the hearing process according to section (3) of this rule, the complaint may be submitted to the Department for administrative review when the complaint cannot be resolved by the brokerage and the complaint involves the provision of services or a provider.

(A) Following a decision by the brokerage director regarding a complaint, the complainant may request an administrative review by the Department's director.

(B) The individual or the person acting on behalf of the individual must submit to the Department a request for an administrative review within 15 days from the date of the decision by the brokerage director.

(C) Upon receipt of a request for an administrative review, the Department's director shall appoint an Administrative Review Committee and name the chairperson. The Administrative Review Committee is comprised of a representative of the Department, a CDDP representative, and a brokerage representative. The Administrative Review Committee representatives may not have any direct involvement in the provision of services to the individual or have a conflict of interest in the specific case being reviewed.

(D) The Administrative Review Committee shall review the complaint and the decision by the brokerage director and make a recommendation to the Department's director within 45 days of receipt of the complaint unless the individual or the person acting on behalf of the individual and the Administrative Review Committee mutually agree to an extension.

(E) The Department's director shall consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision is in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision contains the rationale for the director's decision.

(F) The decision of the Department's director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review.

(h) Documentation of complaint. Documentation of each complaint and resolution of the complaint must be filed or noted in the individual's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, and when a complaint is not resolved according to section (1)(b) through (1)(d) of this rule, the brokerage must inform each individual, or as applicable the individual's legal or designated representative, orally and in writing, using language, format, and methods of communication appropriate to the individual's needs and abilities, of the following:

(a) Brokerage grievance policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a hearing as pursuant to section (3) of this rule and the procedure to request a hearing.

(3) DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF SERVICES FOR INDIVIDUAL MEDICAID RECIPIENTS.

(a) Each time the brokerage takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the brokerage must notify the individual, or as applicable the individual's legal or designated representative, of the right to a hearing and the method to request a hearing. The brokerage must mail the notice by certified mail or personally serve the notice to the individual, or as applicable the individual's legal or designated representative, 10 days or more prior to the effective date of an action.

(A) The brokerage must use form SDS 0947, Notification of Planned Action, or a comparable Department-approved form for such notification.

(B) This notification requirement does not apply if an action is part of, or fully consistent with an individual's ISP, and the individual, or as applicable the individual's legal or designated representative, has agreed with the action by signature to the ISP.

(b) A notice required by section (3)(a) of this rule must include:

(A) The action the brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a hearing in accordance with OAR chapter 137, ORS chapter 183, and 42 CFR Part 431, Subpart E;

(E) A statement that the brokerage files on the subject of the hearing automatically becoming part of the hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice take effect by default if a Department representative does not receive a request for a hearing from the individual, or as applicable the individual's legal or designated representative, within 45 days from the date that the brokerage mails the notice of action;

(G) In cases of an action based upon a change in law, the circumstances under which a hearing is granted; and

(H) An explanation of the circumstances under which brokerage services are continued if a hearing is requested.

(c) If an individual, or as applicable the individual's legal or designated representative, disagrees with a decision or proposed action by the brokerage to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the individual, or as applicable the individual's legal or designated representative, may request a hearing as provided in ORS chapter 183. The request for a hearing must be in writing on form DHS 443 and signed by the individual or the individual's legal or designated representative (as applicable). The signed form (DHS 443) must be received by the Department within 45 days from the date the brokerage mailed the notice of action.

(d) An individual, or as applicable the individual's legal or designated representative, may request an expedited hearing if the individual, or as applicable the individual's legal or designated representative, feels that

there is immediate, serious threat to the individual's life or health if the normal timing of the hearing process is followed.

(e) If an individual, or as applicable the individual's legal or designated representative, requests a hearing before the effective date of the proposed action and requests that the existing services be continued, the Department shall continue the services.

(A) The Department must continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and the Department issues a final order; or

(iii) The individual is no longer eligible for Medicaid benefits.

(B) The Department must notify the individual, or as applicable the individual's legal or designated representative, that the Department is continuing the service. The notice must inform the individual, or as applicable the individual's legal or designated representative, that if the hearing is resolved against the individual, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(f) The Department must reinstate services if:

(A) The Department takes an action without providing the required notice and the individual, or as applicable the individual's legal or designated representative, requests a hearing;

(B) The Department fails to provide the notice in the time required in this rule and the individual, or as applicable the individual's legal or designated representative, requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual, or as applicable the individual's legal or designated representative, but the location of the individual, or as applicable the individual's legal or designated representative, becomes known during the time that the individual is still eligible for services.

(g) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual or if the Department decides in the individual's favor before the hearing.

(h) The Department representative and the individual, or as applicable the individual's legal or designated representative, may have an informal conference without the presence of an administrative law judge to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual, or as applicable the individual's legal or designated representative, to settle the matter;

(B) Ensure the individual, or as applicable the individual's legal or designated representative, understands the reason for the action that is the subject of the hearing request;

(C) Give the individual, or as applicable the individual's legal or designated representative, an opportunity to review the information that is the basis for that action;

(D) Inform the individual, or as applicable the individual's legal or designated representative, of the rules that serve as the basis for the contested action;

(E) Give the individual, or as applicable the individual's legal or designated representative, and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual, or as applicable the individual's legal or designated representative, wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review the Department's action or the action of the brokerage.

(i) At any time prior to the hearing date, the individual, or as applicable the individual's legal or designated representative, may request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if the additional conference facilitates the hearing process.

(j) The Department may provide the individual, or as applicable the individual's legal or designated representative, the relief sought at any time before the final order is issued.

(k) An individual, or as applicable the individual's legal or designated representative, may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal is effective on the date the Department or the Office of Administrative Hearings receives the request for withdrawal. The Department must issue a final order confirming the withdrawal to the last known address of the individual or the individual's legal or designated representative (as applicable). The individual, or as applicable the individual's legal or designated representative, may cancel the withdrawal up to 10 working days following the date the final order is issued.

(l) Proposed and final orders.

(A) In a contested case, the administrative law judge must serve a proposed order on the individual, or as applicable the individual's legal or designated representative, and the Department.

(B) If the administrative law judge issues a proposed order that is adverse to the individual, the individual, or as applicable the individual's legal or designated representative, may file an exception to the proposed order to be considered by the Department. The exception must be in writing and must be received by the Department no later than 10 days after service of the proposed order. The individual, or as applicable the individual's legal or designated representative, may not submit additional evidence after this period unless the Department grants prior approval.

(C) After receiving an exception, if any, the Department may adopt a proposed order as a final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1800, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; (Temp) Repealed by SPD 10, 2011, f. & cert. ef. 5-5-11; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0070

Support Services Brokerage and Provider Organization Personnel Policies and Practices

(1) Brokerages and provider organizations must maintain up-to-date written position descriptions for all staff as well as a file, available to the Department or CDDP for inspection that includes written documentation of the following for each staff:

(a) Reference checks and confirmation of qualifications prior to hire;

(b) Written documentation of an approved background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370;

(c) Satisfactory completion of basic orientation, including instructions for mandatory reporting and training specific to intellectual or developmental disabilities and skills required to carry out assigned work if the employee is to provide direct assistance to individuals;

(d) Written documentation of employee notification of mandatory reporter status;

(e) Written documentation of any founded report of child abuse or substantiated abuse;

(f) Written documentation of any complaints filed against the staff and the results of the complaint process, including any disciplinary action; and

(g) Legal eligibility to work in the United States.

(2) Any employee providing direct assistance to individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description signed and dated by the employee.

(3) An application for employment at the brokerage or provider organization must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(4) Any employee of the brokerage or provider organization, or any subject individual defined by OAR 407-007-0210, who has or will have contact with an eligible individual of support services, must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(5) Effective July 28, 2009, a person may not be authorized as a provider or meet qualifications as described in this rule if the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(6) Section (5) of this rule does not apply to employees of the brokerage or provider organization who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(7) Each brokerage and provider organization regulated by these rules must be a drug-free workplace.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1810, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-

08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0080
Support Service Brokerage and Provider Organization Records

(1) CONFIDENTIALITY. Brokerage and provider organization records of services to individuals must be kept confidential in accordance with ORS 179.505, 45 CFR 205.50, 45 CFR 164.512 Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department rules or policies pertaining to individual service records.

(2) DISCLOSURE AND CONFIDENTIALITY. For the purpose of disclosure from individual medical records under these rules, brokerages, and provider organizations requiring certification under OAR 411-340-0170(2), are considered "providers" as defined in ORS 179.505(1) and 179.505 is applicable.

(a) Access to records by the Department does not require authorization by an individual or an individual's legal or designated representative or family.

(b) For the purpose of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) GENERAL FINANCIAL POLICIES AND PRACTICES. The brokerage or provider organization must:

(a) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities;

(b) As a provider organization, or as a brokerage offering services to the general public, establish and revise, as needed, a fee schedule identifying the cost of each service provided. Billings for Medicaid funds may not exceed the customary charges to private individuals for any like item or services charged by the brokerage or provider organization; and

(c) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department rule pertaining to fraud and embezzlement.

(4) RECORDS RETENTION. Records must be retained in accordance with OAR 166, division 150, Secretary of State, Archives Division.

(a) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period.

(b) Individual records must be kept for a minimum of seven years.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1820, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0090
Support Services Brokerage and Provider Organization Request for Variance

(1) Variances may be granted to a brokerage or provider organization:

(a) If the brokerage or provider organization lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative services, methods, concepts, or procedures would result in services or systems that meet or exceed the standards in these rules; or

(c) If there are other extenuating circumstances.

(2) Variances may not be granted to OAR 411-340-0130 and 411-340-0140.

(3) The brokerage or provider organization requesting a variance must submit to the Department, in writing, an application that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The proposed alternative practice, service, method, concept, or procedure;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(4) The Department may approve or deny the variance request. The Department's decision shall be sent to the brokerage or provider organization and to all relevant Department programs or offices within 45 calendar days of the receipt of the variance request.

(5) The brokerage or provider organization may appeal the denial of a variance request by sending a written request for review to the Department's director, whose decision is final.

(6) The Department shall determine the duration of the variance.

(7) The brokerage or the provider organization may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1830, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0100
Eligibility for Support Service Brokerage Services

(1) Individuals determined eligible according to this rule may not be denied brokerage services or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) The CDDP of an individual's county of residence may find the individual eligible for brokerage services when:

(a) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(b) The individual is an adult living in the individual's own home or family home;

(c) At the time of initial entry to the brokerage, the individual is not enrolled in comprehensive services;

(d) At the time of initial entry to the brokerage, the individual is not receiving short-term services from the Department because the individual is eligible for, and at imminent risk of, civil commitment under ORS chapter 427.215 through 427.306; and

(e) The individual, or as applicable the individual's legal or designated representative, has chosen to use a brokerage for assistance with design and management of personal supports.

(3) Individuals are not eligible for services by more than one brokerage unless the concurrent eligibility:

(a) Is necessary to affect transition from one brokerage to another;

(b) Is part of a collaborative plan between the affected brokerages; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050, 427.402 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.40–427.410, 430.610, 430.620 & 430.662–430.695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1840, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 21-2011(Temp), f. & cert. ef. 8-31-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0110
Standards for Support Service Brokerage Entry and Exit

(1) The brokerage must make accurate, up-to-date, information about the brokerage available to individuals referred for services and the individuals' legal or designated representatives. This information must include:

(a) A declaration of brokerage philosophy;

(b) A brief description of the services provided by the brokerage, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of individual rights, including an individual's right to:

(A) Choose a brokerage from among Department-contracted brokerages in an individual's county of residence that is serving less than the total number of individuals specified in the brokerage's current contract with the Department;

(B) Choose a personal agent among those available in the selected brokerage;

(C) Select providers among those willing, available, and qualified according to OAR 411-340-0160, 411-340-0170 and 411-340-0180 to provide supports authorized through the individual's ISP;

(D) Direct the services of providers; and

(E) Raise and resolve concerns about brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 411-340-0060 when services covered under Medicaid are denied, terminated, suspended, or reduced.

(g) Indication that additional information about the brokerage is available on request. The additional information must include but not be limited to:

(A) A description of the brokerage's organizational structure;

(B) A description of any contractual relationships the brokerage has in place, or may establish, to accomplish the brokerage functions required by rule; and

(C) A description of the relationship between the brokerage and the brokerage's Policy Oversight Group.

(2) The brokerage must make the information required in section (1) of this rule available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(3) ENTRY INTO BROKERAGE SERVICES.

(a) To enter brokerage services:

(A) An individual must be determined by the CDDP to be eligible for brokerage services according to OAR 411-340-0100; and

(B) The individual, or as applicable the individual's legal or designated representative, must choose to receive services from a selected brokerage.

(b) The Department may implement guidelines that govern entries when the Department has determined that such guidelines are prudent and necessary for the continued development and implementation of support services.

(c) The brokerage may not accept individuals for entry beyond the total number of individuals specified in the brokerage's current contract with the Department.

(4) EXIT FROM A BROKERAGE.

(a) An individual must exit a brokerage:

(A) At the written request of the individual, or as applicable the individual's legal or designated representative, to end the service relationship;

(B) If an individual requests case management services from a CDDP. The brokerage must refer the individual to the local CDDP for case management within 10 working days of the request;

(C) No fewer than 30 days after the brokerage has served written notice of intent to exit the individual from brokerage services, when the individual, or as applicable the individual's legal or designated representative, either cannot be located or has not responded to repeated attempts by brokerage staff to complete ISP development or monitoring activities, and does not respond to the notice of intent to terminate; or

(D) Upon entry into a comprehensive service.

(b) Any individual being exited from a brokerage must be given written notice of the intent to terminate service at least 10 days prior to the termination.

(c) Each brokerage must have policies and procedures for notifying the CDDP of an individual's county of residence when the individual plans to exit, or exits, brokerage services. Notification method, timelines, and content must be based on agreements between the brokerage and CDDP's of each county in which the brokerage provides services.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1850, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 21-2011(Temp), f. & cert. ef. 8-31-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; DVA 3-2007, f. & cert .ef. 9-25-07; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0120

Support Service Brokerage Services

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs and plan supports in response to needs;

(b) For individuals who have not had a service level determined, develop individualized budgets based on available resources;

(c) Assistance for individuals to find and arrange the resources to provide planned supports;

(d) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;

(e) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;

(f) Fiscal intermediary services in the receipt and accounting of support services funds on behalf of individuals in addition to making payment to providers with the authorization of an individual;

(g) Employer-related supports; and

(h) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) SELF-DETERMINATION. Brokerages must apply the principles of self-determination to provision of services required in section (1) of this rule.

(3) PERSON-CENTERED PLANNING. A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) HEALTH AND SAFETY ISSUES. The planning process must address basic health and safety needs and supports, including but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual, or as applicable the individual's legal or designated representative, regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(5) PERSONAL AGENT SERVICES.

(a) An individual entered into brokerage services must be assigned a personal agent for case management services.

(b) INITIAL DESIGNATION OF PERSONAL AGENT.

(A) The brokerage must designate a personal agent for individuals newly entered in support services within 10 working days from the date entry becomes known to the brokerage.

(B) In the instance of an individual transferring into a brokerage from another brokerage, the brokerage must designate a personal agent within 10 days of entry to the new brokerage.

(C) The brokerage must send a written notice that includes the name, telephone number, and location of the personal agent or brokerage to the individual, and as applicable the individual's legal or designated representative, within 10 working days from the date entry becomes known to the brokerage.

(D) Prior to implementation of an individual's initial ISP, the brokerage must ask the individual, or as applicable the individual's legal or designated representative, to identify any family and other advocates to whom the brokerage must provide the name, telephone number, and location of the personal agent.

(c) CHANGE OF PERSONAL AGENT. Changes of personal agents initiated by the brokerage must be kept to a minimum. If the brokerage must change personal agent assignments, the brokerage must notify the individual, or as applicable the individual's legal or designated representative, and all current providers within 10 working days of the change. The notification must be in writing and include the name, telephone number, and address of the new personal agent, if known, or of a contact person at the brokerage.

(d) OSIP-M ELIGIBILITY. If an individual loses OSIP-M eligibility, a personal agent must assist the individual in identifying why OSIP-M eligibility was lost. Whenever possible, the personal agent must assist the individual in becoming eligible for OSIP-M again. The personal agent must document efforts taken to assist the individual in becoming OSIP-M eligible.

(6) PARTICIPATION IN PROTECTIVE SERVICES. The brokerage and personal agent are responsible for the delivery of protective services, in cooperation with the CDDP, through the completion of activities necessary to address immediate health and safety concerns.

(7) CHOICE ADVISING. Choice advising regarding the provision of case management and other services must be provided to individuals who are eligible for, and desire, developmental disability services. Choice advising must be provided at least annually.

(8) LEVEL OF CARE DETERMINATION.

(a) The brokerage must assure that individuals, who are eligible or become eligible for OSIP-M after entry into the brokerage, receive a level of care determination. Individuals, who are eligible or become eligible after entry into the brokerage, must:

(A) Be offered the choice between home and community-based services or institutional care;

(B) Be provided a notice of fair hearing rights; and

(C) Have the level of care determination reviewed annually or at any time there is a significant change in a condition that qualified the individual for the level of care.

(b) The level of care determination must be documented in a progress note in the individual's record. The level of care determination must be completed no more than 90 days prior to the authorization of the individual's initial ISP and no more than 60 days prior to the annual reauthorization.

(9) FUNCTIONAL NEEDS ASSESSMENT. The brokerage must complete a functional needs assessment at least annually for any individual who is enrolled in waiver or Community First Choice services. The functional needs assessment must be completed:

(a) Within 30 days of entry into a brokerage;

(b) Within 30 days of establishing eligibility for OSIP-M and determining level of care;

(c) Within 60 days prior to the authorization of an ISP; and

(d) Within 45 days from the time the individual, or as applicable the individual's legal or designated representative, requests a functional needs assessment.

(10) INDIVIDUAL SUPPORT PLANS.

(a) An individual who is accessing waiver or Community First Choice services must have an authorized ISP.

(A) The ISP must be facilitated, developed, and authorized by a personal agent.

(B) The ISP must be authorized within 60 days of the completion of a functional needs assessment and at least annually thereafter.

(C) The brokerage must provide a written copy of the most current ISP to the individual and the individual's legal or designated representative (as applicable).

(b) The ISP must address all the support needs identified in a functional needs assessment. The ISP or attached documents must include:

(A) The individual's name and the name of the individual's legal or designated representative (as applicable);

(B) A description of the supports required that is consistent with the individual's functional needs assessment, including the reason the support is necessary;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) The providers of supports to be purchased with support services funds or the type of provider, such as an independent provider, provider organization, or general business provider, when the provider is unknown or is likely to change frequently;

(G) The setting in which the individual resides as chosen by the individual;

(H) The individual's strengths and preferences;

(I) The clinical and support needs as identified through a functional needs assessment;

(J) Individually identified goals and desired outcomes;

(K) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(L) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(M) The identity of the person responsible for case management and monitoring the ISP;

(N) A provision to prevent unnecessary or inappropriate care;

(O) The alternative settings considered by the individual;

(P) Schedule of ISP reviews;

(Q) Any changes in support needs identified in a functional needs assessment; and

(R) Any revisions to the ISP that may alter:

(i) The amount of support services funds required;

(ii) The amount of support services required;

(iii) Types of support purchased with support services funds; and

(iv) The type of support provider.

(c) ISP SCHEDULE. The schedule of the support services ISP, developed in compliance with this rule after an individual enters a brokerage, may be adjusted one time for any individual entering a brokerage in the following circumstances. An adjustment interrupts any plan year in progress and establishes a new plan year for the individual beginning on the date the first new ISP is authorized.

(A) Brokerages, with the consent of an individual, or as applicable an individual's legal or designated representative, may designate a new ISP start date.

(i) An adjustment may only occur one time per individual upon ISP renewal.

(ii) An ISP date adjustment must be clearly documented in the ISP.

(B) A new ISP start date may be designated for individuals transitioning from family support services regulated by OAR chapter 411, division 305, children's intensive in-home services (CIIS) regulated by OAR chapter 411, division 300, or medically fragile children (MFC) services regulated by OAR chapter 411, division 350, when those individuals are 18 years of age. The date of an individual's first new support services ISP after entry to the brokerage may be adjusted to correspond to the expiration date of the individual's ISP in place at the time the individual turns 18 years of age when the ISP, developed while the individual is still receiving family support, CIIS, or MFC services, has been authorized for implementation prior to, or upon, the individual's entry to the brokerage.

(C) A new ISP start date may be designated for individuals transitioning from other Department-paid services who are required by the Department to transition to support services. The date of the individual's first support services ISP may be adjusted to correspond to the expiration date of the individual's plan for services when the plan for services:

(i) Has been developed according to regulations governing Department-paid services the individual receives prior to transition;

(ii) Is current at the time designated by the Department for transition to support services; and

(iii) Is authorized for implementation prior to, or upon, the individual's entry to the brokerage.

(d) ISP AUTHORIZATION.

(A) An initial and annual ISP must be authorized prior to implementation.

(B) A revision to an initial or annual ISP that involves the types of support purchased with support services funds must be authorized prior to implementation.

(C) A revision to an initial or annual ISP that does not involve the types of support purchased with support services funds does not require authorization. Documented verbal agreement to the revision by the individual, or as applicable the individual's legal or designated representative, is required prior to implementation of the revision.

(D) An ISP is authorized when:

(i) The signature of the individual, or as applicable the individual's legal or designated representative, is present on the ISP or documentation is present explaining the reason an individual who does not have a legal or designated representative may be unable to sign the ISP.

(I) Acceptable reasons for an individual without a legal or designated representative not to sign the ISP include physical or behavioral inability to sign the ISP.

(II) Unavailability is not an acceptable reason for an individual, or as applicable the individual's legal or designated representative, not to sign the ISP.

(III) In the case of a revision to an initial or annual ISP that is in response to immediate, unexpected change in circumstance, and is necessary to prevent injury or harm to the individual, documented verbal agreement may substitute for a signature for no more than 10 working days.

(ii) The signature of the personal agent involved in the development of, or revision to, the ISP is present on the ISP; and

(iii) A designated brokerage representative has reviewed the ISP for compliance with Department rules and policy.

(e) PERIODIC REVIEW OF ISP AND RESOURCES.

(A) A personal agent must conduct and document reviews of an individual's ISP and resources with the individual and the individual's legal or designated representative (as applicable).

(B) At least annually, as part of preparation for a new ISP, the personal agent must:

(i) Evaluate an individual's progress toward achieving the purposes of the ISP and assess and revise goals as needed;

(ii) Note effectiveness of the use of support services funds based on personal agent observation as well as individual satisfaction;

(iii) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports; and

(iv) Record final support services fund costs.

(11) ANNUAL PLANS. An Annual Plan must be completed for individuals who do not access waiver or Community First Choice services.

(a) The Annual Plan must be completed within 60 days of an individual's enrollment into support services.

(b) A written Annual Plan must be documented in an individual's record as an Annual Plan or as a comprehensive progress note and consist of:

(A) A review of the individual's current living situation;

(B) A review of any personal health, safety, or behavioral concerns;

(C) A summary of the individual's support needs; and

(D) Actions to be taken by the personal agent and others.

(12) PROFESSIONAL OR OTHER SERVICE PLANS.

(a) A Nursing Care Plan must be attached to an ISP when support services funds are used to purchase services requiring the education and training of a licensed professional nurse.

(b) A Support Services Brokerage Crisis Addendum, or other document prescribed by the Department for use in these circumstances, must be attached to the ISP when an individual enrolled in a brokerage is in emergent status in a short-term, out-of-home, residential placement as part of the individual's crisis diversion services.

(13) TRANSITION TO ANOTHER BROKERAGE. At the request of an individual enrolled in brokerage services who has selected another brokerage, or as applicable the individual's legal or designated representative, the brokerage must collaborate with the receiving brokerage and the CDDP of the individual's county of residence to transition support services.

(a) If the Department has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify the Department to consider transfer of the funds for the individual to the receiving brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after entry to the new brokerage while a new ISP is negotiated and authorized.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; SPD 10-2011, f. & cert. ef. 5-5-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0125

Crisis Supports in Support Services

(1) The brokerage must, in conjunction with its Regional Crisis Diversion Program, attempt to provide supports that mediate a crisis risk factor for adults who are:

(a) Entered in support services; and

(b) Determined to be in crisis as described in section (2) of this rule.

(2) CRISIS DETERMINATION.

(a) An individual enrolled in support services is eligible for crisis diversion services when:

(A) A brokerage has referred an individual to the Regional Crisis Diversion Program because the brokerage has determined that one or more of the following crisis risk factors, not primarily related to a significant mental or emotional disorder or substance abuse, are present and for which no appropriate alternative resources are available:

(i) An individual is not receiving necessary supports to address life-threatening safety skill deficits;

(ii) An individual is not receiving necessary supports to address life-threatening issues resulting from behavioral or medical conditions;

(iii) An individual currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention;

(iv) An individual undergoes, or is at imminent risk of undergoing, loss of primary caregiver due to the primary caregiver's inability to provide supports;

(v) An individual experiences a loss of home due to a protective service action; or

(vi) An individual is not receiving the necessary supports to address significant safety risks to others, including but not limited to:

(I) A pattern of physical aggression serious enough to cause injury;

(II) Fire-setting behaviors; or

(III) Sexually aggressive behaviors or a pattern of sexually inappropriate behaviors.

(B) The Regional Crisis Diversion Program has determined crisis eligibility according to OAR 411-320-0160; and

(C) The individual's ISP has been revised to address the identified crisis risk factors and the revisions:

(i) May resolve the crisis; and

(ii) May not contribute to new or additional crisis risk factors.

(b) A functional needs assessment must be completed for any individual determined to be in crisis as described in this section of this rule.

(3) CRISIS SUPPORTS.

(a) An ISP for an individual in emergent status may authorize short-term, out-of-home, residential placement. Residential placement does not exit an individual from support services.

(b) The individual's personal agent must:

(A) Participate with the Regional Crisis Diversion Program staff in efforts to stabilize supports and return costs to the individual's benefit level;

(B) Assist with the identification of qualified providers who may be paid in whole, or in part, using crisis diversion funding except in the case of short-term, out-of-home, residential placements with a licensed or certified provider;

(C) Complete and coordinate the Support Services Brokerage Crisis Addendum when an individual in emergent status requires a short-term, out-of-home, residential placement; and

(D) Monitor the delivery of supports provided, including those provided through crisis funding.

(i) Monitoring is done through contact with the individual, any providers, and the individual's legal or designated representative and family (as applicable).

(ii) Monitoring is done to collect information regarding supports provided and progress toward outcomes that are identified as necessary to resolve the crisis.

(iii) The personal agent must document the information described in subparagraph (ii) of this paragraph in the individual's record and report to the Regional Crisis Diversion Program or CDDP as required.

(c) Support services provided during emergent status are subject to all requirements of this rule.

(d) All supports authorized in an ISP continue during the crisis unless prohibited by other rule, policy, or the supports contribute to new or additional crisis risk factors.

(4) TRANSITION TO COMPREHENSIVE SERVICES. When an individual eligible for crisis supports may have long-term support needs that may not be met through support services:

(a) The brokerage must immediately notify the CDDP of the individual's county of residence;

(b) The brokerage must coordinate with the CDDP and the Regional Crisis Diversion Program to facilitate a timely exit from support services and entry into appropriate, alternative services; and

(c) The brokerage must assure that information required for a potential provider of comprehensive services is available as needed for a referral to be made.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 &430.662–430.695

Hist.: SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0130

Using Support Services Funds to Purchase Supports

(1) A brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP when:

(a) Supports are necessary for an individual to live in the individual's own home or in the individual's family home;

(b) For an individual who has not had a service level determined, a functional needs assessment has determined the individual's support needs;

(c) An enrolled individual meets the criteria for level of care;

(d) An enrolled individual is eligible for OSIP-M;

(e) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual are specified in the individual's ISP;

(A) Support services funds are not intended to replace the resources available to an individual from the individual's natural supports. Support services funds may be authorized only when the individual's natural supports are unavailable, insufficient, or inadequate to meet the needs of the individual.

(B) Support services funds are not available when an individual's support needs may be met by alternative resources. Support services funds may be authorized only when alternative resources are unavailable, insufficient, or inadequate to meet the needs of the individual.

(f) For an individual who has not had a service level determined, the ISP projects the amount of support services funds, if any, that may be

required to purchase the remainder of necessary supports that are within the benefit level; and

(g) The ISP has been authorized for implementation.

(2) A brokerage may use support services funds to assist individuals that do not meet the criteria in section (1)(c) or (1)(d) of this rule in the following circumstances:

(a) The individual meets the crisis criteria described in OAR 411-340-0125; or

(b) Up to the individual's 18th birthday, the individual was receiving children's intensive in-home services as described in OAR chapter 411, division 300 or in-home supports as described in OAR chapter 411, division 308.

(3) An individual is no longer eligible to access support services funds when the individual is eligible for support services funds based on section (2)(b) of this rule and:

(a) The individual does not apply for a disability determination and OSIP-M within 10 business days of the individual's 18th birthday;

(b) The Social Security Administration or the Department's Presumptive Medicaid Disability Determination Team finds that the individual does not have a qualifying disability; or

(c) The individual is determined by the state of Oregon to be ineligible for OSIP-M.

(4) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(5) LIMITS OF FINANCIAL ASSISTANCE. For individuals who have not had a service level determined, the use of support services funds to purchase individual supports in any plan year is limited to the individual's annual benefit level.

(a) An individual must have access throughout the plan year to the total annual amount of support services for which they are eligible that are determined to be necessary to implement an authorized ISP, even if there is a delay in implementation of the ISP, unless otherwise agreed to in writing by the individual or the individual's legal or designated representative (as applicable).

(b) The Department may require that annual benefit level amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a plan year, an individual's benefit level changes, or when an individual's ISP is developed and written to be in effect for less than 12 months.

(A) When an individual's benefit level changes, except in the case of an individual whose benefit level changes as the result of a change in eligibility for access to support services funds, the monthly benefit level is 1/12 of the annual benefit level for which the individual would be eligible should the change in benefit level remain in effect for 12 calendar months. The monthly benefit level is applied each month from the date the change in benefit level occurred for the remainder of the plan year.

(B) In the case of an individual with an ISP developed for a partial plan year, the monthly benefit level is 1/12 of the annual benefit level for which the individual would be eligible should the individual's ISP be in effect for 12 calendar months. The monthly benefit level is applied each month during which the ISP developed for a partial plan year is in effect.

(6) EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS.

(a) Exceptions to the basic benefit annual support services fund limits described in this section do not apply to individuals who have had a service level determined. Existing individual's exceptions to the basic benefit may remain until a service level is determined for the individual. No new exceptions to the basic benefit level are allowed.

(b) Individuals whose source of support funds are in whole, or in part, an individual-specific redirection of funds through a Department contract from a Department-regulated residential, work, or day habilitation service to support services funds, or to comprehensive in-home support funds regulated by OAR chapter 411, division 330 prior to entry to a brokerage, may have access to the amount specified in the Department contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual, and as applicable the individual's legal or designated representative, at least annually and must make budget reductions when allowed by the individual's ISP.

(c) Individuals whose support funds were specifically assigned through a Department contract to self-directed support services prior to the date designated by the Department for transfer of the individual from self-directed support services to a brokerage, may have access to the amount specified in the Department contract as available for the individual's use.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual, and as applicable the individual's legal or designated representative, at least annually and must make budget reductions when allowed by the individual's ISP.

(d) Medicaid recipients may have access to a basic supplement for ADLs to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of the individual's ISP within the basic benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. ADLs include:

(i) Basic personal hygiene, providing or assisting with such needs as bathing (tub, bed bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(ii) Toileting, bowel, and bladder care, assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter drainage bag or assistive device, ostomy care, or bowel care;

(iii) Mobility, transfers, and repositioning, assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(iv) Nutrition, preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(v) Medication and medical equipment, assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications, maintaining equipment, or monitoring for adequate medication supply; and

(vi) Delegated nursing tasks.

(B) Assistance means an individual requires help from another person with ADLs. Assistance may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete one of the tasks described in subsection (A) of this section.

(i) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(ii) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(iii) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(iv) "Reassurance" means to offer an individual encouragement and support.

(v) "Redirection" means to divert an individual to another more appropriate activity.

(vi) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(vii) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual be unable to complete the task independently.

(C) The supplement for ADLs must be used to meet identified support needs related to ADLs. The supplement for ADLs may also be used for the following services if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving support services:

(i) Housekeeping tasks necessary to maintain the eligible individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry. Only the housekeeping activities related to the eligible individual's needs may be considered in housekeeping;

(ii) Grocery and other shopping necessary for the completion of ADL and IADL tasks;

(iii) Assistance with necessary medical appointments, including help scheduling appointments, arranging medical transportation services, follow

up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments;

(iv) Observation of an individual's status and reporting of significant changes to physicians, health care professionals, or other appropriate people;

(v) First aid and handling emergencies, including addressing medical incidents related to conditions such as seizures, aspiration, constipation, or dehydration or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response ; and

(vi) Cognitive assistance or emotional support provided to an individual due to the individual's intellectual or developmental disability, including helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(D) The supplement for ADL support may not be used for any of the following services:

(i) Shopping;

(ii) Transportation;

(iii) Money management;

(iv) Mileage reimbursement;

(v) Social companionship; or

(vi) Relief care.

(E) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(F) Planned expenses must be based upon the least costly means of providing adequate services and must only be to the extent necessary to meet the documented ADL needs.

(G) The supplement for ADLs may not cause the cost per any plan year to exceed the individual cost limit. There is an exception for individuals receiving both support services under these rules who had a benefit level at the individual cost limit and state plan personal care services under OAR chapter 411, division 034, as of June 30, 2005. These individuals may continue to access the basic supplement and the supplement for ADLs until the individual terminates their receipt of support services or becomes ineligible for one of the supplements. The combined basic benefit, the basic supplement, and supplement for ADLs must remain above the individual cost limit to remain eligible for this exception.

(H) For Medicaid recipients receiving state plan personal care services under OAR chapter 411, division 034 entering support services after June 30, 2005, the Medicaid Personal Care Assessment (Form SDS 0531A) serves as the individual's authorized ISP for a period not to exceed 90 days.

(I) The supplemental ADL services are not intended to replace the resources available to an individual receiving support services under these rules from their natural supports.

(7) AMOUNT, METHOD, AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals in the amount required to implement an authorized ISP. The brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the individual's legal or designated representative (as applicable).

(8) TYPES OF SUPPORTS PURCHASED. For ISPs that have not been developed based on a service level determined by a functional needs assessment, supports eligible for purchase with support services funds are:

(a) Chore services. Chore services may be provided only in situations where no one else in the household is capable of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of or responsible for providing these services;

(b) Community living and inclusion supports;

(c) Environmental accessibility adaptation;

(d) Family training;

(A) Family training must be provided:

(i) By licensed psychologists, medical professionals, clinical social workers, or counselors as described in OAR 411-340-0160(7); or

(ii) In organized conferences and workshops that are limited to topics related to the individual's intellectual or developmental disability, identified support needs, or specialized medical or habilitative support needs.

(B) Family training may not be provided to paid care providers.

(e) Homemaker services. Homemaker services may be provided only when the person regularly responsible for general housekeeping activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual;

(f) Occupational therapy services;

(g) Personal emergency response systems;

(h) Physical therapy services;

(i) Respite;

(A) Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence.

(B) Respite includes two types of care, neither of which may be characterized as eight-hours-a-day, five-days-a-week services or provided to allow care providers to attend school or work.

(i) Temporary respite must be provided on less than a 24-hour basis.

(ii) Twenty-four hour overnight care must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from the Department.

(j) Special diets. Special diets may not provide or replace the nutritional equivalent of meals and snacks normally required regardless of intellectual or developmental disability.

(k) Specialized equipment and supplies as well as the following provisions:

(A) When specialized equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized equipment and supplies with support services funds must be limited to the types of equipment and supplies permitted under the state plan and specifically those that are not excluded under OAR 410-122-0080.

(B) Support services funds may be used to purchase more of an item than the number allowed under the state plan after the limits specified in the state plan have been reached, requests for purchases have been denied by the state plan or private insurance, and the denial has been upheld in an applicable hearing or private insurance benefit appeals process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform ADLs or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with support services funds when the individual's intellectual or developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that may be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, such as utensils, trays, cups, or bowls that are specially designed to assist an individual to feed him or herself;

(ii) Positioning devices;

(iii) Specially designed clothes to meet the unique needs of the individual, such as clothes designed to prevent access by the individual to the stoma, etc.;

(iv) Assistive technology items;

(v) Computer software used by the individual to express needs, control supports, plan, and budget supports;

(vi) Augmentative communication devices;

(vii) Environmental adaptations to control lights, heat, stove, etc.; or

(viii) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession, such as vestibular swing, weighted blanket, or tactile supplies like creams and lotions;

(l) Specialized supports;

(m) Speech and language therapy services;

(n) Supported employment; and

(o) Transportation.

(9) TYPES OF SUPPORTS. When an ISP is based on a service level determined by a functional needs assessment, supports eligible for purchase with support services funds are:

(a) Community First Choice services:

(A) Community nursing services as described in section (10) of this rule;

(B) Chore services as described in section (11) of this rule;

(C) Attendant care as described in section (12) of this rule;

(D) Skills training as described in section (13) of this rule;

(E) Community transportation as described in section (14) of this rule;

(F) Specialized equipment and supplies as described in section (15) of this rule;

(G) Relief care as described in section (16) of this rule;

(H) Behavior support services as described in section (17) of this rule;

(I) Environmental accessibility adaptations as described in section (18) of this rule; and

(J) Transition costs as described in section (19) of this rule.

(b) Home and Community Based Waiver Services:

(A) Community living and inclusion supports as described in section (20) of this rule;

(B) Case management as defined in OAR 411-340-0020;

(C) Supported employment as described in section (21) of this rule;

(D) Family training as described in section (22) of this rule;

(E) Occupational therapy as described in section (23) of this rule;

(F) Physical therapy as described in section (24) of this rule;

(G) Speech, hearing, and language services, as described in section (25) of this rule;

(H) Special diets as described in section (26) of this rule; and

(I) Specialized supports as described in section (27) of this rule.

(10) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting an individual's autonomy and self-management of healthcare;

(B) Collateral contact with a personal agent regarding an individual's community health status to assist in monitoring safety and well-being and to address needed changes to the person-centered ISP; and

(C) Delegation and training of nursing tasks to an individual's provider so the provider may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(11) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.

(12) ATTENDANT CARE SERVICES.

(a) ADL services include but are not limited to:

(A) Basic personal hygiene, providing or assisting with such needs as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(B) Toileting, bowel, and bladder care, assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter drainage bag or assistive device, ostomy care, or bowel care;

(C) Mobility, transfers, and repositioning, assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition, preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(E) Medication and medical equipment including but not limited to assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring an individual for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply; and

(F) Delegated nursing tasks.

(b) IADL services include but are not limited to:

(A) Light housekeeping, tasks necessary to maintain an individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(C) Assistance with necessary medical appointments, including help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments;

(D) Observation of an individual's status and reporting of significant changes to physicians, health care professionals, or other appropriate people;

(E) First aid and handling emergencies, including addressing medical incidents related to conditions such as seizures, aspiration, constipation, or dehydration or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(F) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability, including helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(c) Attendant care services means an individual requires assistance with ADLs. Assistance may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(C) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(D) "Reassurance" means to offer an individual encouragement and support.

(E) "Redirection" means to divert an individual to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(G) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(13) SKILLS TRAINING. Skills training is specifically tied to the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence in supports otherwise provided through state plan or waiver services.

(a) Skills training may be applied to the use and care of assistive devices and technologies

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a personal agent no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved, the personal agent must reassess the use of skills training with the individual.

(14) COMMUNITY TRANSPORTATION.

(a) Community transportation services include but are not limited to:

(A) Community transportation provided by common carriers, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish an ISP goal related task; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation services exclude medical transportation, purchase of individual or family vehicles, routine vehicle maintenance and repair, ambulance services, payment to the spouse of an individual receiving support services, and costs for transporting a person other than the individual.

(15) SPECIALIZED EQUIPMENT AND SUPPLIES. When specialized equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized equipment and supplies with support service funds must be limited to the types of equipment and supplies that are not excluded under OAR 410-122-0080.

(a) Specialized equipment and supplies may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's ability to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the individual lives.

(b) Specialized equipment and supplies may be purchased with support service funds when an individual's intellectual or developmental disability otherwise prevents or limits the individual's independence in areas identified in a functional needs assessment.

(c) Specialized equipment and supplies that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual and may include:

(A) Supplies needed to assist with incontinence care such as gloves, pads, wipes, or incontinence garments;

(B) Electronic devices to secure assistance in an emergency in the community and other reminders such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices;

(C) Assistive technology to provide additional security and replace the need for direct interventions to enable self direction of care and maximize independence, such as motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems;

(i) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(D) Assistive devices, not covered by other Medicaid programs, to assist and enhance an individual's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(d) Specialized equipment and supplies may not include items not of direct medical or remedial benefit to the individual.

(e) Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation.

(16) RELIEF CARE.

(a) Relief care includes two types of care, neither of which may be characterized as daily or periodic services provided to allow an individual's primary caregiver to attend school or work.

(b) Twenty-four hour overnight services must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from the Department.

(17) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessing an individual or the needs of the individual's family and the environment;

(B) Developing positive behavior support strategies, including a Behavior Support Plan if needed;

(C) Implementing the Behavior Support Plan with an individual's provider or family; and

(D) Revising and monitoring the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring an individual's family;

(B) Developing visual communication systems as behavior support strategies; and

(C) Communicating as authorized by an individual, or as applicable the individual's legal or designated representative, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services, including, but not limited to consultation and training for classroom staff;

(D) Adaptations to meet needs of an individual at school; or

(E) An assessment in a school setting.

(18) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual;

(R) Modifications for the primary vehicle used by the individual that are necessary to meet the unique needs of the individual, such as lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle; and

(S) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and

(B) Adaptations that add to the total square footage of the home,

(c) Environmental accessibility adaptations are limited to $5,000 per modification. A personal agent may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the individual's service and support needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the individual's ISP.

(e) Environmental accessibility adaptations over $500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the provider's file prior to payment.

(f) Environmental accessibility adaptations must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(19) TRANSITION COSTS.

(a) Transition costs are limited to individuals transitioning from a nursing facility, ICF/MR, or acute care hospital, to a home or community-based setting where the individual resides.

(b) Transition costs are based on an individual's assessed need determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The Department's approval is based on the individual's need and the Department's determination of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the individual from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(20) COMMUNITY LIVING AND INCLUSION SUPPORTS. Community living and inclusion supports assist individuals in acquiring, retaining, and improving skills around socialization, recreation and leisure, communication, participation in the community, and ability to direct supports.

(a) Support with socialization includes assisting participants in acquiring, retaining, and improving self-awareness and self control, social responsiveness, social amenities, and interpersonal skills.

(b) Support with community participation, recreation, or leisure includes assisting individuals in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses.

(c) Support with communication includes assisting individuals in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(d) Supports may be work-related and include instruction in skills an individual wishes to acquire, retain, or improve that enhance the individual's independence, productivity, integration, or maintain the individual's physical and cognitive skills. Services may include teaching such concepts as compliance, attendance, task completion, problem solving, and safety that are aimed at preparing an individual with an intellectual or developmental disability for paid employment.

(e) Supports may be used to reinforce skills or lessons taught in school, therapy or other settings. However, this will not duplicate Medicaid State Plan, IDEA or Office of Vocational Rehabilitation Services.

(21) SUPPORTED EMPLOYMENT SERVICES. Supported employment services assist an individual to choose, get, and keep a paid job in an integrated community business setting.

(a) Supported employment services includes job development, training, and on-going supervision to obtain paid employment.

(b) Training may focus on the individual and the individual's coworkers without disabilities capable of providing natural support.

(c) Supported employment services must not replace services available under a program funded under the Rehabilitation Act of 1973, or P.L. 94-142.

(d) Supported employment services under this rule must not replace or duplicate services that an individual currently receives through Department-contracted employment and alternative to employment services governed by OAR chapter 411, division 345.

(22) FAMILY TRAINING. Family training services are training and counseling services provided to an individual's family to increase the family's capability to care for, support, and maintain the individual in the home.

(a) Family training services include but are not limited to:

(A) Instruction about treatment regimens and use of equipment specified in an individual's ISP;

(B) Information, education, and training about an individual's disability, medical, and behavioral conditions; and

(C) Organized conferences and workshops specifically related to an individual's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Family training services may be provided in various settings by various means, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100 or nursing under ORS 678.040, social workers licensed under ORS 675.530, or counselors licensed under ORS 675.715;

(c) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for paid care providers;

(C) Legal fees;

(D) Training for families to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of an adult.

(d) Prior authorization by the brokerage is required for attendance by family members at organized conferences and workshops funded with support services funds.

(23) OCCUPATIONAL THERAPY. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved state plan, except that the limitation on amount, duration, and scope in the state plan do not apply. Occupational therapy services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the state plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified occupational therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Occupational therapy services exclude:

(A) Goods and services available through an individual's private insurance or other public programs, such as the Oregon Health Plan, schools, or federal assistance programs for which an individual is eligible;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and

(E) Education services for an individual such as tuition to a school.

(24) PHYSICAL THERAPY. Physical therapy services are the services of a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved state plan, except that the limitation on amount, duration, and scope in the state plan do not apply. Physical therapy services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the state plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified physical therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Physical therapy services exclude:

(A) Goods and services available through either an individual's private insurance or public programs, such as the Oregon Health Plan, schools, or federal assistance programs for which an individual is eligible;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and

(E) Education services for an individual such as tuition to schools.

(25) SPEECH, HEARING, AND LANGUAGE SERVICES. Speech, hearing, and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved state plan, except that the limitation on amount, duration, and scope specified in the state plan do not apply. Speech, hearing, and language services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the state plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified speech therapy professional when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Speech, hearing, and language services exclude:

(A) Goods and services available through either an individual's private insurance or public programs, such as the Oregon Health Plan, schools, or federal assistance programs for which an individual is eligible;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and

(E) Education services for an individual such as tuition to schools.

(26) SPECIAL DIET. Special diets are specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to an individual's medical condition or diagnosis that are needed to sustain an individual in the individual's home. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements.

(27) SPECIALIZED SUPPORTS. Specialized supports include treatment, training, consultation, or other unique services provided by a social or sexual consultant necessary to achieve outcomes in an individual's ISP that are not available through state plan services or other support services listed in this rule. Specialized supports include:

(a) Assessing the needs of an individual and the individual's family, including environmental factors;

(b) Developing a plan of support;

(c) Training care providers to implement the plan of support;

(d) Monitoring implementation of the plan of support; and

(e) Revising the plan of support as needed.

(28) EDUCATIONAL SERVICES. Educational services for school age individuals, such as professional instruction, formal training, and tutoring in communication, socialization, and academic skills, are not allowable expenses covered by support services funds.

(29) CONDITIONS OF PURCHASE. The brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that enable the individual to freely choose to receive supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction from the brokerage about the limits and conditions of such arrangements;

(B) Combined support services funds may not be used to purchase existing, or create new, comprehensive services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one individual;

(D) A provider organization resulting from the combined arrangements for community living and inclusion supports or supported employment services must be certified according to these rules; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks;

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities; and

(g) In accordance with the Department's Support Services Expenditure Guidelines.

(30) INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, AND GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES. When support services funds are used to purchase services, training, supervision, or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected abuse;

(b) Responsibility to immediately notify the people, if any, specified by the individual, or as applicable the individual's legal or designated representative, of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in an individual's ISP.

(d) The provisions of section (31) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(31) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized services;

(E) Had a founded report of child abuse or substantiated abuse;

(F) Failed to cooperate with any Department or brokerage investigation or grant access to, or furnish, records or documentation, as requested;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made a false statement concerning conviction of crime or substantiated abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (30) of this rule or OAR 411-340-0140; or

(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the brokerage or the Department, as applicable; or

(C) The brokerage may withhold payments to the provider.

(c) If the brokerage makes a decision to sanction a provider, the brokerage must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Department's director.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(e) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0140

Using Support Services Funds for Certain Purchases Is Prohibited

(1) Effective July 28, 2009, support services funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of individuals, individuals' legal representatives, employees of general business providers, or employees of provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(3) Support services funds may not be used to pay for:

(a) Services, materials, or activities that are illegal;

(b) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;

(c) Materials or equipment that has been determined unsafe for the general public by recognized consumer safety agencies;

(d) Individual or family vehicles;

(e) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medications;

(B) Health insurance co-payments;

(C) Dental treatments and appliances;

(D) Medical treatments;

(E) Dietary supplements, including but not limited to vitamins and experimental herbal and dietary treatments; or

(F) Treatment supplies not related to nutrition, incontinence, or infection control.

(f) Ambulance services;

(g) Legal fees;

(h) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community-based settings;

(i) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(j) Services, activities, materials, or equipment that are not necessary, cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;

(k) Educational services for school-age individuals over the age of 18, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills, and post-secondary education-

al services such as those provided through two- or four-year colleges for individuals of all ages;

(l) Services provided in a nursing facility, correctional institution, or hospital;

(m) Services, activities, materials, or equipment that may be obtained by the individual or the individual's family through alternative resources or natural supports;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when the individual is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(o) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(p) Notwithstanding abuse as defined in OAR 407-045-0260, services when there is sufficient evidence to believe that an individual, or as applicable the individual's legal or designated representative, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the individual's ISP, refused to accept or delegate record keeping required to use brokerage resources, or otherwise knowingly misused public funds associated with brokerage services

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0150

Standards for Support Services Brokerage Administration and Operations

(1) POLICY OVERSIGHT GROUP. The brokerage must develop and implement procedures for incorporating the direction, guidance, and advice of individuals and family members of individuals in the administration of the organization.

(a) The brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with intellectual or developmental disabilities and family members of individuals with intellectual or developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint resolution.

(c) If the Policy Oversight Group is not also the governing body of the brokerage, then the brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) FULL-TIME BROKERAGE DIRECTOR REQUIRED. The brokerage must employ a full-time director who is responsible for the daily operations of the brokerage in compliance with these rules and who has authority to make budget, staffing, policy, and procedural decisions for the brokerage.

(3) DIRECTOR QUALIFICATIONS. In addition to the general staff qualifications of OAR 411-340-0070(1) and (2), the brokerage director must have:

(a) A minimum of a bachelor's degree and two years experience, including supervision, in the field of intellectual or developmental disabilities, social services, mental health, or a related field; or

(b) Six years of experience, including supervision, in the field of intellectual or developmental disabilities, social services, or mental health.

(4) FISCAL INTERMEDIARY REQUIREMENTS.

(a) A fiscal intermediary must:

(A) Demonstrate a practical understanding of laws, rules, and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the brokerage director and Policy Oversight Group to effectively manage the brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in the individuals' ISPs.

(b) A fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline those employed to provide services described in an individual's authorized ISP.

(c) FISCAL INTERMEDIARY QUALIFICATIONS.

(A) A fiscal intermediary may not:

(i) Be a provider of support services paid using support services funds; or

(ii) Be a family member or other representative of an individual for whom they provide fiscal intermediary services.

(B) The brokerage must obtain and maintain written evidence that:

(i) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(ii) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the brokerage has provided requisite education, training, and experience.

(5) PERSONAL AGENT QUALIFICATIONS.

(a) Each personal agent must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in a behavioral science, social science, or a closely related field; or

(B) A bachelor's degree in any field and one year of human services related experience, such as work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing; or

(C) An associate's degree in a behavioral science, social science, or a closely related field and two years of human services related experience such as work providing assistance to individuals and groups with issues, such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing; or

(D) Three years of human services related experience.

(b) A brokerage must submit a written variance request to the Department prior to employing a person not meeting the minimum qualifications for a personal agent set forth in subsection (a) of this section. The variance request must include:

(A) An acceptable rationale for the need to employ a person who does not meet the qualifications; and

(B) A proposed alternative plan for education and training to correct the deficiencies.

(i) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(ii) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.

(6) PERSONAL AGENT TRAINING. The brokerage must provide or arrange for personal agents to receive training needed to provide or arrange for brokerage services, including but not limited to:

(a) Principles of self-determination;

(b) Person-centered planning processes;

(c) Identification and use of alternative support resources;

(d) Fiscal intermediary services;

(e) Basic employer and employee roles and responsibilities;

(f) Developing new resources;

(g) Major public health and welfare benefits;

(h) Constructing and adjusting individualized support budgets; and

(i) Assisting individuals to judge and improve quality of personal supports.

(7) INDIVIDUAL RECORD REQUIREMENTS. The brokerage must maintain current, up-to-date records for each individual receiving services and must make these records available to the Department upon

request. The individual or the individual's legal representative may access any portion of the individual's record upon request. Individual records must include at minimum:

(a) Application and eligibility information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including the individual's name, family name (if applicable), individual's legal or designated representative (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and plan year anniversary date;

(c) Documents related to determining eligibility for brokerage services and, for individuals who have not had a service level determined, the amount of support services funds available to the individual, including basic supplement criteria if applicable;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, and verification that providers meet the requirements of OAR 411-340-0160 through 411-340-0180;

(e) Documentation, signed by the individual, or as applicable the individual's legal or designated representative, that the individual, or as applicable the individual's legal or designated representative, has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

(g) The completed functional needs assessment and other assessments used to determine supports required, preferences, and resources;

(h) ISP and reviews. If an individual is unable to sign the ISP, the individual's record must document that the individual was informed of the contents of the ISP and that the individual's agreement to the ISP was obtained to the extent possible;

(i) Names of those who participated in the development of the ISP. If an individual was not able to participate in the development of the ISP, the individual's record must document the reason;

(j) Written service agreements. A written service agreement must be consistent with the individual's ISP and must describe at a minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and the individual is missing while in the community under the service of a contractor or provider organization.

(k) A written job description for all services to be delivered by an employee of the individual or the individual's legal or designated representative (as applicable). The written job description must be consistent with the individual's ISP and must describe at a minimum:

(A) Type of service to be provided;

(B) Hours, rates, location, duration of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and the individual is missing while in the community under the service of an employee of the individual.

(l) Personal agent correspondence and notes related to resource development and plan outcomes;

(m) Progress notes. Progress notes must include documentation of the delivery of services by a personal agent to support each case service provided. Progress notes must be recorded chronologically and documented consistent with brokerage policies and procedures. All late entries must be appropriately documented. Progress notes must, at a minimum, include:

(A) The month, day, and year the services were rendered and the month, day, and year the entry was made if different from the date service was rendered;

(B) The name of the individual receiving services;

(C) The name of the brokerage, the person providing the service (i.e., the personal agent's signature and title), and the date the entry was recorded and signed;

(D) The specific services provided and actions taken or planned, if any;

(E) Place of service. Place of service means the name of the brokerage and where the brokerage is located, including the address. The place of service may be a standard heading on each page of the progress notes; and

(F) The names of other participants (including titles and agency representation, if any) in notes pertaining to meetings with or discussions about the individual.

(n) Information about individual satisfaction with personal supports and the brokerage's services.

(8) SPECIAL RECORD REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES.

(a) The brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include but may not be limited to:

(A) Minimum acceptable records of expenditures:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Itemized invoices for any services purchased from independent contractors, provider organizations, and professionals. Itemized invoices must include:

(I) The name of the individual to whom services were provided;

(II) The date of the services; and

(III) A description of the services.

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services; and

(v) Documentation that services provided were consistent with an individual's authorized ISP.

(B) Procedures for confirming the receipt, and securing the use of, specialized equipment and supplies and environmental accessibility adaptations.

(i) When equipment is obtained for the exclusive use of an individual, the brokerage must record the purpose, final cost, and date of receipt.

(ii) The brokerage must secure use of equipment or furnishings costing more than $500 through a written agreement between the brokerage and the individual or the individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties if the item is lost, damaged, or sold within that time period.

(iii) The brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing $5,000 or more per single instance or cumulatively over several modifications:

(I) Are approved by the Department before work begins and before final payment is made;

(II) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(III) That steps are taken as prescribed by the Department for protection of the Department's interest through liens or other legally available means.

(iv) The brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to the rental structure.

(b) Any goods purchased with support services funds that are not used according to an individual's ISP or according to an agreement securing the state's use may be immediately recovered.

(c) Failure to furnish written documentation upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, immediately or within timeframes specified in the written request, may be deemed reason to recover payments or deny further assistance.

(9) QUALITY ASSURANCE.

(a) The Policy Oversight Group must develop a Quality Assurance Plan and review the plan at least twice a year. The Quality Assurance Plan must include a written statement of values, organizational outcomes, activities, and measures of progress that:

(A) Uses information from a broad range of individuals, legal or designated representatives, professionals, and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the brokerage to changing needs, and preferences of the individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by the Department.

(10) BROKERAGE REFFERRAL TO AFFILIATED ENTITIES.

(a) When a brokerage is part of, or otherwise directly affiliated with, an entity that also provides services that an individual may purchase using private or support services funds, brokerage staff may not refer, recommend, or otherwise encourage the individual to utilize this entity to provide services unless:

(A) The brokerage conducts a review of provider options that demonstrates that the entity's services are cost-effective and best-suited to provide the services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the individual's ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The brokerage must develop and implement a policy that addresses individual selection of an entity that the brokerage is a part of, or otherwise directly affiliated, to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the brokerage and the potential provider;

(B) Provision of information about all other potential providers to the individual, or as applicable the individual's legal or designated representative, without bias;

(C) A process for arriving at the option for selecting a provider;

(D) Verification of the fact that the providers were freely chosen among all alternatives;

(E) Collection and review of data on services purchased by an individual enrolled in the brokerage by an entity that the brokerage is a part of or otherwise directly affiliated; and

(F) Training of personal agents and individuals in issues related to the selection of providers.

(11) GENERAL OPERATING POLICIES AND PRACTICES. The brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the brokerage to accomplish the brokerage's objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0160

Standards for Independent Providers Paid with Support Services Funds

(1) GENERAL INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is paid as a contractor, a self-employed person, or an employee of an individual, or as applicable the individual's legal or designated representative, to provide the services and supports in OAR 411-340-0130 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in 407-007-0210 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in 407-007-0210. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various homes;

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(d) Be legally eligible to work in the United States;

(e) Not be the spouse of an individual receiving services;

(f) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in an individual's ISP, with such demonstration confirmed in writing by the individual, or as applicable the individual's legal or designated representative, and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual receiving services.

(g) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(h) Understand requirements of maintaining confidentiality and safeguarding individual information;

(i) Not be on the Office of Inspector General's list of excluded or debarred providers (http://exclusions.oig.hhs.gov/); and

(j) If providing transportation, have a valid driver's license and proof of insurance, as well as any other license or certification that may be required under state and local law, depending on the nature and scope of the transportation service.

(2) Section (1)(c) of this rule does not apply to employees of individuals, individuals' legal or designated representatives, employees of general business providers, or employees of provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(4) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing Behavior Support Plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services Behavior Intervention System, and have a current certificate; and

(c) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant.

(5) SOCIAL OR SEXUAL CONSULTANTS. Social or sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social or sexual consultation services; and

(b) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, social work, counseling, or other behavioral science field and at least one year of experience with individuals; or

(B) Three years experience with individuals who present social or sexual issues and at least one year of that experience includes providing the services of a social or sexual consultant.

(6) NURSE. A nurse providing community nursing services must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the brokerage indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with individuals.

(7) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(8) DIETICIANS. Dieticians providing special diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1900, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0170

Standards for Provider Organizations Paid with Support Services Funds

(1) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for 24-hour residential services, or licensed under OAR 411, division 360 for adult foster homes, or certified and endorsed under OAR 411, division 345 for employment and alternatives to employment services or OAR 411-328-0550 to 411-328-0830 for supported living services, may not require additional certification as an organization to provide relief care, supported employment, community living and inclusion supports, community transportation, specialized supports, chore services, family training, or emergent services.

(a) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to ISPs; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds meet the standards for qualification of independent providers described in OAR 411-340-0160.

(c) Provider organizations developing new sites, owned or leased by the provider organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and receiving services purchased with support services funds, must meet the conditions of section (2)(f) of this rule in each such site.

(2) PROVIDER ORGANIZATIONS REQUIRING CERTIFICATION. A provider organization without a current license or certification as described in section (1) of this rule must be certified as a provider organization according to OAR 411-340-0030 prior to selection for providing the services listed in 411-340-0130 and paid for with support services funds.

(a) The provider organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including but not limited to:

(A) Policies and procedures required in OAR 411-340-0040, 411-340-0050, 411-340-0070, 411-340-0080, and 411-340-0090 related to abuse and unusual incidents, inspections and investigations, personnel policies and practices, records, and variances.

(B) Individual rights. The provider organization must have, and implement, written policies and procedures that:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide the individual's services;

(ii) Protect individuals during hours of service from financial exploitation that may include but is not limited to:

(I) Staff borrowing from or loaning money to individuals;

(II) Witnessing wills in which the staff or provider organization is beneficiary; or

(III) Adding the staff member's or provider organization's name to the individual's bank account or other personal property without approval of the individual or the individual's legal representative (as applicable).

(C) Complaints. The provider organization must implement written policies and procedures for individuals' complaints. These policies and procedures must, at a minimum, provide for:

(i) Receipt of complaints from an individual or others acting on the individual's behalf. If the complaint is associated in any way with abuse or the violation of the individual's rights, the recipient of the complaint must immediately report the issue to the provider organization director and the CDDP;

(ii) Investigation of the facts supporting or disproving the complaint;

(iii) Taking appropriate actions on the complaint within five working days following receipt of the complaint;

(iv) Submission to the provider organization director. If the complaint is not resolved, the complaint must be submitted to the provider organization director for review. The provider organization director must complete a review and provide a written response to the individual or a person acting on the individual's behalf within 15 days of request for review;

(v) Submission to the brokerage. All complaints received from an individual or a person acting on the individual's behalf must be reported to the appropriate brokerage; and

(vi) Notification. Upon entry into the program and annually thereafter, the provider organization must inform each individual, or as applicable the individual's legal or designated representative, orally and in writing, using language, format, and methods of communication appropriate for the individual's needs and abilities, of the provider organization's complaint policy and procedures.

(D) Policies and procedures appropriate to scope of service, including but not limited to those required to meet minimum standards set forth in subsections (f) to (k) of this section and consistent with written service agreements for individuals currently receiving services.

(b) The provider organization must deliver services according to a written service agreement.

(c) The provider organization must maintain a current record for each individual receiving services. The record must include:

(A) The individual's name, current home address, and home phone number;

(B) A current written service agreement, signed and dated by the individual or the individual's legal or designated representative (as applicable);

(C) Contact information for the individual's legal or designated representative (as applicable) and any other people designated by the individual, or as applicable the individual's legal or designated representative, to be contacted in case of incident or emergency;

(D) Contact information for the brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors, or volunteers must have current CPR and first aid certification obtained from a recognized training agency prior to working alone with an individual.

(e) The provider organization must ensure that employees, contractors, and volunteers receive appropriate and necessary training.

(f) Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites, must meet the following minimum requirements:

(A) A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information:

(i) The telephone numbers of the local fire, police department, and ambulance service, or "911" must be posted by designated telephones; and

(ii) The telephone numbers of the provider organization director and other people to be contacted in case of emergency must be posted by designated telephones.

(C) A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. Safety review reports must be kept in a central location by the provider organization for three years.

(D) The provider organization must train all individuals when the individuals begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each provider organization must conduct an unannounced evacuation drill each month when individuals are present.

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the provider organization for at least two years following the drill. The written documentation must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or the individual's legal or designated representative (as applicable), and the provider organization director; and

(II) Be submitted as a variance request according to OAR 411-340-0090.

(E) The provider organization must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) At least once every three years, the provider organization must conduct a health and safety inspection.

(i) The inspection must cover all areas and buildings where services are delivered to individuals, including administrative offices and storage areas.

(ii) The inspection must be performed by:

(I) The Oregon Occupational Safety and Health Division;

(II) The provider organization's worker's compensation insurance carrier; or

(III) An appropriate expert such as a licensed safety engineer or consultant as approved by the Department; and

(IV) The Oregon Health Authority, Public Health Division, when necessary.

(iii) The inspection must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used at the service site;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(G) The provider organization must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present. When individuals are present, staff must have the following minimum skills and training:

(i) At least one staff member on duty with CPR certification at all times;

(ii) At least one staff member on duty with current First Aid certification at all times;

(iii) At least one staff member on duty with training to meet other specific medical needs identified in the individual service agreement; and

(iv) At least one staff member on duty with training to meet other specific behavior intervention needs as identified in individual service agreements.

(g) Provider organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing:

(i) Emergency medical intervention;

(ii) Treatment and documentation of illness and health care concerns;

(iii) Administering, storing, and disposing of prescription and non-prescription drugs, including self-administration;

(iv) Emergency medical procedures, including the handling of bodily fluids; and

(v) Confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes:

(i) Health status;

(ii) Changes in health status observed during hours of service;

(iii) Any remedial and corrective action required and when such actions were taken if occurring during hours of service; and

(iv) A description of any restrictions on activities due to medical limitations.

(C) If providing medication administration when an individual is unable to self-administer medications and there is no other responsible person present who may lawfully direct administration of medications, the provider organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed;

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders;

(vi) Not administer unused, discontinued, outdated, or recalled drugs; and

(vii) Not administer PRN psychotropic medication. PRN orders may not be accepted for psychotropic medication.

(D) Maintain a MAR (if required). The MAR must include:

(i) The name of the individual;

(ii) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of administrative review by the provider organization director.

(E) Provide safeguards to prevent adverse medication reactions, including:

(i) Maintaining information about the effects and side-effects of medications the provider organization has agreed to administer;

(ii) Communicating any concerns regarding any medication usage, effectiveness, or effects to the individual or the individual's legal or designated representative (as applicable); and

(iii) Prohibiting the use of one individual's medications by another individual or person.

(F) Maintain a record of visits to medical professionals, consultants, or therapists if facilitated or provided by the provider organization.

(h) Provider organizations that own or operate vehicles that transport individuals must:

(A) Maintain the vehicles in safe operating condition;

(B) Comply with Department of Motor Vehicles laws;

(C) Maintain insurance coverage on the vehicles and all authorized drivers;

(D) Carry a fire extinguisher and first aid kit in each vehicle; and

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

(i) If assisting with management of funds, the provider organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with the provider organization's or another individual's funds, or the provider organization becoming an individual's legal or designated representative; and

(B) The provider organization's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the provider organization, or of any funds within the custody of the provider organization that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) The provider organization must have, and implement, a written policy concerning behavior intervention procedures. The provider organization must inform the individual, and as applicable the individual's legal or designated representative, of the behavior intervention policy and procedures prior to finalizing the individual's written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice and must be:

(i) Approved in writing by the individual or the individual's legal or designated representative (as applicable); and

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior must be:

(i) Prescribed by a physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences.

(k) Additional standards for supports that involve protective physical intervention.

(A) The provider organization must only employ protective physical intervention:

(i) As part of an individual's ISP;

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Provider organization staff members who need to apply protective physical intervention under an individual's service agreement must be trained by a Department-approved trainer and documentation of the training must be maintained in the staff members' personnel file.

(C) Protective physical intervention in emergency situations must:

(i) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the provider organization director or the individual's physician within one hour of application of the protective physical intervention;

(iii) Result in the immediate notification of the individual's legal or designated representative (as applicable); and

(iv) Prompt a review of the individual's written service agreement, initiated by the provider organization, if protective physical intervention is used more than three times in a six month period.

(D) Protective physical intervention must be designed to avoid physical injury to an individual or others and to minimize physical and psychological discomfort.

(E) All use of protective physical intervention must be documented and reported according to procedures described in OAR 411-340-0040. The report must include:

(i) The name of the individual to whom the protective physical intervention is applied;

(ii) The date, type, and length of time of the application of protective physical intervention;

(iii) The name and position of the person authorizing the use of the protective physical intervention;

(iv) The name of the staff member applying the protective physical intervention; and

(v) Description of the incident.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1910, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

411-340-0180

Standards for General Business Providers Paid with Support Services Funds

(1) General business providers providing services to individuals and paid with support services funds must hold any current license appropriate to function required by the state of Oregon or federal law or regulation, including but not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental accessibility adaptations involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board);

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of an individual, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, the established standards;

(f) For private transportation providers, a business license and drivers licensed to drive in Oregon;

(g) For vendors and medical supply companies providing specialized equipment and supplies, a current retail business license including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment;

(h) A current business license for providers of personal emergency response systems; and

(i) Retail business licenses for vendors and supply companies providing special diets.

(2) Services provided and paid for with support services funds must be limited to the services within the scope of the general business provider's license.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1920, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13

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Rule Caption: Pediatric Nursing Facilities — Annual Rebasing
Adm. Order No.: SPD 51-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 12-1-2013
Rules Amended: 411-070-0452
Rules Repealed: 411-070-0452(T)
Subject: The Department of Human Services (Department) is permanently amending OAR 411-070-0452 for pediatric nursing facilities to update the rebase relationship percentage to 93% and implement annual rebasing.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-070-0452

Pediatric Nursing Facilities

(1) PEDIATRIC NURSING FACILITY.

(a) A pediatric nursing facility is a licensed nursing facility at least 50 percent of whose residents entered the facility before the age of 14 and all of whose residents are under the age of 21.

(b) A nursing facility that meets the criteria of subsection (1)(a) of this section is reimbursed as follows:

(A) The pediatric rate is a prospective rate and is not subject to settlement. The Department uses financial reports of facilities that have been in operation for at least 180 days and are in operation as of June 30.

(B) The facility specific pediatric cost per resident day is inflated by the annual change in the DRI Index as measured in the previous 4th quarter. The Oregon Medicaid pediatric days are multiplied by the inflated facility specific cost per resident day for each pediatric facility. The totals are summed and divided by total Oregon Medicaid days to establish the weighted average cost per pediatric resident day. The rebase relationship percentage of 93 percent is applied to the weighted average cost to determine the pediatric rate.

(c) Even though pediatric facilities are reimbursed in accordance with subsection (1)(b) of this section, pediatric facilities must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements.

(2) LICENSED NURSING FACILITY WITH A SELF-CONTAINED PEDIATRIC UNIT.

(a) A nursing facility with a self-contained pediatric unit is a licensed nursing facility that provides services for pediatric residents (individuals under the age of 21) in a separate and distinct unit within or attached to the facility with staffing costs separate and distinct from the rest of the nursing facility. All space within the pediatric unit must be used primarily for purposes related to the services of pediatric residents and alternate uses may not interfere with the primary use.

(b) A nursing facility that meets the criteria of subsection (2)(a) of this section is reimbursed for pediatric residents served in the pediatric unit as described in section (1) of this rule.

(c) Licensed nursing facilities with a self-contained pediatric unit must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements and must file a separate attachment, on forms prescribed by the Department, related to the costs of the self-contained pediatric unit.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070, OL 2011 ch. 630, & OL 2013 ch. 608

Hist.: SSD 4-1988, f. & cert. ef. 6-1-88; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 6-1996, f. & cert. ef. 7-1-96; SDSD 10-1999, f.11-30-99, cert.ef. 12-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09; SPD 17-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 22-2011, f. 10-7-11, cert. ef. 11-1-11; SPD 10-2012, f. 7-31-12, cert. ef. 8-1-12; SDP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 40-2013(Temp), f. 10-4-13, cert. ef. 10-7-13 thru 12-28-13; SPD 51-2013, f. 12-27-13, cert. ef. 12-28-13

Rule Caption: Proctor Care Residential Services for Individuals with Intellectual or Developmental Disabilities
Adm. Order No.: SPD 52-2013(Temp)
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Suspended: 411-335-0010, 411-335-0020, 411-335-0030, 411-335-0040, 411-335-0060, 411-335-0120, 411-335-0130, 411-335-0150, 411-335-0160, 411-335-0170, 411-335-0180, 411-335-0190, 411-335-0200, 411-335-0210, 411-335-0220, 411-335-0230, 411-335-0240, 411-335-0250, 411-335-0260, 411-335-0270, 411-335-0280, 411-335-0290, 411-335-0310, 411-335-0320, 411-335-0330, 411-335-0340, 411-335-0350, 411-335-0360
Subject: The Department of Human Services (Department) is suspending the rules in OAR chapter 411, division 335 for proctor care residential services for individuals with intellectual or developmental disabilities. Proctor care residential services were not included as a waiver or Community First Choice State plan option because of concerns regarding third party payments to proctor care providers as well as the potential for violations for the payment of bundled rates under the Social Security Act. As a result, proctor care residential services end effective January 1, 2014.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-335-0010
Statement of Purpose

The rules in OAR chapter 411, division 335 prescribe administrative, policy, procedure, documentation, and personnel requirements for proctor agencies providing intensive, person focused services to individuals with developmental disabilities experiencing significant emotional, medical, or behavioral difficulties. Proctor providers are specially trained and supported by the proctor agency. Proctor providers assist the individual in a home environment to make positive changes in the individual's adaptive skills that shall enable the individual to move to a less restrictive setting. These rules, in addition to the rules in OAR chapter 411, division 323, also prescribe standards and procedures by which the Department endorses proctor agencies to safely operate and oversee proctor care homes and provide training and support to children with developmental disabilities.

Stat. Auth.: ORS 409.050, 410.070, 427.007 & 430.215
Stats. Implemented: ORS 430.021 & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0020
Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005 and for the purposes of these rules, abuse of a child also means abuse as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a person who is responsible for the individual's care.

(4) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's guardian to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(5) "Agency Staff" means paid employees responsible for providing services to individuals whose wages or fees are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department. For the purpose of these rules, agency staff includes skill trainers.

(6) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(7) "Alternate Caregiver" means any person 18 and older responsible for the care or supervision of a child in foster care.

(8) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. This baseline measure serves as the reference point by which the ongoing efficacy of the Individual Support Plan (ISP) is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the ISP team meeting.

(9) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(10) "Behavior Data Summary" means a document composed by the proctor provider to summarize episodes of physical intervention. The behavior data summary serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(11) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for proctor providers to follow, to cause an individual's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment, and teach new skills.

(12) "Board of Directors" means a group of persons formed to set policy and give directions to a proctor agency that provides residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(13) "Certificate" means a document issued by the Department to a proctor agency that certifies the proctor agency is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed proctor care residential services.

(14) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(15) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(16) "Choice" means the individual's and guardian's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(17) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(18) "Competency Based Training Plan" means a written description of the proctor agency's process for providing training to newly hired agency staff and proctor providers. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the proctor agency's mission; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented including steps for remediation, and when a competency may be waived by the proctor agency to accommodate staff or proctor provider's specific circumstances.

(19) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(20) "Contracting Entity" means the community developmental disability program or proctor agency contracting with the Department.

(21) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(22) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(23) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(24) "Director" means the Director of the Department's Office of Developmental Disability Services, or that person's designee. The term "Director" is synonymous with "Assistant Director".

(25) "Direct Nursing Service" means the provision of individual-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility.

Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(26) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of a parent or adult student.

(27) "Endorsement" means authorization to provide proctor care residential services issued by the Department to a certified proctor agency that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(28) "Entry" means admission to a Department-funded developmental disability service. For the purpose of these rules, "entry" means admission to a proctor provider home certified by the Department as described in OAR chapter 411, division 346.

(29) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of proctor care residential services.

(30) "Exit" means either termination from a Department-funded developmental disability proctor agency or transfer from one Department-funded proctor agency to another.

(31) "Foster Care" for the purpose of these rules means 24-hour substitute care for children in a foster home that is contracted with the proctor agency and certified by the Department as described in OAR chapter 411, division 346.

(32) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(33) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(34) "Health Care Provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(35) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(36) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(37) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(38) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(39) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(40) "Individual Support Plan (ISP) Team" means a team composed of the individual served, the proctor provider, representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(41) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals with developmental disabilities in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with persons in their community.

(42) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian.

(43) "Majority Agreement" means for purposes of entry, exit, transfer, and annual Individual Support Plan (ISP) team meetings, that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Agency staff, proctor providers, families, the services coordinator, or advocacy agencies are considered as one member of the ISP team for the purpose of reaching majority agreement.

(44) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section of this rule, OAR 411-335-0020, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(45) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the individual's body.

(46) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(47) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(48) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(49) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include but are not limited to no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(50) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(51) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught or delegated to the provider and staff.

(52) "Oregon Core Competencies" means:

(a) A list of skills and knowledge for newly hired staff and proctor providers in the areas of health, safety, rights, values and personal regard, and the proctor agency's mission; and

(b) The associated timelines in which newly hired staff and proctor providers must demonstrate competencies.

(53) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(54) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(55) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(56) "Proctor Agency" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency" or "program" is synonymous with "proctor agency".

(57) "Proctor Care Services" means a comprehensive residential program endorsed by the Department to provide intensive individually focused contracted foster care, training, and support to individuals with developmental disabilities experiencing emotional, medical, or behavioral difficulties.

(58) "Proctor Provider" means the certified care provider who resides at a child foster home for individuals with developmental disabilities certified by the Department as described in OAR chapter 411, division 346.

(59) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(60) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(61) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement. The term "protective physical intervention" is synonymous with "physical restraint".

(62) "Psychotropic Medication" means medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(63) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(64) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon the written order of a physician, and safely maintains the medication without supervision.

(65) "Services" mean supportive services, including but not limited to supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also includes being aware of the individual's general whereabouts at all times and monitoring the activities of the individual to ensure the individual's health, safety, and welfare. The term "services" is synonymous with "care".

(66) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(67) "Significant Other" means a person selected by the individual and guardian to be the individual's friend.

(68) "Specialized Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physicians order. Examples include but are not limited to low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A specialized diet does not include a diet where extra or additional food is offered without physician's orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.

(69) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(70) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(71) "These Rules" mean the rules in OAR chapter 411, division 335.

(72) "Transfer" means movement of an individual from one proctor provider to another within the same county administered by the same proctor agency.

(73) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan (ISP) is developed and approved by the ISP team. The Transition Plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to assure health and safety, and the assessments and consultations necessary for ISP development.

(74) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(75) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by the proctor provider or proctor agency.

(76) "Volunteer" means any person assisting a proctor provider or the proctor agency without pay to support the services provided to an individual.

Stat. Auth.: ORS 409.050, 410.070, 427.007 & 430.215
Stats. Implemented: ORS 430.021 & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0030
Management and Personnel Practices

(1) PROCTOR AGENCY.

(a) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide proctor care residential services, a proctor agency must have:

(A) A certificate and an endorsement to provide proctor care residential services as set forth in OAR chapter 411, division 323;

(B) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(C) For each specific geographic service area where proctor care residential services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(b) INSPECTIONS AND INVESTIGATIONS. The proctor agency must allow inspections and investigations as described in OAR 411-323-0040.

(c) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The proctor agency must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(d) COMPETENCY BASED TRAINING PLAN. The proctor agency must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(e) PERSONNEL FILES AND QUALIFICATION RECORDS. The proctor agency must maintain written documentation kept current that the staff member and proctor provider has demonstrated competency in areas identified by the proctor agency's Competency Based Training Plan as required by OAR 411-335-0030(1)(d) of this section, and that is appropriate to their job.

(f) POLICIES AND PROCEDURES. The proctor agency must implement policies and procedures to:

(A) Assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure training of agency staff and proctor providers.

(B) Assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in proctor care services. Policies and procedures must include frequency of review.

(C) Assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to:

(i) Respite care in the proctor provider's home during day hours only;

(ii) Respite care in the home of someone other than the proctor provider for day time only;

(iii) Overnight care in the proctor provider's home; and

(iv) Overnight care at someone other than the proctor provider's home.

(D) Review and document that each child enrolled in proctor care services continues to require such services. Policies and procedures must include frequency of review and the criteria as listed below.

(i) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record and functional assessment of the behavior.

(ii) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(iii) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub acute) for the last 12 months, except for assessment and evaluation.

(iv) The child poses no significant risk to self or community.

(v) The proctor provider has not needed or utilized the proctor agency's crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(vi) The proctor provider is successfully supporting the child over time, with a minimum of proctor agency case management contact other than periodic monitoring and check in.

(vii) The proctor provider does not require professional support for the child, and there has been or may be a reduction in ongoing weekly professional support for the child including consultation, skill training, and staffing.

(viii) The proctor agency is not actively working with the child's family to return the child to the family home.

(g) RESPONSIBILITIES. The proctor agency must:

(A) Assure that preliminary certification for the proctor provider is completed per the relevant foster care statutes and OAR chapter 411, divisions 346. Such work must be submitted to the Department for final review and approval.

(B) Complete an initial home study for all proctor provider applicants that is updated at the certification renewal for all certified proctor providers.

(C) Provide and document training and support for agency staff, proctor providers, subcontractors, volunteers, and respite providers:

(i) To maintain the health and safety of the individuals served.

(ii) To implement the ISP process, including completion of a Risk Tracking Record, development of protocols and BSP for each individual served, and the development of the ISP.

(D) Have a plan for emergency back-up for proctor providers including but not limited to use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(E) Coordinate and document entries, exits, and transfers.

(F) Report to the Department, and the CDDP, any placement changes due to a Crisis Plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(G) Assure that each proctor provider has a current Emergency Disaster Plan on file in the proctor provider home, in the proctor agency office, and provided to the CDDP and the individual's services coordinator if not an employee of the local CDDP.

(H) Assure emergency backup in the event the proctor provider is unavailable.

(2) QUALIFICATIONS FOR PROCTOR AGENCY STAFF AND PROCTOR PROVIDERS INCLUDING SUBCONTRACTORS AND VOLUNTEERS. Any agency staff including skill trainers, respite providers, substitute caregivers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age and have a valid social security card.

(b) Have approval to work based on Department policies and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 and OAR 411-323-0050.

(c) Disclose any founded reports of child abuse or substantiated abuse.

(d) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, services coordinators, and appropriate others, and be able to respond to emergency situations at all times.

(e) Have met the basic qualification in the agency's Competency Based Training Plan.

(3) GENERAL REQUIREMENTS FOR SAFETY AND TRAINING. All proctor providers, substitute caregivers, respite providers, child care providers, agency staff, and volunteers having contact with an individual, except for those providing services in a crisis situation, must:

(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety, ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS certification is required if physical intervention is likely to occur as part of the BSP. Knowledge of OIS principles, not certification, is required if it is unlikely that protective physical intervention shall be required.

(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age and have a valid social security card.

(f) Be cleared by the Department's background check requirements in OAR 407-007-0200 to 407-007-0370 and 411-323-0050.

(g) Receive training in applicable agency policies and procedures.

(4) PROCTOR PROVIDERS.

(a) Proctor providers must:

(A) Meet all the standards in these rules and the rules in OAR chapter 411, division 346;

(B) Must have knowledge of these rules and the rules in OAR chapter 411, division 346; and

(C) Must receive and maintain current First Aid and CPR training.

(b) Any home managed and contracted to serve children with developmental disabilities by a proctor agency must be certified by the Department as a foster home for children with developmental disabilities in accordance with OAR chapter 411, division 346.

(5) SKILLS TRAINERS, ADVISORS, OR OTHER AGENCY STAFF. Skills trainers, advisors, or other agency staff must:

(a) Receive and maintain current First Aid and CPR training;

(b) Must have knowledge of these rules and the rules in OAR chapter 411, division 346;

(c) Anyone age 18 or older, living in an agency staff members uncertified home must have an approved Department background check per OAR 407-007-0200 to 407-007-0370 and as described in 411-323-0050, prior to any visit of an individual to the staff member's home.

(d) Assure health and safety guidelines for alternative caregivers including but not limited to the following:

(A) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(B) Any sleeping room used for an individual in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(C) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(D) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(E) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents the individuals from accessing them, unless otherwise addressed in an individual's ISP.

(F) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(G) First aid supplies must be available in the home and in the vehicles used to transport an individual.

(6) RESPITE PROVIDERS.

(a) If respite is being provided in the proctor provider's home day or night, the respite provider must be trained on the:

(A) Basic health needs of the individuals in service; and

(B) Basic safety in the home including but not limited to first aid supplies, the Emergency Plan, and the Fire Evacuation Plan.

(b) If respite is being provided in a home other than the proctor provider's home day or night, the respite provider must assure health and safety guidelines for alternative caregivers, including but not limited to:

(A) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(B) Any sleeping room used for an individual in respite must be finished, have a window that may be opened, be attached to the house, and not a common living area, storage area, closet, or garage. If the individual is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(C) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(D) The alternative caregivers must have access to a working telephone in the home and must have a list of emergency telephone numbers and know where the numbers are located.

(E) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents an individual from accessing them.

(F) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(G) First aid supplies must be available in the home and in the vehicles used to transport individuals.

(7) DAY CARE AND CAMP. When a child is cared for by a child care provider, camp, or child care center, the proctor agency must assure that the camp, provider home, or center is certified, licensed, or registered as required by the Child Care Division (ORS 657A.280). The proctor agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, child care center, or child care provider home.

(8) SOCIAL ACTIVITIES FOR LESS THAN 24 HOURS, INCLUDING OVERNIGHT ARRANGEMENTS. The proctor agency must assure:

(a) The person providing care is capable of assuming all care responsibilities and shall be present at all times.

(b) The ISP team is in agreement with the planned social activity.

(c) The proctor provider maintains back-up responsibilities for the individual in service.

(9) GENERAL CRISIS REQUIREMENTS FOR INDIVIDUALS ALREADY IN PROCTOR AGENCY HOMES.

(a) Crisis service providers must:

(A) Be at least 18 years of age.

(B) Have initial and annual approval to work based on current Department policies and procedures for review of background checks per OAR 407-007-0200 to 407-007-0370 and as described in OAR 411-323-0050, prior to supervising any individual. Providers must also have a child welfare check completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individual's needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols. Be trained on required documentation for health, safety, and behavioral needs of the individual.

(b) The proctor agency must:

(A) Make follow-up contact with the crisis provider within 24 hours of the placement to assess and assure the individual's and provider's support needs are met.

(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(10) MANDATORY ABUSE REPORTING. Proctor agency staff and providers are mandatory reporters. Upon reasonable cause to believe that abuse has occurred, all members of the household and any proctor providers, substitute caregivers, agency staff, independent contractors, or volunteers must report pertinent information to the Department, the CDDP, or law enforcement. For reporting purposes the following shall apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, substitute caregivers, subcontractors, and volunteers, on forms provided by the Department.

(b) All agency employees and proctor providers must be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(11) CONFIDENTIALITY OF RECORDS.

(a) The proctor agency must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(b) The proctor agency, proctor provider, and the proctor provider's family must treat personal information about an individual or an individual's family in a confidential manner. Confidential information is to be used and disclosed in accordance with OAR 407-014-0020 only on a need to know basis to law enforcement, services coordinators, the Department including child protective services staff and child welfare caseworkers, the CDDP, Office of Investigations and Training investigators, and medical professionals who are treating or providing services to the individual. The information shared must be limited to the health, safety, and service needs of the individual.

(c) The proctor agency, proctor provider, and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and OAR 407-014-0020 and therefore may use or disclose an individual's protected health information as defined in OAR 407-014-0000 only:

(A) To law enforcement, the Department, or the CDDP;

(B) As authorized by the individual's guardian including but not limited to a guardian appointed under ORS 125.305, 419C.481, or 419C.555;

(C) For purposes of obtaining healthcare and treatment of the individual;

(D) For purposes of obtaining payment for health care treatment; or

(E) As permitted or required by state or federal law or by order of a court.

(d) The proctor agency and the proctor provider must keep all written records for each individual in a manner that assures their confidentiality.

(12) DOCUMENTATION REQUIREMENTS. All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsification;

(c) Be legible, dated, and signed by the person making the entry;

(d) Be maintained for no less than five years; and

(e) Be made readily available for the purposes of inspection.

Stat. Auth.: ORS 409.050, 410.070, 427.007 & 430.215
Stats. Implemented: ORS 430.021 & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0040
Safety: Staffing Requirements

General Staffing Requirements. Each proctor agency must assure that the appropriate number of agency staff, proctor providers, respite providers and support staff are available to meet the safety needs and identified ISP goals for individuals served.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0060
Admittance of Individuals

(1) A proctor agency or home contracted with the proctor agency must have prior written consent of the Department or the Department's designee to admit individuals to a home whose care needs or age exceed the home's certificate or would violate conditions on the certificate.

(2) A proctor agency or home contracted with the proctor agency must have Department approval to admit or continue to serve children whose numbers exceed the capacity on the proctor provider's child foster home certificate.

(3) A proctor agency or home contracted to provide proctor services may not admit or continue to provide proctor services to children who may be safely and appropriately supported in foster care, if available, or the individual's family home.

(4) A proctor agency or home contracted with the proctor agency may not admit an individual from another funding source without first determining that the care and safety needs of all individuals in the home may be maintained, and that there is prior written approval from the placing agency and the CDDP where the foster home is located.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0120
Variances

(1) The Department may grant a variance to these rules based upon a demonstration by the proctor agency that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The proctor agency requesting a variance must submit, in writing, an application either to the Department's Residential Services Coordinator or the CDDP whichever entity holds the contract for proctor services. Variance applications must at a minimum contain the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The manager or designee of the contracting entity must forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance. If the variance request affects more than one contracting entity, the variance must be reviewed and signed by each contracting entity.

(4) The Department shall approve or deny the request for a variance.

(5) The Department's decision shall be sent to the proctor agency, the contracting entity, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The proctor agency may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the Director and a copy of the request to either the Department's Residential Services Coordinator or the CDDP whichever entity holds the contract for proctor services. The Director's decision is final.

(7) The Department shall determine the duration of the variance.

(8) The proctor agency or proctor provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 1-2012, f. & cert. ef. 1-6-12; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0130
Direct Contracted Services

For purposes of this rule OAR chapter 411, division, 335, Proctor Agencies directly contracting services with the Department will submit required documentation for children's services to the SPD Residential Services Coordinator, in addition to the CDDP services coordinator, unless otherwise specified.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0150
Rights: General

(1) Abuse prohibited. Individuals must not be abused, nor will abuse be tolerated by any foster provider, agency employee, alternate or substitute caregiver, respite provider, contractor or volunteer of the agency.

(2) Protection and well-being. The agency must assure the health and safety of individuals from abuse including the protection of individual's rights, as well as, encouraging and assisting individuals through the ISP process to understand and exercise these rights. With the exception of individuals under the age of 18, where a parent or guardian has placed reasonable limitations, these rights must, at a minimum, provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order;

(b) Adequate food, housing, clothing, medical and health care;

(c) Visits and communication with family members, guardians, friends, advocates and others of the individual's choosing, as well as legal and medical professionals; unless limited due to legal process;

(d) Confidential communication including personal mail and telephone;

(e) Personal property and fostering of personal control and freedom regarding that property;

(f) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical or mechanical or physical interventions or restraints;

(h) Freedom to choose whether or not to participate in religious activity;

(i) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(j) Expression of sexuality within the framework of State and Federal Laws, and, for adults over the age of 18, the freedom to marry and to have children;

(k) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities and health care resources;

(l) Individual choice for children and adults that allows for decision-making and control of personal affairs appropriate to age;

(m) Services, which promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult;

(n) Individual choice for adults to consent to or refuse treatment unless incapable and then an alternative decision maker is allowed to consent or refuse. For children, consent to or refusal of treatment by the child's parent or guardian except as defined in statute (ORS 109.610) or limited by court order;

(o) Individual choice to participate in community activities, except where limited by a court order;

(p) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(3) Policies and procedures. The agency must have and implement written policies and procedures that protect an individual's rights as listed in OAR chapter 411, division 335.

(4) Notification of policies and procedures. The agency must inform each individual and parent or guardian orally and in writing of their rights and a description of how to exercise these rights. This must be completed at entry to the program and in a timely manner thereafter as changes occur. Information must be presented using language, format, and methods of communication appropriate to the individual's and family/guardian's needs and abilities.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0160
Rights: Behavior Support

(1) Written policy required. The agency must implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(2) Development of an individualized plan to alter an individual's behavior. A decision to develop a plan to alter an individual's behavior must be made by the ISP team, and must be based on the Risk Tracking Record. Documentation of the ISP team decision must be maintained by the agency.

(3) Functional assessment required. The agency must conduct a functional assessment of the behavior, which must be based upon information provided by one or more persons who know the individual. The functional assessment must include:

(a) A clear, measurable description of the behavior that includes frequency, duration and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, which includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of medical conditions;

(C) The result of psychiatric conditions; and

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) BSP requirements. The BSP must include:

(a) An individualized summary of the individual's needs, preferences and relationships;

(b) A summary of the function(s) of the behavior, (as derived from the functional assessment);

(c) Strategies that are related to the function(s) of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies including environmental modifications and arrangement(s);

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with the Oregon Intervention System (OIS).

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the plan that includes a method of collecting and reviewing data on frequency, duration and intensity of the behavior;

(i) Specific instructions for agency staff to follow regarding the implementation of the plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Additional documentation requirements for implementation of behavioral support plans. The agency must maintain the following additional documentation for implementation of behavioral support plans:

(a) Written evidence that the individual, guardian or legal representative (if applicable) and the ISP team are aware of the development of the plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the BSP; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

(6) Notification of policies and procedures. The agency must inform each individual and guardian of the behavior support policy and procedures at the time of entry to the program and as changes occur.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0170
Rights: Physical Intervention

(1) Circumstances allowing the use of physical intervention. The agency must assure that agency staff and foster providers employ only physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Physical intervention techniques must only be applied:

(a) When the health and safety of the individual or others is at risk, and the ISP team has authorized the procedures as documented by an ISP team decision, included in the ISP and the procedures are intended to lead to less restrictive intervention strategies; or

(b) As an emergency measure, if absolutely necessary, to protect the individual or others from immediate injury; or

(c) As a health related protection prescribed by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(2) Staff and training. Agency staff members and foster providers who support individuals with a history of behavior that may require the application of physical intervention, and the ISP team has determined that there is probable cause for future application of physical intervention, must be trained by an instructor certified in the Oregon Intervention System (OIS). Documentation verifying such training must be maintained in the personnel file.

(3) Modification of OIS physical intervention procedures. The program must obtain the approval of the OIS Steering Committee for any modification of standard OIS physical intervention technique(s). The request for modification of physical intervention technique(s) must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Physical intervention techniques in emergency situations. Use of physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the agency's executive director or designee within one hour of application. Review will verify the following:

(A) The physical intervention was used in an emergency and only until the individual was no longer an immediate threat to self or others.

(B) An incident report is prepared and submitted within one working day to the Services Coordinator and the individual's guardian.

(C) Determine the need for an ISP team meeting if the emergency intervention is used three times in a six-month period.

(5) Incident report. Any use of any physical intervention must be documented in an incident report. Agency staff or proctor providers or other support staff who are involved in the incident, or who have witnessed the event, must write the report. The report must include:

(a) The name of the individual to whom the physical intervention was applied;

(b) The date, type, and length of time the physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the physical intervention;

(d) Documentation of any injury;

(e) The name and position of the agency staff member(s) or proctor provider(s) applying the physical intervention;

(f) The name(s) and position(s) of the agency staff or proctor provider(s) witnessing the physical intervention;

(g) The name and position of the person providing the initial review of the use of the physical intervention; and

(h) Documentation of an administrative review that includes the follow-up to be taken to prevent a recurrence of the incident by the director or his/her designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) Copies submitted. A copy of the incident report must be forwarded to the Services Coordinator and the legal guardian within five working days of the incident,

(a) Copies of incident reports will not be provided to a legal guardian, personal or other service providers, when the report is part of an abuse or neglect investigation.

(b) Copies provided to a legal guardian, personal agent, or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(c) All interventions resulting in injuries must be documented in an incident report and forwarded to the Services Coordinator and the legal guardian within one working day of the incident.

(7) Behavior data summary. The program may substitute a behavior data summary in lieu of individual incident reports when:

(a) There is no injury to the individual or others.

(b) The intervention utilized is not a physical restraint.

(c) There is a formal written functional assessment and written behavioral support plan.

(d) The individual's behavior support plan defines and documents the baseline level of behavior.

(e) The physical intervention technique(s), and the behavior(s) for which they are applied remain within the parameters outlined in the individual's behavior support plan and OIS curriculum.

(f) The behavior data collection system for recording observation, intervention and other support information critical to the analysis of the efficacy of the behavior support plan, is also designed to record items as required in support in OAR 411-325-0350(5)(a)–(c) and (e)–(h).

(g) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports.

(8) Copy to Services Coordinator. A copy of the behavior data summary must be forwarded to the Services Coordinator, Department designee, and the individual's legal guardian every thirty days.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0180
Rights: Psychotropic Medications and Medications for Behavior

(1) Requirements. Psychotropic medications and medications for behavior must be:

(a) Prescribed by physician or health care provider through a written order; and

(b) Monitored by the prescribing physician, ISP team and program for desired responses and adverse consequences.

(2) Balancing test. When medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing health care provider using the DHS Balancing Test Form or by inserting the prescribed form content into the provider's agency forms. Providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(3) Documentation requirements. The provider must keep signed copies of these forms in the individual's medical record for seven years.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0190
Safety: Incident Reports and Emergency Notifications

(1) Incident reports. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual must be placed in the individual's record. The agency staff or proctor provider who was involved in the incident must write the incident report. Someone who witnessed the event may also write the report. The report must include:

(a) Conditions prior to or leading to the incident.

(b) A description of the incident.

(c) Agency staff or proctor provider response at the time.

(d) Administrative review to include the follow-up to be taken to prevent a recurrence of the incident.

(2) Sent to guardian and Services Coordinator. Copies of all unusual incident reports must be sent to the individual's Services Coordinator within five working days of the incident. Upon request of the guardian, copies of incident reports will be sent to the guardian within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state pri-

vacy laws. Copies of incident reports will not be provided to a guardian when the report is part of an abuse or neglect investigation.

(3) Immediate notification of allegations of abuse and abuse investigations. The program must notify the CDDP or the Department, if the Department holds the direct contract, immediately of an incident or allegation of abuse falling within the scope of OAR 411-320-0020(1)(a)(A)–(G), (b)(A)–(E), and (c)(A)–(H). When an abuse investigation has been initiated, the contracting entity will assure that either the Services Coordinator or the program will also immediately notify the individual's legal guardian or conservator. The parent who is not the guardian, next of kin or other significant person may also be notified unless the adult requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) Immediate notification for serious illness, injury or death. In the case of a serious illness, injury or death of an individual, the program must immediately notify:

(a) The individual's guardian or conservator, parent, next of kin or other significant person;

(b) The CDDP and the Department, if the Department holds the direct contract.

(c) Any agency responsible for or providing services to the individual.

(5) Emergency notification. In the case of an individual who is away from the residence, without support beyond the time frames established by the ISP team, the program must immediately notify:

(a) The individual's guardian, if any, or nearest responsible relative;

(b) The individual's designated contact person;

(c) The local police department; and

(d) The CDDP and the Department, if the Department holds the direct contract.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0200
Rights: Individuals' Personal Property

Record of personal property. The program must ensure that individual written records of personal property are prepared and accurately maintained for each individual of personal property that has significant monetary value or is important to the individual as determined by a documented ISP team or guardian decision. The record must include:

(1) The description and identifying number, if any;

(2) Date of inclusion in the record;

(3) Date and reason for removal from the record;

(4) Signature of agency staff or proctor provider making each entry; and

(5) A signed and dated annual review of the record for accuracy.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0210
Rights: Handling and Managing Individuals' Money

(1) Policies and procedures. The program must implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) Safeguarding of the individual's funds;

(b) Individuals receiving and spending their money; and

(c) Taking into account the individual's interests and preferences.

(2) Individual written record. The agency must assure that documentation of the individual's financial plan is completed II as part of the Proctor Care Individual Support Plan for each individual served.

(3) Reimbursement to individual. The agency must reimburse the individual any funds that are missing due to theft, or mismanagement on the part of any agency staff member or proctor provider, for any funds within the custody of the agency that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing. Where appropriate the agency will ensure that the proctor provider reimburses any funds missing due to theft or mismanagement on the part of the proctor provide.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0220
Safety: Individual Summary Sheets

A current one to two page summary sheet must be maintained for each individual receiving services from the proctor agency. The record must include:

(1) The individual's name, current and previous address, date of entry into the program, date of birth, sex, religious preference, preferred hospital, medical prime number and private insurance number where applicable, and guardianship status.

(2) The name, address and telephone number of:

(a) The individual's legal representative, family, advocate or other significant person, and for children, the individual's parent or guardian, education surrogate, if applicable.

(b) The individual's preferred physician, secondary physician or clinic.

(c) The individual's preferred dentist.

(d) The individual's identified pharmacy.

(e) The individual's school, day program, or employer, if applicable.

(f) The individual's CDDP Services Coordinator, and for Department direct contracts, a Department representative.

(g) Other agency representatives providing services to the individual.

(3) Any court ordered or guardian authorized contacts or limitations.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0230
Individual Support Plan

(1) A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the proctor provider home within 60 days of entry and annually thereafter.

(2) The following information must be collected and summarized prior to the ISP meeting:

(a) Personal Focus Worksheet.

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record; and

(e) Other documents required by the ISP team.

(3) A completed ISP must be documented on the Department required form and include the following:

(a) What's most important to the individual;

(b) Risk summary;

(c) Professional services the individual uses or needs;

(d) Action plan;

(e) Discussion record;

(f) Service supports; and

(g) Signature sheet.

(4) The agency must maintain documentation of implementation of each support and services specified in OAR 411-335-0230(2)(c) to (2)(e) of this rule in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP, and Department representatives.

Stat. Auth.: ORS 409.050, 410.070, 427.007, & 430.215
Stats. Implemented: ORS 430.021 & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 1-2012, f. & cert. ef. 1-6-12; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0240
Health: Medical

(1) Written policies and procedures. The agency must assure implementation of policies and procedures that maintain and protect the physical health of individuals placed in certified proctor provider homes operated and overseen by the Proctor Agency. Policies and procedures must address the following:

(a) Each individual's health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if needed;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

(2) Individual health care. Each individual receiving proctor provider services must receive care that promotes their health and well-being as follows:

(a) The agency must assure each individual has a primary physician or qualified health care provider that the individual or guardian chooses from among qualified providers;

(b) The agency must assure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by a physician;

(c) The agency must assure that the health status and physical conditions of each individual is monitored, and take action in a timely manner in response to identified changes or conditions that could lead to deterioration or harm;

(d) The agency must assure that a physician's or qualified health care providers written, signed order is obtained prior to the usage or implementation of all of the following:

(A) Prescription medications;

(B) Non-prescription medications except over the counter topical preparations;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The agency must maintain a copy of the order in the individual's central record, and assure that the original is maintained in the proctor provider home.

(f) The agency must assure that its contracted proctor provider, their designee, or proctor agency staff implements orders by a physician or qualified health care provider's as written.

(3) Required documentation. The agency must maintain records on each individual to aid physicians, licensed health professionals and proctor providers in understanding the individual's medical history. Such documentation must include:

(a) A list of known health conditions, medical diagnoses; known allergies and immunizations;

(b) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and

(c) A record of known hospitalizations and surgeries.

(4) Medication procurement and storage. All medications must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer or physician, as specified per the physician's or licensed health care practitioner's written order; and

(c) Kept in a secured locked container and stored as indicated by the product manufacturer, or as identified and outlined in the ISP.

(5) Medication administration. All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:

(a) The name of the individual;

(b) A transcription of the written physician's or licensed health practitioner's order, including the brand or generic name of the medication, prescribed dosage, frequency and method of administration;

(c) For topical medications and treatments without a physician's order, a transcription of the printed instructions from the package;

(d) Times and dates of administration or self administration of the medication;

(e) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(f) Method of administration;

(g) An explanation of why a PRN (i.e., as needed) medication was administered;

(h) Documented effectiveness of any PRN (i.e., as needed) medication administration;

(i) An explanation of any medication administration irregularity; and

(j) Documentation of any known allergy or adverse drug reaction.

(6) Self-administration of medication. For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(7) Self-administration medications unavailable to other individuals. The program must assure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same proctor provider home, and store them as recommended by the product manufacturer.

(8) PRN/Psychotropic medication prohibited. PRN (i.e., as needed), orders will not be allowed for psychotropic medication.

(9) Adverse medication affects safeguards. Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(a) Obtaining, whenever possible, all prescription medication except samples provided by the health care provider, for an individual from a single pharmacy that maintains a medication profile for him or her;

(b) Maintaining information about each medication's desired effects and side effects;

(c) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual, proctor provider, or respite provider.

(d) Documentation in the individual's record of reason why all medications should not be provided through a single pharmacy.

(10) Unused, discontinued, outdated, recalled and contaminated medications. All unused, discontinued, outdated, recalled and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage strength and amount being disposed;

(c) Individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) Direct nursing services. When direct nursing services are provided to an individual, the agency must:

(a) Coordinate with the nurse or nursing service and the ISP team to assure that the services being provided are sufficient to meet the individual's health needs; and

(b) Implement the Nursing Care Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(12) Notification. When the individual's medical, behavioral or physical needs change to a point that they cannot be met by the agency, the Services Coordinator must be notified immediately and that notification documented.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0250
Health: Food and Nutrition

(1) Modified or special diets. For individuals with physician or health care provider ordered modified or special diets the agency must assure that the proctor provider:

(a) Maintains menus for the current week that provide food and beverages that consider the individuals preferences and are appropriate to the modified or special diet; and

(b) Maintains documentation that identifies how modified texture or special diets are prepared and served for the individual.

(2) Supply of food. The agency must assure that each proctor provider maintains in their home: adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0260
Safety: Transportation

(1) Vehicles operated to transport individuals. Proctor providers, agency employees and volunteers, that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain or assure insurance coverage including liability, on all vehicles and all authorized drivers; and

(d) Carry a first aid kit in vehicles.

(2) Seat belts and appropriate safety devices. When transporting, the driver must assure that all individuals use seat belts. Child car or booster seats will be used for transporting all children as required by law. When transporting individuals in wheel chairs, the driver must assure that wheel chairs are secured with tie downs and that individuals wear seat belts.

(3) Drivers. Drivers operating vehicles that transport individuals must meet applicable Department of Motor Vehicles requirements as evidenced by a valid driver's license.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0270
Emergency Plan and Safety Review

(1) Written emergency plan. The agency must write an emergency plan to include instructions for the proctor provider and agency staff in the event of a fire, explosion, earthquake, accident, or other emergency including evacuation, if appropriate, of individuals served at the proctor provider home. The plan will be available at the Agency offices and the proctor home. A copy shall also be provided to the CDDP.

(2) Emergency telephone numbers. Emergency telephone numbers must be readily available in each proctor provider home, in close proximity to phone(s):

(a) The telephone numbers of the local fire, police department and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the Executive Director, emergency physician and other persons to be contacted in the case of an emergency.

(3) Monthly safety review. A documented safety review that is specific to each proctor provider home must be conducted monthly to assure that the home is free of hazards. The agency must keep these reports for three years and make them available upon request to the Services Coordinator and Department representatives.

(4) Provider Absence. There must be a written contingency plan for each child that is available for substitute caregivers and agency staff in the event of an emergency absence of the proctor provider.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0280
Safety: Assessment of Fire Evacuation Assistance Required

(1) Assessment of level of evacuation assistance required. The agency must assure that the proctor provider and agency staff assess the individual's ability to evacuate the home in response to an alarm or simulated emergency within 24 hours of entry to the home.

(2) Documentation of level of assistance required. The agency must assure documentation of the level of assistance needed by each individual to safely evacuate the residence. The documentation must be maintained in the individual's entry records.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0290
Safety: Individual Fire Evacuation Safety Plans

(1) Written fire safety evacuation plans are required for all individuals residing in proctor provider homes who are unable to evacuate the home in three minutes or less. For individuals who are unable to evacuate the proctor provider home within the required evacuation time, or who the ISP team determines should not participate in fire drills, the agency must develop a written safety plan that includes the following:

(a) Documentation of the risk to the individual's medical, physical condition and behavioral status;

(b) Identification of the alternative practices used to evacuate his/her home including level of support needed;

(c) The routes to be used to evacuate the residence to a point of safety;

(d) Identification of assistive devices required for evacuation;

(e) The frequency the plan will be practiced and reviewed by the individual, the proctor provider, and any staff working in the proctor provider home.

(f) Approval of the plan by the individual's guardian, Service Coordinator and the program director.

(g) A plan to encourage the individual's future participation.

(2) Required documentation of practice and review of safety plans. The agency must maintain documentation of the practice and review of the safety plan by the individual and the proctor provider.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0310
Rights: Informal Complaints and Formal Grievances

(1) The proctor agency must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The proctor agency must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the proctor agency must inform each individual and parent, guardian, or advocate orally and in writing of the proctor agency's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050, 410.070, 427.007 & 430.215
Stats. Implemented: ORS 430.021 & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0320
Rights: Medicaid Fair Hearings

Medicaid service recipient's policy and procedure. The program must have a policy and procedure that provides for immediate referral to the CDDP when a Medicaid recipient, parent or guardian requests a fair hearing. The policy and procedure must include immediate notice to the individual, parent or guardian of the right to a Medicaid fair hearing each time a program takes action to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0330
Entry, Exit and Transfer: General

(1) Qualifications for Department funding. All individuals considered for Department funded services must:

(a) Be referred through the CDDP;

(b) Be determined to have a developmental disability by the Department or its designee; and

(c) Not be discriminated against because of race, color, creed, disability, national origin, duration or Oregon residence, or other forms of discrimination under applicable state or federal law.

(d) For children, be in the custody of the State of Oregon, DHS Child Welfare, or OYA; or have a Developmental Disabilities Individual Placement Agreement with the Department signed by the child's parent or guardian.

(2) Authorization of Services. The Department must authorize admission into Children's Residential Services. The CDDP services coordinator for the adult will authorize admission into an adult proctor service.

(3) Information required for entry meeting. The agency must acquire the following information prior to or upon entry ISP team meeting:

(a) A copy of the individual's eligibility determination document;

(b) A statement indicating the individual's safety skills including the ability to evacuate a building when warned by a signal device, and adjusting water temperature for bathing and washing;

(c) A brief written history of any behavioral challenges including supervision and support needs;

(d) A medical history and information on health care supports that includes, where available:

(A) The results of a physical exam made within 90 days prior to entry;

(B) Results of any dental evaluation;

(C) A record of immunizations;

(D) A record of known communicable diseases and allergies; and

(E) A record of major illnesses and hospitalizations.

(e) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;

(f) Copies of documents relating to guardianship or conservatorship or any other legal restrictions on the rights of the individual, if applicable;

(g) Written documentation that the individual is participating in out of residence activities including school enrollment until the age of 21; and

(h) A copy of the most recent Functional Assessment, BSP, ISP and IEP.

(i) The entry agreement for family contact and visits that includes, but is not limited to, the names of the family members who can visit, with the level of agency staff supervision needed during visits; and any limitations on location or length of visits.

(j) Medical insurance information and medical card.

(4) Crisis entries from family homes. If the individual is being admitted from his or her family home and the information required in OAR 411-335-0330(3) is not available the agency will assure that they assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than thirty days after

entry. This must include a written justification as to why the information is not available.

(5) Entry meeting. An entry ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting.

(d) Documentation of the pre-entry information required by 411-335-0330(3)(a)–(j).

(e) Documentation of the decision to serve or not serve the individual, with reasons; and

(f) A written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(6) Exit meeting. Each individual considered for exit must have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the planned exit;

(e) Documentation of the discussion of strategies to prevent an unplanned exit from service (unless the individual, individuals parent or guardian is requesting exit);

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and documentation of discussion and criteria, as outlined in section (6) of this rule if applicable.

(g) Documentation of the proposed plan for services to the individual after the exit.

(7) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

(a) The individual and his/her guardian or legal representative requests an immediate move from the home; or

(b) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention;

(8) Transfer meeting. A meeting of the ISP team must precede transfer of an individual before any decision to transfer is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call(s);

(c) Documentation of the participants included in the meeting or telephone call(s) including, a parent or guardian who is participating to sign documents;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, guardian, legal representative, parent or family members cannot be honored;

(g) Documentation of a majority agreement of the participants with the decision; and

(h) The written plan for services to the individual after transfer.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0340
Entry, Exit and Transfer Appeals

(1) Appeals. In cases where the adult, or the parent or guardian objects to, or the ISP team cannot reach majority agreement regarding an entry refusal, a request to exit the program or a transfer within a program, an appeal may be filed by any member of the ISP team.

(2) In cases where the ISP team cannot reach majority agreement or when the parent or guardian objects to an entry refusal, a request to exit the program or a transfer within a program, and an appeal has been filed the following requirements apply.

(a) In the case of a refusal to serve, the program vacancy may not be permanently filled until the appeal is resolved.

(b) In the case of a request to exit or transfer, the individual must continue to receive the same services until the appeal is resolved.

(3) Appeal to the CDDP. All appeals must be made to the CDDP Director or designee in writing, in accordance with the CDDPs dispute resolution policy. The CDDP will provide written response to the individual making the appeal within the timelines specified in the CDDPs dispute resolution policy.

(4) Appeal to Department. In cases where the CDDPs decision is in dispute written appeal must be made to the Department within ten days of receipt of the CDDPs decision.

(5) Department appeal process. The Administrator or designee will review all unresolved appeals. Such review will be completed and a written response provided within 45 days of receipt of written request for Department review. The decision of the Administrator or designee will be final.

(6) Documentation required. Documentation of each appeal and its resolution must be filed or noted in the individual's record.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0350
Respite Care Services

(1) The proctor agency may provide respite services in a proctor home to an individual not enrolled in proctor services.

(2) Qualifications for respite care services. All individuals not currently enrolled in proctor services with the agency and who are being considered for respite care services to be provided by the Proctor Agency and proctor home must:

(a) Be referred by the Department or by the CDDP whichever entity holds the contract for the services ;

(b) Be determined to have a developmental disability by the Department or its designee; and

(c) Not be discriminated against because of race, color, creed, disability, national origin, duration of Oregon residence, or other forms of discrimination under applicable state or federal law.

(3) Respite care plan. The individual and the guardian and services coordinator, or other ISP team members (as available) must participate in an entry meeting prior to the initiation of respite care services in a proctor provider's home. This meeting may occur by phone and the Services Coordinator or Proctor Agency will assure that any critical information relevant to the individual's health and safety, including physicians' orders, will be made immediately available to the provider. The outcome of this meeting will be a written respite care plan which must take effect upon entry and be available on site, and must:

(a) Address the individual's health, safety and behavioral support needs;

(b) Indicate who is responsible for providing the supports described in the plan; and

(c) Specify the anticipated length of stay at the residence up to 14 days.

(4) Waiver of exit meeting requirement. Exit meetings are waived for individuals receiving respite care services.

(5) Waiver of appeal rights for entry, exit and transfer. Individuals receiving respite care services do not have appeal rights regarding entry, exit or transfer.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

411-335-0360
Crisis Services

(1) Proctor Agency Responsibilities in Provision of Crisis Services. All individuals considered for crisis services funded through the Department must:

(a) Be referred by the Department or designee;

(b) Be determined to have a developmental disability by the Department or its designee.

(c) Not be discriminated against because of race, color, creed, disability, national origin, duration of Oregon residence, or other forms of discrimination under applicable state or federal law.

(2) In-Home Support Services Plan, ISP or Plan of Care, and Crisis Addendum required. Individuals receiving CDDP in-home supports or foster care who require crisis services must have a crisis addendum to their current plan of care upon entry to proctor care services.

(3) Plan of Care required for individuals not enrolled in CDDP in-home support services. Individuals not enrolled in CDDP support services, receiving crisis services for less than 90 consecutive days must have a plan of care on entry that addresses any critical information relevant to the individual's health and safety including current physician's orders.

(4) Risk Tracking Record required. Individuals not enrolled in CDDP in-home support services, receiving crisis services for 90 days or more must have a completed Risk Tracking Record and a Plan of Care that addresses all identified health and safety supports as noted in the Risk Tracking Record.

(5) Entry meeting required. Entry meetings are required for individuals receiving crisis respite services.

(6) Exit meeting required. Exit meetings are required for individuals receiving crisis services.

(7) Waiver of appeal rights for entry, exit and transfers. An individual or a guardian of an individual receiving crisis services does not have appeal rights regarding entry, exit or transfers.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; Suspended by SPD 52-2013(Temp), f. 12-27-13, cert. ef. 1-1-14 thru 6-30-14

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Rule Caption: Children's Intensive In-Home Services — Behavior Program
Adm. Order No.: SPD 53-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 12-1-2013
Rules Amended: 411-300-0100, 411-300-0110, 411-300-0120, 411-300-0130, 411-300-0140, 411-300-0150, 411-300-0155, 411-300-0170, 411-300-0190, 411-300-0200, 411-300-0205, 411-300-0210, 411-300-0220
Rules Repealed: 411-300-0110(T), 411-300-0120(T), 411-300-0130(T), 411-300-0140(T), 411-300-0150(T)
Subject: The Department of Human Services is permanently amending the rules in OAR chapter 411, division 300 for the Children's Intensive In-home Services Behavior Program.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-300-0100
Purpose

(1) The rules in OAR chapter 411, division 300 establish the policy of, and prescribe the standards and procedures for, the provision of children's intensive in-home services (CIIS) for children in the ICF/MR Behavioral Waiver. These rules are established to ensure that CIIS augment and support independence, empowerment, dignity, and development of children through the provision of flexible and efficient services to eligible families.

(2) CIIS are exclusively intended to enable a child with an intellectual or developmental disability and intense behaviors to have a permanent and stable familial relationship. CIIS are intended to support, not supplant, a child's natural supports and services provided by the child's family and provide the support necessary to enable the family to meet the needs of caring for a child who meets the eligibility criteria for CIIS.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0110
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 300:

(1) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Attendant Care" means the Medicaid state plan funded essential supportive daily care described in OAR 411-300-0150 that is delivered by a qualified provider to enable a child to remain in, or return to, the child's family home.

(5) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(6) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(7) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause a child's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(8) "Behavior Criteria (Form DHS-0521)" means the assessment tool used by the Department to evaluate the intensity of a child's challenges and service needs and determine the service level for the child.

(9) "Billing Provider" means an organization that enrolls and contracts with the Department to provide services through employees that bills the Department for the provider's services.

(10) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(11) "CDDP" means "Community Developmental Disability Program" as defined in this rule.

(12) "Child" means an individual who is less than 18 years of age, eligible for developmental disability services, and applying for, or accepted for, children's intensive in-home services under the ICF/MR Behavioral Waiver.

(13) "Chore Services" mean the services described in OAR 411-300-0150 that are needed to restore a hazardous or unsanitary situation in a child's family home to a clean, sanitary, and safe environment.

(14) "CIIS" means children's intensive in-home services.

(15) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of developmental disability services according to OAR chapter 411, division 320.

(16) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(17) "Community Nursing Services" mean the services described in OAR 411-300-0150 that include nurse delegation, training, and care coordination for a child living in the child's family home.

(18) "Community Transportation" means the services described in OAR 411-300-0150 that enable a child to gain access to community services, activities, and resources that are not medical in nature.

(19) "Cost Effective" means that in the opinion of a services coordinator, a specific service, support, or item of equipment meets a child's service needs and costs less than, or is comparable to, other similar service, support, or equipment options considered.

(20) "Daily Activity Log" means the record of services provided to a child. The content and form of a daily activity log is agreed upon by both the child's parent and the child's services coordinator and documented in the child's Individual Support Plan.

(21) "Day" means a calendar day unless otherwise specified in these rules.

(22) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047. Delegation by a physician is also allowed.

(23) "Department" means the Department of Human Services.

(24) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(25) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(26) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-300-0150 that are necessary to ensure the health, welfare, and safety of a child in the child's family home, or that enable a child to function with greater independence in the family home.

(27) "Exit" means termination or discontinuance of children's intensive in-home services.

(28) "Family" means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the child's primary caregiver is:

(a) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(C) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(29) "Family Home" means a child's primary residence that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site.

(30) "Family Training" means the training and counseling services described in OAR 411-300-0150 that are provided to a child's family to increase the family's capacity to care for, support, and maintain the child in the child's family home.

(31) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(32) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(33) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(34) "IADL" means "instrumental activities of daily living" as defined in this rule.

(35) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(36) "ICF/MR Behavioral Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on a child living in the child's family home who otherwise would have to be served in an intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as ICF/MR) if the waiver program was not available.

(37) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for a child to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the child's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(38) "Instrumental Activities of Daily Living (IADL)" means the activities other than activities of daily living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(39) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(40) "ISP" means "Individual Support Plan" as defined in this rule.

(41) "K Plan" means "Community First Choice" as defined in this rule.

(42) "Level of Care" means a child meets the following level of care:

(a) HOSPITAL LEVEL OF CARE FOR A CHILD WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY:

(A) A child has a documented medical condition and demonstrates the need for active treatment as assessed by the clinical criteria as defined in OAR 411-350-0020.

(B) A child's medical condition requires the care and treatment of services normally provided in an acute medical hospital.

(b) NURSING FACILITY LEVEL OF CARE FOR A CHILD WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY:

(A) A child has a documented medical condition that requires 24-hour professional nursing supervision and demonstrates the need for active treatment as assessed by the medically involved criteria as defined in OAR 411-355-0010.

(B) A child's medical condition requires the care and treatment of services normally provided in a nursing facility.

(43) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(44) "Natural Supports" means the parental responsibilities for a child who is less than 18 years of age and the voluntary resources available to the child from the child's relatives, friends, neighbors, and the community that are not paid for by the Department.

(45) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(46) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to the child's primary caregiver or a qualified provider. When a Nursing Care Plan exists, it is a supporting document for an Individual Support Plan.

(47) "OHP" means the Oregon Health Plan.

(48) "Oregon Intervention System" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(49) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(50) "Parent" means biological parent, adoptive parent, stepparent, or legal guardian.

(51) "Person-Centered Planning":

(a) Means a timely and formal or informal process for gathering and organizing information that helps:

(A) Determine and describe choices about personal goals, activities, services, providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with cultural considerations, needs, and preferences.

(52) "Personal Care Services" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(53) "Plan of Care" means the written plan of Medicaid services required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(54) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abuse or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(55) "Primary Caregiver" means a child's parent, guardian, relative, or other non-paid parental figure that provides direct care at the times that a paid provider is not available.

(56) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts the child's freedom of movement.

(57) "Provider" means a person who is qualified as described in OAR 411-300-0170 to receive payment from the Department for providing support and services to a child according to the child's Individual Support Plan. A provider works directly with a child. A provider may be an employee of a billing provider, employee of a child's parent, or an independent contractor.

(58) "Relief Care" means the intermittent services described in OAR 411-300-0150 that are provided on a periodic basis of not more than 14 consecutive days, for the relief of, or due to the temporary absence of, a child's primary caregiver.

(59) "Service Level" means the services allotted for the care of a child based on the behavior criteria. The service level consists of state plan services, including Community First Choice state plan services, and if the child is on a waiver, waiver services. The monthly service level is 1/12th of the annual amount if the child's Individual Support Plan is developed for less than a full year.

(60) "Services Coordinator" means an employee of the Department who ensures a child's eligibility for children's intensive in-home services and provides assessment, case management, service implementation, and evaluation of the effectiveness of the services. A services coordinator is a child's person-centered plan coordinator as defined in the Community First Choice state plan.

(61) "Social Benefit" means a service or financial assistance provided to a child's family solely intended to assist the child to function in society on a level comparable to that of a child who does not have an intellectual or developmental disability. Social benefits are pre-authorized by a services coordinator and provided according to the description and limits written in the child's Individual Support Plan.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a child regardless of intellectual or developmental disability;

(B) Replace normal parental responsibilities for a child's services, education, recreation, and general supervision;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to a child with or without a disability; or

(D) Replace other governmental or community services available to the child or the child's family.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in a child's Individual Support Plan (ISP) or an advance payment in anticipation of an expense authorized in a previously authorized ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by a child to be supported in the child's family home.

(62) "Special Diet" means the specially prepared food or particular types of food described in OAR 411-300-0150 that are specific to a child's medical condition or diagnosis and needed to sustain the child in the child's family home.

(63) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-300-0150 that enable a child to increase the child's ability to perform activities of daily living or to perceive, control, or communicate with the environment in which the child lives.

(64) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(65) "Supplant" means take the place of.

(66) "Support" means the assistance that a child and the child's family requires, solely because of the effects of the child's intellectual or developmental disability, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the child's family home. Support is subject to change with time and circumstances.

(67) "These Rules" mean the rules in OAR chapter 411, division 300.

(68) "Volunteer" means any person providing services without pay to support the services and supports provided to a child.

(69) "Waiver Services" means the menu of disability related services and supplies, exclusive of attendant care and the Oregon Health Plan, that are specifically identified by the ICF/MR Behavioral Waiver.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 19-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0120

Eligibility

(1) ELIGIBILITY. In order to be eligible for CIIS, a child must:

(a) Be under the age of 18;

(b) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110;

(c) Be eligible for OSIP-M;

(d) Be eligible to receive Title XIX (Medicaid);

(e) Be determined eligible for developmental disability services by the CDDP of the child's county of residence as described in OAR 411-320-0080;

(f) After completion of an assessment, meet the level of care as defined in OAR 411-300-0110;

(g) Be accepted by the Department by scoring greater than 200 on the behavior criteria within two months of starting services. To remain eligible, a child must maintain a score above 150 as determined during an annual re-eligibility assessment;

(h) Reside in the family home; and

(i) Be capable of being safely served in the family home. This includes but is not limited to the child's primary caregiver demonstrating the willingness, skills, and ability to provide direct care as outlined in the child's ISP in a cost effective manner, as determined by the services coordinator within the limitations of OAR 411-300-0150, and participate in planning, monitoring, and evaluation of the CIIS provided.

(2) INELIGIBILITY. A child is not eligible for CIIS if the child:

(a) Resides in a hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as ICF/MR), residential facility, foster home, or other institution;

(b) Does not require waiver services, Community First Choice state plan services, or has sufficient family, government, or community resources available to provide for his or her care; or

(c) Is not safely served in the family home as described in section (1)(i) of this rule.

(3) TRANSITION. A child whose score on the behavior criteria remains at 150 or less is transitioned out of CIIS within 90 days and at the end of the 90 day transition period must exit.

(a) When possible and agreed upon by the child's parent and the services coordinator, CIIS are incrementally reduced during the 90 day transition period.

(b) A minimum of 30 days prior to exit, the services coordinator must coordinate and attend a transition planning meeting that includes a CDDP representative, the child's parent, and any other person at the parent's request.

(4) EXIT. A child must exit from CIIS if the child no longer meets the eligibility criteria in section (1) of this rule or if the child has been transitioned out as described in section (3) of this rule, except when the child's parent appeals a notice of intent to terminate services and requests continuing services as described in OAR 411-300-0210.

(5) WAIT LIST. If the allowable numbers of children on the ICF/MR Behavioral Waiver are already receiving services, the Department may place a child eligible for CIIS on a wait list. A child on the CIIS wait list may access other waiver, state plan personal care, or Community First Choice state plan services as determined eligible.

(a) The date the initial application for service is completed determines the order on the wait list. A child who was once served by CIIS, exited CIIS, reapplies, and currently meets all other criteria for eligibility, is put on the wait list as of the date the child's original application for services was complete.

(b) The date the application is complete is the date that the Department has the required demographic data on the child and a statement of developmental disability eligibility.

(c) Children on the wait list are served on a first come, first served basis as space on the ICF/MR Behavioral Waiver allows.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0130

Plan of Care

(1) To develop an ISP, a services coordinator must complete a functional needs assessment using a person-centered planning approach and assess the service needs of the child. The assessment must take place in person and the services coordinator must interview the child's parent, other

caregivers, and when appropriate any other person at the parent's request. The assessment must:

(a) Take place in the child's family home with both the child and the child's primary caregiver present;

(b) Identify the services for which the child is currently eligible;

(c) Identify the services currently being provided; and

(d) Identify all available family, private health insurance, and government or community resources that meet any, some, or all of the child's needs.

(2) The services coordinator must prepare, with the input of the child's parent and any other person at the parent's request, a written ISP that identifies:

(a) The service needs of the child;

(b) The most cost effective services for safely and appropriately meeting the child's service needs; and

(c) The methods, resources, and strategies that address the child's service needs;

(3) The ISP must include:

(a) A description of the supports required, including the reason the support is necessary. The description must be consistent with the needs identified in the functional needs assessment;

(b) A list of personal, community, and public resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, or natural supports;

(c) The maximum hours of provider services authorized for the child;

(d) The annual and monthly service level;

(e) The number of hours of attendant care or behavior consultation authorized for the child;

(f) Additional services authorized by the Department for the child:

(g) The projected date of when specific services are to begin and end, as well as the end date, if any, of the period of service covered by the ISP;

(h) Projected costs with sufficient detail to support estimates;

(i) The manner in which services are delivered and the frequency of services;

(j) Service providers;

(k) The child's strengths and preferences;

(l) If the child has a determined service level, the clinical and support needs as identified through the functional needs assessment;

(m) Individually identified goals and desired outcomes;

(n) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(o) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(p) The identity of the person responsible for case management and monitoring the ISP;

(q) The date of the next ISP review that, at a minimum, must be completed within 12 months of the last ISP;

(r) The Nursing Care Plan as a supporting document, when one exists;

(s) A provision to prevent unnecessary or inappropriate care; and

(t) If the child has a determined service level, any changes in support needs identified through a functional needs assessment.

(4) A child's ISP must be reviewed with the child's parent prior to implementation. The parent and the services coordinator must sign the ISP and a copy must be provided to the parent.

(5) The child's ISP is translated, as necessary, upon request.

(6) A services coordinator must reflect significant changes in the needs of a child in the child's ISP, as they occur, and provide a copy of the revised ISP to the child's parent. Changes in service needs funded by the Department must be consistent with needs identified in a functional needs assessment and documented in an amendment to the ISP that is signed by the parent and the services coordinator.

(7) The child's ISP must be renewed at least every 12 months. Each new plan year begins on the anniversary date of the initial or previous plan date.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0140
Rights of the Child

(1) When interventions in the behavior of a child are necessary, the interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-300-0110.

(2) The least intrusive intervention to keep the child and others safe must be used.

(3) Abusive or demeaning interventions must never be used.

(4) When protective physical interventions are required, the protective physical intervention must only be used as a last resort and providers must be appropriately trained as per the child's Behavior Support Plan.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0150
Scope and Limitations of Children's Intensive In-Home Services

(1) CIIS are intended to support, not supplant, the natural supports supplied by a child's primary caregiver. CIIS are not available to replace services provided by a primary caregiver or to replace other governmental or community services.

(2) CIIS are only authorized to enable a child's primary caregiver to meet the needs of caring for a child on the ICF/MR Behavioral Waiver. All services funded by the Department must be based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(3) For an initial or annual ISP, CIIS may include a combination of the following waiver and other Medicaid services based upon the needs of a child as determined by a services coordinator and as consistent with the child's functional needs assessment:

(a) Community First Choice state plan services:

(A) Specialized consultation, including behavior consultation as described in section (4) of this rule;

(B) Community nursing services as described in section (5) of this rule;

(C) Environmental accessibility adaptations as described in section (6) of this rule;

(D) Attendant care as described in section (7) of this rule;

(E) Relief care as described in section (8) of this rule;

(F) Specialized equipment and supplies as described in section (9) of this rule;

(G) Chore services as described in section (10) of this rule; and

(H) Community transportation as described in section (11) of this rule.

(b) Waiver services:

(A) Family training as described in section (12) of this rule;

(B) Special diet as described in section (13) of this rule; and

(C) Translation as described in section (14) of this rule.

(4) SPECIALIZED CONSULTATION — BEHAVIOR CONSULTATION. Behavior consultation is only authorized to support a child's primary caregiver in their caregiving role. Behavior consultation is only authorized, as needed, to respond to specific problems identified by a primary caregiver or a services coordinator. Behavior consultants must:

(a) Work with the child's primary caregiver to identify:

(A) Areas of a child's family home life that are of most concern for the child and the child's parent;

(B) The formal or informal responses the child's family or the provider has used in those areas; and

(C) The unique characteristics of the child's family that may influence the responses that may work with the child.

(b) Assess the child. The assessment must include:

(A) Specific identification of the behaviors or areas of concern;

(B) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(C) Identification of early warning signs of the behavior;

(D) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:

(i) An effort to communicate;

(ii) The result of a medical condition;

(iii) The result of an environmental cause; or

(iv) The symptom of an emotional or psychiatric disorder.

(E) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(F) An assessment of current communication strategies.

(c) Develop a variety of positive strategies that assist the child's primary caregiver and the provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment,

developing effective communication, and appropriate responses by a primary caregiver and a provider to the early warning signs.

(A) Interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-300-0110.

(B) The least intrusive intervention possible must be used.

(C) Abusive or demeaning interventions must never be used.

(D) The strategies must be adapted to the specific disabilities of the child and the style or culture of the child's family.

(d) Develop emergency and crisis procedures to be used to keep the child and the child's primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to the Oregon Intervention System must be utilized;

(e) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the child's primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(f) Teach the child's primary caregiver and the provider the strategies and procedures to be used; and

(g) Monitor and revise the Behavior Support Plan as needed.

(5) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting a child's autonomy and self-management of healthcare;

(B) Collateral contact with a services coordinator regarding a child's community health status to assist in monitoring safety and well-being and to address needed changes to the child's ISP; and

(C) Delegation and training of nursing tasks to a child's primary caregiver and a provider so the caregivers may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(6) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are physical adaptations to a child's family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's intellectual or developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child;

(R) Modifications for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child, such as lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, or other unique modifications to keep the child safe in the vehicle; and

(S) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the child's family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child;

(B) Adaptations that add to the total square footage of the child's family home; and

(C) General repair or maintenance and upkeep required for the child's family home or motor vehicle, including repair of damage caused by the child.

(c) Environmental accessibility adaptations are limited to $5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the child's service needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the child's ISP.

(e) Environmental accessibility adaptations over $500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the provider's file prior to payment.

(f) Environmental accessibility adaptations must be made within the existing square footage of the child's family home, except for external ramps, and may not add to the square footage of the building.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) Environmental accessibility adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

(7) ATTENDANT CARE. Attendant care services include the purchase of direct provider support provided to a child in the child's family home or community by qualified individual providers and agencies. Provider assistance provided through attendant care must support the child to live as independently as appropriate for the child's age, support the child's family in their primary caregiver role, and be based on the identified needs of the child. A child's primary caregiver is expected to be present or available during the provision of attendant care.

(a) Attendant care services provided by qualified providers or agencies include:

(A) Basic personal hygiene — Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care — Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility — Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — Feeding and monitoring intake and output;

(E) Skin care — Dressing changes;

(F) Physical healthcare, including delegated nursing tasks;

(G) Supervision — Providing an environment that is safe and meaningful for the child and interacting with the child to prevent danger to the child and others and maintain skills and behaviors required to live in the child's family home and community;

(H) Assisting the child with appropriate leisure activities to enhance development in the child's family home and community and provide training and support in personal environmental skills;

(I) Communication — Assisting the child in communicating using any means used by the child;

(J) Neurological — Monitoring of seizures, administering medication, and observing status; and

(K) Accompanying the child and the child's family to health related appointments.

(b) Attendant care services must:

(A) Be previously authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services available from the child's family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a child's primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child;

(D) Support generally provided at the child's age by the child's parent or other family members;

(E) Educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(F) Services provided by the child's family; and

(G) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(8) RELIEF CARE. Relief care services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the child's primary caregiver.

(a) Relief care may include both day and overnight services that may be provided in:

(A) The child's family home;

(B) A licensed, certified, or otherwise regulated setting;

(C) A qualified provider's home. If overnight relief care is provided in a qualified provider's home, the services coordinator and the child's parent must document that the home is a safe setting for the child;

(D) A disability-related or therapeutic recreational camp; or

(E) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the child's ISP.

(b) Relief care services are not authorized for the following:

(A) Solely to allow a child's primary caregiver to attend school or work;

(B) For ongoing services that occur on more than a periodic schedule, such as eight hours a day, five days a week;

(C) For more than 14 consecutive overnight stays in a calendar month;

(D) For more than 10 days per individual plan year when provided at a specialized camp;

(E) For vacation, travel, and lodging expenses; or

(F) To pay for room and board if provided at a licensed site or specialized camp.

(9) SPECIALIZED EQUIPMENT AND SUPPLIES. Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase the child's abilities to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the child lives. Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation.

(a) Specialized equipment and supplies include:

(A) Electronic devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices. Expenditures for electronic devices are limited to $500 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(B) Assistive technology to provide additional security and replace the need for direct interventions to enable self direction of care and maximize independence, such as motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems.

(i) Expenditures for assistive technology are limited to $5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(C) Assistive devices not covered by other Medicaid programs to assist and enhance a child's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to $5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(b) Specialized equipment and supplies may include the cost of a professional consultation, if required to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price of the equipment.

(c) To be authorized by a services coordinator, specialized equipment and supplies must be:

(A) In addition to any medical equipment and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of the child; and

(C) Directly related to a child's disability.

(d) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized equipment and supplies intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through a child's family, community, or other governmental resources;

(D) Items that are considered unsafe for a child;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(e) Funding for specialized equipment and supplies with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Specialized equipment and supplies may only be included in a child's ISP when all other public and private resources have been exhausted.

(f) The services coordinator must secure use of specialized equipment or supplies costing more than $500 through a written agreement between the Department and the child's parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any specialized equipment or supplies purchased with CIIS funds that are not used according to the child's ISP or according to the written agreement between the Department and the parent.

(10) CHORE SERVICES. Chore services may be provided only in situations where no one else in a child's family home is able of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of, or responsible for, providing these services.

(a) Chore services include heavy household chores such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of a child's family home is safe for the child to traverse and enter and exit the home.

(11) COMMUNITY TRANSPORTATION. Community transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the child's ISP. Community transportation excludes:

(a) Transportation provided by a child's family members;

(b) Transportation used for behavioral intervention or calming;

(c) Transportation normally provided by schools;

(d) Transportation normally provided by the child's primary caregiver for a child of similar age without disabilities;

(e) Purchase of any family vehicle;

(f) Vehicle maintenance and repair;

(g) Reimbursement for out-of-state travel expenses;

(h) Ambulance services or medical transportation; or

(i) Transportation services that may be obtained through other means, such as OHP or other public or private resources available to the child.

(12) FAMILY TRAINING. Family training services include the purchase of training, coaching, counseling, and support that increase the abilities of a child's family to care for and maintain the child in the child's family home. Family training services include:

(a) Instruction about treatment regimens and use of equipment specified in the child's ISP;

(b) Counseling services that assist the child's family with the stresses of having a child with an intellectual or developmental disability.

(A) To be authorized, the counseling services must:

(i) Be provided by licensed providers, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under 675.530, or counselors licensed under 675.715;

(ii) Directly relate to the child's intellectual or developmental disability and the ability of the child's family to care for the child; and

(iii) Be short-term.

(B) Counseling services exclude:

(i) Therapy that may be obtained through OHP or other payment mechanisms;

(ii) General marriage counseling;

(iii) Therapy to address the psychopathology of the child's family members;

(iv) Counseling that addresses stressors not directly attributed to the child;

(v) Legal consultation;

(vi) Vocational training for the child's family members; and

(vii) Training for families to carry out educational activities in lieu of school.

(c) Registration fees for organized conferences, workshops, and group trainings that offer information, education, training, and materials about the child's intellectual or developmental disability, medical, or health conditions.

(A) Conferences, workshops, or group trainings must be prior authorized by the services coordinator, directly relate to the child's intellectual or developmental disability, and increase the knowledge and skills of the child's family to care for and maintain the child in the child's family home.

(B) Conference, workshop, or group training costs exclude:

(i) Registration fees in excess of $500 per family for an individual event;

(ii) Travel, food, and lodging expenses;

(iii) Services otherwise provided under OHP or available through other resources; or

(iv) Costs for individual family members who are employed to care for the child.

(13) SPECIAL DIET. Special diets do not constitute a full nutritional regime.

(a) In order for a special diet to be authorized:

(A) The foods must be on the approved list developed by the Department;

(B) The special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners;

(C) The special diet must be periodically monitored by a dietician or physician; and

(D) The special diet may not be reimbursed through OHP or any other source of public or private funding.

(b) A special diet excludes restaurant and prepared foods, vitamins, and supplements.

(14) TRANSLATION. If the primary language of a child or the child's primary caregiver is not English, translation service is provided to enable the child or the primary caregiver to communicate with providers of CIIS.

(15) All CIIS authorized by the Department must be included in a child's written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely and appropriately meeting a child's service needs as determined by a services coordinator.

(16) Service levels increase or decrease in direct relationship to the increasing or decreasing behavior criteria score.

(17) If the primary language of a child's primary caregiver is not English, cost of interpretation or translation services related to CIIS are not considered part of the child's service level.

(18) EXCEPTIONS. All exceptions must be authorized by the Department's CIIS manager. Exceptions are limited to 90 days unless re-authorized. Ninety-day exceptions are only authorized in the following circumstances:

(a) The child is at immediate risk of loss of the child's family home without the expenditure;

(b) The expenditure provides supports for the child's emerging or changing care needs or behaviors;

(c) A significant medical condition or event occurs that prevents the child's primary caregiver from providing care or services as documented by a physician; or

(d) The services coordinator determines, with a behavior consultant, that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that a caregiver, including the child's parent, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0155

Using Children's Intensive In-Home Services Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, CIIS funds may not be used to support, in whole or in part, a provider in any capacity having contact with a recipient of CIIS who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of a child's parent or a billing provider who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(3) CIIS funds may not be used for:

(a) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(b) Services or activities that are carried out in a manner that constitutes abuse of a child;

(c) Services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(d) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(e) Purchase of family vehicles;

(f) Purchase of service animals or costs associated with the care of service animals;

(g) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medical treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(h) Ambulance services;

(i) Legal fees, including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(j) Vacation costs for transportation, food, shelter, and entertainment that are not strictly required by the child's disability-created need for personal assistance in all home and community settings that are normally incurred by a person on vacation, regardless of disability;

(k) Services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Unless under certain conditions and limits specified in the child's ISP, employee wages or contractor payments for services when the child is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(m) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-300-0110;

(n) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(o) Services, activities, materials, or equipment that the Department determines may be reasonably obtained by the child's family through other available means, such as private or public insurance, philanthropic organizations, or other governmental or public services;

(p) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(q) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's ISP, refused to cooperate with record keeping required to document use of CIIS funds, or otherwise knowingly misused public funds associated with CIIS; or

(r) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of the services coordinator, are characterized by failure to act or neglect that leads to, or is in imminent danger of causing, physical injury through negligent omission, treatment, or maltreatment of a child, including but not limited to the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that the child's family relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0170
Standards for Providers and Behavior Consultants

(1) PROVIDER QUALIFICATIONS.

(a) A provider must:

(A) Be at least 18 years of age;

(B) Maintain a drug-free work place;

(C) Provide evidence satisfactory to the Department or the Department's designee that demonstrates by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized;

(D) Consent to and pass a background check by the Department as described in OAR 407-007-0200 to 407-007-0370, and be free of convictions or founded allegations of abuse by the appropriate agency, including but not limited to the Department;

(i) Background rechecks must be performed biannually, or as needed if a report of criminal activity has been received by the Department.

(ii) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in 407-007-0210. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes.

(E) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(F) Not be on the current Office of Inspector General's list of excluded or debarred providers (http://exclusions.oig.hhs.gov/);

(G) Not be the child's primary caregiver, parent, stepparent, spouse, or legal guardian;

(H) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any attendant care services; and

(I) Sign a job description prior to delivery of any attendant care services.

(b) Section (1)(a)(E) of this rule does not apply to employees of billing providers or employees of the child's parent who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(c) A provider is not an employee of the Department or the state of Oregon and is not eligible for state benefits and immunities, including but not limited to the Public Employees' Retirement System or other state benefit programs.

(d) If the provider or billing provider is an independent contractor during the terms of the contract, the provider or billing provider must maintain in force, at the providers own expense, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider or billing provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the Department's request.

(B) There must be no cancellation of insurance coverage without 30 days written notice to the Department.

(e) If the provider is an employee of the child's parent, the provider must submit documentation of immigration status required by federal statute to the Department. The Department maintains documentation of immigration status required by federal statute as a service to the parent, who is the employer.

(f) If the provider is an employee of the child's parent, both the parent and the provider must sign a job description. The job description must be provided to the services coordinator prior to the delivery of any services by the employee.

(g) A billing provider that wishes to enroll with the Department must maintain and submit evidence of the following upon initial application or upon the Department's request:

(A) A current background check on each employee who provides services in a child's family home that shows the employee has no disqualifying criminal convictions.

(B) Professional liability insurance that meets the requirements of section (1)(d) of this rule; and

(C) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(h) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(i) A provider must immediately notify a child's parent and the services coordinator of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being, or level of service required by the child for whom CIIS are being provided.

(j) Providers are mandatory reporters and are required to report suspected child abuse to their local Department office or to the police in the manner described in ORS 419B.010.

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-300-0150;

(b) Have current certification demonstrating completion of training in Oregon Intervention Systems; and

(c) Submit a resume or the equivalent to the Department indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science or related field, and at least one year of experience with individuals with disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with individuals with disabilities who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as outlined in OAR 411-300-0150.

(d) Additional education or experience may be required to safely and adequately provide the services described in 411-300-0150.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0190
Documentation Needs for Children's Intensive In-Home Services

(1) Accurate time sheets of CIIS must be dated and signed by the provider and the child's parent after the services are provided and maintained and submitted to the Department with any request for payment for services.

(2) Requests for payment of CIIS must:

(a) Include the billing form indicating prior authorization for the services;

(b) Be signed by the child's parent after the services were delivered, verifying that the services were delivered as billed; and

(c) Be signed by the provider or billing provider, acknowledging agreement with the terms and condition of the billing form and attesting that the hours were delivered as billed.

(3) Documentation of CIIS provided, including but not limited to daily activity logs as prescribed by the services coordinator, must be provided to the services coordinator upon request or as outlined in the child's ISP and maintained in the child's family home or the place of business of the provider of services. The Department does not pay for services unrelated to a child's disability as outlined in the child's ISP.

(4) Daily activity logs must be completed by the provider for each shift worked and the responsibility to complete daily activity logs must be listed in the provider's job description.

(5) The Department retains billing forms and timesheets for at least five years from the date of CIIS.

(6) Behavior consultants must submit the following to the Department written in clear, concrete language understandable to the child's parent and the provider:

(a) An evaluation of the child, the parent's concerns, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that may impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or the provider that describes the suggested strategies to be used with the child.

(7) Billing providers must maintain documentation of provided CIIS for at least seven years from the date of service.

(8) Providers or billing providers must furnish requested documentation immediately upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, or within the time frame specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(9) Access to records by the Department, including but not limited to medical, nursing, behavior, psychiatric, or financial records, and specifically including logs and records by providers and vendors providing goods and services, does not require authorization or release by the child or the child's parent.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0200
Payment for Children's Intensive In-Home Services

(1) Payment is made after CIIS are delivered as authorized and required documentation is received by the services coordinator.

(2) Effective July 28, 2009, payment may not support, in whole or in part, a provider in any capacity having contact with a recipient of CIIS who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(3) Section (2) of this rule does not apply to employees of a child's parent or a billing provider who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(4) Service levels are individually negotiated by the Department based on the individual needs of the child.

(5) Authorization must be obtained prior to the delivery of any CIIS for those services to be eligible for payment.

(6) Providers must request payment authorization for CIIS provided during an unforeseeable emergency on the first business day following the emergency service. The services coordinator must determine if the service is eligible for payment.

(7) The Department makes payment to the employee of the child's parent on behalf of the parent. The Department pays the employer's share of the Federal Insurance Contributions Act tax (FICA) and withholds the employee's share of FICA as a service to the parent, who is the employer.

(8) The delivery of authorized CIIS must occur so that any employee of the child's parent does not exceed 40 hours per work week. The Department does not authorize services that require the payment of overtime, without prior written authorization by the CIIS supervisor.

(9) The Department does not authorize or pay for any hours of CIIS provided by an individual provider beyond 16 hours in any 24-hour period. Exceptions require written authorization by the CIIS supervisor.

(10) Holidays are paid at the same rate as non-holidays.

(11) Travel time to reach the job site is not reimbursable.

(12) Requests for payments must be submitted to the Department within three months of the delivery of CIIS.

(13) Payment by the Department for CIIS is considered full payment for the services rendered under Medicaid. A provider or billing provider may not demand or receive additional payment for CIIS from the child's parent or any other source, under any circumstances.

(14) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

(15) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider of CIIS.

(16) The Department may void without cause prior authorizations that have been issued.

(17) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 407 and chapter 411;

(b) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for CIIS provided within the provider's licensure.

(19) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(20) No person shall submit to the Department:

(a) A false billing form for payment;

(b) A billing form for payment that has been, or is expected to be, paid by another source; or

(c) Any billing form for CIIS that have not been provided.

(21) The Department only makes payment to the enrolled provider who actually performs the CIIS or the provider's enrolled billing provider. Federal regulations prohibit the Department from making payment to collection agencies.

(22) Payments may be denied if any provisions of these rules are not complied with.

(23) The Department recoups all overpayments.

(a) The amount to be recovered:

(A) Is the entire amount determined or agreed to by the Department;

(B) Is not limited to the amount determined by criminal or civil proceedings; and

(C) Includes interest to be charged at allowable state rates.

(b) A request for repayment of the overpayment or notification of recoupment of future payments is delivered to the provider by registered or certified mail or in person.

(c) Payment schedules with interest may be negotiated at the discretion of the Department.

(d) If recoupment is sought from a child's parent, hearing rights in OAR 411-300-0210 apply.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0205
Complaints

(1) COMPLAINTS. The Department shall address all complaints in accordance with the Department's written policies, procedures, and rules. Copies of the procedures for resolving complaints shall be maintained on file at the Department. At a minimum, these policies and procedures shall address:

(a) Informal resolution. The child's parent has an opportunity to informally discuss and resolve any complaint regarding action taken by the Department that is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude the parent from pursuing resolution through formal complaint processes.

(b) Receipt of complaints. The Department shall maintain a log of all complaints regarding the provision of CIIS received via phone calls, e-mails, or writing.

(A) At a minimum, the complaint log shall include:

(i) The date the complaint was received;

(ii) The name of the person taking the complaint;

(iii) The nature of the complaint;

(iv) The name of the person making the complaint, if known; and

(v) The disposition of the complaint.

(B) Child welfare and law enforcement reports of abuse or neglect shall be maintained separately from the central complaint and grievance log.

(c) Response to complaints. Department staff response to the complaint must be provided within five working days following receipt of the complaint and must include an investigation of the facts supporting or disproving the complaint. Any agreement to resolve the complaint must be in writing and must be specifically approved by the complainant. The Department shall provide the complainant with a copy of the agreement.

(d) Review. A manager of the Department must review the complaint if the complaint involves Department staff or services or if the complaint is not, or may not, be resolved with Department staff. The manager's response to the complaint must be made in writing within 30 days following receipt of the complaint and include a response to the complaint as described in subsection (1)(c) of this section.

(e) Third-party review when complaints are not resolved by a Department manager. Unless the complainant is a Medicaid recipient who has elected to initiate the hearing process according to OAR 411-300-0210, a complaint involving the provision of service or a service provider may be submitted to the Department for an administrative review.

(A) The complainant must submit to the Department a request for an administrative review within 15 days from the date of the decision by the Department manager.

(B) Upon receipt of a request for an administrative review, the Department's director shall appoint an Administrative Review Committee and name the chairperson. The Administrative Review Committee shall be comprised of two representatives of the Department. Committee representatives may not have any direct involvement in the provision of services to the complainant or have a conflict of interest in the specific case being reviewed.

(C) The Administrative Review Committee must review the complaint and the decision by the Department manager and make a recommendation to the Department's director within 45 days of receipt of the complaint, unless the complainant and the Administrative Review Committee mutually agree to an extension.

(D) The Department's director shall consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision must contain the rationale for the decision.

(E) The decision of the Department's director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review.

(f) Documentation of complaint. Documentation of each complaint and the resolution of the complaint must be filed or noted in the complainant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, the Department must inform each child's parent orally and in writing, using language, format, and methods of communication appropriate to the parent's needs and abilities, of the following:

(a) The Department's complaint policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a hearing pursuant to OAR 411-300-0210 and the procedure to request a hearing.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0210

Denial, Termination, Suspension, Reduction, or Eligibility for Services for Individual Medicaid Recipients

(1) HEARING RIGHTS. Each time the Department takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the Department shall notify the child's parent of the right to a hearing and the method to request a hearing. The Department shall mail the notice by certified mail or personally serve the notice to the parent 10 days or more prior to the effective date of the action.

(a) The Department shall use the Notice of Hearing Rights or a comparable Department-approved form. A notice of hearing rights is not required if an action is part of, or fully consistent with, a child's ISP, or the child's parent has agreed with the action by signature to the ISP. The notice of hearing rights shall be given directly to the parent when the ISP is signed.

(b) The child's parent may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the address on the notice to expedite the process.

(c) A notice required by this section of this rule must include:

(A) The action the Department intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon administrative rules that supports, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules, ORS Chapter 183, and 42 CFR Part 431, Subpart E;

(E) A statement that the Department files on the subject of the hearing automatically becoming part of the hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice shall take effect by default if the Department representative does not receive a request for hearing from the party within 45 days from the date that the Department mails the notice of action;

(G) In cases of an action based upon a change in law, the circumstances under which a hearing shall be granted; and

(H) An explanation of the circumstances under which CIIS shall be continued if a hearing is requested.

(d) If the child's parent disagrees with the decision or proposed action of the Department to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the parent may request a hearing as provided in ORS Chapter 183. The request for a hearing must be in writing on form DHS 443 and signed by the parent. The signed form (DHS 443) must be received by the Department within 45 days from the date of the Department's notice of action.

(e) The child's parent may request an expedited hearing if the parent feels that there is an immediate, serious threat to the child's life or health if the normal timing of the hearing process is followed.

(f) If the child's parent requests a hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department shall continue the services.

(A) The Department shall continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and the Department issues a final order; or

(iii) The child is no longer eligible for Medicaid benefits.

(B) The Department shall notify the child's parent that the Department is continuing the service. The notice shall inform the parent that if the hearing is resolved against the child, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department may reinstate services if:

(A) The Department takes an action without providing the required notice and the child's parent requests a hearing;

(B) The Department fails to provide the notice in the time required in this rule and the child's parent requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the child's parent but the location of the parent becomes known during the time that the child is still eligible for services.

(h) The Department shall promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the child or the Department decides in the child's favor before the hearing.

(i) The Department representative and the child's parent may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the child's parent to settle the matter;

(B) Ensure the child's parent understands the reason for the action that is the subject of the hearing request;

(C) Give the child's parent an opportunity to review the information that is the basis for that action;

(D) Inform the child's parent of the rules that serve as the basis for the contested action;

(E) Give the child's parent and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the child's parent wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review the Department's action.

(j) The child's parent may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if the additional conference facilitates the hearing process.

(k) The Department may provide the child's parent the relief sought at any time before the final order is issued.

(l) A child's parent may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the Department or the Office of Administrative Hearings receives the request for withdrawal. The Department shall issue a final order confirming the withdrawal to the last known address of the parent. The parent may cancel the withdrawal up to 10 working days following the date the final order is issued.

(2) PROPOSED AND FINAL ORDERS.

(a) In a contested case, the administrative law judge must serve a proposed order on the child and the Department.

(b) If the administrative law judge issues a proposed order that is adverse to the child, the child's parent may file an exception to the proposed order to be considered by the Department. The exception must be in writing and must be received by the Department no later than 10 days after service of the proposed order. The parent may not submit additional evidence after this period unless the Department grants prior approval.

(c) After receiving the exception, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

(3) The provider or billing provider must submit relevant documentation to the Department within five working days at the request of the Department when a hearing has been requested.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

411-300-0220
Provider Sanctions for Children's Intensive In-Home Services

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by the Department to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or issuance of a provider number;

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely and adequately provide the CIIS authorized as determined by the child's parent or the services coordinator;

(e) The provider has had a founded report of child abuse or substantiated abuse;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, records or documentation as requested;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has not adhered to the provisions of these rules; or

(k) The provider has been suspended or terminated as a provider by the Department or Oregon Health Authority.

(2) The Department may impose the following sanctions on a provider:

(a) Termination from providing CIIS;

(b) Suspension from providing CIIS for a specified length of time or until specified conditions for reinstatement are met and approved by the Department; or

(c) Withholding payments to the provider.

(3) If the Department makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the Department's director.

(b) For an appeal to be valid, written notice of the appeal must be received by the Department within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or the Oregon Health Authority may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13

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Rule Caption: In-Home Support for Children with Intellectual or Developmental Disabilities
Adm. Order No.: SPD 54-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 12-1-2013
Rules Amended: 411-308-0010, 411-308-0020, 411-308-0030, 411-308-0040, 411-308-0050, 411-308-0060, 411-308-0070, 411-308-0080, 411-308-0090, 411-308-0100, 411-308-0110, 411-308-0120, 411-308-0130, 411-308-0140, 411-308-0150
Rules Repealed: 411-308-0010(T), 411-308-0020(T), 411-308-0030(T), 411-308-0050(T), 411-308-0060(T), 411-308-0070(T), 411-308-0080(T), 411-308-0100(T), 411-308-0120(T)
Subject: The Department of Human Services is permanently amending the rules in OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-308-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 308 prescribe standards, responsibilities, and procedures for providing in-home support for children with intellectual or developmental disabilities to prevent out-of-home placement, or to return a child with an intellectual or developmental disability back to the family home from a residential setting other than the child's family home.

(2) In-home supports are designed to increase a family's ability to care for a child with an intellectual or developmental disability in the family home.

Stat. Auth.: ORS 409.050,430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0020
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 308:

(1) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, dressing, grooming, bathing, and transferring.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Annual Plan" means the written summary a services coordinator completes for a child, who is not enrolled in waiver or Community First Choice services. An Annual Plan is not an Individual Support Plan and is not a plan of care for Medicaid purposes.

(5) "Attendant Care" means the Medicaid state plan funded essential supportive daily care described in OAR 411-308-0120 that is delivered by a qualified provider to enable a child to remain in, or return to, the child's family home.

(6) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(7) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(8) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause a child's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(9) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to a child's intellectual or developmental disability that prevents the child from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(10) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(11) "CDDP" means "Community Developmental Disability Program" as defined in this rule.

(12) "Child" means an individual who is less than 18 years of age applying for, or determined eligible for, in-home support.

(13) "Children's Intensive In-Home Services" means the services described in:

(a) OAR chapter 411, division 300, Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350, Medically Fragile Children Services; or

(c) OAR chapter 411, division 355, Medically Involved Children's Program.

(14) "Chore Services" mean the services described in OAR 411-308-0120 that are needed to restore a hazardous or unsanitary situation in a child's family home to a clean, sanitary, and safe environment.

(15) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of developmental disability services according to OAR chapter 411, division 320.

(16) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(17) "Community Nursing Services" mean the services described in OAR 411-308-0120 that include nurse delegation, training, and care coordination for a child living in the child's family home.

(18) "Community Transportation" means the services described in OAR 411-308-0120 that enable a child to gain access to community services, activities, and resources that are not medical in nature.

(19) "Cost Effective" means that a specific service, support, or item of equipment meets a child's service needs and costs less than, or is comparable to, other similar service, support, or equipment options considered.

(20) "CPMS" means the Client Processing Monitoring System.

(21) "Crisis" means the risk factors described in OAR 411-320-0160 are present for which no appropriate alternative resources are available and a child meets the eligibility requirements for crisis diversion services in OAR 411-320-0160.

(22) "Day" means a calendar day unless otherwise specified in these rules.

(23) "Department" means the Department of Human Services.

(24) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(25) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(26) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in a child's Annual Plan. Employer-related supports include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools, such as job descriptions; and

(d) Fiscal intermediary services.

(27) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-308-0120 that are necessary to ensure the health, welfare, and safety of a child in the child's family home, or that enable a child to function with greater independence in the family home.

(28) "Exit" means termination or discontinuance of in-home support.

(29) "Family":

(a) Means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the child's primary caregiver is:

(A) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining a child's eligibility for in-home supports as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual supports; and

(C) Determining who may receive family training.

(30) "Family Home" means a child's primary residence that is not under contract with the Department to provide services as a certified foster home for children with intellectual or developmental disabilities or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site. Family home may include a certified child welfare foster home.

(31) "Family Training" means the training and counseling services described in OAR 411-308-0120 that are provided to a child's family to increase the family's capacity to care for, support, and maintain the child in the child's family home.

(32) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of the family of an eligible child according to the child's Individual Support Plan or Annual Plan.

(33) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(34) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(35) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child and paid with in-home support funds that:

(a) Is primarily in business to provide the service chosen by the child's parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(36) "Guardian" means a person or agency appointed and authorized by a court to make decisions about services for a child.

(37) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(38) "IADL" means "instrumental activities of daily living" as defined in this rule.

(39) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(40) "In-Home Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Individual Support Plans, and purchase of supports that are not available through other resources that are required for children with intellectual or developmental disabilities who are eligible for in-home support services to live in the child's family home. In-home supports are designed to:

(a) Prevent unwanted out-of-home placement and maintain family unity; and

(b) Whenever possible, reunite families with children with intellectual or developmental disabilities who have been placed out of the family home.

(41) "In-Home Support Funds" mean public funds contracted by the Department to the community developmental disability program (CDDP) and managed by the CDDP to assist families with the identification and selection of supports for children with intellectual or developmental disabilities according to the child's Individual Support Plan or Annual Plan.

(42) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(43) "Independent Provider" means a person selected by a child's parent or guardian and paid with in-home support funds to personally provide services to the child.

(44) "Individual" means a person with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(45) "Individual Support Plan" means the written details of the supports, activities, and resources required for a child to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the child's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(46) "Instrumental Activities of Daily Living (IADL)" mean the activities other than activities of daily living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(47) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(48) "ISP" means "Individual Support Plan" as defined in this rule.

(49) "K Plan" means "Community First Choice" as defined in this rule.

(50) "Level of Care" means a child meets the following institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as an ICF/MR):

(a) The child has a condition of an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets the eligibility criteria for developmental disability services as described in OAR 411-320-0080; and

(b) The child has a significant impairment in one or more areas of adaptive functioning. Areas of adaptive functioning include self direction, self care, home living, community use, social, communication, mobility, or health and safety.

(51) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(52) "Natural Supports" means the parental responsibility for a child who is less than 18 years of age and the voluntary resources available to the child from the child's relatives, friends, neighbors, and the community that are not paid for by the Department.

(53) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(54) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to a qualified provider or the child's family. When a Nursing Care Plan exists, it is a supporting document for an Individual Support Plan or Annual Plan.

(55) "OHP" means the Oregon Health Plan.

(56) "Oregon Intervention System" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(57) "Parent" means biological parent, adoptive parent, stepparent, or legal guardian.

(58) "Person-Centered Planning":

(a) Means a timely and formal or informal process for gathering and organizing information that helps:

(A) Determine and describe choices about personal goals, activities, services, providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with a child's cultural considerations, needs, and preferences.

(59) "Personal Care Services" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(60) "Plan of Care" means the written plan of Medicaid services required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(61) "Plan Year" means 12 consecutive months from the start date specified on a child's authorized Individual Support Plan or Annual Plan.

(62) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(63) "Primary Caregiver" means a child's parent, guardian, relative, or other non-paid parental figure that provides direct care at the times that a paid provider is not available.

(64) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts the child's freedom of movement.

(65) "Provider" means a person who is qualified as described in OAR 411-308-0130 to receive payment from the Department for providing support and services to a child according to the child's Individual Support Plan or Annual Plan.

(66) "Provider Organization" means an entity selected by a child's parent or guardian and paid with in-home support funds that:

(a) Is primarily in business to provide supports for children with intellectual or developmental disabilities;

(b) Provides supports for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(67) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(68) "Regional Process" means a standardized set of procedures through which a child's needs and funding to implement supports are reviewed for approval. The regional process includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the child's Annual Plan. Children who meet the crisis eligibility under OAR 411-308-0060(2) may be granted access to in-home supports through the regional process.

(69) "Relief Care" means the intermittent services described in OAR 411-308-0120 that are provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a child's primary caregiver.

(70) "Services Coordinator" means an employee of a community developmental disability program, Department, or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor in-home support, and to act as a proponent for children with intellectual or developmental disabilities and their families. A services coordinator is a child's person-centered plan coordinator as defined in the Community First Choice state plan,

(71) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that enable a child to increase the child's ability to perform activities of daily living or to perceive, control, or communicate with the environment in which the child lives.

(72) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(73) "Supplant" means take the place of.

(74) "Support" means the assistance that a child and the child's family requires, solely because of the effects of the child's intellectual or developmental disability, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the child's family home. Support is subject to change with time and circumstances.

(75) "These Rules" mean the rules in OAR chapter 411, division 308.

(76) "Volunteer" means any person providing services without pay to support the services and supports provided to a child.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0030

In-Home Support Administration and Operation

(1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services for all families. The fiscal intermediary receives and distributes in-home support funds on behalf of a child's family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of a child's family who employs a person to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(2) GENERAL RECORD REQUIREMENTS. The CDDP must maintain records of services to children in accordance with OAR 411-320-0070, ORS 179.505, 192.515 to 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department administrative rules and policies pertaining to service records.

(a) DISCLOSURE. For the purpose of disclosure from medical records under these rules, CDDPs are considered "providers" as defined in ORS 179.505(1) and ORS 179.505 is applicable.

(A) Access to records by the Department does not require authorization by a child's family.

(B) For the purposes of disclosure from non-medical records, all or portions of the information contained in the non-medical record may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) SERVICE RECORDS. Records for children who receive in-home support must be kept up-to-date and must include:

(A) An easily accessed summary of basic information as described in OAR 411-320-0070, including the date of the child's enrollment in in-home support;

(B) Records related to receipt and disbursement of in-home support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-308-0130, and documentation of family acceptance or delegation of the record keeping responsibilities outlined in this rule. Records must include:

(i) Itemized invoices and receipts to record the purchase of any single item;

(ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(iii) Written professional support plans, assessments, and reviews to document the acceptable provision of behavior support, nursing, and other professional training and consultation services; and

(iv) Pay records to record employee services, including timesheets signed by both employee and employer.

(C) Incident reports, including those involving CDDP staff;

(D) Assessments used to determine required supports, preferences, and resources;

(E) When a child is not Medicaid eligible, documentation of the child's eligibility for crisis services and approval of the child's services through a regional process;

(F) The child's ISP or Annual Plan and reviews;

(G) The services coordinator's correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(c) GENERAL FINANCIAL POLICIES AND PRACTICES. The CDDP must:

(A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all in-home support revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(d) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except service records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Service records must be kept for a minimum of seven years.

(3) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to in-home support as set forth in OAR 411-320-0170.

(4) DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF SERVICES FOR MEDICAID RECIPIENTS.

(a) Each time the CDDP takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the CDDP must notify the child's parent or guardian of the right to a hearing and the method to request a hearing. The CDDP must mail the notice by certified mail or personally serve the notice to the child's parent or guardian 10 days or more prior to the effective date of the action.

(A) The CDDP must use the Notification of Planned Action form or a comparable Department-approved form for such notification.

(B) This notification requirement does not apply if an action is part of, or fully consistent with, a child's ISP and the child's parent or guardian has agreed with the action by signing the child's ISP.

(b) A notice required by subsection (a) of this section must include:

(A) The action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a hearing in accordance with OAR chapter 137, ORS chapter 183, and 42 CFR Part 431, Subpart E;

(E) A statement that the CDDP files on the subject of the hearing automatically becoming part of the hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice take effect by default if a Department representative does not receive a request for a hearing within 45 days from the date that the CDDP mails or personally serves the notice of planned action;

(G) In cases of an action based upon a change in law, the circumstances under which a hearing is granted; and

(H) An explanation of the circumstances under which CDDP services are continued if a hearing is requested.

(c) If a child's parent or guardian disagrees with a decision or proposed action by the CDDP to deny, terminate, suspend, or reduce the child's access to services covered under Medicaid, the party may request a hearing as provided in ORS chapter 183. The request for a hearing must be in writing on a Department approved form and signed by the child's parent or guardian. The signed form must be received by the Department within 45 days from the date the CDDP mailed the notice of action.

(d) A child's parent or guardian may request an expedited hearing if the child's parent or guardian feels that there is an immediate, serious threat to the child's life or health if the normal timing of the hearing process is followed.

(e) If a child's parent or guardian requests a hearing before the effective date of the proposed action and requests that the existing services be continued, the Department shall continue the services.

(A) The Department must continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and the Department issues a final order; or

(iii) The child is no longer eligible for Medicaid benefits.

(B) The Department must notify the child's parent or guardian that the Department is continuing the service. The notice must inform the child's parent or guardian that, if the hearing is resolved against the child, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(f) The Department may reinstate services if:

(A) The Department takes an action without providing the required notice and the child's parent or guardian requests a hearing;

(B) The Department fails to provide the notice in the time required in this rule and the child's parent or guardian requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the child's parent or guardian, but the location of the child's parent or guardian becomes known during the time that the child is still eligible for services.

(g) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the child, or the Department decides in the child's favor before the hearing.

(h) The Department representative and the child's parent or guardian may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the child's parent or guardian to settle the matter;

(B) Ensure the child's parent or guardian understands the reason for the action that is the subject of the hearing request;

(C) Give the child's parent or guardian an opportunity to review the information that is the basis for that action;

(D) Inform the child's parent or guardian of the rules that serve as the basis for the contested action;

(E) Give the child's parent or guardian and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the child's parent or guardian wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the CDDP.

(i) The child's parent or guardian may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(j) The Department may provide the child's parent or guardian the relief sought at any time before the final order is issued.

(k) The child's parent or guardian may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal is effective on the date the Department or the Office of Administrative Hearings receives the withdrawal. The Department must issue a final order confirming the withdrawal to the last known address of the child's parent or guardian. The child's parent or guardian may cancel the withdrawal up to 10 working days following the date the final order is issued.

(l) Proposed and final orders.

(A) In a contested case, the administrative law judge must serve a proposed order to the child's parent or guardian and the Department.

(B) If the administrative law judge issues a proposed order that is adverse to the child, the child's parent or guardian may file exceptions to the proposed order to be considered by the Department. The exception must be in writing and must be received by the Department no later than 10 days after service of the proposed order. The child's parent or guardian may not submit additional evidence after this period unless the Department grants prior approval.

(C) After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

(5) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0040
Required In-Home Support

(1) The CDDP must provide or arrange for the following services to support all children receiving in-home support in the family home:

(a) SERVICE COORDINATION.

(A) Assistance for families to determine needs, plan supports in response to needs, and develop individualized plans based on available natural supports and public resources;

(B) Assistance for families to find and arrange the resources to provide planned supports;

(C) Assistance for families and children (as appropriate) to effectively put the child's ISP or Annual Plan into practice including help to monitor and improve the quality of personal supports and to assess and revise the child's ISP or Annual Plan goals; and

(D) Assistance to families to access information, referral, and local capacity building services through the county's family support program under OAR chapter 411, division 305.

(b) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of in-home support services on behalf of families in addition to making payment with the authorization of families; and

(B) Assistance to families to fulfill roles and obligations as employers of support staff when staff is paid with in-home support funds.

(2) The CDDP must inform families about in-home support when a child is determined eligible for developmental disability services. The CDDP must provide accurate, up-to-date information that must include:

(a) Criteria for entry and for determining how much assistance with supports shall be available, including information about eligibility for in-home supports and how these supports are different from family support services the child and family may have received under OAR chapter 411, division 305;

(b) An overview of common processes encountered in using - in-home support, including the in-home support planning process and the regional processes (as applicable);

(c) Responsibility of providers of in-home support and CDDP employees as mandatory reporters of child abuse;

(d) A description of family responsibilities in regard to use of public funds;

(e) An explanation of family rights to select and direct the providers of services authorized through an eligible child's ISP or Annual Plan and purchased with in-home support funds from among those qualified according to OAR 411-308-0130 to provide supports; and

(f) Information on complaint and appeal rights and how to raise and resolve concerns about in-home supports.

(3) The CDDP must make information required in sections (1) and (2) of this rule available using language, format, and presentation methods appropriate for effective communication according to each family's needs and abilities.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0050
Financial Limits of In-Home Support

(1) In any plan year, support must be limited to the amount of support determined to be necessary by a functional needs assessment and specified in a child's ISP or Annual Plan. For a child who is not Medicaid eligible, the amount of support specified in the child's Annual Plan may not exceed the maximum allowable monthly plan amount published in the Department's rate guidelines in any month during the plan year.

(2) Payment rates used to establish the limits of financial assistance for specific service in the child's Annual Plan must be based on the Department's rate guidelines for costs of frequently-used services. Department rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the CDDP's own documentation.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0060
Eligibility for In-Home Support

(1) STANDARD ELIGIBILITY. In order to be eligible for in-home support, a child must:

(a) Be under the age of 18;

(b) Be receiving the full Medicaid benefit through the Oregon Health Plan;

(c) Be determined eligible for developmental disability services by the CDDP of the child's county of residence as described in OAR 411-320-0080; and

(d) After completion of an assessment, meet the level of care as defined in OAR 411-308-0020.

(2) CRISIS ELIGIBILITY. When the standard eligibility criteria described in section (1) of this rule are not met, the CDDP of a child's county of residence may find a child eligible for in-home support when the child:

(a) Is experiencing a crisis as defined in OAR 411-308-0020 and may be safely served in the family home;

(b) Has exhausted all appropriate alternative resources, including but not limited to natural supports and children's intensive in-home services as defined in OAR 411-308-0020;

(c) Does not receive or may stop receiving other Department-paid in-home or community living services other than state Medicaid plan services, adoption assistance, or short-term assistance, including crisis services provided to prevent out-of-home placement; and

(d) Is at risk of out-of-home placement and requires in-home support to be maintained in the family home; or

(e) Resides in a Department-paid residential service and requires in-home support to return to the family home.

(3) CONCURRENT ELIGIBLITY. Children are not eligible for in-home support from more than one CDDP unless the concurrent service:

(a) Is necessary to transition from one county to another with a change of residence;

(b) Is part of a collaborative plan developed by both CDDPs; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert.

ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0070
In-Home Support Entry, Duration, and Exit

(1) ENTRY. An eligible child may enter in-home support when in-home support needs are assessed through a functional needs assessment. In-home supports must be authorized on an annual basis, prior to the beginning of a new ISP or Annual Plan.

(2) DURATION OF SERVICES. Once a child has entered in-home support, the child and the child's family may continue receiving in-home supports from the CDDP until the child turns 18. The child must remain eligible for in-home support and in-home support funds must be available at the CDDP and authorized by the Department to continue services. The child's ISP or Annual Plan must be developed each year and kept current.

(3) CHANGE OF COUNTY OF RESIDENCE. If a child and the child's family move outside the CDDP's area of service, the originating CDDP must arrange for services purchased with in-home support funds to continue, to the extent possible, in the new county of residence. The originating CDDP must:

(a) Provide information about the need to apply for services in the new CDDP and assist the family with application for services if necessary; and

(b) Contact the new CDDP to negotiate the date on which the in-home support, including responsibility for payments, transfers to the new CDDP.

(4) EXIT. A child must leave a CDDP's in-home support --

(a) When the child no longer resides in the family home;

(b) At the written request of the child's parent or guardian to end the in-home supports;

(c) When the in-home supports are no longer necessary to prevent out-of-home placement due to either;

(A) The risk of out of home placement no longer exists due to changes in either the child's support needs or the family's ability to provide the support; or

(B) Appropriate alternative resources become available, including but not limited to supports through children's intensive in-home services as defined in OAR 411-308-0020.

(d) On the child's 18th birthday;

(e) When the child and the child's family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP as required in section (3) of this rule; or

(f) No less than 30 days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:

(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete the child's ISP or Annual Plan development and monitoring activities and does not respond to the notice of intent to terminate; or

(B) The CDDP has sufficient evidence that the child's family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's ISP or Annual Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with in-home support.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0080
Written Plan Required

(1) The CDDP must provide an annual planning process to assist families in establishing outcomes, determining needs, planning for supports, and reviewing and redesigning support strategies for all children eligible for in-home support. The planning process must occur in a manner that:

(a) Identifies and applies existing abilities, relationships, and resources while strengthening naturally occurring opportunities for support at home and in the community;

(b) Is consistent in both style and setting with the child's and the child's family's needs and preferences, including but not limited to informal interviews, informal observations in home and community settings, or formally structured meetings; and

(c) Includes completing a functional needs assessment using a person-centered planning approach.

(2) The CDDP, the child (as appropriate), and the child's family must develop a written ISP or Annual Plan for the child as a result of the planning process prior to purchasing supports with in-home support funds and annually thereafter. The child's ISP or Annual Plan must include but not be limited to:

(a) The eligible child's legal name and the name of the child's parent (if different than the child's last name) or the name of the child's guardian;

(b) A description of the supports required, including the reason the support is necessary. The description must be consistent with the needs identified in the functional needs assessment;

(c) Beginning and end dates of the plan year as well as when specific activities and supports are to begin and end;

(d) A list of personal, community, and public resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, general funds, or natural supports;

(e) Signatures of the child's services coordinator, the child's parent or guardian, and the child (as appropriate); and

(f) The schedule of the child's ISP or Annual Plan reviews.

(3) The ISP must also include the following:

(a) Projected costs with sufficient detail to support estimates;

(b) The manner in which services are delivered and the frequency of services;

(c) Service providers;

(d) The child's strengths and preferences;

(e) Individually identified goals and desired outcomes;

(f) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(g) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(h) The identity of the person responsible for case management and monitoring the ISP or Annual Plan; and

(i) A provision to prevent unnecessary or inappropriate care.

(4) The child's ISP or Annual Plan, or records supporting development of each child's ISP or Annual Plan, must include evidence that:

(a) When the child is not Medicaid eligible, in-home support funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement, or to return the child from a community placement to the family home;

(b) The services coordinator has assessed the availability of other means for providing the supports before using in-home support funds, and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(c) Basic health and safety needs and supports have been addressed, including but not limited to identification of risks, including risk of serious neglect, intimidation, and exploitation;

(d) Informed decisions by the child's parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(e) Education and support for the child and the child's family to recognize and report abuse.

(5) The services coordinator must obtain and attach a Nursing Care Plan to the child's written ISP or Annual Plan when in-home supports are used to purchase care and services requiring the education and training of a nurse.

(6) The services coordinator must obtain and attach a Behavior Support Plan to the child's written ISP or Annual Plan when the Behavior Support Plan is implemented by the child's family or providers during the plan year.

(7) In-home supports may only be provided after the child's ISP or Annual Plan is developed as described in this rule, authorized by the CDDP, and signed by the child's parent or guardian.

(8) The services coordinator must review and reconcile receipts and records of purchased supports authorized by the child's ISP or Annual Plan and subsequent ISP or Annual Plan documents, at least quarterly during the plan year.

(9) At least annually, the services coordinator must conduct and document reviews of the child's ISP or Annual Plan and resources with the child's family as follows:

(a) Evaluate progress toward achieving the purposes of the child's ISP or Annual Plan;

(b) Record actual in-home support fund costs;

(c) Note effectiveness of purchases based on services coordinator observation as well as family satisfaction;

(d) Determine whether changing needs or availability of other resources have altered the need for specific supports or continued use of in-home supports; and

(e) For children who meet the crisis eligibility under OAR 411-308-0060(2), a review of the child's continued risk for out-of-home placement and the availability of alternate resources, including eligibility for children's intensive in-home services as defined in OAR 411-308-0020.

(10) When the eligible child and the child's family moves to a county outside the area of service, the originating CDDP must assist in-home support recipients by:

(a) Continuing in-home supports authorized by the child's ISP or Annual Plan which is current at the time of the move, if the support is available, until the transfer date agreed upon according to OAR 411-308-0070; and

(b) Transferring the unexpended portion of the child's in-home supports to the new CDDP of residence.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0090
Managing and Accessing In-Home Support Funds

(1) Funds contracted to a CDDP by the Department to serve a specifically-named child must only be used to support that specified child. Services must be provided according to each child's approved ISP or Annual Plan. The funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to the Department's procedures described in these rules.

(2) No child receiving in-home support may concurrently receive services through:

(a) Children's intensive in home services as defined in OAR 411-308-0020;

(b) Direct assistance or immediate access funds under family support; or

(c) In-home support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to another and the concurrent supports are arranged in accordance with OAR 411-308-0060(3).

(3) Children receiving in-home support may receive short-term crisis diversion services provided through the CDDP or region. Children receiving in-home support may utilize family support information and referral services, other than direct assistance or immediate access funds, while receiving in-home support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0100
Conditions for In-Home Support Purchases

(1) A CDDP must only use in-home support funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010 and in accordance with the child's ISP or Annual Plan that meets the requirements for development and content in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with in-home support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that enable the family to receive supports and services from another qualified provider;

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the child or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the family home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-308-0130 governing provider qualifications.

(3) When in-home support funds are used to purchase services, training, supervision, or other personal assistance for children, the CDDP must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected child abuse;

(b) Responsibility to immediately notify the child's parent or guardian, or any other person specified by the child's parent or guardian, of any injury, illness, accident, or unusual circumstance involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) In-home support fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using in-home support funds.

(d) The provisions of section (6) of this rule regarding sanctions that may be imposed on providers;

(e) The requirement to maintain a drug-free workplace; and

(f) The payment process, including payroll or contractor payment schedules or timelines.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the child's parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. The CDDP must issue payment, or arrange through fiscal intermediary services to issue payment, directly to the qualified provider on behalf of the family after approved services described in the child's ISP or Annual Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030 regarding expenditure of in-home support funds. During development of a child's ISP or Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

(6) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with in-home support funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or certificate, or had his or her professional license or certificate suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized in-home support services, or other similar services in a Department program;

(E) Had a founded report of child abuse or substantiated abuse;

(F) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation, as requested;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (4) of this rule and OAR 411-308-0130; or

(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with in-home support funds; or

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or the Department, as applicable.

(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider may appeal a sanction by requesting an administrative review by the Department's director.

(B) For an appeal regarding provision of Medicaid services, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(e) A provider may be immediately suspended by the CDDP as a protective service action or in the case of alleged criminal activity that may pose a danger to the child. The suspension may continue until the issues are resolved.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0110
Using In-Home Support Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, in-home support funds may not be used to support, in whole or in part, a provider in any capacity having contact with a recipient of in-home supports who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of a parent, employees of a general business provider, or employees of a provider organization who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(3) In-home support funds may not be used for:

(a) Services that:

(A) Duplicate benefits and services otherwise available to citizens regardless of disability;

(B) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(D) Replace other governmental or community services available to the child or the child's family; or

(E) Exceed the actual cost or level of supports that must be provided for the child to be supported in the family home.

(b) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(c) Services or activities that are carried out in a manner that constitutes abuse;

(d) Notwithstanding abuse as defined in OAR 411-308-0020, services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Notwithstanding abuse as defined in OAR 411-308-0020, services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(f) Purchase of family vehicles;

(g) Purchase of service animals or costs associated with the care of service animals;

(h) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Special diet or treatment supplies not related to incontinence or infection control.

(i) Ambulance services;

(j) Legal fees, including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(k) Vacation costs or any costs associated with the vacation;

(l) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Employee wages or contractor payments for time or services when the child is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(n) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support;

(o) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(p) Services, activities, materials, or equipment that the CDDP determines may be obtained by the family through other available means, such as private or public insurance, philanthropic organizations, or other governmental or public services;

(q) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(r) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's ISP or Annual Plan, refused to cooperate with record keeping required to document use of in-home support funds, or otherwise knowingly misused public funds associated with in-home support.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0120
Supports Purchased with In-Home Support Funds

(1) For an initial or annual ISP, when conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, in-home support funds may be used to purchase a combination of the following supports based upon the needs of the child consistent with the child's functional needs assessment, ISP, and available funding:

(a) Community First Choice state plan services:

(A) Specialized consultation including behavior consultation as described in section (2) of this rule;

(B) Community nursing services as described in section (3) of this rule;

(C) Environmental accessibility adaptations as described in section (4) of this rule;

(D) Attendant care as described in section (5) of this rule;

(E) Relief care as described in section (6) of this rule;

(F) Specialized equipment and supplies as described in section (7) of this rule;

(G) Chore services as described in section (8) of this rule; and

(H) Community transportation as described in section (9) of this rule.

(b) As a waiver service, family training as described in section (10) of this rule.

(2) SPECIALIZED CONSULTATION - BEHAVIOR CONSULTATION. Behavior consultation is only authorized to support a child's primary caregiver in their caregiving role. Behavior consultation is only authorized, as needed, to respond to specific problems identified by a primary caregiver or a services coordinator. Behavior consultants must:

(a) Work with the child's primary caregiver to identify:

(A) Areas of a child's family home life that are of most concern for the child and the child's parent;

(B) The formal or informal responses the child's family or the provider has used in those areas; and

(C) The unique characteristics of the child's family that may influence the responses that may work with the child.

(b) Assess the child. The assessment must include:

(A) Specific identification of the behaviors or areas of concern;

(B) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(C) Identification of early warning signs of the behavior;

(D) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:

(i) An effort to communicate;

(ii) The result of a medical condition;

(iii) The result of an environmental cause; or

(iv) The symptom of an emotional or psychiatric disorder.

(E) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(F) An assessment of current communication strategies.

(c) Develop a variety of positive strategies that assist the child's primary caregiver and the provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a primary caregiver and a provider to the early warning signs.

(A) Interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-300-0110.

(B) The least intrusive intervention possible must be used.

(C) Abusive or demeaning interventions must never be used.

(D) The strategies must be adapted to the specific disabilities of the child and the style or culture of the child's family.

(d) Develop emergency and crisis procedures to be used to keep the child and the child's primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to the Oregon Intervention System must be utilized;

(e) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the child's primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(f) Teach the child's primary caregiver and the provider the strategies and procedures to be used; and

(g) Monitor and revise the Behavior Support Plan as needed.

(3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting a child's autonomy and self-management of healthcare;

(B) Collateral contact with a services coordinator regarding a child's community health status to assist in monitoring safety and well-being and to address needed changes to the child's ISP; and

(C) Delegation and training of nursing tasks to a child's primary caregiver and a provider so the caregivers may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are physical adaptations to a child's family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's intellectual or developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child;

(R) Modifications for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child, such as lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, or other unique modifications to keep the child safe in the vehicle; and

(S) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the child's family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child;

(B) Adaptations that add to the total square footage of the child's family home; and

(C) General repair or maintenance and upkeep required for the child's family home or motor vehicle, including repair of damage caused by the child.

(c) Environmental accessibility adaptations are limited to $5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the child's service needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the child's ISP.

(e) Environmental accessibility adaptations over $500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the provider's file prior to payment.

(f) Environmental accessibility adaptations must be made within the existing square footage of the child's family home, except for external ramps, and may not add to the square footage of the building.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) Environmental accessibility adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

(5) ATTENDANT CARE. Attendant care services include the purchase of direct provider support provided to a child in the child's family home or community by qualified individual providers and agencies. Provider assistance provided through attendant care must support the child to live as independently as appropriate for the child's age, support the child's family in their primary caregiver role, and be based on the identified needs of the child. A child's primary caregiver is expected to be present or available during the provision of attendant care.

(a) Attendant care services provided by qualified providers or agencies include:

(A) Basic personal hygiene — Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care — Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility — Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — Feeding and monitoring intake and output;

(E) Skin care — Dressing changes;

(F) Physical healthcare, including delegated nursing tasks;

(G) Supervision — Providing an environment that is safe and meaningful for the child and interacting with the child to prevent danger to the child and others and maintain skills and behaviors required to live in the child's family home and community;

(H) Assisting the child with appropriate leisure activities to enhance development in the child's family home and community and provide training and support in personal environmental skills;

(I) Communication - Assisting the child in communicating using any means used by the child;

(J) Neurological - Monitoring of seizures, administering medication, and observing status; and

(K) Accompanying the child and the child's family to health related appointments.

(b) Attendant care services must:

(A) Be previously authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities, other natural supports, and services available from the child's family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a child's primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child;

(D) Support generally provided at the child's age by the child's parent or other family members;

(E) Educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(F) Services provided by the child's family; and

(G) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(6) RELIEF CARE. Relief care services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the child's primary caregiver.

(a) Relief care may include both day and overnight services that may be provided in:

(A) The child's family home;

(B) A licensed, certified, or otherwise regulated setting;

(C) A qualified provider's home. If overnight relief care is provided in a qualified provider's home, the services coordinator and the child's parent must document that the home is a safe setting for the child;

(D) A disability-related or therapeutic recreational camp; or

(E) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the child's ISP.

(b) Relief care services are not authorized for the following:

(A) Solely to allow a child's primary caregiver to attend school or work;

(B) For ongoing services that occur on more than a periodic schedule, such as eight hours a day, five days a week;

(C) For more than 14 consecutive overnight stays in a calendar month;

(D) For more than 10 days per individual plan year when provided at a specialized camp;

(E) For vacation, travel, and lodging expenses; or

(F) To pay for room and board if provided at a licensed site or specialized camp.

(7) SPECIALIZED EQUIPMENT AND SUPPLIES. Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase the child's abilities to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the child lives. Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation.

(a) Specialized equipment and supplies include:

(A) Electronic devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices. Expenditures for electronic devices are limited to $500 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(B) Assistive technology to provide additional security and replace the need for direct interventions to enable self direction of care and maximize independence, such as motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems.

(i) Expenditures for assistive technology are limited to $5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(C) Assistive devices not covered by other Medicaid programs to assist and enhance a child's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to $5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(b) Specialized equipment and supplies may include the cost of a professional consultation, if required to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price of the equipment.

(c) To be authorized by a services coordinator, specialized equipment and supplies must be --

(A) In addition to any medical equipment and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of the child; and

(C) Directly related to a child's disability.

(d) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized equipment and supplies intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through a child's family, community, or other governmental resources;

(D) Items that are considered unsafe for a child;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(e) Funding for specialized equipment and supplies with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Specialized equipment and supplies may only be included in a child's ISP when all other public and private resources have been exhausted.

(f) The services coordinator must secure use of specialized equipment or supplies costing more than $500 through a written agreement between the Department and the child's parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any specialized equipment or supplies purchased with in-home support funds that are not used according to the child's ISP or according to the written agreement between the Department and the parent.

(8) CHORE SERVICES. Chore services may be provided only in situations where no one else in a child's family home is able of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of, or responsible for, providing these services.

(a) Chore services include heavy household chores such as --

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of a child's family home is safe for the child to traverse and enter and exit the home.

(9) COMMUNITY TRANSPORTATION. Community transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the child's ISP. Community transportation excludes:

(a) Transportation provided by a child's family members;

(b) Transportation used for behavioral intervention or calming;

(c) Transportation normally provided by schools;

(d) Transportation normally provided by the child's primary caregiver for a child of similar age without disabilities;

(e) Purchase of any family vehicle;

(f) Vehicle maintenance and repair;

(g) Reimbursement for out-of-state travel expenses;

(h) Ambulance services or medical transportation; or

(i) Transportation services that may be obtained through other means, such as OHP or other public or private resources available to the child.

(10) FAMILY TRAINING. Family training services include the purchase of training, coaching, counseling, and support that increase the abilities of a child's family to care for and maintain the child in the child's family home. Family training services include:

(a) Instruction about treatment regimens and use of equipment specified in the child's ISP;

(b) Counseling services that assist the child's family with the stresses of having a child with an intellectual or developmental disability.

(A) To be authorized, the counseling services must:

(i) Be provided by licensed providers, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under ORS 675.530, or counselors licensed under ORS 675.715;

(ii) Directly relate to the child's intellectual or developmental disability and the ability of the child's family to care for the child; and

(iii) Be short-term.

(B) Counseling services exclude:

(i) Therapy that may be obtained through OHP or other payment mechanisms;

(ii) General marriage counseling;

(iii) Therapy to address the psychopathology of the child's family members;

(iv) Counseling that addresses stressors not directly attributed to the child;

(v) Legal consultation;

(vi) Vocational training for the child's family members; and

(vii) Training for families to carry out educational activities in lieu of school.

(c) Registration fees for organized conferences, workshops, and group trainings that offer information, education, training, and materials about the child's intellectual or developmental disability, medical, or health conditions.

(A) Conferences, workshops, or group trainings must be prior authorized by the services coordinator, directly relate to the child's intellectual or developmental disability, and increase the knowledge and skills of the child's family to care for and maintain the child in the child's family home.

(B) Conference, workshop, or group training costs exclude:

(i) Registration fees in excess of $500 per family for an individual event;

(ii) Travel, food, and lodging expenses;

(iii) Services otherwise provided under OHP or available through other resources; or

(iv) Costs for individual family members who are employed to care for the child.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0130

Standards for Providers Paid with In-Home Support Funds

Independent providers, provider organizations, and general business providers paid with in-home support funds must be qualified. At the discretion of the Department, providers who have previously been terminated or suspended by the Department or Oregon Health Authority may not be authorized as providers of service. Providers must meet the following qualifications:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or guardian to provide the services listed in OAR 411-308-0120 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0210. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes;

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(d) Be legally eligible to work in the United States;

(e) Not be a parent, adoptive parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;

(f) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the child's ISP or Annual Plan, with such demonstration confirmed in writing by the child's parent or guardian, including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the child; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(g) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(h) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(i) Not be on the Office of Inspector General's list of excluded or debarred providers (http://exclusions.oig.hhs.gov/); and

(j) If transporting the child, have a valid driver's license and proof of insurance, as well as any other license or certification that may be required under state and local law, depending on the nature and scope of the transportation.

(2) Section (1)(c) of this rule does not apply to employees of a parent, employees of a general business provider, or employees of a provider organization who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(4) Nursing consultants must have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law.

(5) Behavior consultants may include but are not limited to autism specialists, licensed psychologists, or other behavioral specialists who:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention System and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(6) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with in-home support funds must meet the standards for qualification of independent providers described in section (1) of this rule.

(7) General business providers must hold any current license appropriate to function required by Oregon or federal law or regulation. Services purchased with in-home support funds must be limited to those within the scope of the general business provider's license. Such licenses include but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental accessibility adaptations involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board), as applicable;

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost effective plans to make homes safe and accessible;

(e) For vendors and medical supply companies providing specialized equipment and supplies, a current retail business license, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment; and

(f) A current business license for providers of personal emergency response systems.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0140
Quality Assurance

The CDDP must participate in statewide quality assurance, service evaluation, and regulation activities as directed by the Department in OAR 411-320-0045.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

411-308-0150
Variances

(1) Variances may be granted to a CDDP if the CDDP:

(a) Lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative services, methods, concepts, or procedures shall result in services or systems that meet or exceed the standards in these rules; or

(c) If there are other extenuating circumstances.

(2) Variances are not granted for OAR 411-308-0110 and OAR 411-308-0130.

(3) The CDDP requesting a variance must submit a written application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The proposed alternative practice, service, method, concept, or procedure;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to a child's service, evidence that the variance is consistent with the child's current ISP or Annual Plan.

(4) The Department may approve or deny the variance request.

(5) The Department's decision shall be sent to the CDDP and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The CDDP may appeal the denial of a variance request by sending a written request for review to the Department's director, whose decision is final.

(7) The Department shall determine the duration of the variance.

(8) The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13

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Rule Caption: Medically Fragile Children's Services
Adm. Order No.: SPD 55-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 12-1-2013
Rules Amended: 411-350-0010, 411-350-0020, 411-350-0030, 411-350-0040, 411-350-0050, 411-350-0080, 411-350-0100, 411-350-0110, 411-350-0115, 411-350-0118, 411-350-0120
Rules Repealed: 411-350-0020(T), 411-350-0030(T), 411-350-0040(T), 411-350-0050(T)
Subject: The Department of Human Services is permanently amending the rules in OAR chapter 411, division 350 for medically fragile children's services.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-350-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 350 establish the policy of, and prescribe the standards and procedures for, the provision of medically fragile children's (MFC) services. These rules are established to ensure that MFC services augment and support independence, empowerment, dignity, and development of medically fragile children through the provision of flexible and efficient services to eligible families.

(2) MFC services are exclusively intended to enable a child who is medically fragile to have a permanent and stable familial relationship. MFC services are intended to supplement the natural supports and services provided by a child's family and provide the support necessary to enable the family to meet the needs of caring for a medically fragile child.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0100, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0020
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 350:

(1) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Aide" means a non-licensed caregiver who may, or may not, be a certified nursing assistant.

(5) "Attendant Care" means Medicaid state plan funded essential supportive daily care described in OAR 411-350-0050 that is delivered by a qualified provider to enable a child to remain in, or return to, the child's family home.

(6) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(7) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(8) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause a child's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(9) "Billing Provider" means an organization that enrolls and contracts with the Department to provide services through employees that bills the Department for the provider's services.

(10) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(11) "Child" means an individual who is less than 18 years of age applying for, or eligible for, medically fragile children's services.

(12) "Chore Services" mean the services described in OAR 411-350-0050 that are needed to restore a hazardous or unsanitary situation in a child's family home to a clean, sanitary, and safe environment.

(13) "Clinical Criteria (Form DHS-0519)" means the assessment tool used by the Department to evaluate the intensity of the challenges and care needs of medically fragile children.

(14) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(15) "Community Nursing Services" mean the services described in OAR 411-350-0050 that include nurse delegation, training, and care coordination for a child living in the child's family home.

(16) "Community Transportation" means the services described in OAR 411-350-0050 that enable a child to gain access to community services, activities, and resources that are not medical in nature.

(17) "Cost Effective" means that in the opinion of a services coordinator, a specific service, support, or item of equipment meets a child's service needs and costs less than, or is comparable to, other similar service, support, or equipment options considered.

(18) "Day" means a calendar day unless otherwise specified in these rules.

(19) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047. Delegation by a physician is also allowed.

(20) "Department" means the Department of Human Services.

(21) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(22) "Direct Nursing Services" mean the nursing services described in OAR 411-350-0050 that are determined medically necessary to support a child receiving medically fragile children's services in the child's family home.

(23) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(24) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-350-0050 that are necessary to ensure

the health, welfare, and safety of a child in the child's family home, or that enable a child to function with greater independence in the family home.

(25) "Family" means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the child's primary caregiver is:

(a) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(C) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(26) "Family Home" means a child's primary residence that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site.

(27) "Family Training" means the training and counseling services described in OAR 411-350-0050 that are provided to a child's family to increase the family's capacity to care for, support, and maintain the child in the child's family home.

(28) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(29) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(30) "Grievance" means a process by which a person may air complaints and seek remedies.

(31) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(32) "Hospital Model Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children living in the family home who otherwise would have to be served in a hospital if the waiver program was not available.

(33) "IADL" means "instrumental activities of daily living" as defined in this rule.

(34) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(35) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for a child to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the child's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(36) "Instrumental Activities of Daily Living (IADL)" means the activities other than activities of daily living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(37) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(38) "ISP" means "Individual Support Plan" as defined in this rule.

(39) "K Plan" means "Community First Choice" as defined in this rule.

(40) "Level of Care" means a child meets the following hospital level of care:

(a) The child has a documented medical condition and demonstrates the need for active treatment as assessed by the clinical criteria; and

(b) The child's medical condition requires the care and treatment of services normally provided in an acute medical hospital.

(41) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(42) "Medically Fragile Children (MFC)" means children who have a health impairment that requires long term, intensive, specialized services on a daily basis, who have been found eligible for medically fragile children's services by the Department.

(43) "Medically Fragile Children's Unit (MFCU)" means the program for medically fragile children's services administered by the Department.

(44) "MFC" means "medically fragile children" as defined in this rule.

(45) "MFCU" means "medically fragile children's unit" as defined in this rule.

(46) "Natural Supports" means the parental responsibilities for a child who is less than 18 years of age and the voluntary resources available to the child from the child's relatives, friends, neighbors, and the community that are not paid for by the Department.

(47) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN) pursuant to ORS chapter 678.

(48) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to the child's primary caregiver or a qualified provider. When a Nursing Care Plan exists, it is a supporting document for an Individual Support Plan.

(49) "Nursing Tasks or Services" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks or services may be delegated.

(50) "OHP" means the Oregon Health Plan.

(51) "Oregon Intervention System" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(52) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(53) "Parent" means biological parent, adoptive parent, stepparent, or legal guardian.

(54) "Person-Centered Planning":

(a) Means a timely and formal or informal process for gathering and organizing information that helps --

(A) Determine and describe choices about personal goals, activities, services, providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with cultural considerations, needs, and preferences.

(55) "Personal Care Services" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(56) "Plan of Care" means the written plan of Medicaid services required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(57) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abuse or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(58) "Primary Caregiver" means a child's parent, guardian, relative, or other non-paid parental figure that provides direct care at the times that a paid provider is not available.

(59) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts the child's freedom of movement

(60) "Provider" means a person who is qualified as described in OAR 411-350-0080 to receive payment from the Department for providing support and services to a child according to the child's Individual Support Plan. A provider works directly with a medically fragile child. A provider may be an employee of a billing provider, employee of a child's parent, or an independent contractor.

(61) "Relief Care" means the intermittent services described in OAR 411-350-0050 that are provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a child's primary caregiver.

(62) "Service Level" means the services allotted for the care of a child based on the clinical criteria. The service level consists of state plan services, including Community First Choice state plan services, and if the child is on a waiver, waiver services. Service levels increase or decrease in direct relationship to the increasing or decreasing clinical criteria score.

(63) "Services Coordinator" means an employee of the Department who ensures a child's eligibility for medically fragile children's services and provides assessment, case management, service implementation, and evaluation of the effectiveness of the services. A services coordinator is a child's person-centered plan coordinator as defined in the Community First Choice state plan.

(64) "Special Diet" means the specially prepared food or particular types of food described in OAR 411-350-0050 that are specific to a child's medical condition or diagnosis and needed to sustain the child in the child's family home.

(65) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-350-0050 that enable a child to increase the child's ability to perform activities of daily living or to perceive, control, or communicate with the environment in which the child lives.

(66) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(67) "Supplant" means take the place of.

(68) "Support" means the assistance that a child and the child's family requires, solely because of the effects of the child's intellectual or developmental disability or medical condition, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the child's family home. Support is subject to change with time and circumstances.

(69) "These Rules" mean the rules in OAR chapter 411, division 350.

(70) "Volunteer" means any person providing services without pay to support the services and supports provided to a child.

(71) "Waiver Services" means the menu of disability related services and supplies, exclusive of attendant care and the Oregon Health Plan, that are specifically identified by the Title XIX Centers for Medicare and Medicaid Services Waiver.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0110, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0030
Eligibility

(1) ELIGIBILITY.

(a) In order to be eligible for MFC services, a child must:

(A) Be under the age of 18;

(B) Be a U.S. citizen;

(C) Be eligible for OSIP-M;

(D) Be eligible to receive Title XIX (Medicaid) or Title XXI (CHIPS) services;

(E) After completion of an assessment, meet the level of care as defined in OAR 411-350-0020;

(F) Be accepted by the Department by scoring 50 or greater on the clinical criteria and have a status of medical need that is likely to last for more than two months;

(G) Reside in the family home; and

(H) Be capable of being safely served in the family home. This includes but is not limited to the child's primary caregiver demonstrating the willingness, skills, and ability to provide direct care not paid for in a child's Individual Support Plan, as determined by the services coordinator within the limitations of OAR 411-350-0050.

(b) A child that resides in a foster home that meets the eligibility criteria in subsection (a)(A) to (F) of this section is eligible for direct nursing services as described in OAR 411-350-0050.

(2) INELIGIBILITY. A child is not eligible for MFC services if the child:

(a) Resides in a hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as ICF/MR), residential facility, or other institution. A child that resides in a foster home is eligible for only direct nursing services as described in OAR 411-350-0050;

(b) Does not require waiver services, Community First Choice state plan services, or has sufficient family, government, or community resources available to provide for his or her care; or

(c) Is not safely served in the family home as described in section (1)(h) of this rule.

(3) REDETERMINATION. The Department redetermines a child's eligibility for MFC services using the clinical criteria at a minimum of every six months, or as the child's status changes.

(4) TRANSITION. A child who meets the following criteria must begin a transition period to phase out of MFC services within 60 days and at the end of the 60 days transition period, is no longer eligible to receive MFC services:

(a) The child has been previously eligible for MFC services;

(b) The needs of the child have decreased; and

(c) The score on the clinical criteria remains at less than 30 during the transition period.

(5) WAIT LIST. If the allowable number of children on the Hospital Model Waiver are already receiving services, the Department may place a child eligible for MFC services on a wait list, based on the date of referral. A child on the wait list may access other waiver, state plan personal care, or Community First Choice state plan services as determined eligible.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0120, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0040
Individual Support Plan

(1) To develop an ISP, a services coordinator must complete a functional needs assessment using a person-centered planning approach and assess the service needs of the child. The assessment must take place in person and the services coordinator must interview the child's parent, other caregivers, and when appropriate any other person at the parent's request. The assessment must identify the following:

(a) The services for which the child is currently eligible;

(b) The services currently being provided; and

(c) All available family, private health insurance, and government or community resources that meet any, some, or all of the child's needs.

(2) The services coordinator must prepare, with the input of the child's parent and any other person at the parent's request, a written ISP that identifies:

(a) The service needs of the child;

(b) The most cost effective services for safely and appropriately meeting the child's service needs; and

(c) The methods, resources, and strategies that address the child's service needs.

(3) The ISP must include:

(a) A description of the supports required, including the reason the support is necessary. The description must be consistent with the needs identified in the functional needs assessment;

(b) A list of personal, community, and public resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, or natural supports;

(c) The maximum hours of provider services authorized for the child;

(d) The annual service level;

(e) The number of hours of MFC services authorized for the child;

(f) Additional services authorized by the Department for the child; and

(g) The estimated number of hours that an aide is authorized and the number of hours that a licensed nurse is authorized;

(A) RN hours are not authorized when an LPN may safely perform the duties.

(B) RN or LPN hours are not authorized when an aide may safely perform the duties.

(h) The projected date of when specific services are to begin and end, as well as the end date, if any, of the period of service covered by the ISP;

(i) Projected costs with sufficient detail to support estimates;

(j) The manner in which services are delivered and the frequency of services;

(k) Service providers;

(l) The child's strengths and preferences;

(m) If the child has a determined service level, the clinical and support needs as identified through the functional needs assessment;

(n) Individually identified goals and desired outcomes;

(o) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(p) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(q) The identity of the person responsible for case management and monitoring the ISP;

(r) The date of the next ISP review that, at a minimum, must be completed within 12 months of the last ISP or more frequently if the child's medical status changes;

(s) The Nursing Care Plan as a supporting document, when one exists;

(t) A provision to prevent unnecessary or inappropriate care; and

(u) If the child has a determined service level, any changes in support needs identified through a functional needs assessment.

(4) The child's parent must review the ISP prior to implementation. The parent and the services coordinator must sign the ISP and a copy must be provided to the parent.

(5) A services coordinator must reflect significant changes in the needs of a child in the ISP, as they occur, and provide a copy of the revised ISP to the child's parent.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0130, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0050

Scope and Limitations of Medically Fragile Children's Services

(1) MFC services are intended to support, not supplant, the natural supports supplied by a child's primary caregiver. MFC services are not available to replace services provided by a primary caregiver or to replace other governmental or community services.

(2) The Department only authorizes MFC services to enable a child's primary caregiver to meet the needs of caring for a child on the Hospital Model Waiver. All MFC services funded by the Department must be based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(3) When multiple children in the same family home or setting qualify for MFC services, the same primary caregiver must provide services to all qualified children if services may be safely delivered by a single primary caregiver, as determined by the services coordinator.

(4) For an initial or annual ISP, MFC services may include a combination of the following waiver and other Medicaid services based upon the needs of a child as determined by a services coordinator and as consistent with the child's functional needs assessment:

(a) Community First Choice state plan services:

(A) Specialized consultation, including behavior consultation as described in section (5) of this rule;

(B) Community nursing services as described in section (6) of this rule;

(C) Environmental accessibility adaptations as described in section (7) of this rule;

(D) Attendant care as described in section (8) of this rule;

(E) Relief care as described in section (9) of this rule;

(F) Specialized equipment and supplies as described in section (10) of this rule;

(G) Chore services as described in section (11) of this rule; and

(H) Community transportation as described in section (12) of this rule.

(b) Waiver services:

(A) Family training as described in section (13) of this rule;

(B) Special diet as described in section (14) of this rule; and

(C) Translation as described in section (15) of this rule.

(c) State plan services - Direct nursing services as described in section (16) of this rule.

(5) SPECIALIZED CONSULTATION – BEHAVIOR CONSULTATION. Behavior consultation is only authorized to support a child's primary caregiver in their caregiving role. Behavior consultation is only authorized, as needed, to respond to specific problems identified by a primary caregiver or a services coordinator. Behavior consultants must:

(a) Work with the child's primary caregiver to identify:

(A) Areas of a child's family home life that are of most concern for the child and the child's parent;

(B) The formal or informal responses the child's family or the provider has used in those areas; and

(C) The unique characteristics of the child's family that may influence the responses that may work with the child.

(b) Assess the child. The assessment must include:

(A) Specific identification of the behaviors or areas of concern;

(B) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(C) Identification of early warning signs of the behavior;

(D) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:

(i) An effort to communicate;

(ii) The result of a medical condition;

(iii) The result of an environmental cause; or

(iv) The symptom of an emotional or psychiatric disorder.

(E) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(F) An assessment of current communication strategies.

(c) Develop a variety of positive strategies that assist the child's primary caregiver and the provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a primary caregiver and provider to the early warning signs.

(A) Interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-350-0020.

(B) The least intrusive intervention possible must be used.

(C) Abusive or demeaning interventions must never be used.

(D) The strategies must be adapted to the specific disabilities of the child and the style or culture of the child's family.

(d) Develop emergency and crisis procedures to be used to keep the child and the child's primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to the Oregon Intervention System must be utilized;

(e) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the child's primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(f) Teach the child's primary caregiver and the provider the strategies and procedures to be used; and

(g) Monitor and revise the Behavior Support Plan as needed.

(6) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting a child's autonomy and self-management of healthcare;

(B) Collateral contact with a services coordinator regarding a child's community health status to assist in monitoring safety and well-being and to address needed changes to the child's ISP; and

(C) Delegation and training of nursing tasks to a child's primary caregiver and a provider so the caregivers may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(7) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are physical adaptations to a child's family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's medical condition or intellectual or developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child;

(R) Modifications for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child, such as lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, or other unique modifications to keep the child safe in the vehicle; and

(S) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the child's family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child;

(B) Adaptations that add to the total square footage of the child's family home; and

(C) General repair or maintenance and upkeep required for the child's family home or motor vehicle, including repair of damage caused by the child.

(c) Environmental accessibility adaptations are limited to $5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the child's service needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the child's ISP.

(e) Environmental accessibility adaptations over $500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the provider's file prior to payment.

(f) Environmental accessibility adaptations must be made within the existing square footage of the child's family home, except for external ramps, and may not add to the square footage of the building.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) Environmental accessibility adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

(8) ATTENDANT CARE. Attendant care services include the purchase of direct provider support provided to a child in the family home or community by qualified individual providers and agencies. Provider assistance provided through attendant care must support the child to live as independently as appropriate for the child's age, support the child's family in their primary caregiver role, and be based on the identified needs of the child. A child's primary caregiver is expected to be present or available during the provision of attendant care.

(a) Attendant care services provided by qualified providers or agencies include:

(A) Basic personal hygiene — Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care — Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility — Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — Feeding and monitoring intake and output;

(E) Skin care — Dressing changes;

(F) Physical healthcare including delegated nursing tasks;

(G) Supervision — Providing an environment that is safe and meaningful for the child and interacting with the child to prevent danger to the child and others and maintain skills and behaviors required to live in the child's family home and community;

(H) Assisting the child with appropriate leisure activities to enhance development in the child's family home and community and provide training and support in personal environmental skills;

(I) Communication — Assisting the child in communicating, using any means used by the child;

(J) Neurological — Monitoring of seizures, administering medication, and observing status; and

(K) Accompanying the child and the child's family to health related appointments.

(b) Attendant care services must:

(A) Be previously authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services available from the child's family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a child's primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child;

(D) Support generally provided at the child's age by the child's parent or other family members;

(E) Educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(F) Services provided by the child's family; and

(G) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(9) RELIEF CARE. Relief care services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the child's primary caregiver.

(a) Relief care may include both day and overnight services that may be provided in:

(A) The child's family home;

(B) A licensed, certified, or otherwise regulated setting;

(C) A qualified provider's home. If overnight relief care is provided in a qualified provider's home, the services coordinator and the child's parent must document that the home is a safe setting for the child;

(D) A disability-related or therapeutic recreational camp; or

(E) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the child's ISP.

(b) Relief care services are not authorized for the following:

(A) Solely to allow a child's primary caregiver to attend school or work;

(B) For ongoing services that occur on more than a periodic schedule, such as eight hours a day, five days a week;

(C) For more than 14 consecutive overnight stays in a calendar month;

(D) For more than 10 days per individual plan year when provided at a specialized camp;

(E) For vacation travel and lodging expenses; or

(F) To pay for room and board if provided at a licensed site or specialized camp.

(10) SPECIALIZED EQUIPMENT AND SUPPLIES. Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase the child's abilities to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the child lives. Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation.

(a) Specialized equipment and supplies include:

(A) Electronic devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices. Expenditures for electronic devices are limited to $500 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(B) Assistive technology to provide additional security and replace the need for direct interventions to enable self direction of care and maximize independence, such as motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems.

(i) Expenditures for assistive technology are limited to $5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(C) Assistive devices not covered by other Medicaid programs to assist and enhance a child's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to $5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(b) Specialized equipment and supplies may include the cost of a professional consultation, if required, to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price of the equipment.

(c) To be authorized by a services coordinator, specialized equipment and supplies must be:

(A) In addition to any medical equipment and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of the child; and

(C) Directly related to a child's disability.

(d) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized equipment and supplies intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through family, community, or other governmental resources;

(D) Items that are considered unsafe for a child;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(e) Funding for specialized equipment and supplies with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Specialized equipment and supplies may only be included in a child's ISP when all other public and private resources have been exhausted.

(f) The services coordinator must secure use of specialized equipment or supplies costing more than $500 through a written agreement between the Department and the child's parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any specialized equipment or supplies purchased with MFC funds that are not used according to the child's ISP or according to the written agreement between the Department and the child's parent.

(11) CHORE SERVICES. Chore services may be provided only in situations where no one else in a child's family home is able of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of, or responsible for, providing these services

(a) Chore services include heavy household chores such as —

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of a child's family home is safe for the child to traverse and enter and exit the home.

(12) COMMUNITY TRANSPORTATION. Community transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the child's ISP. Community transportation excludes:

(a) Transportation provided by a child's family members;

(b) Transportation used for behavioral intervention or calming;

(c) Transportation normally provided by schools;

(d) Transportation normally provided by the child's primary caregiver for a child of similar age without disabilities;

(e) Purchase of any family vehicle;

(f) Vehicle maintenance and repair;

(g) Reimbursement for out-of-state travel expenses;

(h) Ambulance services or medical transportation; or

(i) Transportation services that may be obtained through other means, such as OHP or other public or private resources available to the child.

(13) FAMILY TRAINING. Family training services include the purchase of training, coaching, counseling, and support that increase the abilities of a child's family to care for and maintain the child in the child's family home. Family training services include:

(a) Instruction about treatment regimens and use of equipment specified in the child's ISP;

(b) Counseling services that assist the child's family with the stresses of having a child with an intellectual or developmental disability or medical condition.

(A) To be authorized, the counseling services must:

(i) Be provided by licensed providers, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under 675.530, or counselors licensed under 675.715;

(ii) Directly relate to the child's intellectual or developmental disability or medical condition and the ability of the child's family to care for the child; and

(iii) Be short-term.

(B) Counseling services exclude:

(i) Therapy that may be obtained through OHP or other payment mechanisms;

(ii) General marriage counseling;

(iii) Therapy to address the psychopathology of the child's family members;

(iv) Counseling that addresses stressors not directly attributed to the child;

(v) Legal consultation;

(vi) Vocational training for the child's family members; and

(vii) Training for families to carry out educational activities in lieu of school.

(c) Registration fees for organized conferences, workshops, and group trainings that offer information, education, training, and materials about the child's medical or health condition.

(A) Conferences, workshops, or group trainings must be prior authorized by the services coordinator, directly relate to the child's intellectual or developmental disability or medical condition, and increase the knowledge and skills of the child's family to care for and maintain the child in the child's family home.

(B) Conference, workshop, or group training costs exclude:

(i) Registration fees in excess of $500 per family for an individual event;

(ii) Travel, food, and lodging expenses;

(iii) Services otherwise provided under OHP or available through other resources; or

(iv) Costs for individual family members who are employed to care for the child.

(14) SPECIAL DIETS. Special diets do not constitute a full nutritional regime.

(a) In order for a special diet to be authorized:

(A) The foods must be on the approved list developed by the Department;

(B) The special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners;

(C) The special diet must be periodically monitored by a dietician or physician; and

(D) The special diet may not be reimbursed through OHP or any other source of public or private funding.

(b) A special diet excludes restaurant and prepared foods, vitamins, and supplements.

(15) TRANSLATION. If the primary language of a child or the child's primary caregiver is not English, translation service is provided to enable the child or the primary caregiver to communicate with providers of MFC services.

(16) DIRECT NURSING SERVICES. If a child's service needs require the presence of an RN or LPN on a routine basis as determined necessary based on the child's assessed needs, direct hourly nursing services may be allocated to ensure medically necessary supports are provided.

(a) Direct nursing services may be provided on a shift staffing basis as necessary.

(b) Direct nursing services must be delivered by a licensed RN or LPN, as determined by the child's service needs and documented in the child's ISP.

(17) The Department may expend funds through contract, purchase order, use of credit card, payment directly to the vendor, or any other legal payment mechanism.

(18) MFC services for a child not on the Hospital Model Waiver are limited to attendant care services only.

(19) All MFC services authorized by the Department must be included in a written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely meeting a child's needs as determined by a services coordinator.

(20) SERVICE LEVELS. The Department bases the average monthly service level for the MFC services authorized in the ISP on the child's service level as follows:

(a) Level I.

(A) A child who is eligible for level I services must:

(i) Be ventilator-dependent for 20 or more hours per day;

(ii) Have a score on the clinical criteria of 75 or greater; and

(iii) Require that the provider or primary caregiver be awake for the full 24 hours.

(B) A child must be ventilator-dependent 24 hours per day for the maximum service budget to be allowed.

(b) Level II.

(A) A child who is eligible for level II services must:

(i) Be ventilator-dependent for 14 to 20 hours per day;

(ii) Have a score on the clinical criteria between 70 and 74; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 20 hours per day for the maximum service budget to be allowed.

(c) Level III.

(A) A child who is eligible for level III services must:

(i) Be ventilator-dependent for 6 to 13 hours per day;

(ii) Have a score on the clinical criteria between 65 and 69; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 13 hours per day for the maximum service budget to be allowed.

(d) Level IV.

(A) A child who is eligible for level IV services must:

(i) Be ventilator-dependent for up to 6 hours per day;

(ii) Have a score on the clinical criteria between 60 and 64; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 6 hours per day for the maximum budget to be allowed.

(e) Level V. A child who is eligible for level V services must:

(A) Have a score on the clinical criteria between 50 and 59; and

(B) Require close proximity of the provider or primary caregiver to monitor for the full 24 hours.

(f) Level VI. A child who is eligible for level VI services must:

(A) Have a score on the clinical criteria less than 50;

(B) Meet the eligibility criteria in OAR 411-350-0030; and

(C) Not have been transitioned out of MFC services.

(21) EXCEPTIONS.

(a) Exceptions are only authorized by the Department in the following circumstances:

(A) To prevent a child's hospitalization;

(B) To provide initial teaching of new service needs; or

(C) A significant medical condition or event occurs that prevents or seriously impedes the child's primary caregiver from providing services as documented by a physician.

(b) Exceptions may not exceed 60 consecutive days without MFCU supervisor review and approval.

(22) The Department does not pay for MFC services that are:

(a) Notwithstanding abuse as defined in ORS 419B.005, abusive, aversive, or demeaning;

(b) Experimental;

(c) Illegal, including crimes identified in OAR 407-007-0275;

(d) Determined unsafe for the general public by recognized child and consumer safety agencies;

(e) Not necessary or cost effective;

(f) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(g) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds;

(h) Medical treatments; or

(i) Services or supplies provided by private health insurance or OHP.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0140, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0080

Standards for Providers

(1) A provider must:

(a) Be at least 18 years of age;

(b) Maintain a drug-free work place;

(c) Provide evidence satisfactory to the Department that demonstrates by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized;

(d) Consent to and pass a background check by the Department as described in OAR 407-007-0200 to 407-007-0370, and be free of convictions or founded allegations of abuse by the appropriate agency, including but not limited to the Department;

(A) Background rechecks must be performed biannually, or as needed if a report of a criminal activity has been received.

(B) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0210. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes.

(e) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(f) Not be the child's primary caregiver, parent, stepparent, foster provider, residential services provider, or legal guardian; and

(g) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any attendant care services.

(2) Section (1)(e) of this rule does not apply to employees of the child's parent or employees of billing providers who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(4) A provider who is providing attendant care services as a nurse must have:

(a) A current Oregon nursing license; and

(b) Be in good standing with appropriate professional associations and boards.

(5) A provider is not an employee of the Department or the state of Oregon and is not eligible for state benefits and immunities, including but not limited to the Public Employees' Retirement System or other state benefit programs.

(6) If the provider or billing provider is an independent contractor during the terms of the contract, the provider or billing provider must main-

tain in force, at the providers own expense, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(a) The provider or billing provider must provide written evidence of insurance coverage to the Department prior to beginning work.

(b) There must be no cancellation of insurance coverage without 30 days written notice to the Department.

(7) If the provider is an employee of the child's parent, the provider must submit documentation of immigration status required by federal statute to the Department. The Department maintains documentation of immigration status required by federal statute as a service to the parent, who is the employer.

(8) A billing provider that wishes to enroll with the Department must maintain and submit evidence of the following upon initial application or upon the Department's request:

(a) A current, valid, non-restricted Oregon nurses' licenses for each employee who is providing services as a nurse;

(b) A current background check on each employee who provides services in a child's family home that shows the employee has no disqualifying criminal convictions, including crimes as described in OAR 407-007-0275;

(c) Professional liability insurance that meets the requirements of section (6) of this rule; and

(d) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(9) A provider must immediately notify a child's parent and the Department of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being, or level of service required by the child for whom services are being provided.

(10) Providers are mandatory reporters and are required to report suspected child abuse to their local Department office or to the police in the manner described in ORS 419B.010.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0170, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0100
Documentation Needs for Medically Fragile Children's Services

(1) Original, accurate timesheets of MFC services must be dated and signed by the provider and the child's primary caregiver after the services are provided and maintained and submitted to the Department with any request for payment for services.

(2) Requests for payment for MFC services must:

(a) Include an original copy of the billing form indicating prior authorization for the services;

(b) Be signed by the provider or billing provider, acknowledging agreement with the terms and condition of the billing form and attesting that the hours were delivered as billed; and

(c) Be signed by the child's primary caregiver after the services were delivered, verifying that the services were delivered as billed.

(3) Documentation of provided MFC services must be provided to the services coordinator upon request and maintained in the family home or the place of business of the provider of services. The Department does not pay for services unrelated to a child's disability as outlined in the child's ISP.

(4) A Nursing Care Plan must be developed within seven days of the initiation of MFC services and submitted to the Department for approval when attendant care services are provided by a nurse.

(a) The Nursing Care Plan must be reviewed, updated, and resubmitted to the Department in the following instances:

(A) Every six months;

(B) Within seven working days of a change of the nurse who writes the Nursing Care Plan;

(C) With any request for authorization of an increase in hours of service; or

(D) After any significant change of condition, such as hospital admission or change in health status.

(b) The provider must share the Nursing Care Plan with the parent.

(5) Attendant care services provided by a nurse must be documented and maintained in a format acceptable to the Department, contain information required by the Department, and submitted to the Department upon request.

(6) Delegation, teaching, and assignment of nursing tasks and performance of nursing care must be in accordance with OAR chapter 851.

(7) The Department must be notified by the provider or the child's primary caregiver within one working day of the hospitalization or death of any eligible child.

(8) The Department retains billing forms and timesheets for at least five years from the date of service.

(9) The billing provider must maintain documentation of provided services for at least seven years from the date of service. If a provider is a nurse and does not use a billing provider, the nurse must either maintain documentation of provided services for at least five years or send the documentation to the Department.

(10) Providers or billing providers must furnish requested documentation immediately upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, or within the timeframe specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(11) Access to records by the Department inclusive of medical, nursing, or financial records, to include providers and vendors providing goods and services, does not require authorization or release by the child's primary caregiver.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0190, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0110
Payment for Medically Fragile Children's Services

(1) Service levels are individually determined by the Department, based on the individual assessed needs of the child.

(2) Effective July 28, 2009, public funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(3) Section (2) of this rule does not apply to employees of a child's parent or billing provider who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(4) Authorization must be obtained prior to the delivery of any MFC services for the services to be eligible for reimbursement.

(5) Providers must request payment authorization for MFC services provided during an unforeseeable emergency on the first business day following the emergency service. The services coordinator must determine if the service is eligible for payment.

(6) The delivery of authorized MFC services must occur so that any individual employee of the child's parent does not exceed 40 hours per work week. The Department does not authorize services that require the payment of overtime, without prior written authorization by the MFCU Supervisor.

(7) The Department makes payment for MFC services, described in OAR 411-350-0050, after services are delivered as authorized and required documentation is received by the services coordinator.

(8) The Department makes payment to the individual employee of the child's parent on behalf of the parent. The following are ancillary contributions:

(a) The Department pays the employer's share of the Federal Insurance Contributions Act tax (FICA) and withholds the employee's share of FICA as a service to the parent, who is the employer.

(b) The Department covers real and actual costs to the Employment Department in lieu of the parent, who is the employer.

(9) Holidays are paid at the same rate as non-holidays.

(10) Travel time to reach the job site is not reimbursable.

(11) In order to be eligible for payment, requests for payments must be submitted to the Department within six months of the delivery of MFC services.

(12) Payment by the Department for MFC services is considered full payment for the services rendered under Title XIX or Title XXI. A provider or billing provider may not demand or receive additional payment for MFC services from the child's parent or any other source, under any circumstances.

(13) Medicaid funds are the payer of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

(14) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider of MFC services.

(15) The Department may void without cause prior authorizations that have been issued in the event of any of the following:

(a) Change in the status of the child, such as hospitalization, improvement in health status, or death of the child;

(b) Decision of the parent to change providers;

(c) Inadequate services, inadequate documentation, or failure to perform other expected duties;

(d) Documentation of a person who is subject to background checks on or after July 28, 2009, as required by administrative rule, has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275; or

(e) Any situation, as determined by the services coordinator that puts the child's health or safety at risk.

(16) Section (15)(d) of this rule does not apply to employees of parents or billing providers who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(17) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 407 and chapter 411;

(b) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for MFC services provided within the provider's licensure.

(19) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(20) No person shall submit to the Department:

(a) A false billing form for payment;

(b) A billing form for payment that has been or is expected to be paid by another source; or

(c) Any billing form for MFC services that have not been provided.

(21) The Department only makes payment to the enrolled provider who actually performs the MFC services or the provider's enrolled billing provider. Federal regulations prohibit the Department from making payment to collection agencies.

(22) Payments may be denied if any provisions of these rules are not complied with.

(23) The Department recoups all overpayments.

(a) The amount to be recovered:

(A) Is the entire amount determined or agreed to by the Department;

(B) Is not limited to the amount determined by criminal or civil proceedings; and

(C) Includes interest to be charged at allowable state rates.

(b) A request for repayment of the overpayment or notification of recoupment of future payments is delivered to the provider by registered or certified mail or in person.

(c) Payment schedules with the interest may be negotiated at the discretion of the Department.

(d) If recoupment is sought from a child's parent, hearing rights in OAR 411-350-0118 apply.

(24) Payment for services provided to more than one child in the same setting at the same time may not exceed the maximum hourly rate for one child without prior written authorization by the MFCU Supervisor.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0200, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0115

Complaints and Grievances

(1) COMPLAINTS AND GRIEVANCES. The Department shall address all grievances in accordance with Department written policies, procedures, and rules. Copies of the procedures for resolving grievances shall be maintained on file at the Department. These policies and procedures, at a minimum, shall address:

(a) The child's parent has an opportunity to informally discuss and resolve any complaint or grievance regarding action taken by the Department that is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude the parent from pursuing resolution through formal grievance processes.

(b) The Department shall maintain a log of all complaints regarding the provision of MFC services received via phone calls, e-mails, or writing.

(A) At a minimum, the complaint log shall include:

(i) The date the complaint was received;

(ii) The name of the person taking the complaint;

(iii) The nature of the complaint;

(iv) The name of the person making the complaint, if known; and

(v) The disposition of the complaint.

(B) Child welfare and law enforcement reports of abuse or neglect shall be maintained separately from the central complaint and grievance log.

(c) Response to complaints. Department staff response to the complaint must be provided within five working days following receipt of the complaint and must include an investigation of the facts supporting or disproving the complaint. Any agreement to resolve the complaint must be in writing and must be specifically approved by the grievant. The Department shall provide the grievant with a copy of the agreement.

(d) Review. A manager of the Department must review the complaint if the complaint involves Department staff or services, or if the complaint is not or may not be resolved with Department staff. The manager's response to the complaint must be made in writing within 30 days following receipt of the complaint, and include a response to the complaint as described in subsection (1)(c) of this section.

(e) Third-party review when complaints are not resolved by a Department manager. Unless the complainant is a Medicaid recipient who has elected to initiate the hearing process according to OAR 411-350-0118, a complaint involving the provision of service or a service provider may be submitted to the Department for an administrative review.

(A) The grievant must submit to the Department a request for an administrative review within 15 days from the date of the decision by the Department manager.

(B) Upon receipt of a request for an administrative review, the Department's director shall appoint an Administrative Review Committee and name the chairperson. The Administrative Review Committee shall be comprised of two representatives of the Department. Committee representatives may not have any direct involvement in the provision of services to the grievant or have a conflict of interest in the specific case being grieved.

(C) The Administrative Review Committee must review the complaint and the decision by the Department manager and make a recommendation to the Department's director within 45 days of receipt of the complaint unless the grievant and the Administrative Review Committee mutually agree to an extension.

(D) The Department's director shall consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision must contain the rationale for the decision.

(E) The decision of the Department's director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review.

(f) Documentation of complaint. Documentation of each complaint and the resolution of the complaint must be filed or noted in the complainant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, the Department must inform each child's parent orally and in writing, using language, format, and methods of communication appropriate to the parent's needs and abilities, of the following:

(a) The Department's grievance policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a hearing pursuant to OAR 411-350-0118 and the procedure to request a hearing.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0118

Denial, Termination, Suspension, Reduction, or Eligibility of Services for Individual Medicaid Recipients

(1) Each time the Department takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the Department shall notify the child's parent of the right to a hearing and the method to request a hearing. The Department shall mail the notice by cer-

tified mail, or personally serve the notice to the parent 10 days or more prior to the effective date of the action.

(a) The Department shall use the Notice of Hearing Rights or a comparable Department-approved form. A notice of hearing rights is not required if an action is part of, or fully consistent with, a child's ISP, or the child's parent has agreed with the action by signature to the ISP. The notice of hearing rights shall be given directly to the parent when the ISP is signed.

(b) The child's parent may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the address on the notice to expedite the process.

(c) A notice required by this section of this rule must include:

(A) The action the Department intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that supports, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules, ORS chapter 183, and 42 CFR Part 431, Subpart E;

(E) A statement that the Department files on the subject of the hearing automatically becoming part of the hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice shall take effect by default if the Department representative does not receive a request for hearing from the party within 45 days from the date that the Department mails the notice of action;

(G) In cases of an action based upon a change in law, the circumstances under which a hearing shall be granted; and

(H) An explanation of the circumstances under which MFC services shall be continued if a hearing is requested.

(d) If the child's parent disagrees with the decision or proposed action of the Department to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the parent may request a hearing as provided in ORS chapter 183. The request for a hearing must be in writing on Form DHS 443 and signed by the parent. The signed form (DHS 443) must be received by the Department within 45 days from the date of the Department's notice of action.

(e) The child's parent may request an expedited hearing if the parent feels that there is an immediate, serious threat to the child's life or health if the normal timing of the hearing process is followed.

(f) If the child's parent requests a hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department shall continue the services.

(A) The Department shall continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and the Department issues a final order; or

(iii) The child is no longer eligible for Medicaid benefits.

(B) The Department shall notify the child's parent that the Department is continuing the service. The notice shall inform the parent that, if the hearing is resolved against the child, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department may reinstate services if:

(A) The Department takes an action without providing the required notice and the child's parent requests a hearing;

(B) The Department fails to provide the notice in the time required in this rule and the child's parent requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the child's parent but the location of the parent becomes known during the time that the child is still eligible for services.

(h) The Department shall promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the child, or the Department decides in the child's favor before the hearing.

(i) The Department representative and the child's parent may have an informal conference without the presence of the administrative law judge to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the child's parent to settle the matter;

(B) Ensure the child's parent understands the reason for the action that is the subject of the hearing request;

(C) Give the child's parent an opportunity to review the information that is the basis for that action;

(D) Inform the child's parent of the rules that serve as the basis for the contested action;

(E) Give the child's parent and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the child's parent wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review the Department's action.

(j) The child's parent may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if the additional conference facilitates the hearing process.

(k) The Department may provide the child's parent the relief sought at any time before the final order is issued.

(l) A child's parent may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the Department or the Office of Administrative Hearings receives the request for withdrawal. The Department shall issue a final order confirming the withdrawal to the last known address of the parent. The parent may cancel the withdrawal up to 10 working days following the date the final order is issued.

(2) PROPOSED AND FINAL ORDERS.

(a) In a contested case, the administrative law judge must serve a proposed order on the child and the Department.

(b) If the administrative law judge issues a proposed order that is adverse to the child, the child's parent may file an exception to the proposed order to be considered by the Department. The exceptions must be in writing and must be received by the Department no later than 10 days after service of the proposed order. The child's parent may not submit additional evidence after this period unless the Department grants prior approval.

(c) After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

(3) The provider or billing provider must submit relevant documentation to the Department within five working days at the request of the Department when a hearing has been requested.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0150, SPD 14-2004, f. & cert. ef. 6-1-04; Renumbered from 411-350-0060, SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

411-350-0120

Sanctions for Providers of Medically Fragile Children's Services

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by the Department to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or issuance of a provider number;

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely provide the MFC services authorized as determined by the child's parent or the services coordinator;

(e) The provider has had a founded report of child abuse or substantiated abuse;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish records or documentation as requested;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime, founded report of child abuse, or substantiated abuse;

(i) The provider has falsified required documentation;

(j) The provider has been suspended or terminated as a provider by the Department or Oregon Health Authority; or

(k) The provider has not adhered to the provisions of these rules.

(2) The Department may impose the following sanctions on a provider:

(a) Termination from providing MFC services;

(b) Suspension from providing MFC services for a specified length of time or until specified conditions for reinstatement are met and approved by the Department; or

(c) Withholding payments to the provider.

(3) If the Department makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the Department's director.

(b) For an appeal to be valid, written notice of the appeal must be received by the Department within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or the Oregon Health Authority may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0210, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13

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Rule Caption: Medically Involved Children's Program
Adm. Order No.: SPD 56-2013
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Rules Repealed: 411-355-0010(T), 411-355-0020(T), 411-355-0030(T), 411-355-0040(T)
Subject: The Department of Human Services is permanently amending the rules in OAR chapter 411, division 355 for the Medically Involved Children's Program.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-355-0000
Statement of Purpose

(1) The rules in OAR chapter 411, division 355 establish the policy of, and prescribe the standards and procedures for, the provision of services for children enrolled in the Medically Involved Children's Program.

(2) MICP services are exclusively intended to enable a child who meets the nursing facility level of care to return to the family home, or remain at the family home, with specialized supports and services. MICP services specifically preserve a parent's capacity to care for their child, assure the health and safety of the child within the family home, and enable a child who has been separated from their family due to their health and medical care needs to return to the family home to prevent out of home placement. MICP services complement and supplement the services that are available through the State Medicaid Plan and other federal, state, and local programs as well as the natural supports that families and communities provide.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0010
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 355:

(1) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Attendant Care" means the Medicaid state plan funded essential supportive daily care described in OAR 411-355-0040 that is delivered by a qualified provider to enable a child to remain in, or return to, the child's family home.

(5) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(6) "Behavior Consultant" means a contractor with specialized skills who meets the requirements of OAR 411-355-0050 and provides the services described in OAR 411-355-0040.

(7) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause a child's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(8) "Billing Form" means the document generated by the Department that acts as a prior authorization, contract, and payment mechanism for services.

(9) "Billing Provider" means an organization that enrolls and contracts with the Department to provide services through employees that bills the Department for the provider's services.

(10) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(11) "Child" means an individual who is less than 18 years of age applying for, or eligible for, the Medically Involved Children's Program.

(12) "Chore Services" mean the services described in OAR 411-355-0040 that are needed to restore a hazardous or unsanitary situation in a child's family home to a clean, sanitary, and safe environment.

(13) "CMS" means Centers for Medicare and Medicaid Services, the federal agency charged with delivery and oversight of all Medicare and Medicaid services.

(14) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(15) "Community Nursing Services" mean the services described in OAR 411-355-0040 that include nurse delegation, training, and care coordination for a child living in the child's family home.

(16) "Community Transportation" means the services described in OAR 411-355-0040 that enable a child to gain access to community services, activities, and resources that are not medical in nature.

(17) "Cost Effective" means that in the opinion of a services coordinator, a specific service, support, or item of equipment meets a child's service needs and costs less than, or is comparable to, other similar service, support, or equipment options considered.

(18) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047. Delegation by a physician is also allowed.

(19) "Department" means the Department of Human Services.

(20) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(21) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(22) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-355-0040 that are necessary to ensure the health, welfare, and safety of a child in the child's family home, or that enable a child to function with greater independence in the family home.

(23) "Family" means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the child's primary caregiver is:

(a) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(C) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(24) "Family Home" means a child's primary residence that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site.

(25) "Family Training" means the training and counseling services described in OAR 411-355-0040 that are provided to a child's family to increase the family's capacity to care for, support, and maintain the child in the child's family home.

(26) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(27) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(28) "Grievance" means a process by which a person may air complaints and seek remedies.

(29) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(30) "IADL" means "instrumental activities of daily living" as defined in this rule.

(31) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(32) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for a child to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the child's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(33) "Instrumental Activities of Daily Living (IADL)" means the activities other than activities of daily living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(34) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(35) "ISP" means "Individual Support Plan" as defined in this rule.

(36) "Level of Care" means a child meets the following institutional level of care for nursing facility level of care for children with intellectual or developmental disabilities:

(a) The child has a documented medical condition that requires 24-hour professional nursing supervision and demonstrates the need for active treatment as assessed by the medically involved criteria as defined in this rule; and

(b) The child's medical condition requires the care and treatment of services normally provided in a nursing facility.

(37) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(38) "Medically Involved Children's Program (MICP)" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on a child living in the child's family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

(39) "Medically Involved Criteria (Form DHS-0521)" means the assessment tool used by the Department to evaluate the intensity of the challenges presented by a child eligible for the Medically Involved Children's Program.

(40) "MICP" means "Medically Involved Children's Program" as defined in this rule.

(41) "Natural Supports" means the parental responsibilities for a child who is less than18 years of age and the voluntary resources available to the child from the child's relatives, friends, neighbors, and the community that are not paid for by the Department.

(42) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN) pursuant to ORS chapter 678.

(43) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to the child's primary caregiver or a qualified provider. When a Nursing Care Plan exists, it is a supporting document for an Individual Support Plan.

(44) "Nursing Facility" means a residential medical facility.

(45) "Nursing Tasks or Services" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks or services may be delegated.

(46) "OHP" means the Oregon Health Plan.

(47) "Oregon Intervention System" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(48) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria as described in OAR chapter 461.

(49) "Parent" means biological parent, adoptive parent, stepparent, or legal guardian.

(50) "Person-Centered Planning":

(a) Means a timely and formal or informal process for gathering and organizing information that helps:

(A) Determine and describe choices about personal goals, activities, services, providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with cultural considerations, needs, and preferences.

(51) "Personal Care Services" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(52) "Plan of Care" means the written plan of Medicaid services required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(53) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abuse or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(54) "Primary Caregiver" means a child's parent, guardian, relative, or other non-paid parental figure that provides direct care at the times that a paid provider is not available.

(55) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts the child's freedom of movement.

(56) "Provider" means a person who is qualified as described in OAR 411-355-0050 to receive payment from the Department for providing support and services to a child according to the child's Individual Support Plan. A provider works directly with a child. A provider may be an employee of a billing provider, employee of a child's parent, or an independent contractor.

(57) "Relief Care" means the intermittent services described in OAR 411-355-0040 that are provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a child's primary caregiver.

(58) "Service Level" means the services allotted for the care of a child based on the medically involved criteria. The service level consists of state plan services, including Community First Choice state plan services, and if the child is on a waiver, waiver services.

(59) "Services Coordinator" means an employee of the Department who ensures a child's eligibility for the Medically Involved Children's Program and provides assessment, case management, service implementation, and evaluation of the effectiveness of the services. A services coordinator is a child's person-centered plan coordinator as defined in the Community First Choice state plan.

(60) "Special Diet" means the specially prepared food or particular types of food described in OAR 411-355-0040 that are specific to a child's medical condition or diagnosis and needed to sustain the child in the child's family home.

(61) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-355-0040 that enable a child to increase the child's ability to perform activities of daily living or to perceive, control, or communicate with the environment in which the child lives.

(62) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(63) "Supplant" means take the place of.

(64) "Support" means the assistance that a child and the child's family requires, solely because of the effects of the child's intellectual or developmental disability, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the child's family home. Support is subject to change with time and circumstances.

(65) "These Rules" mean the rules in OAR chapter 411, division 355.

(66) "Volunteer" means any person providing services without pay to support the services and supports provided to a child.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0020
Eligibility

(1) ELIGIBILITY. In order to be eligible for the MICP, a child must:

(a) Be under the age of 18;

(b) Be a U.S. citizen;

(c) Be eligible for OSIP-M;

(d) Be eligible to receive Title XIX (Medicaid) services;

(e) After completion of an assessment, meet the level of care as defined in OAR 411-355-0010;

(f) Be accepted by the Department by scoring 100 or greater on the medically involved criteria within four months of starting services;

(g) Require services offered under the MICP;

(h) Reside in the family home or reside in a nursing facility and wish to return to the family home; and

(i) Be capable of being safely served in the family home. This includes but is not limited to the child's primary caregiver demonstrating the willingness, skills, and ability to provide direct care as outlined in the child's ISP in a cost effective manner as determined by the service coordinator within the limitations of OAR 411-355-0040.

(2) INELIGIBILITY. A child is not eligible for the MICP if the child:

(a) Continues to reside in a hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as ICF/MR), residential facility, foster home, or other institution;

(b) Does not require waiver services, Community First Choice state plan services, or has sufficient family, government, or community resources available to provide for his or her care; or

(c) Is not safely served in the family home as described in section (1)(i) of this rule.

(3) DISENROLLMENT. A child is disenrolled from the MICP when:

(a) The child no longer meets the medically involved criteria of section (1) of this rule; or

(b) The child's medically involved criteria score falls below 80.

(4) REDETERMINATION. The Department redetermines a child's eligibility for the MICP using the medically involved criteria at a minimum of every 12 months, or as the child's status changes.

(5) ENROLLMENT. If a child meets the criteria of section (1) of this rule and space is available in the MICP, the child's priority for enrollment is in accordance with ORS 417.345, CMS model waiver requirements, and geographical distribution for equal access to services. The date the initial application is complete is the date that the Department receives all of the required demographic and referral information on the child.

(6) WAIT LIST. If the allowable numbers of children in the MICP are already receiving services, the Department may place a child eligible for the MICP on a wait list. A child on the wait list may access other waiver, state plan personal care, or Community First Choice state plan services as determined eligible.

(a) The date the initial application for the MICP is completed determines the order on the wait list. A child previously enrolled in children's intensive in-home services that currently meets eligibility criteria and applies for the MICP is put on the wait list as of the date the child's original application for services was complete.

(b) Children on the wait list are served on a first come, first served basis according to the legislatively mandated enrollment priorities, per geographical region, and as space on the MICP allows.

(7) ASSESSMENT. Anyone may request an assessment for a child for MICP services.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0030
Individual Support Plan

(1) To develop an ISP, a services coordinator must complete a functional needs assessment using a person-centered planning approach and assess the service needs of the child. The assessment must take place in person and the services coordinator must interview the child's parent, provider, and when appropriate, any other person at the parent's request. The assessment must identify the following:

(a) The current care needs of the child including ADL care, medication management, communication, supervisory needs, and physical environment;

(b) The services for which the child is currently eligible;

(c) The services currently being provided;

(d) All available family, private health insurance, and government or community resources that meet any, some, or all of the child's needs; and

(e) Areas of unmet needs.

(2) The service coordinator must prepare, with the input of the child's parent and any other person at the parent's request, a written ISP that identifies:

(a) The service needs of the child;

(b) The most cost effective services for safely and appropriately meeting the child's service needs; and

(c) The methods, resources, and strategies that address the child's service needs.

(3) The ISP must include:

(a) A description of the supports required, including the reason the support is necessary. The description must be consistent with the needs identified in the functional needs assessment;

(b) A list of personal, community, and public resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(c) The maximum hours of provider services authorized for the child;

(d) The annual average service level;

(e) The number of hours of attendant care or other related services authorized for the child;

(f) Additional services authorized by the Department for the child;

(g) All behavior and specialized consultant services purchased through the MICP;

(h) The projected date of when specific services are to begin and end, as well as the end date, if any, of the period of service covered by the ISP;

(i) Projected costs with sufficient detail to support estimates;

(j) The manner in which services are delivered and the frequency of services;

(k) Service providers;

(l) The child's strengths and preferences;

(m) If the child has a determined service level, the clinical and support needs as identified through the functional needs assessment;

(n) Individually identified goals and desired outcomes;

(o) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(p) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(q) The identity of the person responsible for case management and monitoring the ISP;

(r) The date of the next ISP review that, at a minimum, must be completed within 12 months of the last ISP;

(s) The Nursing Care Plan as a supporting document, when one exists;

(t) A provision to prevent unnecessary or inappropriate care; and

(u) If the child has a determined service level, any changes in support needs identified through a functional needs assessment.

(4) The child's parent must review the ISP prior to implementation. The parent and the services coordinator must sign the ISP and a copy must be provided to the parent.

(5) A services coordinator must reflect significant changes in the needs of a child in the child's ISP, as they occur, and provide a copy of the revised ISP to the parent.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0040
Scope and Limitations of MICP Services

(1) MICP services are intended to support, not supplant, the natural supports supplied by a child's primary caregiver. MICP services are not available to replace services provided by a primary caregiver or to replace other governmental or community services.

(2) MICP services are only authorized to enable a child's primary caregiver to meet the needs of caring for a child on the Medically Involved Model Waiver. All services funded by the Department must be based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(3) When multiple children in the same family home or setting qualify for MICP services, the same provider must provide services to all qualified children if services may be safely delivered by a single provider, as determined by the services coordinator.

(4) To be authorized and eligible for payment by the Department, all MICP supports and services must be:

(a) Directly related to the child's disability;

(b) Required to maintain the health and safety of the child;

(c) Cost effective;

(d) Considered not typical for a child's parent to provide a child of the same age;

(e) Required to help the child's parent to continue to meet the needs of caring for the child; and

(f) Included in an approved ISP.

(5) For an initial or annual ISP, MICP services may include a combination of the following waiver and other Medicaid services based upon the needs of a child as determined by a services coordinator and as consistent with the child's functional needs assessment:

(a) Community First Choice state plan services:

(A) Specialized consultation, including behavior consultation as described in section (6) of this rule;

(B) Community nursing services as described in section (7) of this rule;

(C) Environmental accessibility adaptations as described in section (8) of this rule;

(D) Attendant care as described in section (9) of this rule;

(E) Relief care as described in section (10) of this rule;

(F) Specialized equipment and supplies as described in section (11) of this rule;

(G) Chore services as described in section (12) of this rule; and

(H) Community transportation as described in section (13) of this rule.

(b) Waiver services:

(A) Family training as described in section (14) of this rule;

(B) Special diet as described in section (15) of this rule; and

(C) Translation as described in section (16) of this rule.

(6) SPECIALIZED CONSULTATION – BEHAVIOR CONSULTATION. Behavior consultation is only authorized to support a child's primary caregiver in their caregiving role. Behavior consultation is only authorized, as needed, to respond to specific problems identified by a primary caregiver or a services coordinator. Behavior consultants must:

(a) Work with the child's primary caregiver to identify:

(A) Areas of a child's family home life that are of most concern for the child and the child's parent;

(B) The formal or informal responses the child's family or the provider has used in those areas; and

(C) The unique characteristics of the child's family that may influence the responses that may work with the child.

(b) Assess the child. The assessment must include:

(A) Specific identification of the behaviors or areas of concern;

(B) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(C) Identification of early warning signs of the behavior;

(D) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:

(i) An effort to communicate;

(ii) The result of a medical condition;

(iii) The result of an environmental cause; or

(iv) The symptom of an emotional or psychiatric disorder.

(E) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(F) An assessment of current communication strategies.

(c) Develop a variety of positive strategies that assist the child's primary caregiver and the provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a primary caregiver and a provider to the early warning signs.

(A) Interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-355-0010.

(B) The least intrusive intervention possible must be used.

(C) Abusive or demeaning interventions must never be used.

(D) The strategies must be adapted to the specific disabilities of the child and the style or culture of the child's family.

(d) Develop emergency and crisis procedures to be used to keep the child and the child's primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to the Oregon Intervention System must be utilized;

(e) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the child's primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(f) Teach the child's primary caregiver and the provider the strategies and procedures to be used; and

(g) Monitor and revise the Behavior Support Plan as needed.

(7) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting a child's autonomy and self-management of healthcare;

(B) Collateral contact with a services coordinator regarding a child's community health status to assist in monitoring safety and well-being and to address needed changes to the child's ISP; and

(C) Delegation and training of nursing tasks to a child's primary caregiver and a provider so the caregivers may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(8) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are physical adaptations to a child's family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's intellectual or developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child;

(R) Modifications for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child, such as lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, or other unique modifications to keep the child safe in the vehicle; and

(S) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the child's family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child;

(B) Adaptations that add to the total square footage of the child's family home; and

(C) General repair or maintenance and upkeep required for the child's family home or motor vehicle, including repair of damage caused by the child.

(c) Environmental accessibility adaptations are limited to $5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the child's service needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the child's ISP.

(e) Environmental accessibility adaptations over $500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the provider's file prior to payment.

(f) Environmental accessibility adaptations must be made within the existing square footage of the child's family home, except for external ramps, and may not add to the square footage of the building.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) Environmental accessibility adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

(9) ATTENDANT CARE. Attendant care services include the purchase of direct provider support provided to a child in the child's family home or community by qualified individual providers and agencies. Provider assistance provided through attendant care must support the child to live as independently as appropriate for the child's age, support the child's family in their primary caregiver role, and be based on the identified needs of the child. A child's primary caregiver is expected to be present or available during the provision of attendant care.

(a) Attendant care services provided by qualified providers or agencies include:

(A) Basic personal hygiene — Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care — Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility — Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — Feeding and monitoring intake and output;

(E) Skin care — Dressing changes;

(F) Physical healthcare including delegated nursing tasks;

(G) Supervision - Providing an environment that is safe and meaningful for the child and interacting with the child to prevent danger to the child and others and maintain skills and behaviors required to live in the child's family home and community;

(H) Assisting the child with appropriate leisure activities to enhance development in the child's family home and community and provide training and support in personal environmental skills;

(I) Communication — Assisting the child in communicating, using any means used by the child;

(J) Neurological — Monitoring of seizures, administering medication, and observing status; and

(K) Accompanying the child and the child's family to health related appointments.

(b) Attendant care services must:

(A) Be previously authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services available from the child's family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a child's primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child;

(D) Support generally provided at the child's age by the child's parent or other family members;

(E) Educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(F) Services provided by the child's family; and

(G) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(10) RELIEF CARE. Relief care services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the child's primary caregiver.

(a) Relief care may include both day and overnight services that may be provided in:

(A) The child's family home;

(B) A licensed, certified, or otherwise regulated setting;

(C) A qualified provider's home. If overnight relief care is provided in a qualified provider's home, the services coordinator and the child's parent must document that the home is a safe setting for the child;

(D) A disability-related or therapeutic recreational camp; or

(E) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the child's ISP.

(b) Relief care services are not authorized for the following:

(A) Solely to allow a child's primary caregiver to attend school or work;

(B) For ongoing services that occur on more than a periodic schedule, such as eight hours a day, five days a week;

(C) For more than 14 consecutive overnight stays in a calendar month;

(D) For more than 10 days per individual plan year when provided at a specialized camp;

(E) For vacation, travel, and lodging expenses; or

(F) To pay for room and board if provided at a licensed site or specialized camp.

(11) SPECIALIZED EQUIPMENT AND SUPPLIES. Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase the child's abilities to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the child lives. Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation.

(a) Specialized equipment and supplies include:

(A) Electronic devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices. Expenditures for electronic devices are limited to $500 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(B) Assistive technology to provide additional security and replace the need for direct interventions to enable self direction of care and maximize independence such as motion or sound sensors, two-way communica-

tion systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems.

(i) Expenditures for assistive technology are limited to $5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(C) Assistive devices not covered by other Medicaid programs to assist and enhance a child's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to $5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(b) Specialized equipment and supplies may include the cost of a professional consultation, if required, to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price of the equipment.

(c) To be authorized by a services coordinator, specialized equipment and supplies must be:

(A) In addition to any medical equipment and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of the child; and

(C) Directly related to a child's disability.

(d) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized equipment and supplies intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through a child's family, community, or other governmental resources;

(D) Items that are considered unsafe for a child;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(e) Funding for specialized equipment and supplies with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Specialized equipment and supplies may only be included in a child's ISP when all other public and private resources have been exhausted.

(f) The services coordinator must secure use of specialized equipment or supplies costing more than $500 through a written agreement between the Department and the child's parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any specialized equipment or supplies purchased with MFC funds that are not used according to the child's ISP or according to the written agreement between the Department and the child's parent.

(12) CHORE SERVICES. Chore services may be provided only in situations where no one else in a child's family home is able of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of, or responsible for, providing these services.

(a) Chore services include heavy household chores such as --

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the family home is safe for a child to traverse and enter and exit the home.

(13) COMMUNITY TRANSPORTATION. Community transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the child's ISP. Community transportation excludes:

(a) Transportation provided by family members;

(b) Transportation used for behavioral intervention or calming;

(c) Transportation normally provided by schools;

(d) Transportation normally provided by the child's primary caregiver for a child of similar age without disabilities;

(e) Purchase of any family vehicle;

(f) Vehicle maintenance and repair;

(g) Reimbursement for out-of-state travel expenses;

(h) Ambulance services or medical transportation; or

(i) Transportation services that may be obtained through other means such as OHP or other public or private resources available to the child.

(14) FAMILY TRAINING. Family training services include the purchase of training, coaching, counseling, and support that increase the abilities of a child's family to care for and maintain the child in the child's family home. Family training services include:

(a) Instruction about treatment regimens and use of equipment specified in the child's ISP;

(b) Counseling services that assist the child's family with the stresses of having a child with an intellectual or developmental disability.

(A) To be authorized, the counseling services must:

(i) Be provided by licensed providers, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under ORS 675.530, or counselors licensed under ORS 675.715;

(ii) Directly relate to the child's intellectual or developmental disability and the ability of the child's family to care for the child; and

(iii) Be short-term.

(B) Counseling services exclude:

(i) Therapy that may be obtained through OHP or other payment mechanisms;

(ii) General marriage counseling;

(iii) Therapy to address the psychopathology of the child's family members;

(iv) Counseling that addresses stressors not directly attributed to the child;

(v) Legal consultation;

(vi) Vocational training for the child's family members; and

(vii) Training for families to carry out educational activities in lieu of school.

(c) Registration fees for organized conferences, workshops, and group trainings that offer information, education, training, and materials about the child's intellectual or developmental disability, medical, or health conditions.

(A) Conferences, workshops, or group trainings must be prior authorized by the services coordinator, directly relate to the child's intellectual or developmental disability, and increase the knowledge and skills of the child's family to care for and maintain the child in the child's family home.

(B) Conference, workshop, or group training costs exclude:

(i) Registration fees in excess of $500 per family for an individual event;

(ii) Travel, food, and lodging expenses;

(iii) Services otherwise provided under OHP or available through other resources; or

(iv) Costs for individual family members who are employed to care for the child.

(15) SPECIAL DIETS. Special diets do not constitute a full nutritional regime.

(a) In order for a special diet to be authorized:

(A) The foods must be on the approved list developed by the Department;

(B) The special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners;

(C) The special diet must be periodically monitored by a dietician or physician; and

(D) The special diet may not be reimbursed through OHP or any other source of public or private funding.

(b) A special diet excludes restaurant and prepared foods, vitamins, and supplements.

(16) TRANSLATION. If the primary language of a child or the child's primary caregiver is not English, translation service is provided to enable the child or the primary caregiver to communicate with providers of MICP services.

(17) The annual average service level, as authorized by the Department in the ISP, dated from the initial ISP to the anniversary date, must not exceed the allowed maximum service level amount. Service levels increase or decrease in direct relationship to the increasing or decreasing medically involved criteria score.

(18) EXCEPTIONS.

(a) The Department authorizes 90 day exceptions in the following circumstances:

(A) The child is at immediate risk of loss of the child's family home without the expenditure;

(B) The expenditure provides supports for emerging or changing care needs; or

(C) A significant medical condition or event occurs that prevents the child's primary caregiver from providing care or services as documented by a physician.

(b) The Department evaluates exceptions beyond 90 days on an individual basis using the criteria in subsection (a) of this section.

(19) The Department does not pay for MICP services that are:

(a) Notwithstanding abuse as defined in ORS 419B.005, abusive, aversive, or demeaning;

(b) Experimental;

(c) Illegal, including crimes identified in OAR 407-007-0275;

(d) Determined unsafe for the general public by recognized child and consumer safety agencies;

(e) Not necessary or cost effective;

(f) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills; or

(g) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0050

Standards for Providers Paid with MICP Funds

(1) PROVIDER QUALIFICATIONS.

(a) Each provider who is paid as a contractor, a self-employed individual, or an employee of the child's parent to provide the services described in OAR 411-355-0040 must:

(A) Be at least 18 years of age;

(B) Maintain a drug-free work place;

(C) Be legally eligible to work in the United States;

(D) Not be on the current Office of Inspector General's list of excluded or debarred providers (http://exclusions.oig.hhs.gov/);

(E) Not be the child's primary caregiver, parent, stepparent, or legal guardian of the child;

(F) Consent to and pass a background check by the Department as described in OAR 407-007-0200 to 407-007-0370 and be free of convictions or founded allegations of abuse by the appropriate agency, including but not limited to the Department, prior to enrolling as a provider;

(i) Background rechecks must be performed biannually, or as needed if a report of criminal activity has been received by the Department.

(ii) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0210. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes.

(G) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(H) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any attendant care services; and

(I) Provide evidence satisfactory to the Department that demonstrates by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized. The evidence must be confirmed in writing by the child's parent and include:

(i) Ability and sufficient education to follow oral and written instructions and keep any records required;

(ii) Responsibility, maturity, exercising sound judgment, and reputable character;

(iii) Ability to communicate with the child;

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(v) Current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training, and skill;

(vi) Understanding requirements of maintaining confidentiality and safeguarding the child's information; and

(vii) If providing transportation, a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(b) Section (1)(a)(G) of this rule does not apply to employees of the child's parent or employees of billing providers who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(c) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(d) A provider is not an employee of the Department or the state of Oregon and is not eligible for state benefits and immunities, including but not limited to the Public Employees' Retirement System or other state benefit programs.

(e) If the provider or billing provider is an independent contractor, during the terms of the contract, the provider or billing provider must maintain in force, at the providers own expense, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider or billing provider must provide written evidence of insurance coverage to the Department prior to beginning work.

(B) There must be no cancellation of insurance coverage without 30 days written notice to the Department.

(f) If the provider is an employee of the child's parent, the provider must submit documentation of immigration status required by federal statute to the Department. The Department maintains documentation of immigration status required by federal statute as a service to the parent, who is the employer.

(g) A provider must immediately notify the child's parent and, if appropriate, the Department, of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being, or level of service required by the child for whom MICP services are being provided.

(h) Providers are mandatory reporters and are required to report suspected child abuse to the police or their local Department office in the manner described in ORS 419B.010.

(2) BEHAVIOR CONSULTANT. A behavior consultant providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-355-0040, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have current certification demonstrating completion of Level II training in Oregon Intervention Systems; and

(c) Submit a resume to the Department indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals with intellectual or developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with individuals with intellectual or developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as outlined OAR 411-355-0040.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-355-0040.

(3) NURSE. A nurse providing direct care or delegation services must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the Department indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(4) ENVIRONMENTAL MODIFICATION CONSULTANTS. Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing individual needs, and developing cost effective plans that make the family home safe and accessible for the child.

(5) ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS. Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(6) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Clinical social workers licensed under ORS 675.530;

(c) Licensed professional counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(7) DIETICIANS. Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0060
Standards for Provider Organizations Paid by SPD

(1) A provider organization may not require additional certification to provide relief care, community inclusion, or emergent services if they are licensed or certified as:

(a) Twenty-four hour residential programs under OAR chapter 411, division 325;

(b) Foster homes for children with intellectual or developmental disabilities under OAR chapter 411, division 346;

(c) Child care centers under OAR chapter 414, division 300; or

(d) Organizational camps under OAR chapter 333, division 030.

(2) Provider organizations licensed or certified as described in section (1) of this rule may be considered sufficient demonstration of ability to:

(a) Recruit, hire, supervise, and train qualified staff;

(b) Provide services according to an ISP; and

(c) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(3) A provider organization that wishes to enroll with the MICP must maintain and submit evidence upon initial application and upon request by the Department the following:

(a) Current background checks on each employee who shall be providing services in a family home showing that the employee has no disqualifying criminal convictions, including crimes identified in OAR 407-007-0275;

(b) Professional liability insurance that meets the requirements of OAR 411-355-0050; and

(c) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(4) Provider organizations must assure that all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MICP funds meet standards for qualification of providers outlined in OAR 411-355-0050.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0070
Standards for General Business Providers paid by SPD

General business providers providing services to children paid with MICP funds must hold any current license appropriate to operate required by the state of Oregon or federal law or regulation.

(1) Home health agencies must be licensed under ORS 443.015.

(2) In-home care agencies must be licensed under ORS 443.315.

(3) Public transportation providers must be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon.

(4) Vendors and medical supply companies providing specialized medical equipment and supplies must have a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Division of Medical Assistance Programs.

(5) Providers of personal emergency response systems must have a current retail business license.

(6) Vendors and supply companies providing specialized diets must have a current retail business license.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0080
Documentation Needs for MICP Services

(1) Original, accurate timesheets of MICP services, dated and signed by the provider and the parent after the services are provided, must be maintained and submitted to the Department with any request for payment for services.

(2) Requests for payment for MICP services must:

(a) Include the billing form indicating prior authorization for the services;

(b) Be signed by the parent after the services were delivered, verifying that the services were delivered as billed; and

(c) Be signed by the provider or billing provider, acknowledging agreement upon request with the terms and condition of the billing form and attesting that the hours were delivered as billed.

(3) Documentation of provided MICP services must be provided to the services coordinator and maintained in the family home or the place of business of the provider of services. The Department does not pay for services unrelated to a child's disability as outlined in the child's ISP.

(4) The Department retains billing forms and timesheets for at least five years from the date of service.

(5) Behavior consultants must submit to the Department the following written in clear, concrete language, understandable to the parent and provider:

(a) An evaluation of the child, the parent's concerns, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that may impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or provider that describes the suggested strategies to be used with the child.

(6) Nurses providing delegation services must submit to the Department the following written in clear, concrete language, understandable to the parent and provider:

(a) A copy of the written statement acknowledging the specific provider receiving training, the nursing tasks delegated to that provider, and the date of the next scheduled review; and

(b) Any nursing delegation plan or instructions left with the parent or provider.

(7) Billing providers must maintain documentation of provided services for at least seven years from the date of service.

(8) Upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, CMS, or their authorized representatives, providers or billing providers must furnish requested documentation immediately or within the time frame specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(9) Access to records by the Department inclusive of medical or nursing records, behavior or psychiatric records, or financial records, does not require authorization or release by the parent.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0090
Payment for MICP Services

(1) The Department makes payment for MICP services, described in OAR 411-355-0040, after services are delivered as authorized and required documentation is received by the services coordinator.

(2) Effective July 28, 2009, public funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(3) Section (2) of this rule does not apply to employees of a parent or billing provider who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(4) Service levels are individually negotiated by the Department, based on the individual needs of the child.

(5) Authorization must be obtained prior to the delivery of any MICP services for the services to be eligible for payment.

(6) Providers must request payment authorization for MICP services provided during an unforeseeable emergency on the first business day following the emergency service. The services coordinator determines if the service is eligible for payment.

(7) The Department makes payment to the individual employee of the parent on behalf of the parent. The Department pays the employer's share of the Federal Insurance Contributions Act (FICA) and withholds the employee's share of FICA as a service to the parent as the provider's employer.

(8) The delivery of authorized MICP services must occur so that any individual employee of the parent does not exceed 40 hours per work week. The Department does not authorize services that require the payment of overtime, without prior written authorization by the supervisor of children's intensive in-home services.

(9) The Department does not pay for any hours of MICP services provided by a provider beyond 16 hours in any 24-hour period unless the hours are part of a 24-hour service budget negotiated by the Department and there is evidence the child may be safely served with a 24-hour service budget. Exceptions require written authorization by the supervisor of children's intensive in-home services.

(10) Holidays are paid at the same rate as non-holidays.

(11) Travel time to reach the job site is not reimbursable.

(12) In order to be eligible for payment, requests for payments must be submitted to the Department within three months of the delivery of MICP services.

(13) Payment by the Department for MICP services is considered full payment for the services rendered under Title XIX. Under no circumstances may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

(14) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

(15) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider of MICP services.

(16) The Department may void without cause prior authorizations that have been issued.

(17) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 411;

(b) Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for MICP services provided within the provider's licensure.

(19) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(20) No individual shall submit to the Department:

(a) A false billing form for payment;

(b) A billing form for payment that has been, or is expected to be, paid by another source; or

(c) Any billing form for MICP services that have not been provided.

(21) The Department only makes payment to the enrolled provider who actually performs the MICP services or the provider's enrolled billing provider. Federal regulations prohibit the Department from making payment to collection agencies.

(22) Payments may be denied if any provisions of these rules are not complied with.

(23) The Department recoups all overpayments.

(a) The amount to be recovered:

(A) Is the entire amount determined or agreed to by the Department;

(B) Is not limited to the amount determined by criminal or civil proceedings; and

(C) Includes interest to be charged at allowable state rates.

(b) A request for repayment of the overpayment or notification of recoupment of future payments is delivered to the provider by registered or certified mail or in person.

(c) Payment schedules with the interest may be negotiated at the discretion of the Department.

(d) If recoupment is sought from a parent whose child received MICP services, hearing rights in OAR 411-355-0110 apply.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 417.345, 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0100

Complaints and Grievances

(1) COMPLAINTS AND GRIEVANCES. The Department shall address all grievances in accordance with Department written policies, procedures, and rules. Copies of the procedures for resolving grievances shall be maintained on file at the Department. These policies and procedures, at a minimum, shall address:

(a) The parent of a child has an opportunity to informally discuss and resolve any complaint or grievance regarding action taken by the Department that is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude the parent to pursue resolution through formal grievance processes.

(b) The Department shall maintain a log of all complaints regarding the provision of MICP services received via phone calls, e-mails, or writing.

(A) At a minimum, the complaint log shall include:

(i) The date the complaint was received;

(ii) The name of the individual taking the complaint;

(iii) The nature of the complaint;

(iv) The name of the individual making the complaint, if known; and

(v) The disposition of the complaint.

(B) Child welfare and law enforcement reports of abuse or neglect shall be maintained separately from the central complaint and grievance log.

(c) Department staff response to the complaint must be provided within five working days following receipt of the complaint and must include:

(A) An investigation of the facts supporting or disproving the complaint; and

(B) Agreement to resolve the complaint. Any agreement to resolve the complaint must be reduced to writing and must be specifically approved by the grievant. The grievant must be provided with a copy of the agreement.

(d) If the complaint involves Department staff or services, or if the complaint is not or cannot be resolved with Department staff, a review by the Department manager must be completed. Department manager response to the complaint must be made in writing, within 30 days following receipt of the complaint, and must include a response to the complaint as described in section (1)(c) of this rule.

(e) Unless the grievant is a Medicaid recipient who has elected to initiate the hearing process according to OAR 411-355-0110, a complaint involving the provision of service or a service provider may be submitted to the Department for an administrative review.

(A) The grievant must submit to the Department a request for an administrative review within 15 days from the date of the decision by the Department manager.

(B) Upon receipt of a request for an administrative review, the Department's director shall appoint an Administrative Review Committee and name the chairperson. The Administrative Review Committee shall be comprised of two representatives of the Department. Committee representatives must not have any direct involvement in the provision of services to the grievant or have a conflict of interest in the specific case being grieved.

(C) The Administrative Review Committee must review the complaint and the decision by the Department manager and make a recommendation to the Department's director within 45 days of receipt of the complaint unless the grievant and the Administrative Review Committee mutually agree to an extension.

(D) The Department's director shall consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision must contain the rationale for the decision.

(E) The decision of the Department's director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review.

(f) Documentation of each complaint and its resolution must be filed or noted in the grievant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, the Department must inform each child's parent orally and in writing, using language, format, and methods of communication appropriate to the parent's needs and abilities, of the following:

(a) Department grievance policy and procedures, including the right to an administrative review, and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a hearing pursuant to OAR 411-355-0110 and the procedure to request a hearing.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 417.345, 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0110

Denial, Termination, Suspension, Reduction or Eligibility for MICP Services for Individual Medicaid Recipients

(1) MEDICAID FAIR HEARING RIGHTS. Each time the Department takes an action to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the Department shall notify the child's parent of the right to a hearing and the method to request a hearing. The Department shall mail the notice by certified mail, or personally serve

it to the child's parent 10 days or more prior to the effective date of an action.

(a) The Department shall use, Notice of Hearing Rights, or a comparable Department-approved form for such notification. This notification requirement does not apply if an action is part of, or fully consistent with, the ISP, or the child's parent has agreed with the action by signature to the ISP. The notice shall be given directly to the parent when the ISP is signed.

(b) The parent may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the address on the notice to expedite the process.

(c) A notice required by section (1) of this rule must include:

(A) The action the Department intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that supports, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules, ORS chapter 183, and 42 CFR Part 431, Subpart E;

(E) A statement that the Department files on the subject of the hearing automatically becoming part of the hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice shall take effect by default if the Department representative does not receive a request for hearing from the party within 45 days from the date that the Department mails the notice of action;

(G) In cases of an action based upon a change in law, the circumstances under which a hearing shall be granted; and

(H) An explanation of the circumstances under which MICP services shall be continued if a hearing is requested.

(d) If the parent disagrees with the decision or proposed action of the Department to deny, terminate, suspend, or reduce a child's access to services covered under Medicaid, the parent may request a hearing as provided in ORS chapter 183. The request for a hearing must be in writing on Form DHS 443 and signed by the parent. The signed form (DHS 443) must be received by the Department within 45 days from the date of the Department's notice of denial.

(e) The parent may request an expedited hearing if the parent feels that there is immediate, serious threat to the child's life or health should the normal timing of the hearing process be followed.

(f) If the parent requests a hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department shall continue the services.

(A) The Department must continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and the Department issues a final order; or

(iii) The child is no longer eligible for Medicaid benefits.

(B) The Department must notify the child's parent that the Department is continuing the service. The notice must inform the parent that, if the hearing is resolved against the child, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department may reinstate services if:

(A) The Department takes an action without providing the required notice and the parent requests a hearing;

(B) The Department fails to provide the notice in the time required in this rule and the parent requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the parent, but the location of the parent becomes known during the time that the child is still eligible for services.

(h) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the child, or the Department decides in the child's favor before the hearing.

(i) The Department representative and the parent may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the parent to settle the matter;

(B) Ensure the child's parent understands the reason for the action that is the subject of the hearing request;

(C) Give the parent an opportunity to review the information that is the basis for that action;

(D) Inform the parent of the rules that serve as the basis for the contested action;

(E) Give the parent and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the parent wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action.

(j) The child's parent may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(k) The Department may provide the parent the relief sought at any time before the final order is issued.

(l) A parent may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the Department or the Office of Administrative Hearings receives it. The Department must issue a final order confirming the withdrawal to the last known address of the child's parent. The child's parent may cancel the withdrawal up to 10 working days following the date the final order is issued.

(2) PROPOSED AND FINAL ORDERS.

(a) In a contested case, the administrative law judge must serve a proposed order on the child and the Department.

(b) If the administrative law judge issues a proposed order that is adverse to the child, the child's parent may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must be received by the Department no later than 10 days after service of the proposed order. The child's parent may not submit additional evidence after this period unless the Department grants prior approval.

(c) After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

(3) The performing or billing provider must submit relevant documentation to the Department within five working days at the request of the Department when a hearing has been requested.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

411-355-0120
Sanctions for MICP Providers

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by the Department to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or issuance of a provider number;

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely and adequately provide the MICP services authorized as determined by the parent or the services coordinator;

(e) The provider has had a founded report of child abuse or substantiated abuse;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has not adhered to the provisions of these rules; or

(k) The provider has been suspended or terminated as a provider by the Department or the Oregon Health Authority.

(2) The Department may impose the following sanctions on a provider:

(a) Termination from participation in the MICP;

(b) Suspension from participation in the MICP for a specified length of time or until specified conditions for reinstatement are met and approved by the Department; or

(c) Payments to the provider may be withheld.

(3) If the Department makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the Department's director.

(b) For an appeal to be valid, written notice of the appeal must be received by the Department within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or the Oregon Health Authority may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13

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Rule Caption: Community Developmental Disability Programs
Adm. Order No.: SPD 57-2013
Filed with Sec. of State: 12-27-2013
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Subject: The Department of Human Services is permanently amending the rules in OAR chapter 411, division 320 for community developmental disability programs.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-320-0010
Statement of Purpose

The rules in OAR chapter 411, division 320 prescribe general administrative standards for the operation of a community developmental disability program (CDDP).

(1) A CDDP providing developmental disability services under a contract with the Department is required to meet the basic management, programmatic, and health, safety, and human rights regulations in the management of the community service system for individuals with intellectual or developmental disabilities.

(2) These rules prescribe the standards by which the Department provides services operated by the CDDP, including but not limited to eligibility determination, case management, adult protective services, and crisis diversion services.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0020
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 320:

(1) "24-Hour Residential Program" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide residential care and training to individuals with intellectual or developmental disabilities.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in:

(i) A home certified, endorsed, and licensed to provide 24-hour residential services for children with intellectual or developmental disabilities; or

(ii) An agency certified and endorsed by the Department to provide proctor foster care for children with intellectual or developmental disabilities.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(6) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include but are not limited to adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills, including but not limited to walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities.

(b) "Significant impairment" in adaptive behavior means a composite score of at least two standard deviations below the norm or two or more areas of functioning that are at least two standard deviations below the norm, including but not limited to communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency as indicated on a standardized adaptive test.

(7) "ADL" means "activities of daily living" as defined in this rule.

(8) "Administrative Review" means the formal process that is used by the Department when an individual, or as applicable the individual's legal or designated representative, is not satisfied with the decision made by a community developmental disability program about a complaint involving the provision of services or a service provider.

(9) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(10) "Annual Plan" means the written summary a services coordinator completes for an individual who is not enrolled in waiver or Community First Choice services. An Annual Plan is not an Individual Support Plan and is not a plan of care for Medicaid purposes.

(11) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(12) "Behavior Support Plan (BSP)" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause an individual's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(13) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to an individual's intellectual or developmental disability that prevents the individual from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community,

(14) "Brokerage" means "support services brokerage" as defined in this rule.

(15) "Care" means "services" as defined in this rule.

(16) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(17) "CDDP" means "community developmental disability program" as defined in this rule.

(18) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(19) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(20) "Choice" means an individual's expression of preference, opportunity for, and active role in decision-making related to services received

and from whom, including but not limited to case management, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated verbally, through sign language, or by other communication methods.

(21) "Choice Advising" means the impartial sharing of information about case management and other service delivery options available to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in OAR 411-320-0030(4)(c).

(22) "CMS" means Centers for Medicare and Medicaid Services.

(23) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(24) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(25) "Community Mental Health and Developmental Disability Program (CMHDDP)" means the entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, intellectual or developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department or Oregon Health Authority.

(26) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(27) "Complaint Investigation" means the investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(28) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated employment or community inclusion program. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a community developmental disability program. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in brokerages.

(29) "County of Origin" means:

(a) For an adult, the individual's county of residence; and

(b) For a child, the county where the jurisdiction of the child's guardianship exists.

(30) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(31) "Crisis Diversion Services" mean short-term services provided for up to 90 days or on a one-time basis, directly related to resolving a crisis, and provided to, or on behalf of, an individual eligible to receive crisis services.

(32) "Crisis Plan" means the document generated by the community developmental disability program or regional crisis diversion program that justifies and authorizes crisis supports and expenditures for an individual receiving crisis diversion services provided under these rules.

(33) "Current Documentation" means documentation relating to an individual's intellectual or developmental disability in regards to the individual's functioning within the last three years. Current documentation may include but is not limited to Individual Support Plans, Annual Plans, Behavior Support Plans, functional needs assessments, educational records, medical assessments related to the individual's intellectual or developmental disability, psychological evaluations, and assessments of adaptive behavior.

(34) "Day" means a calendar day unless otherwise specified in these rules.

(35) "Department" means the Department of Human Services.

(36) "Designated Representative" means a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the individual's representative in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(37) "Developmental Disability (DD)" means a neurological condition that:

(a) Originates before an individual reaches the age of 22 years, except that in the case of intellectual disability, the condition is manifested before the age of 18;

(b) Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior as diagnosed and measured by a qualified professional; and

(d) Is not primarily attributed to other conditions, including but not limited to mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(38) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(39) "Eligibility Determination" means a decision by a community developmental disability program or by the Department regarding a person's eligibility for developmental disability services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disability services.

(40) "Eligibility Specialist" means an employee of the community developmental disability program or other agency that contracts with the county or Department to determine eligibility for developmental disability services.

(41) "Entry" means admission to a Department-funded licensed or certified developmental disability service provider.

(42) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(43) "Family Member" means husband or wife, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(44) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(45) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(46) "Guardian" means the parent of a child or the person or agency appointed and authorized by a court to make decisions about services for a child.

(47) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(48) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(49) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. A hearing is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(50) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a certified foster home or licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site.

(51) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with Section 1915(c) and 1115 of the Social Security Act.

(52) "IADL" means "instrumental activities of daily living" as defined in this rule.

(53) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of

"mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(54) "IEP" means "Individualized Education Plan" as defined in this rule.

(55) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(56) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(57) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(58) "Individual" means an adult with an intellectual or developmental disability or a child with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(59) "Individualized Education Plan (IEP)" means the written plan of instructional goals and objectives developed in conference with an individual, the individual's parent or legal representative (as applicable), teacher, and a representative of the school district.

(60) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the individual's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(61) "Individual Support Plan (ISP) Team" means a team composed of an individual receiving services and the individual's legal or designated representative (as applicable), services coordinator, and others chosen by the individual, or as applicable the individual's legal or designated representative, such as service providers and family members.

(62) "Informal Adaptive Behavior Assessment" means:

(a) Observations of the adaptive behavior impairments recorded in an individual's progress notes by a services coordinator or a trained eligibility specialist, with at least two years experience working with individuals with intellectual or developmental disabilities.

(b) A standardized measurement of adaptive behavior such as a Vineland Adaptive Behavior Scale or Adaptive Behavior Assessment System that is administered and scored by a social worker or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals.

(63) "Instrumental Activities of Daily Living (IADL)" means the activities other than activities of daily living required to continue independent living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(64) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(65) "Intellectual Disability" means significantly sub-average general intellectual functioning defined as intelligence quotient's (IQ's) under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have intellectual disability if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional.

(66) "Intellectual Functioning" means functioning as assessed by a qualified professional using one or more individually administered general intelligence tests. For purposes of making eligibility determinations, intelligence tests do not include brief intelligence measurements.

(67) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the individual's legal or designated representative, has not given prior approval.

(68) "ISP" means "Individual Support Plan" as defined in this rule.

(69) "K Plan" means "Community First Choice" as defined in this rule.

(70) "Legal Representative":

(a) For a child means the child's parent unless a court appoints another person or agency to act as the child's guardian.

(b) For an adult means an attorney at law who has been retained by or for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(71) "Level of Care" means an individual meets the following institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as an ICF/MR):

(a) The individual has a condition of an intellectual disability or a developmental disability as defined in this rule and meets the eligibility criteria for developmental disability services as described in OAR 411-320-0080; and

(b) The individual has a significant impairment in one or more areas of adaptive functioning. Areas of adaptive functioning include self direction, self care, home living, community use, social, communication, mobility, or health and safety.

(72) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a community developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Department.

(73) "Management Entity" means the community developmental disability program or private corporation that operates the regional crisis diversion program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(74) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who:

(a) Comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(b) While acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with an intellectual or developmental disability. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(75) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(76) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(77) "Mental Retardation" means "intellectual disability" as defined in this rule.

(78) "Monitoring" means the periodic review of the implementation of services identified in an Individual Support Plan or Annual Plan and the quality of services delivered by other organizations.

(79) "Natural Supports" means the parental responsibilities for a child and the voluntary resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community that are not paid for by the Department.

(80) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(81) "OAAPI" means the Department's Office of Adult Abuse Prevention and Investigation.

(82) "OHP" means Oregon Health Plan.

(83) "OIS" means "Oregon Intervention System" as defined in this rule.

(84) "Older Adult" means an adult at least 65 years of age.

(85) "Oregon Intervention System (OIS)" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(86) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(87) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual with an intellectual or developmental disability that gathers and organizes information that helps an individual:

(A) Determine and describe choices about personal goals, activities, services, service providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with the individual's cultural considerations, needs, and preferences.

(88) "Personal Agent" means a person who is a case manager for the provision of case management services, works directly with individuals and the individuals' legal or designated representatives and families to provide or arrange for support services as described in OAR chapter 411, division 340, meets the qualifications set forth in OAR 411-340-0150(5), and is a trained employee of a support services brokerage or a person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited. A personal agent is an individual's Person-Centered Plan Coordinator as defined in the Community First Choice state plan.

(89) "Physician" means a person licensed under ORS chapter 677 to practice medicine and surgery.

(90) "Physician Assistant" means a person licensed under ORS 677.505 to 677.525.

(91) "Plan of Care" means the written plan of Medicaid services an individual needs as required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(92) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(93) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(94) "Program" means "service provider" as defined in this rule.

(95) "Progress Note" means a written record of an action taken by a services coordinator in the provision of case management, administrative tasks, or direct services, to support an individual. A progress note may also be a recording of information related to an individual's services, support needs, or circumstances, which is necessary for the effective delivery of services.

(96) "Protection" and "Protective Services" mean the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard an individual's person, property, and funds.

(97) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement.

(98) "Provider" means "service provider" as defined in this rule.

(99) "Psychologist" means:

(a) A person possessing a doctorate degree in psychology from an accredited program with course work in human growth and development, tests, and measurement; or

(b) A state certified school psychologist.

(100) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(101) "Qualified Professional" means a:

(a) Licensed clinical psychologist (Ph.D., Psy.D.) or school psychologist;

(b) Medical doctor (MD);

(c) Doctor of osteopathy (DO); or

(d) Nurse Practitioner.

(102) "Quality Management Strategy" means the Department's Quality Assurance Plan that includes the quality assurance strategies for the Department (http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf).

(103) "Region" means a group of Oregon counties defined by the Department that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(104) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties compromising the region agree are delivered more effectively or automatically on a regional basis.

(105) "Relief Care" means intermittent services provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(106) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(107) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the Department.

(108) "School Aged" means the age at which an individual is old enough to attend kindergarten through high school.

(109) "Self-Direction" means that an individual, or as applicable the individual's legal or designated representative, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports and promoting personal choice and control over the delivery of waiver and state plan services.

(110) "Service Element" means a funding stream to fund programs or services, including but not limited to foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive services, or family support.

(111) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department, or other appropriate agency, to provide these services.

(112) "Service Record" means the combined information related to an individual in accordance with OAR 411-320-0070(3).

(113) "Services" mean supportive services, including but not limited to provision of room and board, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation.

(114) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor services, and to act as a proponent for individuals with intellectual or developmental disabilities. A services coordinator is an individual's person-centered plan coordinator as defined in the Community First Choice state plan.

(115) "SSI" means Supplemental Security Income.

(116) "State Plan" means Community First Choice or state plan personal care.

(117) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(118) "Support" means the assistance that an individual requires, solely because of the affects of the individual's intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(119) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120 as well as the uniquely determined activities and purchases arranged through the support services brokerage that:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by an individual or the individual's legal or designated representative (as applicable);

(c) Are provided in accordance with an individual's Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(120) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with intellectual or developmental disabilities.

(121) "These Rules" mean the rules in OAR chapter 411, division 320.

(122) "Transfer" means movement of an individual from a service site to another service site administered or operated by the same service provider.

(123) "Transition Plan" means the written plan of services and supports for the period of time between an individual's entry into a particular service and the development of the individual's Individual Support Plan (ISP). The Transition Plan is approved by the individual's services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(124) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(125) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-320-0200.

(126) "Volunteer" means any person assisting a service provider without pay to support the services and supports provided to an individual.

(127) "Waiver Services" means "home and community-based waiver services" as defined in this rule.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 31-2011, f. 12-30-11, cert. ef. 1-1-12; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0030

Organization and Program Management

(1) ORGANIZATION AND INTERNAL MANAGEMENT. Each service provider of community developmental disability services funded by the Department must have written standards governing the operation and management of the CDDP. Such standards must be up to date, available upon request, and include:

(a) An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and the components and staff within the CDDP;

(b) Position descriptions for all staff providing community developmental disability services;

(c) Personnel policies and procedures concerning:

(A) Recruitment and termination of employees;

(B) Employee compensation and benefits;

(C) Employee performance appraisals, promotions, and merit pay;

(D) Staff development and training;

(E) Employee conduct, including the requirement that abuse of an individual by an employee, staff, or volunteer of the CDDP is prohibited and is not condoned or tolerated; and

(F) Reporting of abuse, including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse. Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by the Department.

(2) MANAGEMENT PLAN. The CDDP must maintain a current management plan assigning responsibility for the program management functions and duties described in this rule. The management plan must:

(a) Consider the unique organizational structure, policies, and procedures of the CDDP;

(b) Assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that the functions are implemented; and

(c) Reflect implementation of minimum quality assurance activities described in OAR 411-320-0045 that support the Department's Quality Management Strategy for meeting CMS' waiver quality assurances as required by 42 CFR 441.301 and 441.302.

(3) PROGRAM MANAGEMENT.

(a) Staff delivering developmental disability services must be organized under the leadership of a designated CDDP manager and receive clerical services sufficient to perform their required duties.

(b) The LMHA, public entity, or the public or private corporation operating the CDDP must designate a full-time employee who must, on at least a part-time basis, be responsible for management of developmental disability services within a specific geographic service area.

(c) In addition to other duties as may be assigned in the area of developmental disability services, the CDDP must at a minimum develop and assure:

(A) Implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve individuals;

(B) Maintenance of positive and cooperative working relationships with legal and designated representatives, families, service providers, support services brokerages, the Department, local government, and other state and local agencies with an interest in developmental disability services;

(C) Implementation of programs funded by the Department to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state, and federal requirements;

(D) Collection and timely reporting of information as may be needed to conduct business with the Department, including but not limited to information needed to license foster homes, collect federal funds supporting services, and investigate complaints related to services or suspected abuse; and

(E) Use of procedures that attempt to resolve complaints involving individuals or organizations that are associated with developmental disability services.

(4) QUALIFIED STAFF. Each CDDP must provide a qualified CDDP manager, services coordinator, eligibility specialist, and abuse investigator specialist for adults with intellectual or developmental disabilities, or have an agreement with another CDDP to provide a qualified eligibility specialist and abuse investigator specialist for adults with intellectual or developmental disabilities.

(a) CDDP MANAGER.

(A) The CDDP manager must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, health science, special education, public administration, or human service administration and a minimum of four years experience with at least two of those years of experience in developmental disability services that provided recent experience in program management, fiscal management, and staff supervision; or

(ii) Six years of experience with staff supervision; or

(iii) Six years of experience in technical or professional level staff work related to developmental disability services.

(B) On an exceptional basis, the CDDP may hire a person who does not meet the qualifications in subsection (A) of this section if the county and the Department have mutually agreed on a training and technical assistance plan that assures that the person quickly acquires all needed skills and experience.

(C) When the position of a CDDP manager becomes vacant, an interim CDDP manager must be appointed to serve until a permanent CDDP manager is appointed. The CDDP must request a variance as described in section (7) of this rule if the person appointed as interim CDDP manager does not meet the qualifications in subsection (A) of this section and the term of the appointment totals more than 180 days.

(b) CDDP SUPERVISOR. The CDDP supervisor (when designated) must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree or equivalent course work in a field related to management such as business or public administration, or a field related to developmental disability services may be substituted for up to three years required experience; or

(B) Five years of experience in staff supervision or five years of experience in technical or professional level staff work related to developmental disability services.

(c) SERVICES COORDINATOR. The services coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in behavioral science, social science, or a closely related field; or

(B) A bachelor's degree in any field and one year of human services related experience, such as work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing; or

(C) An associate's degree in a behavioral science, social science, or a closely related field and two years of human services related experience, such as work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing; or

(D) Three years of human services related experience, such as work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing.

(d) ELIGIBILITY SPECIALIST. The eligibility specialist must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in behavioral science, social science, or a closely related field; or

(B) A bachelor's degree in any field and one year of human services related experience; or

(C) An associate's degree in behavioral science, social science, or a closely related field and two years of human services related experience; or

(D) Three years of human services related experience.

(e) ABUSE INVESTIGATOR SPECIALIST. The abuse investigator specialist must have at least:

(A) A bachelor's degree in human science, social science, behavioral science, or criminal science and two years of human services, law enforcement, or investigative experience; or

(B) An associate's degree in human science, social science, behavioral science, or criminal science and four years of human services, law enforcement, or investigative experience.

(5) EMPLOYMENT APPLICATION. An application for employment at the CDDP must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(6) BACKGROUND CHECKS.

(a) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210, including staff who are not identified in this rule but use public funds intended for the operation of the CDDP, who has or shall have contact with a recipient of CDDP services, must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and ORS 181.534.

(A) Effective July 28, 2009, the CDDP may not use public funds to support, in whole or in part, any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210, who shall have contact with a recipient of CDDP services and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(B) Effective July 28, 2009, a person does not meet the qualifications described in this rule if the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(C) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or the Department's designee within 24 hours.

(b) Subsections (A) and (B) of section (a) do not apply to employees who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(7) VARIANCE. The CDDP must submit a written variance request to the Department prior to employing a person not meeting the minimum qualifications in section (4) of this rule. A variance request may not be requested for sections (5) and (6) of this rule. The written variance request must include:

(a) An acceptable rationale for the need to employ a person who does not meet the minimum qualifications in section (4) of this rule; and

(b) A proposed alternative plan for education and training to correct the deficiencies.

(A) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(B) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.

(8) STAFF DUTIES.

(a) SERVICES COORDINATOR DUTIES. The duties of the services coordinator must be specified in the employee's job description and at a minimum include:

(A) The delivery of case management services to individuals as described in OAR 411-320-0090;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(b) ELIGIBILITY SPECIALIST DUTIES. The duties of the eligibility specialist must be specified in the employee's job description and at a minimum include:

(A) Completing intake and eligibility determination for individuals applying for developmental disability services;

(B) Completing eligibility redetermination for individuals requesting continuing developmental disability services; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(c) ABUSE INVESTIGATOR SPECIALIST DUTIES. The duties of the abuse investigator specialist must be specified in the employee's job description and at a minimum include:

(A) Conducting abuse investigation and protective services for adult individuals with intellectual or developmental disabilities enrolled in, or previously eligible and voluntarily terminated from, developmental disability services;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(9) STAFF TRAINING. Qualified staff of the CDDP must maintain and enhance their knowledge and skills through participation in education and training. The Department provides training materials and the provision of training may be conducted by the Department or CDDP staff, depending on available resources.

(a) CDDP MANAGER TRAINING. The CDDP manager must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP manager.

(A) The orientation provided by the CDDP to a new CDDP manager must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Department's rules governing the CDDP;

(iii) An overview of the Department's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(v) A review and orientation of Medicaid, SSI, Social Security Administration, home and community-based waiver and state plan services, OHP, and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP manager's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, individuals with physical disabilities, and children.

(B) The CDDP manager must attend the following trainings endorsed or sponsored by the Department within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP manager must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP manager must participate in a minimum of 20 hours per year of additional Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(ii) Each CDDP manager must attend trainings to maintain a working knowledge of system changes in the area the CDDP manager is managing or supervising.

(b) CDDP SUPERVISOR TRAINING. The CDDP supervisor (when designated) must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and of the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP supervisor.

(A) The orientation provided by the CDDP to a new CDDP supervisor must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Department's rules governing the CDDP;

(iii) An overview of the Department's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(v) A review and orientation of Medicaid, SSI, Social Security Administration, home and community-based waiver and state plan services, OHP, and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP supervisor's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, individuals with physical disabilities, and children.

(B) The CDDP supervisor must attend the following trainings endorsed or sponsored by the Department within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP supervisor must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP supervisor must participate in a minimum of 20 hours per year of additional Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(ii) Each CDDP supervisor must attend trainings to maintain a working knowledge of system changes in the area the CDDP supervisor is managing or supervising.

(c) SERVICES COORDINATOR TRAINING. The services coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new services coordinator.

(A) The orientation provided by the CDDP to a new services coordinator must include:

(i) An overview of the role and responsibilities of a services coordinator;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Department's rules governing the CDDP;

(iv) An overview of the Department's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, Social Security Administration, home and community-based waiver and state plan services, OHP, and the individual support planning processes for the services they coordinate; and

(vii) A review (prior to having contact with individuals) of the services coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, individuals with physical disabilities, and children.

(B) The services coordinator must attend the following trainings endorsed or sponsored by the Department within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training (for services coordinators providing services to individuals in comprehensive services).

(C) The services coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities necessary to perform the position. Each services coordinator must participate in a minimum of 20 hours per year of Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(d) ELIGIBILITY SPECIALIST TRAINING. The eligibility specialist must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new eligibility specialist.

(A) The orientation provided by the CDDP to a new eligibility specialist must include:

(i) An overview of eligibility criteria and the intake process;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Department's rules governing the CDDP;

(iv) An overview of the Department's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, Social Security Administration, home and community-based waiver and state plan services, and OHP; and

(vii) A review (prior to having contact with individuals) of the eligibility specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, individuals with physical disabilities, and children.

(B) The eligibility specialist must attend and complete eligibility core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of eligibility core competency training, or if competency is not demonstrated, the eligibility specialist must consult with another trained eligibility specialist or consult with a Department diagnosis and evaluation coordinator when making eligibility determinations.

(C) The eligibility specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each eligibility specialist must participate in Department-sponsored trainings for eligibility on an annual basis.

(ii) Each eligibility specialist must participate in a minimum of 20 hours per year of Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(e) ABUSE INVESTIGATOR SPECIALIST TRAINING. The abuse investigator specialist must participate in core competency training. Training materials are provided by OAAPI. The core competency training is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new abuse investigator specialist.

(A) The orientation provided by the CDDP to a new abuse investigator specialist must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Department's rules governing the CDDP;

(iii) An overview of the Department's licensing and certification rules for service providers;

(iv) A review and orientation of Medicaid, SSI, Social Security Administration, home and community-based waiver and state plan services, OHP, and the individual support planning processes; and

(v) A review (prior to having contact with individuals) of the abuse investigator specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, individuals with physical disabilities, and children.

(B) The abuse investigator specialist must attend and pass core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of core competency training, or if competency is not demonstrated, the abuse investigator specialist must consult with OAAPI prior to completing the abuse investigation and protective services report.

(C) The abuse investigator specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position. Each abuse investigator specialist must participate in quarterly meetings held by OAPPI. At a minimum, one meeting per year must be attended in person.

(f) ATTENDANCE. The CDDP manager must assure the attendance of the CDDP supervisor (when designated), services coordinator, eligibility specialist, and abuse investigator specialist at Department-mandated training.

(g) DOCUMENTATION. The CDDP must keep documentation of required training in the personnel files of the individual employees including the CDDP manager, CDDP supervisor (when designated), services coordinator, eligibility specialist, abuse investigator specialist, and other employees providing services to individuals.

(10) ADVISORY COMMITTEE. Each CDDP must have an advisory committee.

(a) The advisory committee must meet at least quarterly.

(b) The membership of the advisory committee must be broadly representative of the community with a balance of age, sex, ethnic, socioeconomic, geographic, professional, and consumer interests represented. Membership must include advocates for individuals as well as individuals and the individuals' families.

(c) The advisory committee must advise the LMHA, CDDP director, and CDDP manager on community needs and priorities for services, and assist in planning, reviewing, and evaluating services, functions, duties, and quality assurance activities described in the CDDP's management plan.

(d) When the Department or a private corporation is operating the CDDP, the advisory committee must advise the LMHA, CDDP director, and CDDP manager on community needs and priorities for services, and assist in planning, reviewing, and evaluating services, functions, duties, and quality assurance activities described in the CDDP's management plan.

(e) The advisory committee may function as the disability issues advisory committee as described in ORS 430.625 if so designated by the LMHA.

(11) NEEDS ASSESSMENT, PLANNING, AND COORDINATION. Upon the Department's request, the CDDP must assess local needs for services to individuals and must submit planning and assessment information to the Department.

(12) CONTRACTS.

(a) If the CDDP, or any of the CDDPs services as described in the Department's contract with the LMHA, is not operated by the LMHA, there must be a contract between the LMHA and the organization operating the CDDP or the services, or a contract between the Department and the operating CDDP. The contract must specify the authorities and responsibilities of each party and conform to the requirements of the Department's rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual or the individual's family or legal or designated representative (as applicable).

(A) The service provider selected must also meet Department certification or licensing requirements to provide the type of service to be contracted.

(B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of the Department's rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) When a CDDP contracts with a public agency or private corporation for delivery of developmental disability services, the CDDP must include in the contract only terms that are substantially similar to model contract terms established by the Department. The CDDP may not add contractual requirements, including qualifications for contractor selection that are nonessential to the services being provided under the contract. The CDDP must specify in contracts with service providers that disputes arising from these limitations must be resolved according to the complaint procedures contained in OAR 411-320-0170. For purposes of this rule, the following definitions apply:

(A) "Model contract terms established by the Department" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by the Department as local options under procedures established in these rules.

(B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.

(C) "Nonessential to the services being provided" means requirements that are not substantially similar to model contract terms developed by the Department.

(d) As a local option, the CDDP may impose a requirement on a public agency or private corporation delivering developmental disability services under a contract with the CDDP that is in addition to or different from requirements specified in the omnibus contract if all of the following conditions are met:

(A) The CDDP has provided the affected contractors with the text of the proposed local option as it is to appear in the contract. The proposed local option must include:

(i) The date upon which the local option is to become effective; and

(ii) A complete written description of how the local option is to improve individual independence, productivity, or integration or the protection of individual health, safety, or rights;

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option impacts individual services;

(C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations and financial status of the contractors if the local option is imposed;

(D) The CDDP has sent a written request for approval of the proposed local option to the Department's director that includes:

(i) A copy of the information provided to the affected contractors;

(ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and

(iii) The text of the proposed local option as it is to appear in contracts with service providers, including the proposed date upon which the requirement is to become effective.

(E) The Department has notified the CDDP that the new requirement is approved as a local option for that program; and

(F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.

(e) The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which individual services are provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by the Department and contracted through the CDDP. Procedures implementing the dispute resolution policy must be included in the contract with any such service provider.

(13) FINANCIAL MANAGEMENT.

(a) There must be up-to-date accounting records for each developmental disability service accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities. The accounting records must be consistent with generally accepted accounting principles and conform to the requirements of OAR 309-013-0120 to 309-013-0220.

(b) There must be written statements of policy and procedure as are necessary and useful to assure compliance with any Department adminis-

trative rules pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service.

(14) POLICIES AND PROCEDURES. There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with the Department, these rules, and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2010Temp), f. & cert. ef. 12-1-10 thru 5-30-11; SPD 11-2011, f. & cert. ef. 6-2-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0040
Program Responsibilities

The CDDP must ensure the provision of the following services and system supports.

(1) ACCESS TO SERVICES.

(a) In accordance with the Civil Rights Act of 1964 (codified as 42 USC 2000d et seq.), any person may not be denied community developmental disability services on the basis of race, color, creed, sex, national origin, or duration of residence. CDDP contractors must comply with Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4) that states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance".

(b) Any individual determined eligible for developmental disability services by the CDDP must also be eligible for other community developmental disability services unless admission to the service is subject to diagnostic or developmental disability category or age restrictions based on predetermined criteria or contract limitations.

(2) COORDINATION OF COMMUNITY SERVICES. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the CDDP, other local and state human service agencies, and any other service providers as appropriate for the needs of the individual.

(3) CASE MANAGEMENT SERVICES. The CDDP must provide case management services to individuals who are eligible for and desire services.

(a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CDDP and a service provider of case management services.

(c) If an individual is receiving services in more than one county, the county of origin must be responsible for case management services unless otherwise negotiated and documented in writing with the mutually agreed upon conditions.

(d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring, monitoring, and investigating. Except as allowed under subsection (e) of this section, the case management program must be provided under an organizational structure that separates case management from other direct services for individuals. This separation may take one of the following forms:

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or

(B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services or further subcontract these other direct services through organizations that are not already under contract to provide case management services.

(e) The CDDP or other organization that provides case management services may also provide other direct services under one or more of the following circumstances:

(A) The CDDP coordinates the delivery of family support services for children under 18 years of age living at home with their family or comprehensive in-home supports for adults.

(B) The CDDP determines that an organization providing direct services is no longer able to continue providing services, or the organization providing direct service is no longer willing or able to continue providing services and no other organization is able or willing to continue operations on 30 days notice.

(C) In order to develop new or expanded direct services for geographic service areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(f) If the CDDP intends to perform a direct service other than family support services or comprehensive in-home support, a variance must be prior authorized by the Department.

(A) It is assumed that the CDDP provides family support services or comprehensive in-home supports described in subsection (e)(A) of this section. If the CDDP does not provide one or both of these services, the CDDP must submit a written variance request to the Department for prior approval that describes how the services are to be provided.

(B) If the circumstances described in subsection (e)(B) of this rule exist, the CDDP must propose a plan to the Department for review, including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If the CDDP providing case management services delivers other services as allowed under subsection (e)(C) of this section, the CDDP must submit a written variance request to the Department for prior approval that includes the action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If the CDDP providing case management services delivers other services as allowed under subsections (e)(B) and (e)(C) of this section, the CDDP must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is issued, a copy must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in subsection (g) of this section, the CDDP must submit a written variance request to the Department for prior approval that describes how conflict of roles are to be managed within the CDDP.

(i) If the CDDP also operates a support services brokerage, the CDDP must submit a written variance request to the Department for prior approval that includes the mechanism for addressing potential conflict of interest.

(4) FAMILY SUPPORT SERVICES. The CDDP must ensure the availability of a program for family support services in accordance with OAR chapter 411, division 305.

(5) ABUSE AND PROTECTIVE SERVICES.

(a) The CDDP must assure that abuse investigations for adults with intellectual or developmental disabilities are appropriately reported and conducted by trained staff according to statute and administrative rules. When there is reason to believe a crime has been committed, the CDDP must report to law enforcement.

(b) The CDDP must report any suspected or observed abuse of a child directly to the Department or local law enforcement, when appropriate.

(6) FOSTER HOMES. The CDDP must recruit foster home applicants and maintain forms and procedures necessary to license or certify foster homes. The CDDP must maintain copies of the following records:

(a) Initial and renewal applications for a foster home;

(b) All inspection reports completed by the CDDP, including required annual renewal inspection and any other inspections;

(c) General information about the home;

(d) Documentation of references, classification information, credit check (if necessary), background check, and training for service providers and substitute caregivers;

(e) Documentation of foster care exams for adult foster home providers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denials, or revocations (if any); and

(k) Copies of the foster home's annual license or certificate.

(7) CONTRACT MONITORING. The CDDP must monitor all community developmental disability subcontractors to assure that:

(a) Services are provided as specified in the CDDP's contract with the Department; and

(b) Services are in compliance with these rules and other applicable Department rules.

(8) INFORMATION AND REFERRAL. The CDDP must provide information and referral services to individuals, individuals' families, and interested others.

(9) AGENCY COORDINATION. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(10) SERVICE DELIVERY COMPLAINTS. The CDDP must implement procedures to address individual or family complaints regarding service delivery that have not been resolved using the CDDP subcontractor's complaint procedures (informal or formal). Such procedures must be consistent with the requirements in OAR 411-320-0170.

(11) COMPREHENSIVE IN-HOME SUPPORTS. The CDDP must ensure the availability of comprehensive in-home supports for those individuals for whom the Department has funded such services. Comprehensive in-home supports must be in compliance with OAR chapter 411, division 330.

(12) EMERGENCY PLANNING. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The emergency procedure and disaster plan must be immediately available to the CDDP manager and employees. The emergency procedure and disaster plan must:

(a) Be integrated with the county emergency preparedness plan, where appropriate;

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any Department offices, as appropriate;

(c) Include provisions for identifying individuals most vulnerable; and

(d) Include any plans for health and safety checks, emergency assistance, and any other plans that are specific to the type of emergency.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0045

Quality Assurance Responsibilities

(1) Each CDDP must draft a local CDDP management plan as described in OAR 411-320-0030 that supports the Department's Quality Management Strategy for meeting CMS' six waiver quality assurances, as required and defined by 42 CFR 441.301 and 441.302. CMS' six waiver assurances are:

(a) Administrative authority;

(b) Level of care;

(c) Qualified service providers;

(d) Service plans;

(e) Health and welfare; and

(f) Financial accountability.

(2) Each CDDP must implement, maintain, and monitor minimum quality assurance activities, as required by the Department and set forth in section (3) of this rule. CDDPs may conduct additional quality assurance activities that consider local community needs and priorities for services and the unique organizational structure, policies, and procedures of the CDDP.

(3) The CDDP must conduct, monitor, and report the outcomes and any remediation as a result of the following Department required activities:

(a) Individual case file reviews;

(b) Customer satisfaction surveys administered at least every two years;

(c) Service provider file reviews;

(d) Analysis of SERT (Serious Event Review Team) system data which may include:

(A) Review by service provider, location, reason, status, outcome, and follow-up;

(B) Identification of trends;

(C) Review of timely reporting of abuse allegations; and

(D) Coordination of delivery of information requested by the Department, such as the Serious Event Review Team (SERT).

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 9-2009, f. & cert. ef. 7-13-09; SPD 27-2010Temp), f. & cert. ef. 12-1-10 thru 5-30-11; SPD 11-2011, f. & cert. ef. 6-2-11; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0050

Management of Regional Services

(1) INTERGOVERNMENTAL AGREEMENT. The management entity for a group of counties to deliver crisis diversion services, community training, quality assurance activities, or other services, must have an intergovernmental agreement with each affiliated CDDP.

(2) REGIONAL PLAN. The CDDP or private corporation acting as the management entity for the region must prepare, in conjunction with affiliated CDDP's, a plan detailing the services that are to be administered regionally. The regional plan must be updated when needed and submitted to the Department for approval. The regional plan must include:

(a) A description of how services are to be administered;

(b) An organizational chart and staffing plan; and

(c) A detailed budget, on forms provided by the Department.

(3) IMPLEMENTATION. The CDDP or private corporation acting as the management entity for the region must work in conjunction with the affiliated CDDP's to implement the regional plan as approved by the Department, within available resources.

(4) MANAGEMENT STANDARDS. The region, through the management entity and the affiliated CDDP partners, must maintain compliance with the management standards outlined in OAR 411-320-0030 and this rule.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0060

Individuals' Rights

(1) CIVIL RIGHTS. The rights described in this rule are in addition to and do not limit any other statutory and constitutional rights that are afforded all citizens, including but not limited to the right to vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law in the case of children less than 18 years of age.

(2) RIGHTS OF INDIVIDUALS. The CDDP must have written policies and procedures to provide for and assure individuals the following rights while receiving developmental disability services:

(a) The right to a humane service environment that affords reasonable protection from harm, affords reasonable privacy, and ensures that individuals:

(A) Are not abused or neglected, nor is abuse or neglect tolerated by any employee, staff, or volunteer of the program;

(B) Are free to report any incident of abuse without being subject to retaliation;

(C) Have the freedom to choose whether or not to participate in religious activity and for children, according to parent or guardian preference;

(D) Have contact and visits with medical professionals and the individuals' legal or designated representatives, family members, and friends (as applicable except where prohibited by court order);

(E) Have access to and communicate privately with any public or private rights protection program, services coordinator, or CDDP representative;

(F) Be free from unauthorized mechanical restraint or protective physical intervention; and

(G) Are not subject to any chemical restraint and assured that medication is administered only for the individual's clinical needs as prescribed by a health care provider.

(b) The right to choose from available services, service settings, and service providers consistent with the individual's support needs identified through a functional needs assessment.

(A) Services must promote independence, dignity, and self-esteem and reflect the age and preferences of the individual.

(B) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the individual's liberty, least intrusive to the individual, and that provide for self directed decision-making and control of personal affairs appropriate to the individual's age and identified support needs.

(c) The right to a written Individual Support Plan or Annual Plan consistent with OAR 411-320-0120.

(d) The right to an ongoing opportunity to participate in planning of services in a manner appropriate to the individual's capabilities, including the right to participate in the development and periodic revision of the plan described in subsection (c) of this section, and the right to be provided with a reasonable explanation of all service considerations through choice advising.

(e) The right to informed, voluntary, written consent prior to receiving services except in a medical emergency or as otherwise permitted by law.

(f) The right to informed, voluntary, written consent prior to participating in any experimental programs.

(g) The right to prior notice of any action that terminates, suspends, reduces, or denies a service and notification of other available sources for necessary continued services.

(h) The right to a hearing as defined in OAR 411-320-0020 following an action that terminates, suspends, reduces, or denies a service.

(i) The right to reasonable and lawful compensation for performance of labor, except personal housekeeping duties.

(j) The right to exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department.

(k) The right to be informed at the start of services and periodically thereafter of the rights guaranteed by this rule and the procedures for reporting abuse.

(l) The right to have these rights and procedures prominently posted in a location readily accessible to the individual and made available to the individual's legal or designated representative (as applicable).

(m) The right to be informed of, and have the opportunity to assert, complaints with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial procedure.

(n) The right to have the freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(o) The right of the individual, or as applicable the individual's legal or designated representative, to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name of the family member and contact information, if known.

(p) The right to courteous, fair, and dignified treatment by Department personnel and to file a complaint with the Department about staff conduct or customer service to the extent provided in OAR 407-005-0100 to 407-005-0120.

(q) The right to file a complaint with the Department about discrimination or unfair treatment as provided in OAR 407-005-0030.

(3) ASSERT RIGHTS. The rights described in this rule may be asserted and exercised by the individual or the individual's legal or designated representative (as applicable).

(4) CHILDREN. Nothing in this rule is to be construed to alter any parental rights and responsibilities.

(5) ADULTS WITH GUARDIANS. A guardian is appointed for an adult only as is necessary to promote and protect the well being of the adult individual. A guardianship for an adult individual must be designed to encourage the development of maximum self-reliance and independence of the adult individual and may be ordered only to the extent necessitated by the adult individual's actual mental and physical limitations. An adult individual for whom a guardian has been appointed is not presumed to be incompetent. An adult individual with a guardian retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the individual include but are not limited to the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0070

Service Records

(1) CONFIDENTIALITY. An individual's service record must be kept confidential in accordance with ORS 179.505, ORS 192.515 to 192.518, 45 CFR 205.50, 45 CFR 164.512, the Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department rules or policies pertaining to individual service records.

(2) INFORMATION SHARING. Pertinent clinical, financial eligibility, and legal status information concerning an individual supported by the CDDP must be made available to other CDDP's responsible for the individual's services, consistent with state statutes and federal laws and regulations concerning confidentiality and privacy.

(3) RECORD REQUIREMENTS. In order to meet Department and federal record documentation requirements, the CDDP, through the CDDP's employees, must maintain a service record for each individual who receives services from the CDDP.

(a) Information contained in the service record must include:

(A) Documentation of any initial referral to the CDDP for services;

(B) The application for developmental disability services. The application for developmental disability services must be completed prior to an eligibility determination and must be on the application form required by the Department or transferred onto CDDP letterhead;

(C) Sufficient documentation to conform to Department eligibility requirements, including notices of eligibility determination;

(D) Documentation of the initial intake interview or home assessment, as well as any subsequent social service summaries;

(E) Documentation of the functional needs assessment defining the individual's support needs for ADL and IADL;

(F) Documentation of initial, annual, and requested choice advising;

(G) Documentation of the individual's request for support services and the individual's selection of an available support services brokerage within the CDDP's geographic service area;

(H) Referral information or documentation of referral materials sent to a service provider or another CDDP;

(I) Progress notes written by a services coordinator as described in section (4) of this rule;

(J) Medical information, as appropriate;

(K) Admission and exit meeting documentation into any comprehensive service, including any transition plans, crisis diversion plans, or other plans developed as a result of the meeting;

(L) ISP or Annual Plans, including documentation that the plan is authorized by a services coordinator;

(M) Copies of any incident reports initiated by a CDDP representative for any unusual incident that occurred at the CDDP or in the presence of the CDDP representative;

(N) Documentation of a review of unusual incidents received from service providers. Documentation of the review of unusual incidents must be made in progress notes and a copy of the incident report must be placed in the individual's file. If applicable, information must be electronically entered into the SERT system and referenced in progress notes;

(O) Documentation of Medicaid eligibility, if applicable;

(P) The initial and annual level of care determination on a form prescribed by the Department;

(i) For individuals receiving children's intensive in-home services or children's 24-hour residential services, the CDDP must maintain a current copy of the annual level of care determination or reflect documentation of attempts to obtain a current copy.

(ii) Once an individual is enrolled in a support services brokerage, the CDDP must maintain a copy of the initial level of care determination form completed by the CDDP and any annual reviews completed by the CDDP; and

(Q) Legal records, such as guardianship papers, civil commitment records, court orders, and probation and parole information (as appropriate).

(b) An information sheet or reasonable alternative must be kept current and reviewed at least annually for each individual receiving case management services from the CDDP enrolled in comprehensive services, family support services, or living with family or independently. Information must include:

(A) The individual's name, current address, date of entry into the CDDP, date of birth, sex, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number (where applicable), and guardianship status; and

(B) The names, addresses, and telephone numbers of:

(i) For an adult, the individual's legal or designated representative and family (as applicable), and for a child, the child's parent or guardian and education surrogate (as applicable);

(ii) The individual's physician and clinic;

(iii) The individual's dentist;

(iv) The individual's school, day program, or employer, if applicable;

(v) Other agency representatives providing services to the individual; and

(vi) Any court ordered or legal representative authorized contacts or limitations from contact for individuals living in a foster home, supported living program, or 24-hour residential program.

(c) A current information sheet or reasonable alternative must be maintained for each individual enrolled in a support services brokerage. The current information must include the information listed in subsection (b) of this section.

(4) PROGRESS NOTES. Progress notes must include documentation of the delivery of case management services provided to an individual by a

services coordinator. Progress notes must be recorded chronologically and documented consistent with CDDP policies and procedures. All late entries must be appropriately documented. At a minimum, progress notes must include:

(a) The month, day, and year the services were rendered and the month, day, and year the entry was made if different from the date services were rendered;

(b) The name of the individual receiving service;

(c) The name of the CDDP, the person providing the services (i.e., the services coordinator's signature and title), and the date the entry was recorded and signed;

(d) The specific services provided and actions taken or planned, if any;

(e) Place of service. Place of service means the county where the CDDP or agency providing case management services is located, including the address. The place of service may be a standard heading on each page of the progress notes; and

(f) For notes pertaining to meetings with or discussions about the individual, the names of other participants, including the participants' titles and agency representation, if any.

(5) RETENTION OF RECORDS. The CDDP must have a record retention plan for all records relating to the CDDP's provision of, and contracts for, services that is consistent with this rule and OAR 166-150-0055. The record retention plan must be made available to the public or the Department upon request.

(a) Financial records, supporting documents, and statistical records must be retained for a minimum of three years after the close of the contract period or until the conclusion of the financial settlement process with the Department, whichever is longer.

(b) Individual service records must be kept for seven years after the date of an individual's death, if known. If the case is closed, inactive, or the date of death is unknown, the individual service record must be kept for 70 years.

(c) Copies of annual ISPs must be kept for 10 years.

(6) TRANSFER OF RECORDS. In the event an individual moves from one county to another county in Oregon, the individual's complete service record as described in section (3) of this rule must be transferred to the receiving CDDP within 30 days of transfer. The sending CDDP must ensure that the service record required by this rule is maintained in permanent record and transferred to the CDDP having jurisdiction for the individual's services. The sending CDDP must retain the following information to document that services were provided to the individual while enrolled in CDDP services:

(a) Documentation of eligibility for developmental disability services received while enrolled in services through the CDDP, including waiver or state plan eligibility;

(b) Service enrollment and termination forms;

(c) CDDP progress notes;

(d) Documentation of services provided to the individual by the CDDP; and

(e) Any required documentation necessary to complete the financial settlement with the Department.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0080

Application and Eligibility Determination

(1) APPLICATION.

(a) To apply for developmental disability services, an applicant must use the Department required application and apply in the county of origin as defined in OAR 411-320-0020.

(A) If the applicant is an adult, the applicant must be an Oregon resident at the time of application.

(B) If the applicant is a minor child, the child's legal guardian and the minor child must be Oregon residents at the time of application.

(b) The application must be completed, signed, and dated before an eligibility determination is made.

(c) The date the CDDP receives the completed, signed, and dated application is the date of application for developmental disability services.

(d) A new application is required in the following situations:

(A) Following a closure, denial, or termination if the file has been closed for more than 12 months; or

(B) Following a closure, denial, or termination if the file has been closed for less than 12 months and the applicant does not meet all application requirements.

(2) FINANCIAL STATUS. The CDDP must identify whether the applicant receives any unearned income benefits.

(a) The CDDP must refer adults with no unearned income benefits to Social Security for a determination of financial eligibility.

(b) The CDDP must refer minor children to Social Security if it is identified that the minor child may qualify for Social Security benefits.

(3) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist to act as a designee of the Department for purposes of making an eligibility determination. The eligibility specialist must meet performance qualifications and training expectations for determining developmental disability eligibility according to OAR 411-320-0030.

(4) QUALIFIED PROFESSIONAL DIAGNOSIS. Evaluation of information and diagnosis of intellectual disability and developmental disability must be completed by a qualified professional as defined in OAR 411-320-0020 who is qualified to make a diagnosis of the specific intellectual or developmental disability.

(5) INTELLECTUAL DISABILITY. A history demonstrating an intellectual disability, as defined in OAR 411-320-0020, must be in place by an individual's18th birthday for the individual to receive developmental disability services.

(a) Diagnosing an intellectual disability is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by a qualified professional as described in section (4) of this rule.

(A) For individuals who have consistent IQ results of 65 and under, no assessment of adaptive behavior may be needed if current documentation supports eligibility.

(B) For individuals who have IQ results of 66-75, verification of an intellectual disability requires an assessment of adaptive behavior.

(b) The adaptive behavior impairments must be directly related to an intellectual disability and cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition or impairment must be expected to last indefinitely.

(6) OTHER DEVELOPMENTAL DISABILITY. A history of a developmental disability, as defined in OAR 411-320-0020, must be in place prior to an individual's 22nd birthday for the individual to receive developmental disability services.

(a) Other developmental disabilities include:

(A) Autism, cerebral palsy, epilepsy, or other neurological disabling conditions that originate in and directly affect the brain; and

(B) The individual must require training or support similar to that required by individuals with intellectual disability. For the purpose of this rule, "training or support similar to that required by individuals with intellectual disability" means an individual has a domain category or composite score that is at least two standard deviations below the mean, as measured on a standardized assessment of adaptive behavior administered by a qualified professional.

(b) IQ scores are not used in verifying the presence of a developmental disability. Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairment in adaptive behavior, as defined in OAR 411-320-0020, related to the diagnosis.

(c) The adaptive behavior impairments must be directly related to the developmental disability and cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(d) The condition or impairment must be expected to last indefinitely.

(7) PROVISIONAL ELIGIBILITY. Eligibility may be redetermined in the future when new information is obtained.

(a) Eligibility for children is always provisional.

(b) Eligibility may be provisional for adults between their 18th and 22nd birthdays if the individual's eligibility is based on an other developmental disability.

(8) ELIGIBILITY FOR CHILDREN. Eligibility documentation for children must be no more than three years old.

(a) Eligibility for children under 7 years of age must include:

(A) Standardized testing by a qualified professional or master's level trained early intervention evaluation specialist that demonstrates at least

two standard deviations below the norm in two or more areas of adaptive behavior, including but not limited to:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; OR

(B) A medical statement by a licensed medical practitioner confirming a neurological condition or syndrome that originates in and directly affects the brain and causes or is likely to cause significant impairment in at least two or more areas of adaptive behavior, including but not limited to:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction.

(C) The condition or syndrome cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(D) The condition or impairment must be expected to last indefinitely.

(b) Eligibility for school aged children.

(A) Eligibility for school aged children must include:

(i) School age documents that are no more than three years old.

(ii) Documentation of an intellectual disability as described in section (5) of this rule; or

(iii) A diagnosis and documentation of an other developmental disability as described in section (6) of this rule.

(B) School aged eligibility may be completed on individuals:

(i) Who are at least 5 years old and who have had school aged testing completed;

(ii) Up to age 18 for individuals who are provisionally eligible based on a condition of an intellectual disability; or

(iii) Up to age 22 for individuals who are provisionally eligible based on a condition of a developmental disability other than an intellectual disability.

(9) ELIGIBILITY FOR ADULTS.

(a) Eligibility for adults must include:

(A) Documentation of an intellectual disability as described in section (5) of this rule. Adult intellectual functioning assessments are not needed if the individual has:

(i) Consistent IQ results of 65 or less; and

(ii) Significant impairments in adaptive behavior that are directly related to an intellectual disability; and

(iii) Current documentation that supports eligibility; OR

(B) A diagnosis and documentation of an other developmental disability as described in section (6) of this rule.

(b) The documentation of an other developmental disability or intellectual disability must include:

(A) Information no more than three years old for individuals under 21 years of age; or

(B) Information obtained after the individual's 17th birthday for individuals 21 years of age and older.

(10) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

(a) In the absence of sufficient data during the developmental years, current data may be used if:

(A) There is no evidence of head trauma;

(B) There is no evidence or history of significant mental or emotional disorder; or

(C) There is no evidence or history of substance abuse.

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the individual's functioning may be impacted by the identified condition must be obtained in order to determine if the individual's significant impairment in adaptive behavior is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

(11) REDETERMINATION OF ELIGIBILITY.

(a) The CDDP must notify the individual or the individual's legal representative anytime that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(b) Eligibility for school age children must be redetermined no later than age 7.

(c) Eligibility for adults must be redetermined by age 18 for an intellectual disability and by age 22 for developmental disabilities other than an intellectual disability.

(d) Any time there is evidence that contradicts the eligibility determination, the Department or the Department's designee may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(e) Eligibility must be redetermined using the criteria established in this rule.

(A) IQ testing, completed within the last three years, is not needed if the individual has:

(i) Consistent IQ results of 65 or less;

(ii) Significant impairments in adaptive behavior that continue to be directly related to an intellectual disability; and

(iii) Current documentation continues to support eligibility.

(B) A current medical or clinical diagnosis of a developmental disability may not be needed if:

(i) There is documentation of a developmental disability by a qualified professional, as defined in OAR 411-320-0020;

(ii) Significant impairments in adaptive behavior continue to be directly related to the developmental disability; and

(iii) Current documentation continues to support eligibility.

(C) An informal adaptive behavior assessment, as defined in OAR 411-320-0020, may be completed if all of the following apply:

(i) An assessment of adaptive behavior is required in order to redetermine eligibility;

(ii) An assessment of adaptive behavior has already been completed by a qualified professional; and

(iii) The individual has obvious significant adaptive impairments in adaptive behavior.

(12) SECURING EVALUATIONS.

(a) In the event that the eligibility specialist has exhausted all local resources to secure the necessary evaluations for an eligibility determination, the Department or the Department's designee shall assist in obtaining additional testing if required to complete the eligibility determination.

(b) In the event there is evidence that contradicts the information that an eligibility determination was based upon, the Department or the Department's designee may obtain additional information, including securing an additional evaluation for clarification purposes.

(13) PROCESSING ELIGIBILITY DETERMINATIONS. The CDDP in the county of origin is responsible for making the eligibility determination.

(a) The CDDP must work in collaboration with the individual to gather historical records related to the individual's intellectual or developmental disability.

(b) The CDDP must process eligibility for developmental disability services in the following time frames:

(A) The CDDP must complete an eligibility determination and issue a Notice of Eligibility Determination within 90 calendar days of the date that the application for services is received by the CDDP, except in the following circumstances:

(i) The CDDP may not make an eligibility determination because the individual or the individual's legal representative fails to complete an action;

(ii) There is an emergency beyond the CDDP's control; or

(iii) More time is needed to obtain additional records by the CDDP, the individual, or the individual's legal representative.

(B) The process of making an eligibility determination may be extended up to 90 calendar days by mutual agreement among all parties. Mutual agreement may be in verbal or written form. The CDDP must document the reason for the delay and type of contact made to verify the individual's agreement to an extension in the individual's service record.

(c) The CDDP must make an eligibility determination unless the following applies and is documented in the individual's progress notes:

(A) The individual or the individual's legal representative voluntarily withdraws the individual's application;

(B) The individual dies; or

(C) The individual cannot be located.

(d) The CDDP may not use the time frames established in subsection (b) of this section as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(14) NOTICE OF ELIGIBILITY DETERMINATION. The CDDP, based upon a review of the documentation used to determine eligibility, must issue a written Notice of Eligibility Determination to the individual and to the individual's legal representative.

(a) The Notice of Eligibility Determination must be sent or hand delivered within:

(A) Ten working days of making an eligibility redetermination.

(B) Ten working days of making an eligibility determination or 90 calendar days of receiving an application for services, whichever comes first.

(b) The notice must be on forms prescribed by the Department. The notice must include:

(A) The specific date the notice is mailed or hand delivered;

(B) The effective date of any action proposed;

(C) The eligibility determination;

(D) The rationale for the eligibility determination, including what reports, documents, or other information that were relied upon in making the eligibility determination;

(E) The specific rules that were used in making the eligibility determination;

(F) Notification that the documents relied upon may be reviewed by the individual or the individual's legal representative; and

(G) Notification that if the individual or the individual's legal representative disagrees with the Department's eligibility determination, the individual or the individual's legal representative has the right to request a hearing on the individual's behalf as provided in ORS chapter 183 and OAR 411-320-0175 including:

(i) The timeline for requesting a hearing;

(ii) Where and how to request a hearing;

(iii) The right to receive assistance from the CDDP in completing and submitting a request for a hearing; and

(iv) The individual's right to receive continuing services at the same level during the hearing and at the request of the individual including:

(I) Notification of the time frame within which the individual must request continuing services;

(II) Notification of how and where the individual must submit a request for continuing services; and

(III) Notification that the individual may be required to repay the state for any services received during the hearing process if the determination of ineligibility is upheld in a Final Order.

(15) REQUESTING A HEARING. As described in OAR 411-320-0175, an individual or the individual's legal representative may request a hearing if the individual or the individual's legal representative disagrees with the eligibility determination or redetermination made by the CDDP. The request for a hearing must be made by completing the DD Administrative Hearing Request (SDS 0443DD) within the timeframe identified on the Notice of Eligibility Determination.

(16) TRANSFERABILITY OF ELIGIBILITY DETERMINATION. An eligibility determination made by one CDDP must be honored by another CDDP when an individual moves from one county to another.

(a) The receiving CDDP must notify the individual, on forms prescribed by the Department, that a transfer of services to a new CDDP has taken place.

(b) The receiving CDDP must continue services for the individual as soon as it is determined that the individual is residing in the county of the receiving CDDP and the receiving CDDP has verification of the individual's eligibility for developmental disability services in the form of one of the following:

(A) Statement of an eligibility determination;

(B) Notification of eligibility determination; or

(C) Evaluations and assessments supporting eligibility.

(c) In the event that the items in subsection (b) of this section cannot be located, written documentation from the sending CDDP verifying eligibility and enrollment in developmental disability services may be used. Written verification may include documentation from the Department's electronic payment system.

(d) If the receiving CDDP receives information that suggests the individual is not eligible for developmental disability services, the CDDP that determined the individual was eligible for developmental disability services may be responsible for the services authorized on the basis of that eligibility determination.

(e) If an individual submits an application for developmental disability services and discloses that he or she has previously received developmental disability services in another CDDP and the termination of case management services as described in OAR 411-320-0100(3) occurred within the past 12 months, the eligibility determination from the other CDDP shall transfer as outlined in this section of the rule.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 31-2011, f. 12-30-11, cert. ef. 1-1-12; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0090

Case Management Program Responsibilities

(1) AVAILABILITY. As required by these rules, the CDDP must assure the availability of a services coordinator to meet the service needs of an individual and any emergencies or crisis. The assignment of the services coordinator must be appropriately documented in an individual's service record and the CDDP must accurately report enrollment in the Department's payment and reporting systems.

(2) POLICIES AND PROCEDURES. The CDDP must adopt written procedures to assure that the delivery of services meet the standards in section (4) of this rule.

(a) The CDDP must have procedures for the ongoing involvement of individuals and the individuals' family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP.

(b) Copies of the procedures for planning and review of case management services, consumer satisfaction, and complaints must be maintained on file at the CDDP offices. The procedures must be available to:

(A) CDDP employees who work with individuals;

(B) Individuals who are receiving services from the CDDP and the individuals' families;

(C) Individuals' legal or designated representatives (as applicable) and service providers; and

(D) The Department.

(3) NOTICE OF SERVICES. The CDDP must inform the individuals, and as applicable the individuals' family members and legal or designated representatives, of the minimum case management services that are set out in section (4) of this rule.

(4) MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.

(a) The CDDP must ensure that eligibility for services is determined by an eligibility specialist trained in accordance with OAR 411-320-0030.

(b) A services coordinator must maintain documentation of the referral process of an individual to a service provider and if applicable, include the reason the service provider preferred by the individual, or as applicable the individual's legal or designated representative, declined to deliver services to the individual.

(c) An Annual Plan for an individual receiving case management services through the CDDP must be developed and reviewed in accordance with OAR 411-320-0120.

(d) Program services must be authorized in accordance with OAR 411-320-0120.

(e) Services coordinators must monitor services and supports for all individuals enrolled in case management services through the CDDP in accordance with the standards described in OAR 411-320-0130.

(f) If an individual loses OSIP-M eligibility and the individual is receiving case management services through the CDDP, a services coordinator must assist the individual in identifying why OSIP-M eligibility was lost and whenever possible, assist the individual in becoming eligible for OSIP-M again. The services coordinator must document efforts taken to assist the individual in becoming OSIP-M eligible in the individual's service record.

(g) Entry, exit, and transfers from comprehensive services must be in accordance with OAR 411-320-0110.

(h) Crisis diversion services for an individual receiving case management services through a CDDP must be assessed, identified, planned, monitored, and evaluated by a services coordinator in accordance with OAR 411-320-0160.

(i) Abuse investigations and provision of protective services for adults must be provided as described in OAR 407-045-0250 to 407-045-0360 and include investigating complaints of abuse, writing investigation reports, and monitoring the implementation of report recommendations.

(j) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(k) The CDDP must describe case management and other service delivery options within the CDDP's geographic service area provided by the CDDP or support services brokerage to an individual. Choice advising

must begin at least 6 months before a child's 18th birthday and must be provided to individuals 18 years and older.

(A) An individual newly determined eligible for developmental disability services must receive choice advising within 25 days of the individual's eligibility determination.

(B) An individual moving into a county with an existing eligibility determination who is not enrolled in support services must receive choice advising within 10 days of the individual's move or of the CDDP learning of the individual's move.

(C) Choice advising must be provided initially and at minimum annually thereafter. Annual choice advising must include informing the individual of the individual's right to request access to other available services. Documentation of the discussion must be included in the individual's service record.

(D) If an individual is not eligible for state plan or waiver services, initial and annual choice advising must also inform the individual of their right to access case management from the CDDP or a support services brokerage.

(l) A services coordinator must coordinate services with the child welfare (CW) caseworker assigned to a child to ensure the provision of required supports from the Department, CDDP, and CW.

(m) A services coordinator may attend IEP planning meetings or other transition planning meetings for a child when the services coordinator is invited to participate by the child's family or guardian.

(A) The services coordinator may, to the extent resources are available, assist the child's family in accessing critical non-educational services that the child or the child's family may need.

(B) Upon request and to the extent possible, the services coordinator may act as a proponent for the child or the child's family at IEP meetings.

(C) The services coordinator must participate in transition planning by attending IEP meetings or other transition planning meetings for students 16 years of age or older, or until the student is no longer enrolled in CDDP case management, to discuss the individual's transition to adult living and work situations unless the services coordinator's attendance is refused by the child's parent or guardian or the individual if the individual is 18 years or older.

(n) The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in the Department's payment and reporting systems. The county of origin must enroll the individual into the Department payment and reporting systems for all developmental disability service providers except in the following circumstances:

(A) The Department completes the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with the Department.

(B) The Department completes the Department payment and reporting systems enrollment, termination, and billing forms for children entering or leaving the children's intensive in-home services (CIIS) program.

(C) The Department completes the enrollment, termination, and billing forms as part of an interagency agreement for purposes of billing for crisis diversion services by a region.

(o) When appropriate, a services coordinator must facilitate referrals to nursing facilities as described in OAR 411-070-0043.

(p) A services coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing facility in accordance with OAR 411-320-0150.

(q) A services coordinator must ensure that all serious events related to an individual are reported to the Department using the SERT system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends.

(r) When a services coordinator completes a level of care determination, the services coordinator must ensure that OSIP-M eligible individuals are offered the choice of home and community-based waiver and state plan services, provided a notice of hearing rights, and have a completed level of care determination that is reviewed annually or at any time there is a significant change. For individuals who are expected to enter support services, the services coordinator must complete the initial level of care determination after the individual's 18th birth date and no more than 30 days prior to the individual's entry into the support services brokerage.

(s) A services coordinator must participate in the appointment of an individual's health care representative as described in OAR chapter 411, division 365.

(t) A services coordinator must coordinate with other state, public, and private agencies regarding services to individuals.

(u) The CDDP must ensure that a services coordinator is available to provide or arrange for comprehensive in-home supports for adults, in-home supports for children, or family supports as required to meet the support needs of eligible individuals. This includes:

(A) Providing assistance in determining needs and planning supports;

(B) Providing assistance in finding and arranging resources and supports;

(C) Providing education and technical assistance to make informed decisions about support need and direct service providers;

(D) Arranging fiscal intermediary services;

(E) Arranging employer-related supports; and

(F) Providing assistance with monitoring and improving the quality of supports.

(5) SERVICE PRIORITIES. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval of a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working days to submit the variance request to the Department. The variance request must:

(a) Document the reason the service prioritization is necessary, including any alternatives considered;

(b) Detail the specific service priorities being proposed; and

(c) Provide assurances that the basic health and safety of individuals continues to be addressed and monitored.

(6) FAMILY RECONNECTION. The CDDP and a services coordinator must provide assistance to the Department when a family member is attempting to reconnect with an individual who was previously discharged from Fairview Training Center or Eastern Oregon Training Center or an individual who is currently receiving developmental disability services.

(a) If a family member contacts the CDDP for assistance in locating an individual, the CDDP must refer the family member to the Department. A family member may contact the Department directly.

(b) The Department shall send the family member a Department form requesting further information to be used in providing notification to the individual. The form shall include the following information:

(A) Name of requestor;

(B) Address of requestor and other contact information;

(C) Relationship to individual;

(D) Reason for wanting to reconnect; and

(E) Last time the family had contact.

(c) The Department shall determine:

(A) If the individual was previously a resident of Fairview Training Center or Eastern Oregon Training Center;

(B) If the individual is deceased or living;

(C) Whether the individual is currently or previously enrolled in Department services; and

(D) The county in which services are being provided, if applicable.

(d) Within 10 working days of receipt of the request, the Department shall notify the family member if the individual is enrolled or no longer enrolled in Department services.

(e) If the individual is enrolled in Department services, the Department shall send the completed family information form to the individual, or as applicable the individual's legal or designated representative, and the individual's services coordinator.

(f) If the individual is deceased, the Department shall follow the process for identifying the individual's personal representative as provided for in ORS 192.526.

(A) If the personal representative and the requesting family member are the same, the Department shall inform the personal representative that the individual is deceased.

(B) If the personal representative is different from the requesting family member, the Department shall contact the personal representative for permission before sharing information about the individual with the requesting family member. The Department must make a good faith effort to find the personal representative and obtain a decision concerning the sharing of information as soon as practicable.

(g) When an individual is located, the services coordinator when the individual is enrolled in case management or the CDDP in conjunction with the personal agent when the individual is enrolled in a support services brokerage, must facilitate a meeting with the individual, or as applicable the individual's legal or designated representative, to discuss and determine if the individual wishes to have contact with the family member.

(A) The individual's services coordinator or the CDDP in conjunction with the individual's personal agent, as applicable, must assist the individual, or as applicable the individual's legal or designated representative, in evaluating the information to make a decision regarding initiating contact,

including providing the information from the form and any relevant history with the family member that may support contact or present a risk to the individual.

(B) If the individual does not have a legal or designated representative or is unable to express his or her wishes, the individual's ISP team must be convened to review factors and choose the best response for the individual after evaluating the situation.

(h) If the individual, or as applicable the individual's legal or designated representative, wishes to have contact, the individual, or as applicable the individual's legal or designated representative or ISP team designee, may directly contact the family member to make arrangements for the contact.

(i) If the individual, or as applicable the individual's legal or designated representative, does not wish to have contact, the individual's services coordinator or the CDDP in conjunction with the individual's personal agent (as applicable), must notify the Department. The Department shall inform the family member in writing that no contact is requested.

(j) The notification to the family member regarding the decision of the individual, or as applicable the individual's legal or designated representative, must be within 60 business days of the receipt of the information form from the family member.

(k) The decision by the individual, or as applicable the individual's legal or designated representative, is not appealable.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0100
Coordination of Services

(1) DESIGNATION OF A SERVICES COORDINATOR OR PERSONAL AGENT.

(a) When an individual chooses case management services through a personal agent, the CDDP must send referral information to the appropriate support services brokerage within 10 days following the individual's decision. If there is no available brokerage capacity for an individual requesting brokerage services, the individual may receive case management through the CDDP and receive in-home supports until brokerage capacity becomes available.

(b) When an individual chooses case management services through a services coordinator, the CDDP must designate a services coordinator within five days following the individual's decision.

(c) When an individual is enrolled in a support services brokerage and moves from one CDDP geographic service area to another CDDP geographic service area, the new CDDP must enroll the individual in the Department's payment and reporting systems.

(2) CHANGE OF CASE MANAGEMENT SERVICE PROVIDER.

(a) The CDDP must keep the change of services coordinators to a minimum. If the CDDP changes a services coordinator's assignment, the CDDP must notify the individual, the individual's legal or designated representative (as applicable), and all current service providers within 10 working days of the change. The notification must be in writing and include the name, telephone number, and address of the new services coordinator.

(b) The individual receiving services, or as applicable the individual's legal or designated representative, may request a new services coordinator within the same CDDP or request case management services from a support services brokerage.

(A) The CDDP must develop standards and procedures for acting upon requests for the change of a services coordinator or when referring case management services to a support services brokerage.

(B) If another services coordinator is assigned by the CDDP as the result of a request by the individual, or as applicable the individual's legal or designated representative, the CDDP must notify the individual, the individual's legal or designated representative (as applicable), and all current service providers, within 10 working days of the change. The notification must be in writing and include the name, telephone number, and address of the new services coordinator.

(3) TERMINATION OF CASE MANAGEMENT SERVICES.

(a) A services coordinator retains responsibility for providing case management services to an individual until the responsibility is terminated in accordance with this rule, until another services coordinator is designated, or until the individual is enrolled in support services. A CDDP must terminate case management services when any of the following occur:

(A) An individual or the individual's legal representative delivers a signed written request that case management services be terminated or such a request is made by telephone and documented in the individual's service record. An individual, or as applicable the individual's legal or designated representative, may refuse contact by a services coordinator as well as the involvement of the services coordinator at the individual's ISP meeting, except if the services are mandatory as described in section (5) of this rule.

(B) The individual dies.

(C) The individual is determined to be ineligible for developmental disability services in accordance with OAR 411-320-0080.

(D) The individual moves out of state or to another county in Oregon. If an individual moves to another county, case management services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree. In the case of a child moving into a foster home or 24-hour residential home, the county of parental residency or court jurisdiction must retain case management responsibility.

(E) An individual cannot be located after repeated attempts by letter and telephone.

(b) If an individual is determined ineligible or cannot be located, the CDDP must issue a written notification of intent to terminate services in 30 days as well as notification of the individual's right to a hearing.

(4) TERMINATION FROM DEPARTMENT PAYMENT AND REPORTING SYSTEMS.

(a) The CDDP must terminate an individual in the Department payment and reporting systems when:

(A) The individual or the individual's legal representative delivers a signed written request to the support services brokerage requesting brokerage services be terminated. An individual who declines support services but wishes to continue receiving developmental disability services through the CDDP is terminated from the support services brokerage but is not terminated from developmental disability services;

(B) The individual dies;

(C) The individual is determined to be ineligible for developmental disability services in accordance with OAR 411-320-0080;

(D) The individual moves out of state or to another county in Oregon. If an individual moves to another county, developmental disability services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree; or

(E) Notification from the support services brokerage that an individual cannot be located after repeated attempts by letter and telephone.

(b) The CDDP retains responsibility for maintaining enrollment in the Department's payment and reporting systems for individuals enrolled in support services until the responsibility is terminated as described in this section of this rule.

(5) MANDATORY SERVICES. An individual in developmental disability services must accept the following services:

(a) Case management or support services;

(b) Abuse investigations;

(c) Services coordinator presence, when applicable, at Department-funded program entry, exit, or transfer meetings, or transition planning meetings required for entry or exit to adult services, including support services and in-home comprehensive services for adults;

(d) Monitoring of service provider programs, when applicable; and

(e) Services coordinator access to the individual's service record.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0110
Entry and Exit Requirements

(1) ENTRY TO A DEPARTMENT-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.

(a) Department staff authorize entry into children's residential services, children's proctor care, children's intensive in-home services, and the Stabilization and Crisis Unit. A services coordinator must make referrals for admission and participate in all entry meetings for these programs.

(b) Admissions to all other Department-funded programs for individuals must be coordinated and authorized by a services coordinator in accordance with these rules.

(2) WRITTEN INFORMATION REQUIRED. A services coordinator, or the services coordinator's designee, must provide available and sufficient written information about the individual to the individual's service

providers, including information that is current and necessary to meet the individual's support needs in comprehensive services prior to admission.

(a) This written information must be provided in a timely manner and include:

(A) A copy of the individual's eligibility determination;

(B) A statement indicating the individual's safety skills, including the individual's ability to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes, where available:

(i) The results of a physical exam (if any) made within 90 days prior to the entry;

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) A copy of the most current functional needs assessment. If the individual's needs have changed over time, the previous functional needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if applicable);

(H) Copies of documents relating to guardianship, conservatorship, health care representative, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

(I) Written documentation to explain why preferences or choices of the individual cannot be honored at that time;

(J) Written documentation that the individual is participating in out-of-residence activities, including school enrollment for individuals under the age of 21;

(K) A copy of the most recent Behavior Support Plan and assessment, ISP, and IEP, if applicable; and

(L) A copy of the most recent nursing care plan or mental health treatment plan (if applicable).

(b) If the individual is being admitted from the individual's family home and entry information is not available due to a crisis, the services coordinator must ensure that the service provider assesses the individual upon entry for issues of immediate health or safety.

(A) The services coordinator must document a plan to secure the information listed in subsection (a) of this section no later than 30 days after admission.

(B) The plan must include a written description as to why the information is not available and a copy must be given to the service provider at the time of entry.

(c) If the individual is being admitted from comprehensive services, the information listed in subsection (a) of this section must be made available prior to entry.

(d) If an individual is admitted to a program for crisis diversion services for a period not to exceed 30 days, subsection (a) of this section does not apply.

(3) ENTRY MEETING. Prior to an individual's date of entry into a Department-funded comprehensive service, the individual's ISP team must meet to review referral material in order to determine appropriateness of placement. The members of the ISP team are determined according to OAR 411-320-0120. The findings of the entry meeting must be recorded in the individual's service record and distributed to the individual's ISP team members. The findings of the entry meeting must include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the entry meeting and the date determined to be the date of entry;

(c) The names and roles of the participants at the entry meeting;

(d) Documentation of the pre-entry information required by section (2)(a) of this rule; and

(e) If the decision was made to serve the individual, a written Transition Plan that includes all medical, behavior, and safety supports to be provided to the individual for no longer than 60 days after entry.

(4) TRANSFER OR EXIT FROM DEPARTMENT-FUNDED PROGRAMS.

(a) The CDDP must authorize all transfers or exits from Department-funded developmental disability services.

(b) The Department authorizes all transfers or exits from services directly contracted with the Department for children's 24-hour residential and the Stabilization and Crisis Unit.

(c) Prior to an individual's transfer or exit date, the individual's ISP team must meet to review the transfer or exit and to plan and coordinate any services necessary during or following the transfer or exit. The members of the ISP team are determined according to OAR 411-320-0120.

(5) EXIT MEETING. A meeting of an individual's ISP team must precede any decision to exit the individual. Findings of the exit meeting must be recorded in the individual's service record and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the exit meeting;

(c) Documentation of the participants included in the exit meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent the individual's exit from service, unless the individual, or as applicable the individual's legal or designated representative, is requesting the exit;

(f) Documentation of the decision regarding the individual's exit, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Transfer or Exit; and

(g) The written plan for services for the individual after exit.

(6) TRANSFER MEETING. A meeting of an individual's ISP team must precede any decision to transfer the individual. Findings of the transfer meeting must be recorded in the individual's service record and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the individual's legal or designated representative or family members, may not be honored;

(g) Documentation of the decision regarding transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Transfer or Exit; and

(h) The written plan for services for the individual after transfer.

(7) ENTRY TO SUPPORT SERVICES.

(a) Referrals of eligible individuals to a support services brokerage must be made in accordance with OAR 411-340-0110. Referrals must be made in accordance with Department guidelines and the Department-mandated application and referral form must be used.

(b) The CDDP of an individual's county of origin may find the individual eligible for services from a support services brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(B) The individual is an adult living in his or her own home or family home;

(C) At the time of initial entry to the support services brokerage, the individual is not enrolled in comprehensive services;

(D) At the time of initial entry to the support services brokerage, the individual is not receiving crisis diversion services from the Department because the individual does not meet one or more of the crisis risk factors listed in OAR 411-320-0160; and

(E) The individual or the individual's legal representative has chosen to use a support service brokerage for assistance with design and management of personal supports.

(c) An eligible individual must be referred into support services within 10 days of requesting support services and selecting an available support services brokerage within the CDDP's geographic service area.

(d) The services coordinator must communicate with the support services brokerage staff and provide all relevant information upon request and as needed to assist support services brokerage staff in developing an ISP that best meets the individual's support needs including:

(A) A current application or referral on the Department-mandated application or referral form;

(B) A completed level of care determination;

(C) A copy of the individual's eligibility determination;

(D) Copies of financial eligibility information;

(E) Copies of any legal documents, such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc;

(F) Copies of relevant progress notes; and

(G) A copy of any current plans.

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

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0120
Service Planning

((1) PRINCIPLES FOR SERVICE PLANNING. This rule prescribes standards for the development and implementation of an individual's ISP or Annual Plan. An ISP or Annual Plan must:

(a) Be developed using a person-centered process and in a manner that addresses issues of independence, integration, and productivity;

(b) Enhance the quality of life of the individual with intellectual or developmental disabilities; and

(c) Be consistent with the following principles:

(A) Personal control and family participation. While the service system reflects the value of family member participation in the planning process, adult individuals have the right to make informed choices about the level of family member participation. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.

(B) Choice and preferences. The planning process is critical in determining an individual's and the individual's family's preferences for services and supports. The preferences of the individual and the individual's family must serve to guide the ISP team. The individual's active participation and input must be facilitated throughout the planning process.

(C) Barriers. The planning process is designed to identify the types of services and supports necessary to achieve an individual's and the individual's family's preferences, identify the barriers to providing those preferred services, and develop strategies for reducing the barriers.

(D) Health and safety. The planning process must also identify strategies to assist an individual in the exercise of the individual's rights. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the individual's exercise of rights while being equally sensitive to protecting the individual's health and safety.

(E) Children in alternate living situations. When planning for children in 24-hour residential or foster care services, maintaining family connections is an important consideration. The following must apply:

(i) Unless contraindicated, there must be a goal for family reunification;

(ii) The number of moves or transfers must be kept to a minimum; and

(iii) If the placement of a child is distant from the child's family, the services coordinator must continue to seek a placement that brings the child closer to the child's family.

(2) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator must complete a functional needs assessment for each individual at least annually. The functional needs assessment must be completed:

(a) Within 30 days following the assignment of an individual's services coordinator;

(b) Within 60 days prior to the authorization of a plan renewal; and

(c) Not more than 45 days from the date a functional needs assessment is requested by an individual or the individual's legal or designated representative (as applicable).

(3) INDIVIDUAL SUPPORT PLANS. Individuals enrolled in waiver or state plan services must have an ISP.

(a) A services coordinator and ISP team must develop an individual's ISP within 90 days of the individual's entry into comprehensive services and at least annually thereafter.

(b) Upon the request for a new functional needs assessment by an individual, or as applicable the individual's legal or designated representative, a services coordinator must revise the individual's ISP as needed within 30 days of the functional needs assessment. The revised ISP must be developed with the individual, the individual's legal or designated representative (as applicable), and other invited ISP team members.

(c) The CDDP must provide a written copy of the most current ISP to the individual, the individual's legal or designated representative (as applicable), and others as identified by the individual.

(d) An individual's ISP must address the individual's support needs identified in the functional needs assessment and be understandable to the individual with intellectual or developmental disabilities. The ISP or attached documents must include:

(A) The individual's name and the name of the individual's legal or designated representative (as applicable);

(B) A description of the supports required that is consistent with the individual's functional needs assessment, including the reason the support is necessary;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) Service providers;

(G) The setting in which the individual resides as chosen by the individual;

(H) The individual's strengths and preferences;

(I) The clinical and support needs as identified through the functional needs assessment;

(J) Individually identified goals and desired outcomes;

(K) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(L) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(M) The identity of the person responsible for case management and monitoring the ISP;

(N) A provision to prevent unnecessary or inappropriate care; and

(O) The alternative settings considered by the individual.

(e) An individual's ISP must be finalized and agreed to in writing by the individual, the individual's legal or designated representative (as applicable), and others invited by the individual, including but not limited to service providers or other family members.

(f) A services coordinator must track the ISP timelines and coordinate the resolution of complaints and conflicts arising from ISP discussions.

(g) An ISP must be developed, implemented, and authorized as follows:

(A) FOSTER CARE AND 24-HOUR RESIDENTIAL SERVICES.

(i) A services coordinator must attend and assure that an annual ISP meeting is held for individuals receiving foster care or 24-hour residential services and any associated employment or alternatives to employment services.

(ii) A services coordinator must conduct the ISP for an individual receiving foster care or 24-hour residential services and any associated employment or alternatives to employment services.

(iii) If a child is in 24-hour residential services directly contracted with the Department, the child's ISP is coordinated by Department staff.

(iv) A services coordinator must ensure that the ISP for an individual receiving foster care or 24-hour residential services is developed and updated in accordance with Department guidelines.

(B) SUPPORTED LIVING SERVICES. A services coordinator must ensure the development of an annual ISP for an adult receiving supported living services and any associated employment or alternative to employment services.

(i) The services coordinator must coordinate with the individual, and as applicable the individual's family or legal or designated representative, in the development of the individual's annual ISP.

(ii) The ISP for an adult receiving supported living services and any associated employment or alternative to employment program must include the information described in subsection (d) of this section. .

(C) COMPREHENSIVE IN-HOME SUPPORTS FOR ADULTS. A services coordinator must ensure the development of an annual ISP for an individual receiving comprehensive in-home supports.

(i) The services coordinator must coordinate with the individual, and as applicable the individual's family or legal or designated representative, in the development of the individual's annual ISP.

(ii) The ISP for an individual receiving comprehensive in-home supports must be in accordance with OAR 411-330-0050.

(4) ANNUAL PLANS. Individuals enrolled in developmental disability services not accessing waiver or state plan services must have an Annual Plan.

(a) A services coordinator must complete an Annual Plan within 60 days of an individual's enrollment into case management services, and annually thereafter if the individual is not enrolled in any waiver or state plan services.

(b) An Annual Plan must be developed as follows:

(A) For an adult, a written Annual Plan must be documented in an individual's service record as an Annual Plan or as a comprehensive progress note and consist of:

(i) A review of the individual's current living situation;

(ii) A review of any personal health, safety, or behavioral concerns;

(iii) A summary of the individual's support needs; and

(iv) Actions to be taken by the services coordinator and others.

(B) For a child receiving family support services, a services coordinator must coordinate with the child and the child's family or guardian in the development of the child's Annual Plan. The Annual Plan for a child receiving family support services must be in accordance with OAR 411-305-0080.

(5) PLANS FOR IN-HOME SUPPORTS FOR CHILDREN. For a child receiving in-home supports, a services coordinator must coordinate with the child and the child's family or guardian in the development of the child's ISP or Annual Plan. The ISP or Annual Plan for a child receiving in-home supports must be in accordance with OAR chapter 411, division 308 and sections (3) and (4) of this rule, as applicable.

(6) PLAN FORMATS. An ISP or Annual Plan developed at an annual or update meeting must be conducted in a manner specified by the Department and on forms required by the Department. In the absence of a Department-mandated form, the CDDP with the affected service providers may develop an ISP format that conforms to the rules for the service provider and provides for an integrated plan across the funded developmental disability service settings.

(7) PLAN UPDATES. An ISP or Annual Plan must be kept current. A services coordinator, or the Department's Residential Services Coordinator for children in 24-hour residential services directly contracted with the Department, must ensure that a current ISP or Annual Plan is authorized and maintained for each individual receiving services.

(a) The ISP or Annual Plan must be kept in an individual's service record.

(b) ISP or Annual Plan updates must occur as required by this rule and any rules governing the operation of the service.

(c) When there is a significant change, the ISP or Annual Plan must be updated.

(8) TEAM PROCESS IN SERVICE AND SUPPORT PLANNING. This section applies to an ISP developed for an individual in comprehensive services:

(a) An ISP for an individual in comprehensive services must be developed by an ISP team. The ISP team assigns responsibility for obtaining or providing services to meet the individual's identified needs.

(A) Membership on the ISP team must at a minimum conform to this rule and any relevant service provider rules. An individual, or as applicable the individual's legal or designated representative, may include additional participants, friends, or significant others on the individual's ISP team.

(B) The individual may raise an objection to a particular person's or service provider's inclusion on the individual's ISP team. When the individual raises objections to a person, the ISP team must respect the individual's request. In order to assure adequate planning, service provider representatives are necessary informants to the ISP team.

(b) An ISP developed by an ISP team must respect and honor individual choice in the development of a meaningful plan. .

(c) In circumstances where an individual is unable to express his or her opinion or choice using words, behaviors, or other means of communication and the individual does not have a legal or designated representative, the individual's ISP team is empowered to make a decision on behalf of the individual.

(d) No one member of an ISP team has the authority to make decisions for the ISP team.

(e) Consensus amongst ISP team members is prioritized. When consensus may not be reached, majority agreement is used. For purposes of reaching a majority agreement, a service provider, family member, CDDP, or designated representative are considered as one member of the ISP team.

(f) Any ISP team member's objections to decisions of the ISP team must be documented in the ISP.

(g) An individual's legal or designated representative directing services for the individual (as applicable) may not also be a paid service provider for the individual.

(h) An individual's ISP is authorized by a services coordinator using a person-centered planning process and with agreement by the individual and the individual's legal or designated representative (as applicable).

(i) An individual or the individual's legal representative retains the right to consent to treatment and training or to note any specific areas of the ISP that they object to and wish to file a complaint.

(j) ISP team members must keep a services coordinator informed whenever there are significant needs or changes, or there is a crisis or potential for a crisis. The services coordinator must reconvene the ISP team if ISP adjustments are required due to a significant change in an individual's support needs.

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411-320-0130

Site Visits and Monitoring of Services

(1) SITE VISITS. The CDDP must ensure that site visits are conducted at each child or adult foster home, each 24-hour residential service site, and each employment provider licensed or certified and endorsed (as applicable) by the Department to serve individuals with intellectual or developmental disabilities.

(a) The CDDP must establish a quarterly schedule for site visits to each child or adult foster home and each 24-hour residential services site.

(b) The CDDP must establish an annual schedule for visits with individuals receiving supported living services. If an individual opposes a visit to his or her home, a mutually agreed upon location for the visit must be arranged.

(c) The CDDP must establish an annual schedule for site visits to each employment or alternatives to employment services site. If a visit to an integrated employment site disrupts the work occurring, a mutually agreed upon location for the site visit must be arranged.

(d) Site visits may be increased for any of the following reasons, including but not limited to:

(A) Increased certified and licensed capacity;

(B) New individuals receiving services;

(C) Newly licensed or certified and endorsed provider;

(D) An abuse investigation;

(E) A serious event;

(F) A change in the management or staff of the licensed or certified and endorsed provider;

(G) An ISP team request;

(H) Individuals receiving services are also receiving crisis diversion services; or

(I) Significant change in an individual's functioning who receives services at the site.

(e) The CDDP must develop a procedure for the conduct of the visits to these sites.

(f) The CDDP must document site visits and provide information concerning the site visits to the Department upon request.

(g) If there are no Department-funded individuals at the site, a visit by the CDDP is not required.

(h) When a service provider is a Department-contracted and licensed, certified, and endorsed 24-hour residential program for children or is a proctor agency and the Department's Children's Residential Services Coordinator is assigned to monitor services, the Department's Children's Residential Services Coordinator and the CDDP shall coordinate the site visit. If the site visit is made by Department staff, Department staff shall provide the results of the site visit to the local services coordinator.

(i) The Department may conduct site visits on a more frequent basis than described in this section based on program needs.

(2) MONITORING OF SERVICES: A services coordinator must conduct monitoring activities using the framework described in this section.

(a) For an individual residing in 24-hour residential services, supported living, foster care, or receiving employment or alternatives to employment services, an ongoing review of the individual's ISP must determine whether the actions identified by the ISP team are being implemented by the service providers and others. The review of an ISP must include an assessment of the following:

(A) Are services being provided as described in the ISP and do the services result in the achievement of the identified action plans?

(B) Are the personal, civil, and legal rights of the individual protected in accordance with these rules?

(C) Are the personal desires of the individual, and as applicable the individual's legal or designated representative or family, addressed?

(D) Do the services provided for in the ISP continue to meet what is important to, and for, the individual?

(E) Do identified goals remain relevant and are the goals supported and being met?

(b) For an individual residing in 24-hour residential services, supported living, foster care, or receiving employment or alternatives to employment, the monitoring of services may be combined with the site visits described in section (1) of this rule. In addition:

(A) During a one year period, the services coordinator must review, at least once, services specific to health, safety, and behavior, using questions established by the Department.

(B) A semi-annual review of the process by which an individual accesses and utilizes funds must occur, using questions established by the Department. The services coordinator must determine whether financial records, bank statements, and personal spending funds are correctly reconciled and accounted for.

(i) The financial review standards for 24-hour residential services are described in OAR 411-325-0380.

(ii) The financial review standards for adult foster home services are described in OAR 411-360-0170.

(iii) Any misuse of funds must be reported to the CDDP and the Department. The Department determines whether a referral to the Medicaid Fraud Control Unit is warranted.

(C) The services coordinator must monitor reports of serious and unusual incidents.

(c) For an individual receiving employment or alternatives to employment services, the services coordinator must also assess the individual's progress toward a path to employment.

(d) The frequency of service monitoring must be determined by the needs of an individual. Events identified in section (1)(d) of this rule provide indicators that may potentially increase the need for service monitoring.

(e) For an individual receiving only case management services and not enrolled in any other funded developmental disability services, the services coordinator must make contact with the individual at least once annually.

(A) Whenever possible, annual contact must be made in person. If annual contact is not made in person, a progress note in the individual's service record must document how contact was achieved.

(B) The services coordinator must document annual contact in the individual's Annual Plan as described in OAR 411-320-0120.

(C) If the individual has any identified high-risk medical issue, including but not limited to risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the services coordinator must maintain contact in accordance with planned actions as described in the individual's Annual Plan.

(D) Any follow-up activities must be documented in a progress note.

(3) MONITORING FOLLOW-UP. A services coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in 24-hour residential services directly contracted with the Department when the Department conducts the follow-up.

(a) If the services coordinator determines that comprehensive services are not being delivered as agreed in an individual's ISP or Annual Plan or that an individual's service needs have changed since the last review, the services coordinator must initiate action to update the individual's ISP or Annual Plan.

(b) If there are concerns regarding a service provider's ability to provide services, the CDDP, in consultation with the services coordinator, must determine the need for technical assistance or other follow-up activities such as coordination or provision of technical assistance, referral to the CDDP manager for consultation or corrective action, requesting assistance from the Department for licensing or other administrative support, or meeting with the service provider's executive director or board of directors.

(4) DEPARTMENT NOTIFICATION. In addition to conducting abuse or other investigations as necessary, the CDDP must notify the Department when:

(a) A service provider demonstrates substantial failure to comply with any applicable licensing, certification, or endorsement rules for Department-funded programs;

(b) The CDDP finds a serious and current threat endangering the health, safety, or welfare of individuals in a program for which an immediate action by the Department is required; or

(c) Any individual receiving Department-funded developmental disability services dies. Notification must be made to the Department's director within one working day of the death. Entry must be made into the Serious Event Review System according to Department guidelines.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 27-2010(Temp), f. & cert. ef. 12-1-10 thru 5-30-11; SPD 11-2011, f. & cert. ef. 6-2-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0140

Abuse Investigations and Protective Services

(1) GENERAL DUTIES. For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of the Department. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs and when applicable, support services brokerages.

(a) Investigations must be done in accordance with OAR 407-045-0290.

(b) If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the CDDP to investigate the alleged abuse or the Department may conduct an investigation in addition to the investigation by the CDDP. Under such circumstances, the CDDP must receive authorization from the Department before conducting any separate investigation.

(2) ELIGIBILITY. Unless otherwise directed by the Department, the CDDP must investigate allegations of abuse of individuals with intellectual or developmental disabilities who are:

(a) Eighteen years of age or older; and

(b) Receiving case management services; or

(c) Receiving any Department-funded services for individuals; or

(d) Previously determined eligible for developmental disability services and voluntarily terminated from services in accordance with OAR 411-320-0100.

(3) ABUSE INVESTIGATIONS. The CDDP must have and implement written protocols that describe the conduct of an abuse investigation, a risk assessment, implementation of any actions, and the report writing process. Abuse investigations must be conducted in accordance with OAR 407-045-0250 to 407-045-0360.

(4) COORDINATION WITH OTHER AGENCIES. The CDDP must cooperate and coordinate investigations and protective services with other agencies that have authority to investigate allegations of abuse for adults or children.

(5) INITIAL COMPLAINTS. Initial complaints must immediately be submitted electronically, using the Department's system for reporting serious events.

(6) CONFLICT OF INTEREST. The CDDP may not investigate allegations of abuse made against employees of the CDDP. Abuse investigations of CDDP staff are conducted by the Department or a CDDP not subject to an actual or potential conflict of interest.

(7) NOTIFICATION. Upon the initiation and completion of an abuse investigation, the CDDP must comply with the notification requirements as described in OAR 407-045-0290 and 407-045-0320.

(8) REPORTS. The CDDP must complete an abuse investigation and protective service report according to OAR 407-045-0320. A copy of the final abuse investigation and protective services report must be provided to the Department within five working days of the report's completion and approval by OAAPI. Abuse investigation and protective service reports must be maintained by the CDDP in accordance with OAR 407-045-0320.

(9) DISCLOSURE. The CDDP must disclose an abuse investigation and protective services report and related documents as described in OAR 407-045-0330.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10: SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0150

Specialized Services in a Nursing Home

An individual residing in a nursing facility determined to require specialized services, as described in OAR 411-070-0043, must have an annual plan for specialized services incorporated with a plan of care by the nursing facility.

(1) A services coordinator must coordinate with the individual, the individual's legal representative, the staff of the nursing facility, and other service providers, as appropriate, to provide or arrange the specialized services. The plan for specialized services must include:

(a) The name of the service provider;

(b) A description of the specialized services to be provided;

(c) The number of hours of service per month;

(d) A description of how the services must be tracked; and

(e) A description of the process of communication between the specialized service provider and the nursing facility in the event of unusual incidents, illness, absence, and emergencies.

(2) A services coordinator must complete an annual review of the plan for specialized services or when there has been a significant change in the individual's level of functioning. The review must conform to OAR 411-320-0130(2)(b).

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0160

Crisis/Diversion Services

(1) CRISIS DIVERSION SERVICES. The CDDP must, in conjunction with the CDDP's regional partners, provide crisis diversion services for adults and children with intellectual or developmental disabilities who are enrolled in developmental disability services and are eligible for crisis diversion services as described in section (3) of this rule and experiencing a crisis risk factor.

(2) CRISIS RISK FACTORS. An individual is in crisis when one or more of the following risk factors are present:

(a) An individual is not receiving necessary supports to address life-threatening safety skill deficits;

(b) An individual is not receiving necessary supports to address life-threatening issues resulting from behavioral or medical conditions;

(c) An individual currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention;

(d) An individual undergoes, or is at imminent risk of undergoing, loss of caregiver due to caregiver inability to provide supports;

(e) An individual experiences a loss of home due to a protective service action; or

(f) An individual is not receiving the necessary supports to address significant safety risks to others, including but not limited to:

(A) A pattern of physical aggression serious enough to cause injury;

(B) Fire-setting behaviors; or

(C) Sexually aggressive behaviors or a pattern of sexually inappropriate behaviors.

(3) ELIGIBILITY FOR CRISIS DIVERSION SERVICES. The CDDP must ensure the determination of the eligibility of individuals to receive crisis diversion services and must ensure eligibility information is made available to ISP team members upon request and to regional crisis diversion programs upon each referral. An individual is eligible for crisis diversion services when:

(a) The individual is enrolled in developmental disability services;

(b) A crisis exists as described in section (2) of this rule;

(c) There are no appropriate alternative resources available;

(d) The crisis is not primarily related to a significant mental or emotional disorder or substance abuse; and

(e) The individual meets at least one of the following criteria:

(A) The adult is court committed to the Department under ORS 427.215 through 427.306.

(B) The adult meets one of the crisis risk factors as described in section (2) of this rule.

(C) The child with intellectual or developmental disabilities is at imminent risk of out of home placement.

(D) The child with intellectual or developmental disabilities is in need of out of home placement.

(E) The child with intellectual or developmental disabilities requires supports to return home from out of home placement.

(4) FUNDS FOR CRISIS DIVERSION SERVICES.

(a) Funds for crisis diversion services must not supplant existing funding.

(b) Purchased goods or services must only be those necessary to resolve the crisis.

(c) Crisis diversion services must only be used when no appropriate alternative resources are available to resolve the crisis situation. The CDDP or the regional crisis diversion program administering the crisis diversion service, in consultation with the individual ISP team, must determine the appropriateness of alternative resources based on consideration of individual support needs, proximity to the individual's actively involved family members, access to other necessary resources, and cost effectiveness.

(5) ALLOWABLE SHORT-TERM EXPENDITURES. Allowable crisis diversion services include but are not limited to:

(a) Professional consultation, assessment, or evaluation;

(b) Adaptive equipment;

(c) Respite;

(d) Adaptations to the eligible individual's residence to increase accessibility or security;

(e) Short-term residential or vocational services;

(f) Added staff supervision; or

(g) Crisis diversion rates for direct care staff, respite providers, and professional consultants. Crisis diversion rates are paid within the Department's wage and rate guidelines.

(6) SERVICE LIMITATIONS. The following must not be purchased with crisis diversion services funds:

(a) Household appliances;

(b) Services covered under existing service provider contracts with the CDDP or Department;

(c) Health care services covered by Medicaid, Medicare, or private medical insurance; and

(d) Services provided by the parent of a child or the spouse of an adult.

(7) SERVICE AUTHORIZATION. The CDDP or regional crisis diversion program must authorize the utilization of crisis diversion services.

(a) To assure that crisis diversion services are utilized only when no appropriate alternative resources are available, the CDDP or the regional crisis diversion program must document the individual's eligibility for crisis diversion services, the alternative resources considered, and why those resources were not appropriate or available, prior to initiating any crisis diversion services.

(b) For services that exceed 90 days duration, authorization must be made by the CDDP or the regional crisis diversion program and must be documented in writing within the individual's service record.

(c) For services that exceed $5,000 for adaptation or alteration of fixed property, authorization must be made by the Department based upon the recommendation of the CDDP or the regional crisis diversion program.

(d) The Department may, at its discretion, exercise authority under ORS 427.300 to direct any individual who is court committed to the Department under ORS 427.290 to the facility best able to treat and train the individual. The Department shall consult with any CDDP, the regional crisis diversion program, or service provider affected by this decision, prior to placement of the individual.

(8) ADMINISTRATION OF CRISIS DIVERSION SERVICES. The CDDP and the regional crisis diversion program must operate under policies and procedures that assure internal management control of expenditures. Policies and procedures must be written and include at least the following:

(a) Identification of people or positions within the organization authorized to approve expenditures;

(b) Description of limits on those authorities and procedures for management reviews; and

(c) Description of procedures to disburse and account for funds.

(9) MONITORING OF CRISIS DIVERSION SERVICES.

(a) The CDDP must monitor the delivery of crisis diversion services as specified in the crisis plan and the individual's plan of care. Monitoring must be done through contact with the individual, any service providers, and the individual's family. The monitoring contact must include the collection of information regarding supports provided and progress toward outcomes that are identified in the crisis plan. Monitoring must be documented in the individual's service record.

(b) The CDDP must coordinate with service providers or other ISP team members to evaluate the impact of crisis diversion services upon the individual and must ensure needed changes are recommended to the individual's ISP team.

(c) The Department may monitor crisis diversion services through reports received pursuant to sections (10) and (11) of this rule and OAR 411-320-0180.

(10) RECORD KEEPING AND REPORTING PROCEDURES.

(a) The CDDP or the regional crisis diversion program must ensure the crisis plan is developed in partnership with the individual's ISP team and the following written information is maintained within the crisis plan:

(A) Identifying information about the individual, including name, address, age, and name of parent or legal representative (as applicable);

(B) Description of the circumstances for which crisis diversion services were requested to clearly specify how the individual is eligible to receive crisis diversion services;

(C) Description of resources used or alternatives considered prior to the request for crisis funds and why the resources or alternatives were not appropriate or were not available in meeting the individual's needs in addressing the crisis;

(D) Description of the goods and services requested to be purchased or provided specific to addressing the crisis, including:

(i) The frequency of the provision or purchase of goods or services;

(ii) The duration of the provision or purchase of goods or services; and

(iii) The costs of the goods or services to be provided or purchased.

(E) Description of the outcome to be achieved, including identification of benchmarks that may be used to determine whether the outcome has been achieved and maintained.

(b) The CDDP must ensure the documentation of the ISP team approved modifications to the individual's ISP that outline how the crisis is to be addressed through the use of crisis diversion services.

(c) The CDDP must ensure the documentation of monitoring contacts described in section (9)(a) of this rule.

(d) The CDDP must maintain a current copy of the level of care determination when an individual eligible for crisis diversion services is receiving home and community-based waiver or state plan services, or as otherwise instructed by the Department.

(11) REPORTING REQUIREMENTS. The CDDP or regional crisis diversion program must report, using the accepted Department payment and reporting systems, the following information to the Department by the tenth working day the month following each month in which crisis diversion services were provided and paid:

(a) Individuals for whom crisis diversion services were provided;

(b) Individual services provided and paid; and

(c) Total cost by type of service.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0170

Complaints

(1) COMPLAINT LOG. The CDDP must maintain a log of all complaints received regarding the CDDP or any subcontract agency providing services to individuals.

(a) The complaint log, at a minimum, must include:

(A) The date the complaint was received;

(B) The name of the person taking the complaint;

(C) The nature of the complaint;

(D) The name of the person making the complaint, if known; and

(E) The disposition of the complaint.

(b) CDDP personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint resulted in disciplinary action against a staff member, the documentation must include a statement that personnel action was taken.

(2) COMPLAINTS. The CDDP must address all complaints by individuals or subcontractors in accordance with CDDP policies, procedures, and these rules. Copies of the procedures for resolving complaints must be maintained on file at the CDDP offices. The complaint procedures must be available to CDDP employees who work with individuals, individuals who are receiving services from the CDDP, individuals' families, individuals' legal or designated representatives, service providers, and the Department.

(a) SUBCONTRACTOR COMPLAINTS. When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of the Department's administrative rule and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Department in mediating the dispute.

(A) The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(i) The party requesting mediation must send a written request to the Department's director, the CDDP director, and the service provider's executive director, unless other people are named as official contact people in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

(ii) Department staff shall arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting shall include:

(I) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement shall be made on arrangements for obtaining these services;

(II) Development of rules and procedures that shall be followed by all parties during the mediation; and

(III) Agreement on a date by which mediation shall be completed, unless extended by mutual agreement.

(iii) Unless otherwise agreed to by all parties:

(I) Each party shall be responsible for the compensation and expenses of their own employees and representatives; and

(II) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. shall be shared equally by all parties.

(B) A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, the Department shall prepare the final report. A final report on each mediation must be retained on file at the Department.

(b) CONTRACT NOT SUBSTANTIALLY SIMILAR. A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by the Department in its model contract. The service provider's appeal of the imposition of the disputed terms or conditions must be in writing and sent to the Department's director within 30 calendar days after the effective date of the contract requirement.

(A) A copy of notice of appeal must be sent to the CDDP. The notice of appeal must include:

(i) A copy of the contract and any pertinent contract amendments;

(ii) Identification of the specific terms that are in dispute; and

(iii) A complete written explanation of the dissimilarity between terms.

(B) Upon receipt of the notice of appeal, the CDDP must suspend enforcement of compliance with any contract requirement under appeal by the contractor until the appeal process is concluded.

(C) The Department's director must offer to mediate a solution in accordance with the procedure outlined in sections (2)(a)(A) and (2)(a)(B) of this rule.

(i) If a solution cannot be mediated, the Department's director shall declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include at a minimum:

(I) A representative from the Department;

(II) A representative from another CDDP; and

(III) A representative from another service provider organization.

(ii) The panel must meet with the parties, consider their respective arguments, and send written recommendations to the Department's director within 45 business days after an impasse is declared, unless the Department's director grants an extension.

(iii) If an appeal requiring panel consideration has been received from more than one contractor, the Department may organize materials and discussion in any manner it deems necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(iv) The Department's director must notify all parties of his or her decision within 15 business days after receipt of the panel's recommendations. The decision of the Department is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(v) Notwithstanding section (2)(b)(C) of this rule, the Department's director has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the Department's director finds that the contract language being contested is identical to the current language in the county financial assistance agreement with the Department.

(D) The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(i) The request must be made in writing to the Department's director. The request must describe the potential harm and level of risk that shall be incurred by following the appeal process.

(ii) The Department must notify all parties of its decision to approve an expedited appeal process within two business days.

(iii) If an expedited process is approved, the Department shall notify all parties of the Department's decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process shall be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

(c) COMPLAINTS BY, OR ON BEHALF OF, INDIVIDUALS. An individual, or as applicable the individual's legal or designated representative or family member, may file a complaint with the CDDP under the following conditions:

(A) An individual, or as applicable a person acting on behalf of the individual, must have an opportunity to informally discuss and resolve any allegation that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual to pursue resolution through formal complaint processes. Any agreement to resolve the complaint must be reduced to writing and must be specifically approved by the complainant. The complainant must be provided with a copy of such agreement.

(B) A complaint may be filed regarding an inability to resolve a dispute concerning the appropriateness of services described in the service plan provided by a CDDP subcontractor or regarding dissatisfaction with services provided by the CDDP.

(i) The CDDP must follow its policies and procedures regarding receipt and resolution of a complaint.

(ii) The CDDP director must provide to the complainant a written decision regarding the complaint within 30 days following receipt of the complaint.

(I) The written decision regarding the complaint must contain the rationale for the decision and must list the reports, documents, or other information relied upon in making the decision.

(II) Along with the written decision, the complainant must also be provided a notice that the documents relied upon in making the decision may be reviewed by the individual or the person who filed the complaint.

(III) Along with the written decision, the complainant must also be provided a notice that the complainant has the right to request a review of the decision by the Department. Such notice, must be written in clear, simple language and at a minimum explain how and when to request such a review and when a final decision must be rendered by the Department's director.

(iii) Following a decision by the CDDP director regarding a complaint, the complainant may request an administrative review by the Department's director.

(I) The complainant must submit to the Department a request for an administrative review within 15 days from the date of the decision by the CDDP director.

(II) Upon receipt of a request for an administrative review, the Department's director shall appoint an administrative review committee and name the chairperson. The administrative review committee shall be comprised of a representative of the Department, a CDDP representative, and a service provider who provides a similar service as the service being reviewed, such as residential, employment, foster care, etc. Committee representatives may not have any direct involvement in the provision of services to the complainant or have a conflict of interest in the specific case being reviewed.

(III) The administrative review committee must review the complaint and the decision by the CDDP director and make a recommendation to the Department's director within 45 days of receipt of the complaint unless the complainant and the administrative review committee mutually agree to an extension.

(IV) The Department's director shall consider the report and recommendations of the administrative review committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the administrative review committee. The written decision must contain the rationale for the decision.

(V) The decision of the Department's director is final. Any further review is pursuant to the provisions of ORS 183.484.

(d) SPECIFIC COMPLAINTS. Individuals, or as applicable the individual's legal or designated representative, may request a review of specific decisions by the CDDP or a service provider as follows:

(A) Complaints of entry, exit, or transfer decisions within residential services may only be initiated according to OAR 411-325-0400 for 24-hour residential services and OAR 411-328-0800 for supported living services.

(B) Complaints of entry, exit, or transfer decisions within employment services or community inclusion services may only be initiated according to OAR 411-345-0150.

(C) Appeals of Medicaid eligibility decisions may be initiated according to OAR 411-330-0130(2).

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 27-2010(Temp), f. & cert. ef. 12-1-10 thru 5-30-11; Administrative correction 6-28-11; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0175
Hearings for Eligibility Determinations

(1) DEFINITIONS. As used in this rule:

(a) "Claimant" means a person who has requested a hearing or who is scheduled for a hearing.

(b) "Department Hearing Representative" means a person authorized to represent the Department in the hearing.

(c) "Good Cause" means a circumstance beyond the control of the claimant and claimant's representative.

(d) "Representative" means any adult chosen by the claimant to represent them at the hearing.

(e) A "Request for Hearing" is a written request by the claimant or the claimant's representative that the claimant wishes to appeal an eligibility determination.

(2) HEARING REQUESTS. A claimant or the claimant's representative may request a hearing, as provided in ORS chapter 183 if the claimant disagrees with the Notice of Eligibility Determination (SDS 5104) issued by the CDDP as described in OAR 411-320-0080.

(a) The request for a hearing must be in writing on the DD Administrative Hearing Request (SDS 0443DD) and signed by the claimant or the claimant's representative. Upon request by the claimant or the claimant's representative, the CDDP shall assist in completing the DD Administrative Hearing Request.

(b) The Department must receive the signed DD Administrative Hearing Request within 45 calendar days from the date on the CDDP's Notice of Eligibility Determination.

(c) The Department processes late hearing requests as described in OAR 411-001-0520.

(3) CONTINUING SERVICES PENDING A HEARING OUTCOME.

(a) Following a redetermination of eligibility as described in OAR 411-320-0080, the claimant or the claimant's representative may request continuing services during the hearing process.

(b) The claimant or the claimant's representative may request continuing services by;

(A) Checking the appropriate box on the DD Administrative Hearing Request; or

(B) Communicating directly with the local CDDP, support services brokerage, or the Department that services remain the same during the hearing process.

(c) To qualify for continuing services, the Department must receive the DD Administrative Hearing Request, which includes the request for continuing services by the effective date identified on the Notice of Eligibility Determination or by 10 calendar days following the date of the Notice, whichever is later.

(d) The Department may grant a late request for continuing services when the Department has determined the claimant or the claimant's representative has good cause.

(e) The claimant may be required to pay back any benefits received during the hearing process unless the determination is in the claimant's favor.

(4) INFORMAL CONFERENCE.

(a) The Department representative and the claimant or the claimant's representative may have an informal conference without the presence of the administrative law judge to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the claimant's representative to settle the matter;

(B) Ensure the claimant or the claimant's representative understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or the claimant's representative an opportunity to review the information that is the basis for the action;

(D) Inform the claimant or the claimant's representative of the rules that serve as the basis for the contested action;

(E) Give the claimant or the claimant's representative and the Department the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the claimant's representative an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review its action.

(b) A claimant or a claimant's representative may, at any time prior to the hearing date, request an additional informal conference with a Department representative. At the Department representative's discretion, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the relief sought at any time before a final order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by the claimant to represent his or her interests during an informal conference and hearing.

(b) Department employees are authorized to appear as a witness on behalf of the Department for hearings.

(c) Hearings are not open to the public. Non-participants may attend the hearing subject to the consent of the claimant or the claimant's representative.

(6) WITHDRAWAL OF HEARING. A claimant or the claimant's representative may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the request for withdrawal is received by the Department or the Office of Administrative Hearings (OAH). The Department shall issue the order of withdrawal to the last known address of the claimant. The claimant or the claimant's representative may cancel the withdrawal up to 10 working days following the date the order of withdrawal is issued.

(7) DISMISSAL FOR FAILURE TO APPEAR. A hearing request shall be dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The dismissal order shall be effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the claimant's representative upon a showing that the claimant or the claimant's representative was unable to attend the hearing or unable to request a postponement for good cause.

(8) ORDERS.

(a) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(A) Whether the Department is authorizing OAH to issue a final order, a proposed order, a proposed and final order; and

(B) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing is being referred for an expedited hearing.

(b) FINAL ORDER. The Department shall issue the final order unless the Department authorizes OAH to issue the final order under OAR 137-003-0655. Ordinarily, the final order shall be issued within 90 calendar days of the request for hearing or within 30 calendar days following the receipt of the proposed order or proposed and final order from OAH.

(c) PROPOSED ORDERS. After OAH issues a proposed order, the Department shall issue the final order, unless the Department authorizes OAH to issue the final order under OAR 137-003-0655.

(d) PROPOSED AND FINAL ORDERS. After OAH issues a proposed and final order, the proposed and final order shall become a final order on the 21st calendar day unless:

(A) The claimant or the claimant's representative has filed written exception and written argument as described in subsection (e) of this section;

(B) The Department has issued a revised order; or

(C) The Department has notified the claimant or the claimant's representative and OAH that the Department shall issue the final order.

(e) EXCEPTIONS.

(A) The claimant or the claimant's representative may file written exceptions and written argument to be considered by the Department once OAH has issued either a proposed order or a proposed and final order. The written exceptions and written argument must be received at the location indicated in the OAH order not later than the 20th calendar day after service of the proposed order or proposed and final order, unless subsection (a)(B) of this section applies.

(B) When the Department receives timely written exception and written argument as described above, the Department shall issue the final order, unless the Department authorizes OAH to issue the final order in compliance with OAR 137-003-0655.

(f) PETITION OF FINAL ORDER. Within 60 calendar days after a final order is served, a claimant or the claimant's representative may file a petition for reconsideration or rehearing. The petition must be filed with the entity who signed the final order unless stated otherwise on the final order.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.670

Hist.: SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 30-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-29-12; SPD 8-2012, f. 6-27-12, cert. ef. 6-30-12; SPD 6-2013, f. & cert. ef. 4-2-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0180

Inspections and Investigations

(1) All services covered by these rules must allow the following types of investigations and inspections:

(a) Quality assurance, certification, and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, the Department's designee, or proper authority must perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) A plan of correction must be submitted to the Department for any non-compliance found during an inspection

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.670

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0190

Program Review

(1) The Department may review the CDDP implementation of these rules as provided in OAR 411-320-0180 at least every five years or more frequently as needed to ensure compliance.

(2) Following a Department review, the Department shall issue a report to the CDDP identifying areas of compliance and areas in need of improvement.

(3) If, following a review, the CDDP or services coordinator is not in substantial compliance with these rules, the Department may offer technical assistance or request a plan of improvement. The CDDP must perform the necessary improvement measures required by and in the time specified by the Department. The Department may conduct additional reviews as necessary to ensure improvement measures have been achieved.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.670

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 28-2011, f. 12-28-11, cert. ef. 1-1-12; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

411-320-0200

Variances

(1) A variance that does not jeopardize individuals' health or safety may be granted to the CDDP if there is a lack of resources to meet the standards required in these rules and the alternative services, methods, concepts, or procedures proposed would result in services or systems that meet or exceed the standards. All variances must be submitted to and approved by the Department prior to implementation.

(2) The CDDP requesting a variance must submit, in writing, an application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) A description of the alternative practice, service, method, concept, or procedure proposed, including how the health and safety of individuals receiving services shall be protected to the extent required by these rules;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) Signed documentation from the CDDP reflecting the justification for the proposed variance.

(3) The Department's director must approve or deny the request for a variance.

(4) The Department shall notify the CDDP of the decision within 45 days of the receipt of the request by the Department.

(5) Appeal of the denial of a variance request must be made in writing to the Department's director whose decision is final.

(6) The CDDP may implement a variance only after written approval from the Department. The intergovernmental agreement is amended to the extent that the variance changes a term in that agreement.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.670

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13

Rule Caption: 24-Hour Residential Services for Children and Adults with Intellectual or Developmental Disabilities
Adm. Order No.: SPD 58-2013
Filed with Sec. of State: 12-27-2013
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Rules Repealed: 411-325-0020(T), 411-325-0390(T), 411-325-0400(T), 411-325-0440(T)
Subject: The Department of Human Services (Department) is permanently amending the rules in OAR chapter 411, division 325 for 24-hour residential services for children and adults with intellectual or developmental disabilities.

The permanent rules:

- Adopt the changes made by temporary rulemaking that became effective on July 1, 2013 to implement the 1915(k) Community First Choice state plan option, comply with the Code of Federal Regulations, and implement corrective actions required by the Centers for Medicare and Medicaid Services;
- Bring definitions in alignment with the Community First Choice state plan option;
- Clarify the eligibility requirements for home and community-based waivered services, Community First Choice state plan services, and 24-hour residential services;
- Specify that natural supports are voluntary by nature and are not paid for by the Department;
- Clarify the process, notice requirements, and hearing rights for an involuntary transfer or exit from services;
- Specify under what conditions a 24-hour residential provider may transfer or exit a child or adult involuntarily;
- Add definitions and requirements related to a comprehensive functional needs assessment;
- Address the roles and responsibilities of a designated representative;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-325-0010
Statement of Purpose

The rules in OAR chapter 411, division 325 prescribe standards, responsibilities, and procedures for 24-hour residential programs providing services to individuals with intellectual or developmental disabilities. These rules also prescribe the standards and procedures by which the Department of Human Services licenses a 24-hour residential program to provide residential care and training to individuals with intellectual or developmental disabilities.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0020
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 325:

(1) "24-Hour Residential Program" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide residential care and training to individuals with intellectual or developmental disabilities.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a home certified, endorsed, and licensed to provide 24-hour residential services for children with intellectual or developmental disabilities.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(4) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(5) "ADL" means "activities of daily living" as defined in this rule.

(6) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(7) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(8) "Agency" means "service provider" as defined in this rule.

(9) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(10) "Apartment" means "24-hour residential program" as defined in this rule.

(11) "Appeal" means the process under ORS chapter 183 that a service provider may use to petition conditions or the suspension, denial, or revocation of an application, certificate, endorsement, or license.

(12) "Applicant" means a person, agency, corporation, or governmental unit who applies for a license to operate a residential home providing 24-hour comprehensive residential services.

(13) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an Individual Support Plan (ISP) is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of an ISP team meeting.

(14) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(15) "Behavior Data Summary" means the document composed by a service provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.

(16) "Board of Directors" means the group of people formed to set policy and give directions to a service provider that provides 24-hour residential services. A board of directors includes local advisory boards used by multi-state organizations.

(17) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(18) "CDDP" means "community developmental disability program" as defined in this rule.

(19) "Certificate" means the document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed 24-hour residential services.

(20) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(21) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(22) "Choice" means an individual's expression of preference, opportunity for, and active role in decision-making related to services received and from whom, including but not limited to case management, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated verbally, through sign language, or by other communication methods.

(23) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(24) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(25) "Competency Based Training Plan" means the written description of a service provider's process for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the service provider's mission; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented including steps for remediation, and when a competency may be waived by a service provider to accommodate a staff member's specific circumstances.

(26) "Complaint Investigation" means the investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(27) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the service provider.

(28) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(29) "Day" means a calendar day unless otherwise specified in these rules.

(30) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential home for individuals with intellectual or developmental disabilities because the Department has determined that the service provider or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(31) "Department" means the Department of Human Services.

(32) "Designated Representative" means a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the individual's representative in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(33) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(34) "Direct Nursing Service" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(35) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(36) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(37) "Duplex" means "24-hour residential program" as defined in this rule.

(38) "Educational Surrogate" means the person who acts in place of a child's parent in safeguarding the child's rights in the special education decision-making process:

(a) When the child's parent cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of the child's parent or adult student.

(39) "Endorsement" means the authorization to provide 24-hour residential services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(40) "Entry" means admission to a Department-funded developmental disability service.

(41) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of 24-hour residential services.

(42) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(43) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(44) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(45) "Guardian" means the parent of a child or the person or agency appointed and authorized by a court to make decisions about services for a child.

(46) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(47) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(48) "Home" means "24-hour residential program" as defined in this rule.

(49) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with Section 1915(c) and 1115 of the Social Security Act.

(50) "IADL" means "instrumental activities of daily living" as defined in this rule.

(51) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(52) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(53) "Individual" means an adult with an intellectual or developmental disability or a child with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(54) "Individualized Education Plan (IEP)" means the written plan of instructional goals and objectives developed in conference with an individual, the individual's parent or legal representative (as applicable), teacher, and a representative of the school district.

(55) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the individual's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(56) "Individual Support Plan (ISP) Team" means a team composed of an individual receiving services and the individual's legal or designated representative (as applicable), services coordinator, and others chosen by the individual, or as applicable the individual's legal or designated representative, such as service providers or family members.

(57) "Instrumental Activities of Daily Living (IADL)" means the activities other than activities of daily living required to continue independent living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community

(58) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(59) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(60) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the individual's legal or designated representative, has not given prior approval.

(61) "ISP" means "Individual Support Plan" as defined in this rule.

(62) "K Plan" means "Community First Choice" as defined in this rule.

(63) "Legal Representative":

(a) For a child means the child's parent unless a court appoints another person or agency to act as the child's guardian.

(b) For an adult means an attorney at law who has been retained by or for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(64) "Licensee" means the person or organization to whom a certificate, endorsement, and license is granted.

(65) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who:

(a) Is a staff or volunteer working with a child who, comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(b) Is a staff or volunteer working with an adult who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with an intellectual or developmental disability. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(66) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the individual's body.

(67) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(68) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(69) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(70) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(71) "Natural Supports" means the parental responsibilities for a child and the voluntary resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community that are not paid for by the Department.

(72) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(73) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of an individual and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to the service provider and staff. When a Nursing Care Plan exists, it is a supporting document for an Individual Support Plan.

(74) "OIS" means "Oregon Intervention System" as defined in this rule.

(75) "Oregon Core Competencies" means:

(a) The list of skills and knowledge required for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate the competencies.

(76) "Oregon Intervention System (OIS)" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(77) "OSIP-M" means "Oregon Supplemental Income Program-Medical' as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(78) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual with an intellectual or developmental disability that gathers and organizes information that helps an individual:

(A) Determine and describe choices about personal goals, activities, services, service providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual's cultural considerations, needs, and preferences.

(79) "Plan of Care" means the written plan of Medicaid services an individual needs as required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(80) "Prescription Medication" means any medication that requires a physician's prescription before the medication may be obtained from a pharmacist.

(81) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(82) "Protection" and "Protective Services" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard an individual's person, property, and funds.

(83) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement.

(84) "Provider" means "service provider" as defined in this rule.

(85) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(86) "Relief Care" means intermittent services provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(87) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license after the Department has determined that the service provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(88) "Self-Administration of Medication" means an individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon the written order of a physician, and safely maintains the medication without supervision.

(89) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(90) "Services" mean supportive services, including but not limited to supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also include being aware of an individual's general whereabouts at all times and monitoring the activities of the individual to ensure the individual's health, safety, and welfare.

(91) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor services, and to act as a proponent for individuals with intellectual or developmental disabilities. A services coordinator is an individual's person-centered plan coordinator as defined in the Community First Choice state plan.

(92) "Significant Other" means a person selected by an individual to be the individual's friend.

(93) "Special Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order, such as low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A special diet does not include a diet where extra or additional food is offered without physician's orders but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(94) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department.

(95) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(96) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(97) "Suspension" means an immediate temporary withdrawal of the approval to operate 24-hour residential services after the Department determines a service provider or 24-hour residential home is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(98) "These Rules" mean the rules in OAR chapter 411, division 325.

(99) "Transfer" means movement of an individual from one home to another home administered or operated by the same service provider.

(100) "Transition Plan" means the written plan of services and supports for the period of time between an individual's entry into a particular service and the development of the individual's Individual Support Plan (ISP) . The Transition Plan is approved by the individual's services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(101) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(102) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a service provider.

(103) "Volunteer" means any person assisting a service provider without pay to support the services and supports provided to an individual.

(104) "Waiver Services" means "home and community-based waiver services" as defined in this rule.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0030
Issuance of License

(1) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate a residential home providing 24-hour support services without being licensed for each home.

(2) No license is transferable or applicable to any location, home, agency, management agent, or ownership other than that indicated on the application and license.

(3) The Department issues a license to an applicant found to be in compliance with these rules. The license is in effect for two years from the date issued unless revoked or suspended.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0040
Application for Initial License

(1) At least 30 days prior to anticipated licensure, an applicant must submit an application and required non-refundable fee. The application is provided by the Department and must include all information requested by the Department.

(2) The application must identify the number of beds the residential home is presently capable of operating at the time of application, considering existing equipment, ancillary service capability, and the physical requirements as specified by these rules. For purposes of license renewal, the number of beds to be licensed may not exceed the number identified on the license to be renewed unless approved by the Department.

(3) The initial application must include a copy of any lease agreements or contracts, management agreements or contracts, and sales agreements or contracts, relative to the operation and ownership of the home.

(4) The initial application must include a floor plan of the home showing the location and size of rooms, exits, smoke alarms, and extinguishers.

(5) If a scheduled, onsite licensing inspection reveals that an applicant is not in compliance with these rules as attested to on the Licensing Onsite Inspection Checklist, the onsite licensing inspection may be rescheduled at the Department's convenience.

(6) Applicants may not admit any individual to the home prior to receiving a written confirmation of licensure from the Department.

(7) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause initial licensure to be delayed or may deny or revoke the license.

(8) Any applicant or person with a controlling interest in an agency is considered responsible for acts occurring during, and relating to, the operation of such home for the purpose of licensing.

(9) The Department may consider the background and operating history of each applicant and each person with a controlling ownership interest when determining whether to issue a license.

(10) When an application for initial licensure is made by an applicant who owns or operates other licensed homes or facilities in Oregon, the Department may deny the license if the applicant's existing home or facility is not, or has not been, in substantial compliance with the Oregon Administrative Rules.

(11) Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same management.

(12) A residential home may not admit an individual whose service needs exceed the classification on the home's license without prior written consent of the Department.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0050
License Expiration, Termination of Operations, License Return

(1) Unless revoked, suspended, or terminated earlier, each license to operate a residential home expires two years following the date of issuance.

(2) If the operation of a home is discontinued for any reason, the license is considered to have been terminated.

(3) Each license is considered void immediately if the operation of a home is discontinued by voluntary action of the licensee or if there is a change in ownership.

(4) The license must be returned to the Department immediately upon suspension or revocation of the license or when operation is discontinued.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0060
Conditions on License

The Department may attach conditions to a license that limit, restrict, or specify other criteria for operation of a home. The type of condition attached to a license directly relates to the risk of harm or potential risk of harm to individuals.

(1) The Department may attach a condition to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(b) A threat to the health, safety, or welfare of an individual exists;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home is not being operated in compliance with these rules; or

(e) The service provider is licensed to provide services for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that the Department may impose on a license include but are not limited to:

(a) Restricting the total number of individuals that may be served;

(b) Restricting the number of individuals allowed within a licensed classification level based upon the capacity of the service provider and staff to meet the health and safety needs of all individuals;

(c) Restricting the support level of individuals allowed within a licensed classification level based upon the capacity of the service provider and staff to meet the health and safety needs of all individuals;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training;

(f) Restricting the service provider from allowing a person on the premises who may be a threat to an individual's health, safety, or welfare;

(g) Requiring additional documentation; or

(h) Restricting admissions.

(3) The Department shall notify the service provider in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and continue until removed by the Department.

(4) Upon written notice from the Department of the imposition of conditions, the service provider may request a contested case hearing in accordance with ORS chapter 183.

(a) The service provider must request a hearing within 21 days of receipt of the Department's written notice of conditions.

(b) In addition to, or in lieu of a hearing, a service provider may request an administrative review as described in section (5) of this rule. The administrative review does not diminish the service provider's right to a hearing.

(5) ADMINISTRATIVE REVIEW.

(a) A service provider, in addition to the right to a contested case hearing, may request an administrative review by the Department's director for imposition of conditions.

(b) The request for administrative review must be received by the Department within 10 days from the date of the Department's notice of imposition of conditions. The service provider may submit, along with the request for administrative review, any additional written materials the service provider wishes to have considered during the administrative review.

(c) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the service provider.

(d) If the decision of the Department is to affirm the condition, the service provider may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of imposition of conditions.

(6) The service provider may send a written request to the Department to remove a condition if the service provider believes the situation that warranted the condition has been remedied.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0070
Renewal of License

(1) A license is renewable upon submission of an application to the Department and the payment of the required non-refundable fee, except that no fee is required of a governmental owned home.

(2) Filing of an application and required fee for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application and fee are not submitted prior to the expiration date, the home or facility is treated as an unlicensed home subject to civil penalties as described in OAR 411-325-0460.

(3) The Department shall conduct a licensing review of the home prior to the renewal of the license. The review shall be unannounced, conducted 30-120 days prior to expiration of the license, and review compliance with these rules.

(4) The Department may not renew a license if the home is not in substantial compliance with these rules or if the State Fire Marshal or the State Fire Marshal's authorized representative has given notice of noncompliance pursuant to ORS 479.220.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0090
Change of Ownership, Legal Entity, Legal Status, Management Corporation

(1) The service provider must notify the Department in writing of any pending change in ownership or legal entity, legal status, or management corporation.

(2) A new license is required upon change in ownership, legal entity, or legal status. The service provider must submit a license application and required fee at least 30 days prior to change in ownership, legal entity, or legal status.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0110
Variances

(1) The Department may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater effectiveness and does not adversely impact the welfare, health, safety, or rights of the individuals.

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The CDDP must forward the signed variance request form to the Department within 30 days of receipt of the request indicating the CDDP's position on the proposed variance.

(4) The Department shall approve or deny the request for a variance.

(5) The Department's decision shall be sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The service provider may appeal the denial of a variance request within 10 working days of the denial by sending a written request for review to the Department's director and a copy of the request to the CDDP. The director's decision is final.

(7) The Department shall determine the duration of the variance.

(8) The service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0120
Medical Services

(1) The service provider must have and implement policies and procedures that maintain and protect the physical health of individuals. Policies and procedures must address the following:

(a) Individual health care;

(b) Medication administration;
(c) Medication storage;
(d) Response to emergency medical situations;
(e) Nursing service provision, if provided;
(f) Disposal of medications; and
(g) Early detection and prevention of infectious disease.
(2) INDIVIDUAL HEALTH CARE.
(a) An individual must receive care that promotes the individual's health and well being as follows:
(A) The service provider must ensure each individual has a primary physician or primary health care provider whom the individual, or as applicable the individual's parent or legal representative, has chosen from among qualified providers;
(B) The service provider must ensure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by a physician;
(C) The service provider must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm;
(b) A physician's or qualified health care provider's written, signed order is required prior to the usage or implementation of all of the following:
(A) Prescription medications;
(B) Non prescription medications except over the counter topical;
(C) Treatments other than basic first aid;
(D) Modified or special diets;
(E) Adaptive equipment; and
(F) Aids to physical functioning.
(c) The service provider must implement a physician's or qualified health care provider's order.
(d) The service provider must maintain records on each individual to aid physicians, licensed health professionals, and the service provider in understanding the individual's medical history. Such documentation must include:
(A) A list of known health conditions, medical diagnoses, known allergies, and immunizations;
(B) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and
(C) A record of known hospitalizations and surgeries.
(3) MEDICATION.
(a) All medications must be:
(A) Kept in their original containers;
(B) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the physician's or licensed health care practitioner's written order; and
(C) Kept in a secured locked container and stored as indicated by the product manufacturer.
(b) All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:
(A) The name of the individual;
(B) A transcription of the written physician's or licensed health practitioner's order, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;
(C) For topical medications and treatments without a physician's order, a transcription of the printed instructions from the package;
(D) Times and dates of administration or self-administration of the medication;
(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;
(F) Method of administration;
(G) An explanation of why a PRN (i.e., as needed) medication was administered;
(H) Documented effectiveness of any PRN (i.e., as needed) medication administration;
(I) An explanation of any medication administration irregularity; and
(J) Documentation of any known allergy or adverse drug reaction.
(c) Self-administration of medication.
(A) For individuals who independently self-administer medications, the ISP team must determine a plan for the periodic monitoring and review of the self-administration of medications.
(B) The service provider must ensure that individuals able to self-administer medications keep them in a secure locked container unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.
(d) PRN (i.e., as needed) orders are not allowed for psychotropic medication.
(e) Safeguards to prevent adverse effects or medication reactions must be utilized and include:
(A) Obtaining, whenever possible, all prescription medication except samples provided by the health care provider, for an individual from a single pharmacy which maintains a medication profile for the individual;
(B) Maintaining information about each medication's desired effects and side effects;
(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and
(D) Documentation in the individual's record of reason why all medications are not provided through a single pharmacy.
(f) All unused, discontinued, outdated, recalled, and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes documentation of:
(A) Date of disposal;
(B) Description of the medication, including dosage strength and amount being disposed;
(C) Individual for whom the medication was prescribed;
(D) Reason for disposal;
(E) Method of disposal;
(F) Signature of the person disposing of the medication; and
(G) For controlled medications, the signature of a witness to the disposal.
(4) DIRECT NURSING SERVICES. When direct nursing services are provided to an individual, the service provider must:
(a) Coordinate with the nurse or nursing service and the ISP team to ensure that the services being provided are sufficient to meet the individual's health needs; and
(b) Implement the Nursing Care Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.
(5) When an individual's medical, behavioral, or physical needs change to a point that they may not be met by the service provider, the services coordinator must be notified immediately and that notification documented.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0130
Food and Nutrition

(1) The service provider must provide access to a well balanced diet in accordance with the U.S. Department of Agriculture.
(2) For an individual with a physician or health care provider ordered modified or special diet, the service provider must:
(a) Have menus for the current week that provide food and beverages that consider the individual's preferences and are appropriate to the modified or special diet; and
(b) Maintain documentation that identifies how modified texture or special diets are prepared and served for the individual.
(3) At least three meals must be made available or arranged for daily.
(4) Foods must be served in a form consistent with an individual's needs and provide opportunities for choices in food selection.
(5) Unpasteurized milk and juice or home canned meats and fish may not be served or stored in the home.
(6) Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days must be maintained on the premises.
(7) Food must be stored, prepared, and served in a sanitary manner.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0140
Physical Environment

(1) All floors, walls, ceilings, windows, furniture, and fixtures must be kept in good repair, clean, and free from odors. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting.
(2) The water supply and sewage disposal must meet the requirements of the current rules of the Oregon Health Authority governing domestic water supply.

(3) A public water supply must be utilized if available. If a non-municipal water source is used, a sample must be collected yearly by the service provider, sanitarian, or a technician from a certified water-testing laboratory. The water sample must be tested for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(4) Septic tanks or other non-municipal sewage disposal systems must be in good working order. Incontinence garments must be disposed of in closed containers.

(5) The temperature within the home must be maintained within a normal comfort range. During times of extreme summer heat, the service provider must make reasonable effort to keep individuals comfortable using ventilation, fans, or air conditioning.

(6) Screening for workable fireplaces and open-faced heaters must be provided.

(7) All heating and cooling devices must be installed in accordance with current building codes and maintained in good working order.

(8) Handrails must be provided on all stairways.

(9) Swimming pools, hot tubs, saunas, or spas must be equipped with safety barriers and devices designed to prevent injury and unsupervised access.

(10) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of current rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and may not present a danger or health risk to individuals residing at the home or the individuals' guests.

(11) All measures necessary must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects.

(12) The interior and exterior of the residence must be kept free of litter, garbage, and refuse.

(13) Any work undertaken at a residence, including but not limited to demolition, construction, remodeling, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes appropriate to the individuals served.

(14) Service providers must comply with all applicable legal zoning ordinances pertaining to the number of individuals receiving services at the home.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0150
General Safety

(1) All toxic materials, including but not limited to poisons, chemicals, rodenticides, and insecticides must be:

(a) Properly labeled;

(b) Stored in the original container separate from all foods, food preparation utensils, linens, and medications; and

(c) Stored in a locked area unless the Risk Tracking records for all individuals residing in the home document that there is no risk present.

(2) All flammable and combustible materials must be properly labeled, stored, and locked in accordance with state fire code.

(3) For children, knives and sharp kitchen utensils must be locked unless otherwise determined by a documented ISP team decision.

(4) Window shades, curtains, or other covering devices must be provided for all bedroom and bathroom windows to assure privacy.

(5) Hot water in bathtubs and showers may not exceed 120 degrees Fahrenheit. Other water sources, except the dishwasher, may not exceed 140 degrees Fahrenheit.

(6) Sleeping rooms on ground level must have at least one window that opens from the inside without special tools that provides a clear opening of not less than 821 square inches, with the least dimension not less than 22 inches in height or 20 inches in width. Sill height may not be more than 44 inches from the floor level. Exterior sill heights may not be greater than 72 inches from the ground, platform, deck, or landing. There must be stairs or a ramp to ground level. Those homes previously licensed having a minimum window opening of not less than 720 square inches are acceptable unless through inspection it is deemed that the window opening dimensions present a life safety hazard.

(7) Sleeping rooms must have 60 square feet per individual with beds located at least three feet apart.

(8) Operative flashlights, at least one per floor, must be readily available to staff in case of emergency.

(9) First-aid kits and first-aid manuals must be available to staff within each home in a designated location. First aid kits must be locked if, after evaluating any associated risk, items contained in the first aid kit present a hazard to individuals living in the home. First aid kits containing any medication including topical medications must be locked.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0170
Staffing Requirements

(1) Each residence must provide staff appropriate to the number of individuals served as follows:

(a) Each home serving five or fewer individuals must provide at a minimum one staff on the premises when individuals are present; and

(b) Each home serving five or fewer individuals in apartments must provide at a minimum one staff on the premises of the apartment complex when individuals are present; and

(c) Each home serving six or more individuals must provide a minimum of one staff on the premises for every 15 individuals during awake hours and one staff on the premises for every 15 individuals during sleeping hours, except residences licensed prior to January 1, 1990; and

(d) Each home serving children, for any number of children, must provide at a minimum one awake night staff on the premises when children are present.

(2) A home is granted an exception to the staffing requirements in sections (1)(a), (1)(b), and (1)(c) for adults to be home alone when the following conditions have been met:

(a) No more than two adults are to be left alone in the home at any time without on staff supervision;

(b) The amount of time any adult individual may be left alone may not exceed five hours within a 24-hour period and an adult individual may not be responsible for any other adult individual or child in the home or community;

(c) An adult individual may not be left home alone without staff supervision between the hours of 11:00 P.M. and 6:00 A.M.;

(d) The adult individual has a documented history of being able to do the following safety measures or there is a documented ISP team decision agreeing to an equivalent alternative practice:

(A) Independently call 911 in an emergency and give relevant information after calling 911;

(B) Evacuate the premises during emergencies or fire drills without assistance in three minutes or less;

(C) Knows when, where, and how to contact the service provider in an emergency;

(D) Before opening the door, check who is there;

(E) Does not invite strangers to the home;

(F) Answer the door appropriately;

(G) Use small appliances, sharp knives, kitchen stove, and microwave safely;

(H) Self-administer medications, if applicable;

(I) Safely adjust water temperature at all faucets; and

(J) Safely takes a shower or bathe without falling.

(e) There is a documented ISP team decision annually noting team agreement that the adult individual meets the requirements of subsection (d) of this section.

(3) If at any time an adult individual is unable to meet the requirements in section (2)(d)(A)-(J) of this rule, the service provider may not leave the adult individual alone without supervision. In addition, the service provider must notify the adult individual's services coordinator within one working day and request that the ISP team meet to address the adult individual's ability to be left alone without supervision.

(4) Each home must meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0180
Individual Summary Sheets

A current one to two page summary sheet must be maintained for each individual receiving services from the service provider. The record must include:

(1) The individual's name, current and previous address, date of entry into the home, date of birth, sex, marital status (for individuals 18 or older),

religious preference, preferred hospital, medical prime number and private insurance number (if applicable), and guardianship status; and

(2) The name, address, and telephone number of:

(a) The individual's legal or designated representative, family, or other significant person (as applicable), and for children, the child's parent and educational surrogate (if applicable);

(b) The individual's preferred physician, secondary physician, or clinic;

(c) The individual's preferred dentist;

(d) The individual's identified pharmacy;

(e) The individual's school, day program, or employer (if applicable);

(f) The individual's services coordinator and Department representative for Department direct contracts; and

(g) Other agencies and representatives providing services and supports to the individual.

(3) For children under the age 18, any court ordered or legal representative authorized contacts or limitations must also be included on the individual summary sheet.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0185
Emergency Information

(1) Effective September 1, 2009, a service provider must maintain emergency information for each individual receiving services from the home in addition to the individual summary sheet described in OAR 411-325-0180.

(2) The emergency information must be kept current and must include:

(a) The individual's name;

(b) The service provider's name, address, and telephone number;

(c) The address and telephone number of the home where the individual lives;

(d) The individual's physical description, which may include a picture and the date the picture was taken, and identification of:

(A) The individual's race, sex, height, weight range, hair, and eye color; and

(B) Any other identifying characteristics that may assist in identifying the individual if the need arises, such as marks or scars, tattoos, or body piercings.

(e) Information on the individual's abilities and characteristics including:

(A) How the individual communicates;

(B) The language the individual uses or understands;

(C) The ability of the individual to know and take care of bodily functions; and

(D) Any additional information that may assist a person not familiar with the individual to understand what the individual may do for him or herself.

(f) The individual's health support needs including:

(A) Diagnosis;

(B) Allergies or adverse drug reactions;

(C) Health issues that a person needs to know when taking care of the individual;

(D) Special dietary or nutritional needs such as requirements around the textures or consistency of foods and fluids;

(E) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(F) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(G) Physical limitations that may affect the individual's ability to communicate, respond to instructions, or follow directions; and

(H) Specialized equipment needed for mobility, positioning, or other health related needs.

(g) The individual's emotional and behavioral support needs including:

(A) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(B) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(h) Any court ordered or legal representative authorized contacts or limitations;

(i) The individual's supervision requirements and why; and

(j) Any additional pertinent information the provider has that may assist in the care and support of the individual if a natural or man-made disaster occurs.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 11-2008, f. & cert. ef. 9-11-08; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0190
Incident Reports and Emergency Notifications

(1) An incident report, as defined in OAR 411-325-0020, must be placed in an individual's record and include:

(a) Conditions prior to or leading to the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review to include the follow-up to be taken to prevent a recurrence of the incident.

(2) A copy of all unusual incident reports must be sent to the individual's services coordinator within five working days of the unusual incident. Upon request of the individual's legal representative, copies of unusual incident reports must be sent to the legal representative within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of unusual incident reports may not be provided to an individual's legal representative when the report is part of an abuse or neglect investigation.

(3) The service provider must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR chapter 407, division 045.

(a) When an abuse investigation has been initiated, the Department or the Department's designee must provide notice to the service provider according to OAR chapter 407, division 045.

(b) When an abuse investigation has been completed, the Department or the Department's designee must provide notice of the outcome of the investigation according to OAR chapter 407, division 045.

(c) When a service provider receives notification of a substantiated allegation of abuse of an adult as defined in OAR 407-045-0260, the service provider must provide written notification immediately to:

(A) The person found to have committed abuse;

(B) Residents of the home;

(C) Residents' services coordinators; and

(D) Residents' legal representatives.

(d) The service provider's written notification must include:

(A) The type of abuse as defined in OAR 407-045-0260;

(B) When the allegation was substantiated; and

(C) How to request a copy of the redacted Abuse Investigation and Protective Services Report.

(e) The service provider must have policies and procedures to describe how the service provider implements notification of substantiated abuse as listed in subsections (3)(c) and (d) of this section.

(4) In the case of a serious illness, injury, or death of an individual, the service provider must immediately notify:

(a) The individual's legal representative or conservator, parent, next of kin, designated representative, or other significant person;

(b) The CDDP; and

(c) Any agency responsible for, or providing services to, the individual.

(5) In the case of an individual who is away from the residence without support beyond the time frames established by the ISP team, the service provider must immediately notify:

(a) The individual's legal or designated representative or nearest responsible relative (as applicable);

(b) The local police department; and

(c) The CDDP.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0200
Transportation

(1) Service providers, including employees and volunteers who own or operate vehicles that transport individuals, must:

(a) Maintain the vehicle in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain or assure insurance coverage including liability, on all vehicles and all authorized drivers; and

(d) Carry a first aid kit in the vehicle.

(2) When transporting, the driver must ensure that all individuals use seat belts. Individual car or booster seats must be used for transporting all children as required by law. When transporting individuals in wheel chairs, the driver must ensure that wheel chairs are secured with tie downs and that individuals wear seat belts.

(3) Drivers operating vehicles that transport individuals must meet applicable Department of Motor Vehicles requirements as evidenced by a driver's license.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0220
Individual Furnishings

(1) Bedroom furniture must be provided or arranged for each individual and include:

(a) A bed including a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, a waterproof mattress cover if the individual is incontinent, and a pillow;

(b) A private dresser or similar storage area for personal belongings that is readily accessible to the individual; and

(c) A closet or similar storage area for clothing that is readily accessible to the individual.

(2) Two sets of linens must be provided or arranged for each individual and include:

(a) Sheets and pillowcases;

(b) Blankets appropriate in number and type for the season and the individual's comfort; and

(c) Towels and washcloths.

(3) Each individual must be assisted in obtaining personal hygiene items in accordance with individual needs and items must be stored in a sanitary and safe manner.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0230
Emergency Plan and Safety Review

(1) Effective September 1, 2009, service providers must provide the emergency plan and safety review requirements as described in this rule.

(2) EMERGENCY PLANNING.

(a) Service providers must post the following emergency telephone numbers in close proximity to all phones used by staff.

(A) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency services; and

(B) The telephone number of the service provider's executive director, emergency physician, and additional people to be contacted in the case of an emergency.

(b) If an individual regularly accesses the community independently, the service provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(3) Providers must develop, maintain, update, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster.

(a) The emergency plan must:

(A) Be practiced at least annually. The emergency plan practice may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise.

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the home such as a pandemic or an earthquake.

(C) Include provisions and sufficient supplies, such as sanitation supplies, to shelter in place, when unable to relocate, for a minimum of three days under the following conditions:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to replace food or supplies; and

(iv) Staff unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies:

(i) The duties of staff during evacuation, transporting, and housing of individuals, including instructions to staff to notify the Department, local office, or designee of the plan to evacuate or the evacuation of the home as soon as the emergency or disaster reasonably allows;

(ii) The method and source of transportation;

(iii) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals in the home;

(iv) A method that provides a person unknown to the individual the ability to identify each individual by the individual's name and to identify the name of the individual's supporting provider; and

(v) A method for tracking and reporting to the Department, local office, or designee, the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals, including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheets described in OAR 411-325-0180 and the emergency information described in OAR 411-325-0185 and other information necessary to obtain care, treatment, food, and fluids for the individuals.

(ii) Continued access to life-sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(b) The service provider must instruct and provide training to all staff about the staffs' duties and responsibilities for implementing the emergency plan.

(c) The service provider must re-evaluate and revise the emergency plan at least annually or when there is a significant change in the home.

(d) The emergency plan summary must be sent to the Department annually and upon change of ownership.

(e) Applicable parts of the emergency plan must coordinate with each applicable employment and alternative to employment provider to address the possibility of an emergency or disaster during work hours.

(4) A documented safety review must be conducted quarterly to ensure that each home is free of hazards. The service provider must keep the quarterly safety review reports for three years and must make them available upon request by the CDDP or the Department.

Stat. Auth. ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 11-2008, f. & cert. ef. 9-11-08; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0240
Assessment of Fire Evacuation Assistance

(1) The service provider must assess, within 24 hours of an individual's entry to the home, the individual's ability to evacuate the home in response to an alarm or simulated emergency.

(2) The service provider must document the level of assistance needed by each individual to safely evacuate the home and the documentation must be maintained in the individual's entry records.

Stat. Auth. ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0250
Fire Drill Requirements and Fire Safety

(1) The service provider must conduct unannounced evacuation drills when individuals are present, one per quarter each year with at least one drill per year occurring during the hours of sleep. Drills must occur at different times during day, evening, and night shifts with exit routes being varied based on the location of a simulated fire.

(2) Written documentation must be made at the time of the fire drill and kept by the service provider for at least two years following the drill. Fire drill documentation must include:

(a) The date and time of the drill or simulated drill;

(b) The location of the simulated fire and exit route;

(c) The last names of all individuals and staff present on the premises at the time of the drill;

(d) The type of evacuation assistance provided by staff to individuals' as specified in each individual's safety plan;

(e) The amount of time required by each individual to evacuate or staff simulating the evacuation; and

(f) The signature of the staff conducting the drill.

(3) Smoke alarms or detectors and protection equipment must be inspected and documentation of inspections maintained as recommended by the local fire authority or State Fire Marshal.

(4) The service provider must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

Stat. Auth. ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0260
Individual Fire Evacuation Safety Plans

(1) For individuals who are unable to evacuate the residence within the required evacuation time or who with concurrence of the ISP team request not to participate in fire drills, the service provider must develop a written fire safety and evacuation plan that includes the following:

(a) Documentation of the risk to the individual's medical, physical condition, and behavioral status;

(b) Identification of how the individual evacuates his or her residence, including level of support needed;

(c) The routes to be used to evacuate the residence to a point of safety;

(d) Identification of assistive devices required for evacuation;

(e) The frequency the plan is to be practiced and reviewed by the individual and staff;

(f) The alternative practices;

(g) Approval of the plan by the individual's legal or designated representative (as applicable), case manager, and the service provider's executive director; and

(h) A plan to encourage future participation.

(2) The service provider must maintain documentation of the practice and review of the safety plan by the individual and the staff.

Stat. Auth. ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0270
Fire Safety Requirements for Homes on a Single Property or on Contiguous Property Serving Six or More Individuals

(1) The home must provide safety equipment appropriate to the number and level of individuals served and meet the requirements of the State of Oregon Structural Specialty and Fire Code as adopted by the state:

(a) Each home housing six or more but fewer than 11 individuals or each home that houses five or fewer individuals but is licensed as a single facility due to the total number of individuals served per the license or meets the contiguous property provision, must meet the requirements of a SR 3.3 occupancy and must:

(A) Provide and maintain permanent wired smoke alarms from a commercial source with battery back-up in each bedroom and at a point centrally located in the corridor or area giving access to each separate sleeping area and on each floor;

(B) Provide and maintain a 13D residential sprinkler system as defined in the National Fire Protection Association standard; and

(C) Have simple hardware for all exit doors and interior doors that may not be locked against exit that has an obvious method of operation. Hasps, sliding bolts, hooks and eyes, double key deadbolts, and childproof doorknobs are not permitted. Any other deadbolts must be single action release so as to allow the door to open in a single operation.

(b) Each home housing 11 or more but fewer than 17 individuals must meet the requirements of a SR 3.2 occupancy.

(c) Each home housing 17 or more individuals must meet the requirements of a SR 3.1 occupancy.

(2) The number of individuals receiving services may not exceed the licensed capacity, except that one additional individual may receive relief care services not to exceed two weeks. Relief care supports may not violate the safety and health sections of these rules.

(3) The service provider may not admit individuals functioning below the level indicated on the license for the home.

Stat. Auth. ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 11-2008, f. & cert. ef. 9-11-08; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0280
Fire Safety Requirements for Homes or Duplexes Serving Five or Fewer Individuals

(1) The home or duplex must be made fire safe.

(a) A second means of egress must be provided.

(b) A class 2A10BC fire extinguisher that is easily accessible must be provided on each floor in the home or duplex.

(c) Permanent wired smoke alarms from a commercial source with battery back up in each bedroom and at a point centrally located in the corridor or area giving access to each separate sleeping area and on each floor must be provided and maintained.

(d) A 13D residential sprinkler system in accordance with the National Fire Protection Association Code must be provided and maintained. Homes or duplexes rated as "Prompt" facilities per Chapter 3 of the 2000 edition NFPA 101 Life Safety Code are granted an exception from the residential sprinkler system requirement.

(e) Hardware for all exit doors and interior doors must be simple hardware that may not be locked against exit and must have an obvious method of operation. Hasp, sliding bolts, hooks and eyes, double key deadbolts, and childproof doorknobs are not permitted. Any other deadbolts must be single action release so as to allow the door to open in a single operation.

(2) A home or duplex is granted an exception to the requirements in sections (1)(c) and (d) of this rule under the following circumstances:

(a) All individuals residing in the home or duplex have demonstrated the ability to respond to an emergency alarm with or without physical assistance from staff to the exterior and away from the home or duplex in three minutes or less, as evidenced by three or more consecutive documented fire drills;

(b) Battery operated smoke alarms with a 10 year battery life and hush feature have been installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes or duplexes at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be mounted as per the manufacturer's instructions. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition; and

(c) A written fire safety evacuation plan is implemented that assures that staff assist all individuals in evacuating the premises safely during an emergency or fire as documented by fire drill records.

(3) The number of individuals receiving services at the home or duplex may not exceed the maximum capacity of five individuals, including individuals receiving relief care services. An individual may receive relief care services not to exceed two weeks. Relief care services may not violate the safety and health sections of these rules.

Stat. Auth. ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 11-2008, f. & cert. ef. 9-11-08; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0290
Fire Safety Requirements for Apartments Serving Five or Fewer Individuals

(1) The apartment must be made fire safe by:

(a) Providing and maintaining in each apartment, battery-operated smoke alarms with a 10-year life in each bedroom and in a central location on each floor;

(b) Providing first floor occupancy apartments. Individuals who are able to exit in three minutes or less without assistance may be granted a variance from the first floor occupancy requirement;

(c) Providing a class 2A10BC portable fire extinguisher easily accessible in each apartment;

(d) Providing access to telephone equipment or intercom in each apartment usable by the individual receiving services; and

(e) Providing constantly usable unblocked exits from the apartment and apartment building.

(2) The number of individuals receiving services at the apartment may not exceed the maximum capacity of five including relief care services. An individual may receive relief care services not to exceed two weeks. Relief care services may not violate the safety and health sections of these rules.

Stat. Auth. ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0300
General Rights

(1) Adults as defined in OAR 411-325-0020 and children as defined in OAR 411-325-0020 must not be abused or neglected or is abuse or neglect tolerated by any employee, staff, or volunteer of the home.

(2) The service provider must ensure the health and safety of individuals from abuse, including the protection of individual rights, as well as

encourage and assist individuals through the ISP process to understand and exercise these rights. Except for children under the age of 18 where reasonable limitations have been placed by a parent or legal representative, these rights must at a minimum provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age, except when limited by a court order:

(b) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(c) Visits with family members, legal and designated representatives (as applicable), friends, advocates, others of the individual's choosing, and legal and medical professionals;

(d) Confidential communication, including personal mail and telephone;

(e) Personal property and fostering of personal control and freedom regarding that property;

(f) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical, mechanical, and protective physical intervention;

(h) Freedom to choose whether or not to participate in religious activity;

(i) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(j) Expression of sexuality within the framework of state and federal laws and for adults over the age of 18, freedom to marry and to have children;

(k) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities, and health care resources;

(l) Individual choice for children and adults that enables for decision making and control of personal affairs appropriate to age;

(m) Services that promote independence, dignity, and self-esteem and reflect the age and preferences of the individual child or adult;

(n) Individual choice for adults to consent to or refuse treatment unless incapable and then an alternative decision maker may consent or refuse. For children, consent or refusal of treatment by the child's parent or legal representative, except as defined in statute (ORS 109.610) or limited by court order;

(o) Individual choice to participate in community activities;

(p) Access to a free and appropriate education for children and individuals under the age of 21, including a procedure for school attendance or refusal to attend.

(3) The service provider must have and implement written policies and procedures that protect an individual's rights as listed in section (2) of this rule.

(4) The service provider must inform each individual, and as applicable the individual's parent or legal or designated representative, orally and in writing of the individual's rights and a description of how to exercise those rights. Notification must be completed at entry to the home and in a timely manner thereafter as changes occur. Information must be presented using language, format, and methods of communication appropriate to the individual's needs and abilities.

Stat. Auth.: ORS 409.050, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0320
Rights: Informal Complaints and Formal Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual, and as applicable the individual's parent, legal representative, or designated representative, orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0330
Rights: Medicaid Fair Hearings

The service provider must have a policy and procedure that provides for immediate referral to the CDDP when a Medicaid recipient, or as applicable the Medicaid recipient's parent or legal or designated representative, requests a fair hearing. The policy and procedure must include immediate notice to the individual, and as applicable the individual's parent or legal or designated representative, of the right to a Medicaid fair hearing each time a service provider takes action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0340
Behavior Support

(1) The service provider must have and implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(2) A decision to develop a plan to alter a person's behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the service provider.

(3) The service provider must conduct a functional behavioral assessment of the behavior that is based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior, including (as applicable) frequency, duration, and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, including the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) The Behavior Support Plan must include:

(a) An individualized summary of the individual's needs, preferences, and relationships;

(b) A summary of the function of the behavior, as derived from the functional behavioral assessment;

(c) Strategies that are related to the function of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies, including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with (OIS);

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan, including a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Providers must maintain the following additional documentation for implementation of a Behavioral Support Plan:

(a) Written evidence that the individual and the individual's parent (if applicable), legal or designated representative (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

(6) The service provider must inform each individual, and as applicable the individual's parent or legal or designated representative, of the behavior support policy and procedures at the time of entry to the home and as changes occur.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0350
Protective Physical Intervention

(1) A service provider must only employ protective physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection ordered by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure or for the individual's protection during the time that a medical condition exists.

(2) Staff supporting an individual must be trained by an instructor certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying OIS training must be maintained in the staff person's personnel file.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of a protective physical intervention technique must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Use of protective physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the service provider's executive director or the executive director's designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Submit an incident report to the CDDP services coordinator or other Department designee (if applicable) and the individual's legal representative (if applicable), no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if emergency protective physical intervention is used more than three times in a six-month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances described in section (7) of this rule. The report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the protective physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member applying the protective physical intervention;

(f) The name and position of the staff witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of an administrative review including the follow-up to be taken to prevent a recurrence of the incident by the service provider's executive director or the executive director's designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) A copy of the incident report must be forwarded within five working days of the incident to the CDDP services coordinator and the individual's legal representative (when applicable).

(a) The services coordinator or the Department designee (when applicable) must receive complete copies of incident reports.

(b) Copies of incident reports may not be provided to a legal representative or other service providers when the report is part of an abuse or neglect investigation.

(c) Copies provided to a legal representative or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(d) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the CDDP services coordinator or other Department designee (if applicable) within one working day of the incident.

(7) Behavior data summary.

(a) The service provider may substitute a behavior data summary in lieu of individual incident reports when:

(A) There is no injury to the individual or others;

(B) The intervention utilized is not a protective physical intervention;

(C) There is a formal written functional assessment and a written Behavioral Support Plan;

(D) The individual's Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

(E) The protective physical intervention technique and the behavior for which the protective physical intervention techniques are applied remain within the parameters outlined in the individual's Behavior Support Plan and the OIS curriculum;

(F) The behavior data collection system for recording observations, interventions, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record the items described in sections (5)(a)-(c) and (e)-(h) of this rule; and

(G) There is written documentation of an ISP team decision that a behavior data summary has been authorized for substitution in lieu of incident reports.

(b) A copy of the behavior data summary must be forwarded every 30 days to the CDDP services coordinator or other Department designee (if applicable) and the individual's legal representative (if applicable).

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0360
Psychotropic Medications and Medications for Behavior

(1) Psychotropic medications and medications for behavior must be:

(a) Prescribed by a physician or health care provider through a written order; and

(b) Monitored by the prescribing physician, ISP team, and service provider for desired responses and adverse consequences.

(2) When medication is first prescribed and annually thereafter, the service provider must obtain a signed balancing test from the prescribing health care provider using the Department's Balancing Test Form or by inserting the required form content into the service provider's agency forms. Service providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(3) The provider must keep signed copies of the forms required in section (2) of this rule in the individual's medical record for seven years.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0370
Individuals' Personal Property

(1) The service provider must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or legal representative decision.

(2) The record must include:

(a) The description and identifying number, if any;

(b) Date of inclusion in the record;

(c) Date and reason for removal from the record;

(d) Signature of staff making each entry; and

(e) A signed and dated annual review of the record for accuracy.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0380
Handling and Managing Individuals' Money

(1) The service provider must have and implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) The individual to manage his or her own funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

(d) Taking into account an individual's interests and preferences.

(2) For those individuals not yet capable of managing their own money, as determined by the ISP Risk Tracking Record or the individual's legal representative, the service provider must prepare and maintain an accurate written record for each individual of all money received or disbursed on behalf of or by the individual. The record must include:

(a) The date, amount, and source of income received;

(b) The date, amount, and purpose of funds disbursed; and

(c) Signature of the staff making each entry.

(3) The service provider must reimburse the individual any funds that are missing due to theft or mismanagement on the part of any staff member of the home or for any funds within the custody of the service provider that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0390

Entry, Exit, and Transfer

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters 24-hour residential services is subject to eligibility as described in this section.

(a) To be eligible for home and community-based waiver services or Community First Choice state plan services, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OSIP-M;

(C) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080; and

(D) After completion of an assessment, meet the level of care as defined in OAR 411-320-0020.

(b) To be eligible for 24-hour residential services, an individual must:

(A) Be an Oregon resident;

(B) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080;

(C) Be an individual who is not receiving other Department-funded in-home or community living support; and

(D) Be eligible for home and community-based waiver services or Community First Choice state plan services as described in subsection (a) of this section; or

(E) Be determined to meet crisis eligibility as described in OAR 411-320-0160.

(3) ENTRY.

(a) The Department authorizes entry into children's residential services and stabilization and crisis units.

(b) The CDDP services coordinator authorizes entry into 24-hour residential programs, except in the cases of children's residential services and stabilization and crisis units.

(4) DOCUMENTATION UPON ENTRY.

(a) A service provider must acquire the following information prior to or upon an entry ISP team meeting:

(A) A copy of the individual's eligibility determination document;

(B) A statement indicating the individual's safety skills, including the individual's ability to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) The individual's medical history and information on health care supports that includes, where available:

(i) The results of a physical exam made within 90 days prior to entry;

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of the individual's current or recommended medications, treatments, diets, and aids to physical functioning;

(F) Copies of documents relating to the individual's guardianship, conservatorship, health care representation, or any other legal restrictions on the rights of the individual (if applicable);

(G) Written documentation that the individual is participating in out of residence activities, including school enrollment for individuals under the age of 21; and

(H) A copy of the individual's most recent functional behavioral assessment, Behavior Support Plan, Individual Support Plan, and Individual Education Plan (if applicable).

(b) If an individual is being admitted from the individual's family home and the information required in subsection (a) of this section is not available, the service provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. Documentation of the assessment must include a written justification as to why the information is not available.

(5) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. The findings of the meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting;

(c) The date determined to be the individual's date of entry;

(d) Documentation of the participants included in the meeting;

(e) Documentation of the pre-entry information required by section (4)(a) of this rule;

(f) Documentation of the decision to serve the individual requesting services; and

(g) A written Transition Plan for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.

(6) VOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must promptly notify an individual's services coordinator if an individual, or as applicable the individual's legal or designated representative, gives notice of the individual's intent to exit or the individual abruptly exits services.

(b) A service provider must notify an individual's services coordinator prior to an individual's voluntary transfer or exit from services.

(c) Notification and authorization of an individual's voluntary transfer or exit must be documented in the individual's record.

(d) A service provider is responsible for the provision of services until an individual exits the home.

(7) INVOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must only transfer or exit an individual involuntarily for one or more of the following reasons:

(A) The individual's behavior poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The individual's service needs exceed the ability of the service provider;

(D) The individual fails to pay for services; or

(E) The service provider's certification or endorsement described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. A service provider must not transfer or exit an individual involuntarily without 30 days advance written notice to the individual, the individual's legal or designated representative (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The individual's right to a hearing as described in subsection (e) of this section.

(B) A notice is not required when an individual, or as applicable the individual's legal or designated representative, requests a transfer or exit.

(c) A service provider may give less than 30 days advanced written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the individual, the individual's legal or designated representative (as applicable), and the services coordinator immediately upon determination of the need for a transfer or exit.

(d) A service provider is responsible for the provision of services until an individual exits the home.

(e) HEARING RIGHTS. An individual must be given the opportunity for a contested case hearing under ORS chapter 183 to dispute an involuntary transfer or exit. If an individual or the individual's legal or designated representative (as applicable) requests a hearing, the individual must

receive the same services until the hearing is resolved. When an individual has been given less than 30 days advanced written notice of a transfer or exit as described in subsection (c) of this section and the individual or the individual's legal or designated representative (as applicable) has requested a hearing, the service provider must reserve the individual's room until receipt of the final order.

(8) EXIT MEETING.

(a) An individual's ISP team must meet before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the meeting;

(C) Documentation of the participants included in the meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the individual's exit from services (unless the individual, or as applicable the individual's legal or designated representative, is requesting the exit);

(F) Documentation of the decision regarding the individual's exit, including verification of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and

(G) Documentation of the proposed plan for services for the individual after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

(A) The individual, or as applicable the individual's legal or designated representative, requests an immediate move from the home; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention for an individual less than 18 years of age.

(9) TRANSFER MEETING. An individual's ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call;

(c) Documentation of the participants included in the meeting or telephone call;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the individual's legal or designated representative, parent, or family members, cannot be honored;

(g) Documentation of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and

(h) The individual's written plan for services after transfer.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0400
Grievance of Entry, Exit, and Transfer

(1) In cases where the individual, or as applicable the individual's legal or designated representative, objects to an entry refusal, a grievance may be filed.

(2) All grievances must be made in writing to the CDDP director or the CDDP director's designee in accordance with the CDDP's dispute resolution policy. The CDDP must provide a written response to the individual, or as applicable the individual's legal or designated representative, within the timelines specified in the CDDP's dispute resolution policy.

(3) In cases where the CDDP's decision is in dispute, a written grievance must be made to the Department within 10 days of receipt of the CDDP's decision.

(4) Unresolved grievances are reviewed by the Department's director and a written response is provided within 45 days of receipt of the written request for the Department's review. The decision of the Department's director is final.

(5) Documentation of each grievance and resolution must be filed or noted in the individual's record.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0410
Relief Care Services

(1) All individuals considered for relief care services funded through 24-hour residential services must:

(a) Be referred by the CDDP or Department;

(b) Be determined to have an intellectual or developmental disability by the Department or the Department's designee; and

(c) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) The individual, service provider, legal or designated representative (as applicable), parent, and family or other ISP team members (as available) must participate in an entry meeting prior to the initiation of relief care services. The meeting may occur by phone and the CDDP or Department must ensure that any critical information relevant to the individual's health and safety, including physicians' orders, is made immediately available. The outcome of the meeting must be a written Relief Care Plan that takes effect upon entry and is available on site. The Relief Care Plan must:

(a) Address the individual's health, safety, and behavioral support needs;

(b) Indicate who is responsible for providing the supports described in the Relief Care Plan; and

(c) Specify the anticipated length of stay at the home up to 14 days.

(3) Exit meetings are waived for individuals receiving relief care services.

(4) Individuals receiving relief care services do not have appeal rights regarding entry, exit, or transfer.

Stat. Auth.:ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0420
Crisis Services

(1) All individuals considered for crisis services funded through 24-hour residential services must:

(a) Be referred by the CDDP or Department;

(b) Be determined to have an intellectual or developmental disability by the Department or the Department's designee;

(c) Be determined to be eligible for developmental disability services as defined in OAR 411-320-0080; and

(d) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) Individuals receiving support services under OAR chapter 411, division 340 and receiving crisis services must have a Support Services Plan of Care and a Crisis Addendum upon entry to the home.

(3) An ISP is required for individuals not enrolled in support services. Individuals not enrolled in support services receiving crisis services for less than 90 consecutive days must have an ISP on entry that addresses any critical information relevant to the individual's health and safety, including current physicians' orders.

(4) Individuals not enrolled in support services receiving crisis services for 90 days or more must have a completed Risk Tracking Record and an ISP that addresses all identified health and safety supports as noted in the Risk Tracking Record.

(5) Entry meetings are required for individuals receiving crisis services.

(6) Exit meetings are required for individuals receiving crisis services.

(7) Individuals receiving crisis services do not have appeal rights regarding entry, exit, or transfer.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0430
Individual Support Plan

(1) A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the home within 60 days of entry and annually thereafter.

(2) The following information must be collected and summarized prior to the ISP meeting:

(a) Personal Focus Worksheet;

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record;

(e) Other documents required by the ISP team; and

(f) The individual's functional needs assessment.

(3) A completed ISP must be documented on the Department required form and include the following:

(a) The individual's name and the name of the individual's legal or designated representative (as applicable);

(b) A description of the supports required that is consistent with the individual's functional needs assessment, including the reason the support is necessary;

(c) The projected dates of when specific supports are to begin and end;

(d) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(e) The manner in which services are delivered and the frequency of services;

(f) Service providers;

(g) The setting in which the individual resides as chosen by the individual;

(h) The individual's strengths and preferences;

(i) The clinical and support needs as identified through the functional needs assessment;

(j) Individually identified goals and desired outcomes;

(k) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(l) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(m) The identity of the person responsible for case management and monitoring the ISP;

(n) A provision to prevent unnecessary or inappropriate care; and

(o) The alternative settings considered by the individual.

(4) The provider must maintain documentation of implementation of each support and services specified in OAR sections (2)(c) to (2)(e) of this rule in the individual's ISP. This documentation must be kept current and be available for review by the individual, the individual's legal representative, CDDP, and Department representatives.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0440
Children's Direct Contracted Services

Any documentation or information required for children's direct contracted developmental disability services to be submitted to the CDDP services coordinator must also be submitted to the Department's residential services coordinator assigned to the home.

Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0460
Civil Penalties

(1) For purposes of imposing civil penalties, 24-hour residential programs licensed under ORS 443.400 to 443.455 and 443.991(2) are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) The Department issues the following schedule of penalties applicable to 24-hour residential programs as provided for under ORS 441.705 to 441.745:

(a) Violations of any requirement within any part of the following rules may result in a civil penalty up to $500 per day for each violation not to exceed $6,000 for all violations for any licensed 24-hour residential program within a 90-day period:

(A) 411-325-0025(3), (4), (5), (6), and (7);

(B) 411-325-0120(2), and (4);

(C) 411-325-0130;

(D) 411-325-0140;

(E) 411-325-0150;

(F) 411-325-0170;

(G) 411-325-0190;

(H) 411-325-0200;

(I) 411-325-0220(1), and (2);

(J) 411-325-0230;

(K) 411-325-0240, 0250, 0260, 0270, 0280, and 0290;

(L) 411-325-0300, 0320, 0330, 0340, and 0350;

(M) 411-325-0360;

(N) 411-325-0380;

(O) 411-325-0430(3) and (4); and

(P) 411-325-0440.

(b) Civil penalties of up to $300 per day per violation may be imposed for violations of any section of these rules not listed in subsection (a)(A) to (a)(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential program where such surveys are conducted by an employee of the Department. Penalties assessed under this section of this rule may not exceed $6,000 within a 90-day period.

(3) Monitoring occurs when a 24-hour residential program is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department considers the following factors:

(a) The past history of the service provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to 24-hour residential programs;

(c) The economic and financial conditions of the service provider incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or well-being of individuals.

(5) Any civil penalty imposed under ORS 443.455 and 441.710 becomes due and payable when the service provider incurring the penalty receives a notice in writing from the Department's director. The notice referred to in this section of this rule is sent by registered or certified mail and includes:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the service provider's right to request a hearing.

(6) The person representing the service provider to whom the notice is addressed has 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.

(7) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(8) If the service provider notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.

(9) If, after a hearing, the service provider is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Department's director considers proper and consistent with individual health and safety.

(11) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) A violation of any general order or final order pertaining to a 24-hour residential program issued by the Department is subject to a civil penalty in the amount of not less than $5 and not more than $500 for each and every violation.

(13) Judicial review of civil penalties imposed under ORS 441.710 are provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) All penalties recovered under ORS 443.455 and 441.710 to 441.740 are paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 409.050, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0470
License Denial, Suspension, Revocation, Refusal to Renew

(1) The Department shall deny, suspend, revoke, or refuse to renew a license where the Department finds there has been substantial failure to comply with these rules or where the State Fire Marshal or the State Fire Marshal's representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) The Department shall suspend the home license where imminent danger to health or safety of individuals exists.

(3) The Department shall deny, suspend, revoke, or refuse to renew a license where it finds that a provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(4) Revocation, suspension, or denial is done in accordance with the rules of the Department and ORS Chapter 183.

(5) Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application constitutes grounds for denial or revocation of the license.

(6) The Department shall deny, suspend, revoke, or refuse to renew a license if the licensee fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction, including the imposition of a civil penalty.

Stat. Auth.: Stat. Auth.: ORS 409.050, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

411-325-0480
Criminal Penalties

(1) Violation of any provision of ORS 443.400 to 443.455 is a Class B misdemeanor.

(2) Violation of any provision of ORS 443.881 is a Class C misdemeanor.

Stat. Auth.: ORS 409.050, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13

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Rule Caption: Supported Living Services for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: SPD 59-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 12-1-2013
Rules Amended: 411-328-0550, 411-328-0560, 411-328-0570, 411-328-0620, 411-328-0630, 411-328-0640, 411-328-0650, 411-328-0660, 411-328-0680, 411-328-0690, 411-328-0700, 411-328-0710, 411-328-0715, 411-328-0720, 411-328-0740, 411-328-0750, 411-328-0760, 411-328-0770, 411-328-0780, 411-328-0790, 411-328-0800
Rules Repealed: 411-328-0560(T), 411-328-0790(T), 411-328-0800(T)
Subject: The Department of Human Services is permanently amending the rules for supported living services for adults with intellectual or developmental disabilities in OAR chapter 411, division 328.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-328-0550
Statement of Purpose

(1) Purpose. These rules prescribe standards by which the Seniors and People with Disabilities Division approves programs that provide supported living services for individuals with developmental disabilities.

(2) Mission Statement. The overall mission of the Seniors and People with Disabilities Division, Office of Developmental Disability Services is to provide support services that enhance the quality of life of persons with developmental disabilities.

(a) Supported living services are a key element in the service delivery system and are critical to achieving this mission.

(b) The goal of supported living is to assist individuals to live in their own homes, in their own communities.

(c) The term "Supported Living" refers to a service which provides the opportunity for persons with developmental disabilities to live in the residence of their choice within the community with recognition that needs and preferences may change over time. Levels of support are based upon individual needs and preferences as defined in the Individual Support Plan. Such services may include up to 24 hours per day of paid supports which are provided in a manner that protects individuals' dignity.

(d) The service provider is responsible for developing and implementing policies and procedures and/or plans that ensure that the requirements of this rule are met.

(e) In addition, the service provider must ensure services comply with all applicable local, state and federal laws and regulations.

(f) The purpose of this rule is to ensure that the service provider meets basic management, programmatic, health and safety, and human rights regulations for those individuals receiving supported living services funded by the Seniors and People with Disabilities Division.

(3) Statutory Authority. These rules are authorized by ORS 409.050 and 410.070 and carry out the provisions of 430.610, 430.630, and 430.670.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0550 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0560
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 328:

(1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(3) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "ADL" means "activities of daily living" as defined in this rule.

(5) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(6) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(7) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(8) "Board of Directors" mean the group of persons formed to set policy and give directions to a service provider that provides supported living services. A board of directors includes local advisory boards used by multistate organizations.

(9) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(10) "CDDP" means "community developmental disability program" as defined in this rule.

(11) "Certificate" means the document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed supported living services.

(12) "Choice" means an individual's expression of preference, opportunity for, and active role in decision-making related to services received and from whom, including but not limited to case management, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated verbally, through sign language, or by other communication methods.

(13) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(14) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(15) "Complaint Investigation" means the investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(16) "Controlled Substance" means any drug classified as Schedules 1 to 5 under the Federal Controlled Substance Act.

(17) "Day" means a calendar day unless otherwise specified in these rules.

(18) "Department" means the Department of Human Services.

(19) "Designated Representative" means a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the individual's representative in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(20) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(21) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(22) "Endorsement" means the authorization to provide supported living services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(23) "Entry" means admission to a Department-funded developmental disability service.

(24) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of supported living services.

(25) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified service provider.

(26) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(27) "Functional Needs Assessment' means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(28) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(29) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(30) "IADL" means "instrumental activities of daily living" as defined in this rule.

(31) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(32) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(33) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(34) "Individual Profile" means the written profile that describes an individual entering into supported living services. The profile may consist of materials or assessments generated by a service provider or other related agencies, consultants, family members, or the individual's legal or designated representative.

(35) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the individual's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(36) "Individual Support Plan (ISP) Team" means a team composed of an individual receiving services and the individual's legal or designated representative (as applicable), services coordinator, and others chosen by the individual, or as applicable the individual's legal or designated representative, such as service providers and family members.

(37) "Instrumental Activities of Daily Living (IADL)" mean the activities other than activities of daily living required to continue independent living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(38) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(39) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(40) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the individual's legal or designated representative, has not given prior approval.

(41) "ISP" means "Individual Support Plan" as defined in this rule.

(42) "K Plan" means "Community First Choice" as defined in this rule.

(43) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(44) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with an intellectual or developmental disability. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(45) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(46) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(47) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(48) "Natural Supports" means the voluntary resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community that are not paid for by the Department.

(49) "Needs Meeting" means a process in which an Individual Support Plan team identifies the services and supports an individual needs to live in his or her own home and makes a determination as to the feasibility of creating such services. The information generated in a needs meeting or discussion is used for completion of the functional needs assessment to develop an individual's Transition Plan.

(50) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(51) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual with an intellectual or developmental disability that gathers and organizes information that helps an individual:

(A) Determine and describe choices about personal goals, activities, services, service providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with the individual's cultural considerations, needs, and preferences.

(52) "Personal Futures Planning" means an optional planning process for determining activities, supports, and resources that best create a desirable future for an individual. The planning process generally occurs around major life transitions, such as moving into a new home, graduation from high school, marriage, etc.

(53) "Plan of Care" means the written plan of Medicaid services an individual needs as required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(54) "Prescription Medication" means any medication that requires a physician's prescription before the medication may be obtained from a pharmacist.

(55) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(56) "Protection" and "Protective Services" mean the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard an individual's person, property, and funds.

(57) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement.

(58) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(59) "Program" means "service provider" as defined in this rule.

(60) "Self-Administration of Medication" means an individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(61) "Self Direction" means that an individual, and as applicable the individual's legal or designated representative, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports and promoting personal choice and control over the delivery of waiver and state plan services.

(62) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(63) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor services, and to act as a proponent for individuals with intellectual or developmental disabilities. A services coordinator is an individual's person-centered plan coordinator as defined in the Community First Choice state plan.

(64) "Significant Other" means a person selected by an individual to be the individual's friend.

(65) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department.

(66) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(67) "Support" means the assistance that an individual requires, solely because of the affects of the individual's intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(68) "Supported Living" means the endorsed service that provides the opportunity for individuals to live in a residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want, for as long as they desire, with a recognition that needs and desires may change over time.

(69) "These Rules" mean the rules in OAR chapter 411, division 328.

(70) "Transfer" means movement of an individual from one type of service to another type of service administered or operated by the same service provider.

(71) "Transition Plan" means the written plan of services and supports for the period of time between an individual's entry into a particular service and the development of the individual's Individual Support Plan (ISP). The Transition Plan is approved by the individual's services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(72) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(73) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a service provider.

(74) "Volunteer" means any person assisting a service provider without pay to support the services and supports provided to an individual.

(75) "Waiver Services" means "home and community-based waiver services" as defined in this rule.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0560 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 24-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0570
Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide supported living services, a service provider must have:

(a) A certificate and an endorsement to provide supported living services as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where supported living services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(2) INSPECTIONS AND INVESTIGATIONS. The service provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) MANAGEMENT AND PERSONNEL PRACTICES. The service provider must comply with the management and personnel practices as described in OAR 411-323-0050.

(4) PERSONNEL FILES AND QUALIFICATION RECORDS. The service provider must maintain written documentation of six hours of pre-service training prior to supervising individuals that includes mandatory abuse reporting training and training on individual profiles, Transition Plans, and ISPs.

(5) CONFIDENTIALITY OF RECORDS. The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(6) DOCUMENTATION REQUIREMENTS. Unless stated otherwise, all entries required by these rules must:

(a) Be prepared at the time or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0570 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 13-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0620
Variances

(1) The Department may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The CDDP must forward the signed variance request form to the Department within 30 days of receipt of the request indicating the CDDP's position on the proposed variance.

(4) The Department may approve or deny the request for a variance. The Department's decision shall be sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(5) The service provider may appeal the denial of a variance request within 10 working days of the denial by sending a written request for review to the Department's director and a copy of the request to the CDDP. The director's decision is final.

(6) The Department shall determine the duration of the variance.

(7) The service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0620 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0630
Medical Services

(1) All individuals' medical records must be kept confidential as described in OAR 411-323-0060.

(2) Individuals must receive sufficient oversight and guidance by the service provider to ensure that the individuals' health and medical needs are adequately addressed.

(3) Written health and medical supports must be developed as required for the individual and integrated into the individual's Transition Plan or ISP. The plan must be based on a functional needs assessment of the individual's health and medically related support needs and preferences, and updated annually or as significant changes occur.

(4) The service provider must have and implement written policies and procedures that maintain or improve the physical health of individuals. Policies and procedures must address:

(a) Early detection and prevention of infectious disease;

(b) Emergency medical intervention;

(c) Treatment and documentation of illness and health care concerns; and

(d) Obtaining, administering, storing, and disposing of prescription and non-prescription drugs, including self administration.

(5) The service provider must ensure each individual has a primary physician whom the individual has chosen from among qualified providers.

(6) Provisions must be made for a secondary physician or clinic in the event of an emergency.

(7) The service provider must ensure that an individual has a medical evaluation by a physician no less often than every two years or as recommended by a physician. Evidence of the evaluation must be placed in the individual's record and must address:

(a) Current health status;

(b) Changes in health status;

(c) Recommendations, if any, for further medical intervention;

(d) Any remedial and corrective action required and when such actions were taken;

(e) Statement of restrictions on activities due to medical limitations; and

(f) A review of medications, treatments, special diets, and therapies prescribed.

(8) Before entry, the service provider must obtain the most complete medical profile available including:

(a) The results of a physical exam made within 90 days prior to entry;

(b) Results of any dental evaluation;

(c) A record of immunizations;

(d) Status of Hepatitis B screening;

(e) A record of known communicable diseases and allergies; and

(f) A summary of the individual's medical history, including chronic health concerns.

(9) The service provider must ensure that all medications, treatments, and therapies:

(a) Have a written order or copy of the written order signed by a physician or physician designee before any medication, prescription, or non-prescription is administered to, or self-administered by, the individual unless otherwise indicated by the individual's ISP team in the written health and medical support section of the individual's ISP or Transition Plan; and

(b) Be followed per written orders.

(10) PRN orders are not allowed for psychotropic medication.

(11) The drug regimen of each individual on prescription medication must be reviewed and evaluated by a physician or physician designee no less often than every 180 days, unless otherwise indicated by the individual's ISP team in the written health and medical support section of the individual's ISP or Transition Plan.

(12) All prescribed medications and treatments must be self-administered unless contraindicated by the individual's ISP team or physician. For individuals who require assistance in the administration of their own medications, the following must be required:

(a) The individual's ISP team has recommended that the individual be assisted with taking their medication;

(b) There is a written training program for the self-administration of medication unless contraindicated by the individual's ISP team; and

(c) There is a written record of medications and treatments that document physician's orders are being followed.

(13) For individuals who independently self-administer medications, there must be a plan for the periodic monitoring or review of medications on each individual's ISP.

(14) The service provider must assist individuals with the use of prosthetic devices as ordered.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0630 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0640
Dietary

(1) The service provider is responsible for identifying the amount of support and guidance required to ensure that individuals are provided access to a nutritionally adequate diet.

(2) Written dietary supports must be developed as required by the individual's ISP team and integrated into the individual's Transition Plan or ISP. The plan must be based on a review and identification of the individual's dietary service needs and preferences, and updated annually or as significant changes occur.

(3) The service provider must have and implement policies and procedures related to maintaining adequate food supplies, meal planning, preparation, service, and storage.

Stat. Auth.:ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0640 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0650
Physical Environment

(1) Maintained. All floors, walls, ceilings, windows, furniture and fixtures shall be maintained.

(2) Water and sewage. The water supply and sewage disposal shall meet the requirements of the current rules of the Oregon Public Health Division governing domestic water supply.

(3) Kitchen and bathroom. Each residence shall have:

(a) A kitchen area for the preparation of hot meals; and

(b) A bathroom containing a properly operating toilet, handwashing sink and bathtub or shower.

(4) Adequately heated and ventilated. Each residence shall be adequately heated and ventilated.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; Renumbered from 309-041-0650 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0660
General Safety

(1) The service provider must employ means for protecting individuals' health and safety which:

(a) Are not unduly restrictive;

(b) May include risks but do not inordinately affect individuals' health, safety and welfare; and

(c) Are used by other individuals in the community.

(2) Written safety supports must be developed as required by the individual's ISP team and integrated into the individual's Transition Plan or ISP. The plan must:

(a) Be based on a review and identification of the individual's safety needs and preferences;

(b) Be updated annually or as significant changes occur; and

(c) Identify how the individual evacuates his or her residence, specifying at a minimum routes to be used and the level of assistance needed.

(3) The service provider must have and implement policies and procedures that provide for the safety of individuals and for responses to emergencies and disasters.

(4) An operable smoke alarm must be available in each bedroom and in a central location on each floor.

(5) An operable class 2A10BC fire extinguisher must be easily accessible in each residence.

(6) First aid supplies must be available in each residence.

(7) The need for emergency evacuation procedures and documentation thereof must be assessed and determined by an individual's ISP team.

(8) An operable flashlight must be available in each residence.

(9) The service provider must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(10) Bedrooms must meet minimum space requirements (single 60 square feet, double 120 square feet with beds located three feet apart).

(11) Sleeping rooms must have at least one window that opens from the inside without special tools and provides a clear opening through which the individual may exit.

(12) Emergency telephone numbers must be available at each individual's residence as follows:

(a) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the service provider's executive director or the executive director's designee, emergency physician, and other people to be contacted in case of an emergency.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0660 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0680

Staffing Requirements

(1) The service provider must provide responsible people or an agency, on-call and available to individuals by telephone at all times.

(2) The service provider must provide staff appropriate to the number and needs of individuals served as specified in each individual's ISP.

(3) Each service provider must meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; Renumbered from 309-041-0680 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0690

Individual Summary Sheets

A current record must be maintained by the service provider for each individual receiving services. The record must include:

(1) The individual's name, current address, home phone number, date of entry into services, date of birth, sex, marital status, social security number, social security beneficiary account number, religious preference, preferred hospital, and where applicable, the number of the Disability Services Office (DSO) or the Multi-Service Office (MSO) of the Department and guardianship status; and

(2) The name, address, and telephone number of:

(a) The individual's legal or designated representative and family (as applicable);

(b) The individual's preferred physician, secondary physician, and clinic;

(c) The individual's preferred dentist;

(d) The individual's day program or employer, if any;

(e) The individual's services coordinator; and

(f) Other agency representatives providing services to the individual.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0690 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0700

Incident Reports and Emergency Notifications

(1) A written report that describes any injury, accident, act of physical aggression, or unusual incident involving an individual must be placed in the individual's record. Such description must include:

(a) Conditions prior to, or leading to, the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review and follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression, or unusual incident.

(2) Copies of incident reports for all unusual incident s(as defined by OAR 411-328-0560) must be sent to the individual's services coordinator within five working days of the incident.

(3) The service provider must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR 411-328-0560(1). When an abuse investigation has been initiated, the CDDP must ensure that either the services coordinator or the service provider also immediately notifies the individual's legal or designated representative (as applicable). The individual's parent, next of kin, or other significant person may also be notified unless the individual requests the parent, next of kin, or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) In the case of a serious illness, injury, or death of an individual, the service provider must immediately notify:

(a) The individual's legal or designated representative, parent, next of kin, and other significant person (as applicable);

(b) The Community Developmental Disability Program; and

(c) Any other agency responsible for the individual.

(5) In the case of an individual who is missing beyond the timeframes established by the individual's ISP team, the service provider must immediately notify:

(a) The individual's designated representative;

(b) The individual's legal representative, if any, or nearest responsible relative;

(c) The local police department; and

(d) The Community Developmental Disability Program.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0700 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0710

Vehicles and Drivers

(1) A service provider that owns or operates a vehicle that transports individuals must:

(a) Maintain the vehicle in safe operating condition;

(b) Comply with Driver and Motor Vehicle Services Division laws;

(c) Maintain insurance coverage on the vehicle and all authorized drivers; and

(d) Carry a fire extinguisher and first aid kit in the vehicle.

(2) A driver operating a vehicle to transport individuals must meet applicable Driver and Motor Vehicle Services Division requirements.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0710 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0715

Financial Rights

(1) Written individual financial supports must be developed as required by the individual's ISP team and integrated into the individual's Transition Plan or ISP. The plan must be based on a review and identification of the individual's financial support needs and preferences, and be updated annually or as significant changes occur.

(2) The service provider must have and implement written policies and procedures related to the oversight of the individual's financial resources.

(3) The service provider must reimburse to the individual any funds that are missing due to theft or mismanagement on the part of any staff of the service provider, or of any funds within the custody of the service provider that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0715 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0720
General Rights

(1) Any adult or any individual as defined at OAR 411-328-0560 shall not be abused nor shall abuse be condoned by an employee, staff, or volunteer of the service provider.

(2) The service provider must have and implement written policies and procedures that protect individuals' rights and encourage and assist individuals to understand and exercise these rights. These policies and procedures must at a minimum provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens;

(b) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(c) Visits to and from family members, friends, legal or designated representatives (as applicable), and when necessary legal and medical professionals;

(d) Private communication, including personal mail and telephone;

(e) Personal property and fostering of personal control and freedom regarding that property;

(f) Privacy;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical or mechanical restraints;

(h) Freedom from unauthorized protective physical intervention;

(i) Freedom to choose whether or not to participate in religious activity;

(j) The opportunity to vote and training in the voting process if desired;

(k) Expression of sexuality, to marry, and to have children;

(l) Access to community resources, including recreation, agency services, employment and alternatives to employment services, educational opportunities, and health care resources;

(m) Transfer within a program;

(n) Individual choice that enables control and ownership of personal affairs;

(o) Appropriate services that promote independence, dignity, and self-esteem and are also appropriate to the age and preferences of the individual;

(p) Individual choice to consent to or refuse treatment; and

(q) Individual choice to participate in community activities.

(3) At entry to services and as changes occur, the service provider must inform each individual, and as applicable the individual's legal or designated representative, orally and in writing of the service provider's rights policy and procedures and a description of how to exercise them.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0720 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0740
Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send a copy of the grievance to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual, and as applicable the individual's legal or designated representative, orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0740 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0750
Personalized Plans

(1) The decision to support an individual so that the individual may live in and maintain his or her own home requires significant involvement from the individual and the individual's ISP team. In supported living, this process is characterized by a functional needs assessment and a series of team meetings or discussions to determine what personalized supports the individual needs to live in his or her own home, a determination as to the feasibility of creating such supports, and the development of a written plan that describes services the individual must receive upon entry into supported living.

(2) NEEDS MEETING. Prior to an individual moving into his or her own home or receiving supported living services, the individual's ISP team must meet to discuss the individual's projected service needs in a needs meeting. This meeting must:

(a) Review information related to the individual's health and medical, safety, dietary, financial, social, leisure, staff, mental health, and behavioral support needs and preferences;

(b) Include any potential service providers, the individual, and other ISP team members;

(c) As part of a functional needs assessment activity, identify the supports required for the individual to live in his or her own home; and

(d) Discuss the selection of potential service providers based on the list of support and services needed.

(3) TRANSITION PLAN. The service provider must spend time getting to know the individual personally before the development of the individual's Transition Plan. The individual, service provider, and other ISP team members must participate in an entry meeting prior to the initiation of services. The outcome of the entry meeting must be a written Transition Plan that takes effect upon entry. The Transition Plan must:

(a) Address the individual's health and medical, safety, dietary, financial, staffing, mental health, and behavioral support needs and preferences as required by the individual's ISP team;

(b) Indicate who is responsible for providing the supports described in the individual's Transition Plan;

(c) Be based on the list of supports identified in the functional needs assessment and consultation required by the individual's ISP team; and

(d) Be in effect and available at the site until the individual's ISP is developed and approved by the individual's ISP team.

(4) INDIVIDUAL SUPPORT PLAN.

(a) An ISP must be developed and approved by an individual's ISP team, be available at the individual's home within 30 days of development and approval, and updated at least annually or as changes occur.

(b) The ISP must address all the support needs identified in a functional needs assessment. The ISP or attached documents must include:

(A) The individual's name and the name of the individual's legal or designated representative (as applicable);

(B) A description of the supports required that is consistent with the individual's functional needs assessment, including the reason the support is necessary;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) The setting in which the individual resides as chosen by the individual;

(G) The individual's strengths and preferences;

(H) The clinical and support needs as identified through a functional needs assessment;

(I) Individually identified goals and desired outcomes;

(J) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(K) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(L) The identity of the person responsible for case management and monitoring the ISP;

(M) A provision to prevent unnecessary or inappropriate care;

(N) The alternative settings considered by the individual;

(O) Schedule of ISP reviews; and

(P) Any changes in support needs identified in a functional needs assessment.

(c) The services coordinator must distribute a copy of the ISP to all ISP team members within 30 calendar days of the ISP team meeting.

(5) INDIVIDUAL PROFILE.

(a) The service provider must develop a written profile that describes the individual. This information is used in training new staff. The profile must be completed within 90 days of entry. The profile must include information related to the individual's history or personal highlights, lifestyle and activity choices and preferences, social network and significant relationships, and other information that helps describe the individual.

(b) The profile must be composed of written information generated by the service provider. The profile may include:

(A) Reports of assessments or consultations;

(B) Historical or current materials developed by the CDDP, training center, or nursing facility;

(C) Material and pictures from the individual's family and friends;

(D) Newspaper articles; and

(E) Other relevant information.

(c) The profile must be maintained at the service site and updated as significant changes occur.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0750 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0760
Behavior Intervention

(1) The service provider must have and implement a written policy concerning behavior intervention procedures. At the time of entry and as changes occur, the service provider must inform the individual, and as applicable the individual's legal or designated representative, of the behavior intervention policy and procedures.

(2) A decision to implement behavior intervention to alter an individual's behavior must be made by the individual's ISP team and the behavior intervention must be described fully in the individual's ISP. The behavior intervention must:

(a) Emphasize the development of the functional alternative behavior and positive approaches and positive behavior intervention;

(b) Use the least intervention possible;

(c) Ensure that abusive or demeaning intervention is never used; and

(d) Be evaluated by the service provider through timely review of specific data on the progress and effectiveness of the behavior intervention.

(3) Documentation regarding the behavior intervention must include:

(a) Documentation that the individual, the individual's legal or designated representative (as applicable), and ISP team are fully aware of, and consent to, the behavior intervention in accordance with the ISP process as described in OAR 411-320-0120;

(b) Documentation of all prior interventions used to develop an alternative behavior; and

(c) A functional analysis of the behavior by a trained staff member or consultant that is completed prior to developing the behavior intervention. This written record must include:

(A) A clear, measurable description of the behavior, including frequency, duration, intensity, and severity of the behavior;

(B) A clear description of the need to alter the behavior;

(C) An assessment of the meaning of the behavior, which includes the possibility that the behavior is:

(i) An effort to communicate;

(ii) The result of medical conditions;

(iii) The result of environmental causes; or

(iv) The result of other factors;

(d) A description of the conditions which precede the behavior in question;

(e) A description of what appears to reinforce and maintain the behavior; and

(f) Clear and measurable behavior interventions used to alter the behavior and develop the functional alternative behavior.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0760 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0770
Protective Physical Intervention

(1) The service provider must only employ protective physical intervention:

(a) As part of an individual's ISP that meets OAR 411-328-0760;

(b) As an emergency measure but only if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health-related protection prescribed by a physician but only if necessary for individual protection during the time that a medical condition exists.

(2) Staff members who need to apply protective physical intervention as part of an individual's ongoing training program must be trained by a Department-approved trainer. Documentation verifying such training must be maintained in the staff member's personnel file.

(3) Protective physical intervention in emergency situations must:

(a) Be only used until the individual is no longer a threat to self or others;

(b) Be authorized by the service provider's executive director or the executive director's designee, or physician;

(c) Be authorized within one hour of the application of protective physical intervention;

(d) Result in the immediate notification of the individual's services coordinator or CDDP designee; and

(e) Prompt an ISP meeting initiated by the service provider if used more than three times in a six month period.

(4) Protective physical intervention must be designed to avoid physical injury to the individual or others and to minimize physical and psychological discomfort.

(5) All use of protective physical intervention must be documented in an incident report. The incident report must include:

(a) The name of the individual to whom the protective physical intervention is applied;

(b) The date, type, and length of time of protective physical intervention application;

(c) The name and position of the person authorizing the use of the protective physical intervention;

(d) The name of the staff member applying the protective physical intervention; and

(e) Description of the incident.

(6) A copy of the incident report must be forwarded within five working days of the incident to the CDDP.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0770 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0780
Psychotropic Medications and Medications for Behavior

(1) Psychotropic medications and medications for behavior must be:

(a) Prescribed by a physician through a written order; and

(b) Included in the individual's ISP.

(2) The use of psychotropic medications and medications for behavior must be based on a physician's decision that the harmful effects without the medication clearly outweigh the potentially harmful effects of the medication. Service providers must present the physician with a full and clear written description of the behavior and symptoms to be addressed, as well as any side effects observed, to enable the physician to make this decision.

(3) Psychotropic medications and medications for behavior must be:

(a) Monitored by the prescribing physician, ISP team, and service provider for desired responses and adverse consequences; and

(b) Reviewed to determine the continued need and lowest effective dosage in a carefully monitored program.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0780 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0790
Entry, Exit, and Transfer

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or Federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters supported living services is subject to eligibility as described in this section.

(a) To be eligible for home and community-based waiver services or Community First Choice state plan services, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OSIP-M;

(C) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080; and

(D) After completion of an assessment, meet the level of care defined in OAR 411-320-0020.

(b) To be eligible for supported living services, an individual must:

(A) Be an Oregon resident;

(B) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080;

(C) Be an individual who is not receiving other Department-funded in-home or community living support;

(D) Have access to the financial resources to pay for food, utilities, and housing expenses; and

(E) Be eligible for home and community-based waiver services or Community First Choice state plan services as described in subsection (a) of this section;

(3) ENTRY.

(a) A service provider must acquire the following information prior to or upon an individual's entry ISP team meeting:

(A) A copy of the individual's eligibility determination document;

(B) A statement indicating the individual's safety skills, including the individual's ability to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of the individual's medical conditions or behavioral challenges (if any), including supervision and support needs;

(D) Information related to the individual's lifestyle, activities, and other choices and preferences;

(E) Documentation of the individual's financial resources;

(F) Documentation from a physician of the individual's current physical condition, including a written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(G) Documentation of any guardianship or conservatorship, health care representation, or any other legal restriction on the rights of the individual (if applicable); and

(H) A copy of the individual's most recent ISP (if applicable).

(b) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. The findings of the entry meeting must be recorded in the individual's file and include at a minimum:

(A) The name of the individual proposed for services;

(B) The date of the meeting;

(C) The date determined to be the individual's date of entry;

(D) Documentation of the participants included in the meeting;

(E) Documentation of the pre-entry information required by subsection (a) of this section;

(F) Documentation of the proposed Transition Plan for services to be provided; and

(G) Documentation of the decision to serve the individual requesting services.

(4) VOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must promptly notify an individual's services coordinator if an individual, or as applicable the individual's legal or designated representative, gives notice of the individual's intent to exit or the individual abruptly exits services.

(b) A service provider must notify an individual's services coordinator prior to an individual's voluntary transfer or exit from services.

(c) Notification and authorization of an individual's voluntary transfer or exit must be documented in the individual's record.

(5) INVOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must only transfer or exit an individual involuntarily for one or more of the following reasons:

(A) The individual's behavior poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The individual's service needs exceed the ability of the service provider;

(D) The individual fails to pay for services; or

(E) The service provider's certification or endorsement described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. A service provider must not transfer or exit an individual involuntarily without 30 days advance written notice to the individual, the individual's legal or designated representative (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The individual's right to a hearing as described in subsection (d) of this section.

(B) A notice is not required when an individual, or as applicable the individual's legal or designated representative, requests a transfer or exit.

(c) A service provider may give less than 30 days advanced written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others. The notice must be provided to the individual, the individual's legal or designated representative (as applicable), and the services coordinator immediately upon determination of the need for a transfer or exit.

(d) HEARING RIGHTS. An individual must be given the opportunity for a contested case hearing under ORS chapter 183 to dispute an involuntary transfer or exit. If an individual or the individual's legal or designated representative (as applicable) requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advanced written notice of a transfer or exit as described in subsection (c) of this section and the individual or the individual's legal or designated representative (as applicable) has requested a hearing, the service provider must reserve service availability for the individual until receipt of the final order.

(6) EXIT.

(a) An individual's ISP team must meet before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the meeting;

(C) Documentation of the participants included in the meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the individual's exit from services (unless the individual, or as applicable the individual's legal or designated representative, is requesting the exit);

(F) Documentation of the decision regarding the individual's exit, including verification of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and

(G) Documentation of the proposed plan for services for the individual after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:

(A) The individual, or as applicable the individual's legal or designated representative, requests an immediate removal from services; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(7) TRANSFER. An individual's ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call;

(c) Documentation of the participants included in the meeting or telephone call;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the individual's legal or designated representative or family members, cannot be honored;

(g) Documentation of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and

(h) The individual's written plan for services after the transfer.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0790 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 24-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

411-328-0800

Entry, Exit, and Transfer: Appeal Process

(1) In cases where the individual and the individual's parent, guardian, advocate, or the provider objects to, or the ISP team cannot reach majority agreement regarding an admission refusal, an appeal may be filed by any member of the ISP team. In the case of a refusal to serve, the slot must be held vacant but the payment for the slot must continue.

(2) All appeals must be made in writing to the CDDP Director or the CDDP Director's designee for decision using the county's appeal process. The CDDP Director or the CDDP Director's designee must make a decision within 30 working days of receipt of the appeal and notify the appellant of the decision in writing.

(3) The decision of the CDDP may be appealed by the individual, the individual's parent, guardian, advocate, or the provider by notifying the Office of Developmental Disability Services in writing within ten working days of receipt of the county's decision.

(a) A committee is appointed by the Director or the Director's designee in the Office of Developmental Disability Services every two years and is composed of a Department representative, a residential service representative, and a services coordinator;

(b) In case of a conflict of interest, as determined by the Director or the Director's designee, alternative representatives may be temporarily appointed by the Director or the Director's designee to the committee;

(c) The committee reviews the appealed decision and makes a written recommendation to the Director or the Director's designee within 45 working days of receipt of the notice of appeal;

(d) The Director or the Director's designee makes a decision on the appeal within ten working days after receipt of the recommendation from the committee; and

(e) If the decision is for admission or continued placement and the provider refuses admission or continued placement, the funding for the slot may be withdrawn by the contractor.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0800 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 24-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13

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Rule Caption: Comprehensive In-Home Support for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: SPD 60-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 12-1-2013
Rules Amended: 411-330-0010, 411-330-0020, 411-330-0030, 411-330-0040, 411-330-0050, 411-330-0060, 411-330-0065, 411-330-0070, 411-330-0080, 411-330-0090, 411-330-0100, 411-330-0110, 411-330-0120, 411-330-0130, 411-330-0140, 411-330-0150, 411-330-0160, 411-330-0170
Rules Repealed: 411-330-0020(T), 411-330-0030(T), 411-330-0040(T), 411-330-0050(T), 411-330-0060(T), 411-330-0070(T), 411-330-0080(T), 411-330-0090(T), 411-330-0110(T)
Subject: The Department of Human Services is permanently amending the rules for comprehensive in-home support for adults with intellectual or developmental disabilities in OAR chapter 411, division 330.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-330-0010
Statement of Purpose

The rules in OAR chapter 411, division 330 prescribe standards, responsibilities, and procedures for community developmental disability programs providing comprehensive in-home support for adults with intellectual or developmental disabilities to remain at home or in their family homes.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0020
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 330:

(1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(3) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "ADL" means "activities of daily living" as defined in this rule.

(5) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(6) "Alternatives to Employment - Habilitation" means assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that takes place in a non-residential setting, separate from the home in which an individual with an intellectual or developmental disability resides.

(7) "Attendant Care" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding, as described in OAR 411-330-0110.

(8) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(9) "Behavior Support Plan (BSP)" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause an individual's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(10) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to an individual's intellectual or developmental disability that prevents the individual from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(11) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(12) "CDDP" means "community developmental disability program" as defined in this rule.

(13) "Choice" means an individual's expression of preference, opportunity for, and active role in decision-making related to services received and from whom, including but not limited to case management, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated verbally, through sign language, or by other communication methods.

(14) "Chore Services" mean the services described in OAR 411-330-0110 that are needed to restore a hazardous or unsanitary situation in an individual's home to a clean, sanitary, and safe environment.

(15) "Collective Bargaining Agreement" means a contract based on negotiation between organized workers and their designated employer for purposes of collective bargaining to determine wages, hours, rules, and working conditions.

(16) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(17) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(18) "Community Nursing Services" mean the services described in OAR 411-330-0110 that include nurse delegation, training, and care coordination for an individual living in his or her own home.

(19) "Community Transportation" means the services described in OAR 411-330-0110 that enable an individual to gain access to community services, activities, and resources that are not medical in nature.

(20) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated employment or community inclusion program. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a community developmental disability program. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in brokerages.

(21) "CPMS" means the Client Process Monitoring System. CPMS is the Department's computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(22) "Day" means a calendar day unless otherwise specified in these rules.

(23) "Department" means the Department of Human Services.

(24) "Designated Representative" means a parent, family member, guardian, advocate, or other person authorized in writing by an individual

to serve as the individual's representative in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(25) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(26) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(27) "Employer" means, for the purposes of obtaining in-home support through an independent provider as described in these rules, an individual or a person selected by the individual or the individual's legal representative to act on the individual's behalf to provide the employer responsibilities described in OAR 411-330-0065. An employer may also be a designated representative.

(28) "Employer-Related Supports" mean the activities that assist an individual, and when applicable the individual's legal or designated representative or family members, with directing and supervising provision of services described in the individual's Individual Support Plan. Employer-related supports include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools, such as job descriptions; and

(d) Fiscal intermediary services.

(29) "Entry" means admission to a Department-funded licensed or certified developmental disability service provider.

(30) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-330-0110 that are necessary to ensure the health, welfare, and safety of an individual in the individual's home, or that enable an individual to function with greater independence in the individual's home.

(31) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a licensed or certified provider organization.

(32) "Family":

(a) Means a unit of two or more people that includes at least one individual with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the individual with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting the individual with an intellectual or developmental disability when the individual is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining an individual's eligibility for in-home support as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual supports; and

(C) Determining who may receive family training.

(33) "Family Training" means the training and counseling services described in OAR 411-330-0110 that are provided to an individual's family to increase the family's capacity to care for, support, and maintain the individual in the individual's home.

(34) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of an individual according to the individual's Individual Support Plan. The fiscal intermediary acts as an agent for the individual, or as applicable the individual's legal or designated representative, and performs activities and maintains records related to payroll and payment of employer-related taxes and fees. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(35) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(36) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(37) "General Business Provider" means an organization or entity selected by an individual, or as applicable the individual's legal or designated representative, and paid with in-home support funds that:

(a) Is primarily in business to provide the service chosen by the individual, or as applicable the individual's legal or designated representative, to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(38) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a certified foster home or licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site.

(39) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(40) "IADL" means "instrumental activities of daily living" as defined in this rule.

(41) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(42) "IHS" means "in-home support" as defined in this rule.

(43) "Immediate Family" means, for the purpose of determining whether in-home support funds may be used to pay a family member to provide services, the spouse of an adult with an intellectual or developmental disability.

(44) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(45) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(46) "Independent Provider" means a person selected by an individual, or as applicable the individual's legal or designated representative, and paid with in-home support funds to personally provide services to the individual.

(47) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(48) "Individual Support Plan" means the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the individual's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(49) "In-Home Support (IHS)" means services that are:

(a) Required for an individual with an intellectual or developmental disability to live in the individual's home or the individual's family home;

(b) Designed, selected, and managed by the individual or the individual's legal or designated representative (as applicable); and

(c) Provided in accordance with the individual's Individual Support Plan.

(50) "Instrumental Activities of Daily Living (IADL)" mean the activities other than activities of daily living required to continue independent living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(51) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(52) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(53) "Intervention" means the action the Department or the Department's designee requires when an employer fails to meet the employer responsibilities described in OAR 411-330-0065. Intervention includes but is not limited to:

(a) A documented review of the employer responsibilities described in OAR 411-330-0065;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of an independent provider filing a complaint with the Department, the Department's designee, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if an individual is not able to meet the employer responsibilities described in OAR 411-330-0065; or

(e) Identifying another representative if an individual's current employer representative is not able to meet the employer responsibilities described in OAR 411-330-0065.

(54) "ISP" means "Individual Support Plan" as defined in this rule.

(55) "K Plan" means "Community First Choice" as defined in this rule.

(56) "Legal Representative" means an attorney at law who has been retained by, or for an individual or a person or agency authorized by a court to make decisions about services for an individual.

(57) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The board of directors of a public or private corporation if the county declines to operate a contract for all or part of a community developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Department.

(58) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with an intellectual or developmental disability. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(59) "Natural Supports" means the voluntary resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community that are not paid for by the Department.

(60) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS Chapter 678.

(61) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of an individual and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to a qualified provider or the individual's family. When a Nursing Care Plan exists, it is a supporting document for the individual's Individual Support Plan.

(62) "Occupational Therapy" means the services described in OAR 411-330-0110 that are provided by a professional licensed under ORS 675.240 that are defined under the approved state plan, except that the amount, duration, and scope specified in the state plan do not apply.

(63) "Oregon Intervention System (OIS)" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(64) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(65) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual with an intellectual or developmental disability that gathers and organizes information that helps an individual:

(A) Determine and describe choices about personal goals, activities, services, providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with the individual's cultural considerations, needs, and preferences.

(66) "Personal Care Services" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(67) "Personal Support Worker":

(a) Means a person:

(A) Who is hired by an individual with an intellectual or developmental disability or the individual's legal or designated representative (as applicable);

(B) Who receives money from the Department for the purpose of providing personal care services to the individual in the individual's home or community; and

(C) Whose compensation is provided in whole or in part through the Department or community developmental disability program.

(b) This definition of personal support worker is intended to reflect the term as defined in ORS 410.600.

(68) "Physical Therapy" means the services described in OAR 411-330-0110 that are provided by a professional licensed under ORS 688.020 that are defined under the approved state plan, except that the amount, duration, and scope specified in the state plan do not apply.

(69) "Plan of Care" means the written plan of Medicaid services an individual needs as required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(70) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(71) "Prevocational Services" mean the services described in OAR 411-330-0110 that are not job-task oriented that are aimed at preparing an individual with an intellectual or developmental disability for paid or unpaid employment.

(72) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(73) "Progress Note" means a written record of an action taken by a services coordinator in the provision of case management, administrative tasks, or direct services, to support an individual. A progress note may also be a recording of information related to an individual's services, support needs, or circumstances, which is necessary for the effective delivery of services.

(74) "Provider" means a person, organization, or business selected by an individual, or as applicable the individual's legal or designated representative, and paid with in-home support funds to provide support according to the individual's Individual Support Plan.

(75) "Provider Organization" means an entity selected by an individual, or as applicable the individual's legal or designated representative, and paid with in-home support funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(76) "Relief Care" means the intermittent services described in OAR 411-330-0110 that are provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(77) "Self-Direction" means that an individual, or as applicable the individual's legal or designated representative, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports and promoting personal choice and control over the delivery of waiver and state plan services

(78) "Service Level" means the amount of services determined necessary to meet an individual's identified support needs.

(79) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor services, and to act as a proponent for individuals with intellectual or developmental disabilities. A services coordinator is an individual's person-centered plan coordinator as defined in the Community First Choice state plan.

(80) "Skills Training" means the activities described in OAR 411-330-0110 that are intended to maximize an individual's independence through training, coaching, and prompting the individual to accomplish activities of daily living, instrumental activities of daily living, supported employment, and health-related skills.

(81) "Social Benefit" means a service or financial assistance solely intended to assist an individual with an intellectual or developmental disability to function in society on a level comparable to that of a person who does not have an intellectual or developmental disability. Social benefits are pre-authorized by an individual's services coordinator and provided according to the description and limits written in an individual's Individual Support Plan.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of intellectual or developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to a person with or without an intellectual or developmental disability; or

(C) Replace other governmental or community services available to an individual.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an individual's Individual Support Plan (ISP) or an advance payment in anticipation of an expense authorized in an individual's previously authorized ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home.

(82) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-330-0110 that enable an individual to increase the individual's ability to perform activities of daily living or to perceive, control, or communicate with the environment in which the individual lives.

(83) "Speech, Hearing, and Language Services" mean the services described in OAR 411-330-0110 that are provided by a professional licensed under ORS 681.250 that are defined under the approved state plan, except that the amount, duration, and scope specified in the state plan do not apply.

(84) "State Plan" means Community First Choice or state plan personal care.

(85) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(86) "Support" means the assistance that an individual requires, solely because of the affects of the individual's intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(87) "Supported Employment Services" mean the services described in OAR 411-330-0110 that provide support for individuals for whom competitive employment is unlikely without ongoing support to perform in a work setting. Supported employment services occur in a variety of settings, particularly work sites in which people without disabilities are employed.

(88) "These Rules" mean the rules in OAR chapter 411, division 330.

(89) "Transition Costs" mean the expenses described in OAR 411-330-0110, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities (formerly referred to as an ICF/MR) to a community-based home setting where the individual resides.

(90) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(91) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-330-0170.

(92) "Volunteer" means any person assisting a provider without pay to support the services and supports provided to an individual.

(93) "Waiver Services" means "home and community-based waiver services" as defined in this rule.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13; SPD 1-2013, f. & cert. ef. 1-4-13; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0030
Eligibility for In-Home Support Services

(1) An eligible individual may not be denied in-home support services or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) An individual who enters in-home support services is subject to eligibility as described in this section. To be eligible for in-home support services, an individual must:

(a) Be an Oregon resident;

(b) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080;

(c) Be an adult who is living in his or her own home or the family home who is not receiving other Department-funded in-home or community living support;

(d) Choose to use a CDDP for assistance with design and management of in-home support services; and

(e) Be eligible for home and community-based waiver services or Community First Choice state plan services. To be eligible for home and community-based waiver services or Community First Choice state plan services, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OSIP-M;

(C) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080; and

(D) Be determined to meet the level of care defined in OAR 411-320-0020; or

(E) Be determined to meet crisis eligibility as described in OAR 411-320-0160.

(3) Individuals are not eligible for services by more than one CDDP unless the concurrent eligibility:

(a) Is necessary to effect transition from one county to another with a change of residence; and

(b) Is part of a collaborative plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0040
In-Home Support Service Entry and Exit

(1) The CDDP must make accurate, up-to-date, written information about in-home support services available to eligible individuals and the individuals' legal or designated representatives. These materials must include:

(a) Criteria for entry, conditions for exit, and how the limits of assistance with purchasing supports are determined;

(b) A description of processes involved in using in-home support services, including person-centered planning, evaluation, and how to raise and resolve concerns about in-home support services;

(c) Clarification of CDDP employee responsibilities as mandatory abuse reporters;

(d) A brief description of an individual's and an individual's legal or designated representative's responsibility for use of public funds; and

(e) An explanation of an individual's right to select and direct providers of services authorized through the individual's ISP and purchased with IHS funds from among those qualified according to OAR 411-330-0070, 411-330-0080, and 411-330-0090, as applicable.

(2) The CDDP must make the information required in section (1) of this rule available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(3) An individual may enter in-home support services when funds are made available through a Department contract with the CDDP specifically to support the individual.

(4) An eligible individual who has entered a CDDP's in-home support service may continue to receive in-home support services as long as the Department continues to provide funds specifically for that individual through a contract with the CDDP and the individual continues to require the services to remain at home or in the family home.

(5) An individual must exit in-home support services:

(a) At the end of a service period agreed upon by all parties and specified in the individual's ISP;

(b) At the written request of the individual, or as applicable the individual's legal or designated representative, to end the service relationship;

(c) No fewer than 30 days after the CDDP has served the individual, and as applicable the individual's legal or designated representative, written notice of intent to exit the individual from in-home support services when the individual has been determined to no longer meet eligibility for in-home support services as described in OAR 411-330-0030, except when the individual, or as applicable the individual's legal or designated representative, appeals the notice and requests continuing services in accordance with ORS chapter 183;

(d) When the individual moves from the CDDP's service area, unless services are part of a time-limited plan for transition to a new county of residence;

(e) When funds to support the individual are no longer provided through the Department contract to the CDDP of the individual's county of residence;

(f) When the CDDP has sufficient evidence to believe that an individual, or as applicable the individual's legal or designated representative, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the individual's ISP, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services; or

(g) No fewer than 30 days after the CDDP has served written notice of intent to exit the individual from in-home support services, when the individual, or as applicable the individual's legal or designated representative, either cannot be located or has not responded to repeated attempts by CDDP staff to complete ISP development or monitoring activities, and does not respond to the notice of intent to terminate.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0050

Required In-Home Support Services

(1) Each CDDP must provide or arrange for the following services as required to meet the support needs of eligible individuals:

(a) Assistance to determine needs and plan supports;

(b) Assistance to find and arrange resources and supports;

(c) Education and technical assistance to make informed decisions about support needs and direct support providers;

(d) Fiscal intermediary services;

(e) Employer-related supports; and

(f) Assistance to monitor and improve the quality of personal supports.

(2) A CDDP must complete a functional needs assessment and use a person-centered planning approach to assist an individual, and as applicable the individual's legal or designated representative, to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The planning process must address the individual's basic health and safety needs and supports, including informed decisions by the individual, or as applicable the individual's legal or designated representative, regarding any identified risks.

(3) An individual's services coordinator must authorize an initial ISP that addresses the individual's needs. If the individual has a determined service level, the needs identified in the functional needs assessment must be addressed in the individual's ISP. Prior to services beginning, the ISP must be signed by the individual or the individual's legal or designated representative (as applicable). The ISP and attached documents must include the information described in OAR 411-320-0120, including:

(a) The individual's name and the name of the individual's legal or designated representative (as applicable);

(b) The purpose of ISP activities, addressing one or more of the following:

(A) Independence such as the degree of choice and control an individual hopes to achieve or maintain;

(B) Integration such as the regular access to relationships and community resources the individual hopes to achieve or maintain;

(C) Productivity such as the employment or other contributing roles an individual hopes to achieve or maintain; or

(D) Developing or maintaining the capacity of an individual's family to continue to provide services for the individual in the family home.

(c) A description of the supports required to accomplish the purpose, including a brief statement of the nature of the individual's disability that make the supports necessary. If the individual has a determined service level, the description must be consistent with the individual's functional needs assessment, including the reason the support is necessary;

(d) The projected dates of when specific supports are to begin and end, as well as the end date, if any, of the period of service covered by the ISP;

(e) Projected costs with sufficient detail to support estimates;

(f) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(g) The manner in which services are delivered and the frequency of services;

(h) Service providers;

(i) The setting in which the individual resides as chosen by the individual;

(j) The individual's strengths and preferences;

(k) If the individual has a determined service level, the clinical and support needs as identified through the functional needs assessment;

(l) Individually identified goals and desired outcomes;

(m) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(n) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(o) The identity of the person responsible for case management and monitoring the ISP;

(p) A provision to prevent unnecessary or inappropriate care;

(q) The alternative settings considered by the individual;

(r) Final IHS fund costs;

(s) Schedule of ISP reviews; and

(t) If the individual has a determined service level, any changes in support needs identified through a functional needs assessment.

(4) A Nursing Care Plan must be attached to the ISP when IHS funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(5) An individual's services coordinator must conduct and document reviews of an individual's ISP and resources with the individual, and as applicable the individual's legal or designated representative, as follows:

(a) At least quarterly, review and reconcile receipts and records related to purchases of supports with IHS funds; and

(b) At least annually and as major activities or purchases are completed:

(A) Evaluate an individual's progress toward achieving the purposes of the individual's ISP;

(B) Note effectiveness of the use of IHS funds based on the services coordinator's observation as well as the satisfaction of the individual or the individual's legal or designated representative (as applicable); and

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of IHS funds to purchase supports.

(6) For an individual moving to another service area within Oregon, the CDDP must collaborate with the receiving CDDP to transfer IHS funds designated for the individual to continue the individual's ISP for supports.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0060
Assistance with Purchasing In-Home Supports

(1) A CDDP must only use IHS funds to assist an individual, or as applicable the individual's legal or designated representative, to purchase supports when:

(a) The individual's services coordinator has developed a written and approved ISP that meets requirements for development and content as described in OAR 411-330-0050;

(b) For individuals who have had a service level determined, a functional needs assessment has identified supports that are necessary for the individual to live in the individual's own home or in the family home;

(c) The ISP specifies cost-effective arrangements for obtaining the required supports and applying public, private, formal, and informal resources available to the eligible individual;

(d) The ISP identifies the resources needed to purchase the remainder of necessary supports; and

(e) The ISP is the most cost-effective plan to safely meet the goals of the individual's ISP.

(2) Goods and services purchased with IHS funds must be provided only as a social benefit as defined in OAR 411-330-0020.

(3) The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and the individual's legal or designated representative (as applicable). The CDDP is specifically prohibited from:

(a) Reimbursing an individual, or as applicable the individual's legal or designated representative or family, for expenses related to services; and

(b) Advancing funds to an individual, or as applicable the individual's legal or designated representative or family, to obtain services.

(4) Supports purchased for an individual with IHS funds are limited to those described in OAR 411-330-0110. The CDDP must arrange for these supports to be provided:

(a) In settings and under contractual conditions that enable the individual, or as applicable the individual's legal or designated representative, the choice to receive supports and services from another provider;

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-330-0020;

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the home; and

(e) According to the Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks.

(5) When IHS funds are used to purchase supports for individuals, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify an individual's legal or designated representative (as applicable), family (if services are provided to an individual in the family home), and the CDDP of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being, or level of services required by the individual for whom services are being provided; and

(c) Limits of payment:

(A) IHS fund payments for the agreed-upon services must be considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's legal or designated representative (as applicable), the individual's family, or any other source.

(B) The provider must bill all third party resources before using IHS funds unless another arrangement is agreed upon by the CDDP in the individual's ISP.

(6) USE OF IHS FUNDS PROHIBITED.

(a) Effective July 28, 2009, IHS funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (6)(a) of this rule does not apply to employees of the individual, the individual's legal or designated representative (as applicable), or provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(c) IHS funds must not pay for:

(A) Services, materials, or activities that are illegal;

(B) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;

(C) Materials or equipment that has been determined unsafe for the general public by recognized consumer safety agencies;

(D) Individual or family vehicles;

(E) Health and medical costs that the general public normally must pay, including but not limited to:

(i) Medications;

(ii) Health insurance co-payments;

(iii) Mental health evaluation and treatment;

(iv) Dental treatments and appliances;

(v) Medical treatments;

(vi) Dietary supplements; or

(vii) Treatment supplies not related to nutrition, incontinence, or infection control;

(F) Basic or specialized food or nutrition essential to sustain the individual, including but not limited to high caloric supplements, gluten-free supplements, diabetic, ketogenic, or other metabolic supplements;

(G) Ambulance services;

(H) Legal fees, including but not limited to costs of representation in educational negotiations, establishing trusts, or creating guardianships;

(I) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community-based settings;

(J) Individual support that has not been arranged according to applicable state and federal wage and hour regulations;

(K) Rate enhancements to an individual's existing employment and alternatives to employment services under OAR chapter 411, division 345;

(L) Employee wages or contractor payments for services when the individual is not present or available to receive services, such as employee paid time off, hourly "no-show" charges, and contractor preparation hours;

(M) Services, activities, materials, or equipment, that are not necessary or cost-effective and do not meet the definition of in-home supports, supports, and social benefits, as defined in OAR 411-330-0020;

(N) Educational services for school-age adults, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(O) Services, activities, materials, or equipment that may be obtained by the individual, or as applicable the individual's legal or designated representative, through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(P) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(Q) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the individual's legal or designated representative (as applicable), family, or service provider has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with record keeping required to document use of IHS funds, or otherwise knowingly misused public funds associated with in-home support services.

(7) The CDDP must inform an individual, and as applicable the individual's legal or designated representative, in writing of records and procedures required in OAR 411-330-0140 regarding expenditure of IHS funds for direct assistance. During development of the ISP, the individual's services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must include delineations of responsibility for maintenance of records in the ISP and any other written service agreements.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0065
Standards for Employers

(1) EMPLOYEE - EMPLOYER RELATIONSHIP. The relationship between an independent provider and an individual or a person selected by an individual, or the individual's legal representative, to act on the individ-

ual's behalf to provide the employer responsibilities in this rule, is that of employee and employer.

(2) JOB DESCRIPTION. The employer is responsible for creating and maintaining a job description for potential independent providers that is in coordination with the services authorized by the individual's services coordinator.

(3) PERSONAL SUPPORT WORKER BENEFITS. The only benefits available to independent providers are for those who are personal support workers and negotiated in the collective bargaining agreement and provided in Oregon Revised Statute. The collective bargaining agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Independent providers, including personal support workers, are not state or CDDP employees.

(4) EMPLOYER RESPONSIBILITIES.

(a) For an individual to be eligible for in-home support provided by an independent provider, an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified independent provider;

(B) Supervise and train the independent provider;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the independent provider;

(E) Recognize, discuss, and attempt to correct, with the independent provider, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory independent provider.

(b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (4)(a) of this section include but are not limited to:

(A) Independent provider complaints;

(B) Multiple complaints from an independent provider requiring intervention from the Department or CDDP;

(C) Frequent errors on time sheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department or CDDP;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the CDDP of services not being delivered as identified in the individual's ISP.

(c) The Department or the CDDP may require intervention as defined in OAR 411-330-0020 when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (4)(a) of this section.

(d) After appropriate intervention and assistance, an individual unable to meet the employer responsibilities described in subsection (4)(a) of this section may be determined ineligible for in home support provided by an independent provider.

(A) An individual determined ineligible to be an employer of an independent provider and unable to designate an employer representative, may not request in-home support provided by an independent provider until the individual's next annual ISP. Improvements in health and cognitive functioning may be factors in demonstrating the individual's ability to meet the employer responsibilities described in section (4)(a) of this rule. If an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the next annual ISP, the individual may request the waiting period be shortened.

(B) An individual determined ineligible to be an employer of an independent provider is offered other available service options that meet the individual's service needs, including in-home support through a contracted qualified provider organization or general business provider when available. As an alternative to in-home support, the Department or the Department's designee may offer other available services through the Home and Community Based Services Waiver or State Plan .

(5) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

(a) An individual not able to meet all of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate an employer representative in order to receive or continue to receive in home support; or

(B) Select other available services.

(b) An individual able to demonstrate the ability to meet some of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the individual is not able to meet to receive or continue to receive in home support; and

(B) On a Department approved form, document the specific employer responsibilities performed by the individual and the employer responsibilities performed by the individual's employer representative.

(c) When an individual's employer representative is not able to meet the employer responsibilities described in section (4)(a) or the qualifications in section (6)(c) of this rule, an individual must:

(A) Designate a different employer representative to receive or continue to receive in home support; or

(B) Select other available services.

(6) EMPLOYER REPRESENTATIVE.

(a) An individual, or the individual's legal representative, may designate an employer representative to act on behalf of the individual, to meet the employer responsibilities described in section (4)(a) of this rule. An individual's legal or designated representative may be the employer.

(b) An employer who is also an individual's independent provider of in-home support must seek an alternate employer for purposes of the independent provider's employment. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the independent provider; and

(B) Document the specific employer responsibilities performed by the employer on a Department approved form.

(c) The Department or the CDDP may suspend, terminate, or deny an individual's request for an employer representative if the requested employer representative has:

(A) A history of substantiated abuse of an adult as described in OAR 411-045-0250 to 411-045-0370;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities in section (4)(a) or (6)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (4)(a) or (6)(b).

(d) An individual is given the option to select another employer representative if the Department or CDDP suspends, terminates, or denies an individual's request for an employer representative for the reasons described in subsection (6)(c) of this section.

(7) APPEALS.

(a) The Department or the CDDP, respectively, shall mail a notice identifying the individual, and if applicable the individual's employer representative and legal or designated representative, when:

(A) The Department or the CDDP denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (4)(a) or (6)(b) of this rule; and

(B) The Department or the CDDP denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (4)(a) or (6)(b) of this rule because the employer representative does not meet the qualifications in section (6)(c) of this rule.

(b) CDDP ISSUED NOTICES. An individual receiving in-home support, or as applicable the individual's legal or designated representative or employer representative, may appeal a notice issued by the CDDP by requesting a review by the CDDP's director.

(A) For an appeal regarding denial, suspension, or termination of an employer to be valid, written notice of the appeal and request for review must be received by the CDDP within 45 calendar days of the date of the notice.

(B) The CDDP director shall complete a review and issue a decision within 30 calendar days of the date the written appeal was received by the CDDP.

(C) If an individual, or as applicable the individual's legal or designated representative or employer representative, is dissatisfied with the CDDP director's decision, the individual, or as applicable the individual's legal or designated representative or employer representative, may request an administrative review by the Department's director or the Department's designee.

(D) For an appeal of the CDDP's decision to be valid, written notice of the appeal and request for an administrative review must be received by the Department within 15 calendar days of the date of the CDDP's decision.

(E) The Department's director or the Department's designee shall complete an administrative review within 30 calendar days of the date the written appeal was received by the Department.

(F) The Department's decision of an administrative review is considered final.

(c) DEPARTMENT ISSUED NOTICES. An individual receiving in-home support, or as applicable the individual's legal or designated representative, may appeal a notice issued by the Department by requesting an administrative review by the Department's director or the Department's designee.

(A) For an appeal regarding denial, suspension, or termination of an employer to be valid, written notice of the appeal and request for an administrative review must be received by the Department within 45 calendar days of the date of the notice.

(B) The Department's director or Department's designee shall complete an administrative review and issue a decision within 30 calendar days of the date the written appeal was received by the Department.

(C) The Department's decision of an administrative review is considered final.

(d) An individual has appeal rights as described in OAR 411-330-0130 when the denial, suspension, or termination of the employer results in the Department or CDDP denying, suspending, or terminating an individual from comprehensive in-home supports.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13; SPD 1-2013, f. & cert. ef. 1-4-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0070
Standards for Independent Providers Paid with In-Home Support Funds

(1) GENERAL INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is paid as a contractor, a self-employed person, or an employee of an individual must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0210. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes;

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275:

(d) Be legally eligible to work in the United States;

(e) Not be the spouse of an individual receiving services;

(f) Not be the individual's employer of record or designated representative;

(g) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on an individual's ISP, with such demonstration confirmed in writing by the employer including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual receiving services;

(h) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(i) Understand requirements of maintaining confidentiality and safeguarding individual information;

(j) Not be on the Office of Inspector General's list of excluded or debarred providers (http://exclusions.oig.hhs.gov/);

(k) In the case of an agency, hold any license or certificate required by the state of Oregon or federal law or regulation to provide the services purchased by or for the individual; and

(l) If providing transportation, have a valid driver's license and proof of insurance, as well as any other license or certificate that may be required under state and local law, depending on the nature and scope of the transportation service.

(2) Section (1)(c) of this rule does not apply to employees of an employer or employees of provider organizations who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(4) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing Behavior Support Plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention System and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant.

(5) NURSE. A nurse providing community nursing services must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(6) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0080
Standards for Provider Organizations Paid with In-Home Support Funds

(1) A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for 24-hour residential services, or licensed under OAR chapter 411, division 360 for adult foster homes, or certified under OAR chapter 411, division 340 for support services, or certified and endorsed under OAR chapter 411, division 345 for employment and alternatives to employment services or OAR chapter 411, division 328 for supported living services, does not require additional certification as an organization to provide relief care, supported employment, community living, community inclusion, emergent services, or support services.

(2) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(a) Recruit, hire, supervise, and train qualified staff;

(b) Provide services according to an ISP; and

(c) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(3) A person directed by a provider organization to provide services paid for with IHS funds as an employee, contractor, or volunteer, must meet the qualifications of an independent provider outlined in OAR 411-330-0070.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0090
Standards for General Business Providers

(1) General business providers providing services to individuals and paid with IHS funds must hold any current license appropriate to function required by the state of Oregon or federal law or regulation, including but not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental accessibility adaptations involving building modifications or new construction, a current license and bond as a building contractor as required by OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board);

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of an individual, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, the established standards;

(f) For private transportation providers, a business license and drivers licensed to drive in Oregon; and

(g) For vendors and medical supply companies providing specialized equipment and supplies, a current retail business license, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment.

(2) Services provided and paid for with IHS funds must be limited to the services within the scope of the general business provider's license.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0100
Sanctions for Independent Providers, Provider Organizations, and General Business Providers

(1) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with IHS funds, the provider has:

(a) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(b) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(d) Notwithstanding abuse as defined in OAR 407-045-0260, failed to safely and adequately provide the services authorized;

(e) Had a founded report of child abuse or substantiated abuse;

(f) Failed to cooperate with the Department or CDDP investigation or grant access to, or furnish, records or documentation as requested;

(g) Billed excessive or fraudulent charges or been convicted of fraud;

(h) Made a false statement concerning conviction of crime or substantiated abuse;

(i) Falsified required documentation;

(j) Not adhered to the provisions of OAR 411-330-0060(6) and OAR 411-330-0070; or

(k) Been suspended or terminated as a provider by the Department or Oregon Health Authority.

(2) The following sanctions may be imposed on a provider:

(a) The provider may no longer be paid with IHS funds;

(b) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or Department, as applicable; or

(c) The CDDP may withhold payments to the provider.

(3) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(4) The provider may appeal a sanction within 30 calendar days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(a) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Department's director.

(b) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(5) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0110
Supports Purchased with In-Home Support Funds(Amended 12/28/2013)

(1) For an initial or annual ISP, IHS funds may be used to purchase a combination of the following waiver and state plan services when the conditions of purchase in OAR 411-330-0060 are met:

(a) Community First Choice state plan services:

(A) Community nursing services as described in section (2) of this rule;

(B) Chore services as described in section (3) of this rule;

(C) Attendant care as described in section (4) of this rule;

(D) Skills training as described in section (5) of this rule;

(E) Community transportation as described in section (6) of this rule;

(F) Specialized equipment and supplies as described in section (7) of this rule;

(G) Relief care as described in section (8) of this rule;

(H) Behavior support services as described in section (9) of this rule;

(I) Environmental accessibility adaptations as described in section (10) of this rule; and

(J) Transition costs as described in section (11) of this rule.

(b) Home and Community-Based Waiver Services:

(A) Alternatives to employment - habilitation as described in section (12) of this rule;

(B) Pre-vocational services as described in section (13) of this rule;

(C) Supported employment as described in section (14) of this rule;

(D) Family training as described in section (15) of this rule;

(E) Occupational therapy as described in section (16) of this rule;

(F) Physical therapy as described in section (17) of this rule; and

(G) Speech, hearing, and language services as described in section (18) of this rule.

(2) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting an individual's autonomy and self-management of healthcare;

(B) Collateral contact with a services coordinator regarding an individual's community health status to assist in monitoring safety and well-being and to address needed changes to the ISP; and

(C) Delegation and training of nursing tasks to an individual's provider so the provider may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(3) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.

(4) ATTENDANT CARE SERVICES.

(a) ADL services include but are not limited to:

(A) Basic personal hygiene — providing or assisting with such needs as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(B) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter drainage bag or assistive device, ostomy care, or bowel care;

(C) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition -- preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(E) Medication and medical equipment — assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring an individual for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply; and

(F) Delegated nursing tasks.

(b) IADL services include but are not limited to:

(A) Light housekeeping — tasks necessary to maintain an individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(C) Assistance with necessary medical appointments, including help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments;

(D) Observation of an individual's status and reporting of significant changes to physicians, health care professionals, or other appropriate people;

(E) First aid and handling emergencies, including addressing medical incidents related to conditions such as seizures, aspiration, constipation, or dehydration or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(F) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability, including helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(c) Attendant care services means an individual requires assistance with ADLs. Assistance may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(C) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(D) "Reassurance" means to offer an individual encouragement and support.

(E) "Redirection" means to divert an individual to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(G) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(5) SKILLS TRAINING. Skills training is specifically tied to the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence in supports otherwise provided through state plan or waiver services.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcomes are measured and the measurements are evaluated by a services coordinator no less frequently than every six months based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved, the services coordinator must reassess the use of skills training with the individual.

(6) COMMUNITY TRANSPORTATION.

(a) Community transportation services include but are not limited to:

(A) Community transportation provided by common carriers, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish an ISP goal related task; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation services exclude medical transportation, purchase of individual or family vehicles, routine vehicle maintenance and repair, ambulance services, payment to the spouse of an individual receiving in-home support services, and costs for transporting a person other than the individual.

(7) SPECIALIZED EQUIPMENT AND SUPPLIES. When specialized equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized equipment and supplies with IHS funds must be limited to the types of equipment and supplies that are not excluded under OAR 410-122-0080.

(a) Specialized equipment and supplies may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's ability to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the individual lives.

(b) Specialized equipment and supplies may be purchased with IHS funds when an individual's intellectual or developmental disability otherwise prevents or limits the individual's independence in areas identified in a functional needs assessment.

(c) Specialized equipment and supplies that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual and may include:

(A) Supplies needed to assist with incontinence care such as gloves, pads, wipes, or incontinence garments;

(B) Electronic devices to secure assistance in an emergency in the community and other reminders such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices;

(C) Assistive technology to provide additional security and replace the need for direct interventions to enable self direction of care and maximize independence, such as motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems;

(i) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(D) Assistive devices not covered by other Medicaid programs to assist and enhance an individual's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(d) Specialized equipment and supplies may not include items not of direct medical or remedial benefit to the individual.

(e) Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation.

(8) RELIEF CARE.

(a) Relief care includes two types of care, neither of which may be characterized as daily or periodic services provided to allow an individual's provider to attend school or work.

(b) Twenty-four hour overnight services must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from the Department.

(9) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessing an individual or the needs of the individual's family and the environment;

(B) Developing positive behavior support strategies, including a Behavior Support Plan if needed;

(C) Implementing the Behavior Support Plan with an individual's provider or family; and

(D) Revising and monitoring the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring an individual's family;

(B) Developing visual communication systems as behavior support strategies; and

(C) Communicating as authorized by an individual, or as applicable the individual's legal or designated representative, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services, including but not limited to consultation and training for classroom staff;

(D) Adaptations to meet the needs of an individual at school; or

(E) An assessment in a school setting.

(10) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual;

(R) Modifications for the primary vehicle used by the individual that are necessary to meet the unique needs of the individual, such as lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle; and

(S) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and

(B) Adaptations that add to the total square footage of the home,

(c) Environmental accessibility adaptations are limited to $5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the individual's service and support needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the individual's ISP.

(e) Environmental accessibility adaptations over $500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the provider's file prior to payment.

(f) Environmental accessibility adaptations must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(11) TRANSITION COSTS.

(a) Transition costs are limited to individuals transitioning from a nursing facility, ICF/MR, or acute care hospital to a home or community-based setting where the individual resides.

(b) Transition costs are based on an individual's assessed need determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The Department's approval is based on the individual's need and the Department's determination of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the individual from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(12) ALTERNATIVES TO EMPLOYMENT — HABILITATION. Alternatives to employment - habilitation is assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that takes place in a non-residential setting, separate from the home in which an individual with an intellectual or developmental disability resides.

(13) PREVOCATIONAL SERVICES. Prevocational services include teaching such concepts as compliance, attendance, task completion, problem solving, and safety. Prevocational services are provided to an individual not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year. An individual's ISP must reflect that prevocational services are directed to habilitative rather than explicit employment objectives.

(14) SUPPORTED EMPLOYMENT SERVICES. Supported employment services assist an individual to choose, get, and keep a paid job in an integrated community business setting.

(a) Supported employment services includes job development, training, and on-going supervision to obtain paid employment.

(b) Training may focus on the individual and the individual's co-workers without disabilities capable of providing natural support.

(c) Supported employment services must not replace services available under a program funded under the Rehabilitation Act of 1973, or P.L. 94-142.

(d) Supported employment services under this rule must not replace or duplicate services that an individual currently receives through Department-contracted employment and alternative to employment services governed by OAR chapter 411, division 345.

(15) FAMILY TRAINING. Family training services are training and counseling services provided to an individual's family to increase the family's capability to care for, support, and maintain the individual in the individual's home.

(a) Family training services include but are not limited to:

(A) Instruction about treatment regimens and use of equipment specified in an individual's ISP;

(B) Information, education, and training about an individual's disability, medical, and behavioral conditions; and

(C) Organized conferences and workshops specifically related to an individual's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Family training services may be provided in various settings by various means, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100 or nursing under ORS 678.040, social workers licensed under ORS 675.530, or counselors licensed under ORS 675.715;

(c) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for paid care providers;

(C) Legal fees;

(D) Training for families to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of an adult.

(d) Prior authorization by the CDDP is required for attendance by family members at organized conferences and workshops funded with IHS funds.

(16) OCCUPATIONAL THERAPY. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved state plan, except that the limitation on amount, duration, and scope in the state plan do not apply. Occupational therapy services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the state plan have been reached either through private or public resources.

(a) Occupational therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified occupational therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Occupational therapy services exclude:

(A) Goods and services available through an individual's private insurance or other public programs, such as the Oregon Health Plan, schools, or federal assistance programs for which an individual is eligible;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and

(E) Education services for an individual such as tuition to a school.

(17) PHYSICAL THERAPY. Physical therapy services are the services of a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved state plan, except that the limitation on amount, duration, and scope in the state plan do not apply. Physical therapy services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service

limits of the state plan have been reached either through private or public resources.

(a) Physical therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified physical therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Physical therapy services exclude:

(A) Goods and services available through either an individual's private insurance or public programs, such as the Oregon Health Plan, schools, or Federal assistance programs for which an individual is eligible;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and

(E) Education services for an individual such as tuition to a school.

(18) SPEECH, HEARING, AND LANGUAGE SERVICES. Speech, hearing, and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved state plan, except that the limitation on amount, duration, and scope specified in the state plan do not apply. Speech, hearing, and language services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the state plan have been reached either through private or public resources.

(a) Speech, hearing, and language services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified speech therapy professional when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Speech, hearing, and language services exclude:

(A) Goods and services available through either an individual's private insurance or public programs, such as the Oregon Health Plan, schools, or Federal assistance programs for which an individual is eligible;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and

(E) Education services for an individual such as tuition to a school.

(19) Educational services for school age individuals, such as professional instruction, formal training, and tutoring in communication, socialization, and academic skills are not allowable expenses covered by IHS funds.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0120
Abuse and Unusual Incidents

(1) ABUSE PROHIBITED. No adult or individual, as defined by OAR 411-330-0020, shall be abused nor shall abuse be tolerated by any employee, staff, or volunteer of an individual, provider organization, or CDDP.

(2) UNUSUAL INCIDENTS.

(a) A written report that describes any injury, accident, act of physical aggression, or unusual incident involving an individual and a CDDP employee must be prepared at the time of the incident and placed in the individual's service record. The report must include:

(A) Conditions prior to, or leading to, the incident;

(B) A description of the incident;

(C) Staff response at the time; and

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression, or unusual incident.

(b) The CDDP must notify the Department immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(A) When an abuse investigation has been initiated, the CDDP must provide notification in accordance with OAR 407-045-0290.

(B) When an abuse investigation has been completed, the CDDP must provide notification in accordance with OAR 407-045-0320.

(c) In the case of a serious illness, injury, or death of an individual, the CDDP must immediately notify the individual's legal or designated representative, parent, next of kin, and designated contact person, as applicable.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0130
Grievances and Appeals

(1) GRIEVANCES. The CDDP must implement written policies and procedures for the grievance of individuals' and the individuals' legal or designated representatives and families. These policies and procedures must, at a minimum, provide for the following:

(a) The CDDP must inform each individual, and as applicable each individual's legal or designated representative and family members, orally and in writing of the CDDP's grievance policy and procedures and of the right to move directly to a hearing according to section (2) of this rule in the case of certain circumstances involving Medicaid services.

(b) Receipt of grievances from individuals, and as applicable individuals' legal or designated representatives and families, and others acting on the behalf of individuals;

(c) Investigation of the facts supporting or disproving the grievance;

(d) Taking appropriate actions on grievances by the CDDP Program Manager within five working days following receipt of grievance;

(e) Submission to the CDDP director. If the grievance is not resolved, the grievance must be submitted to the CDDP director for review. CDDP review must be completed and a written response to the grievant provided within 30 days;

(f) Submission to the Department. If the grievance is not resolved by the CDDP director, the grievance must be submitted to the Department's director, or designee, for review. Department review must be completed and a written response to the grievant provided within 45 days of submission to the Department. The decision of the Department's director, or designee, is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review; and

(g) Documentation of each grievance and resolution must be filed or noted in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(2) DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF SERVICES.

(a) Each time the CDDP takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the CDDP must notify the individual, or as applicable the individual's legal or designated representative, of the right to a hearing and the method to obtain a hearing. The CDDP must mail the notice or personally serve the notice to the individual, or as applicable the individual's legal or designated representative, 10 days or more prior to the effective date of the action.

(A) The CDDP must use the Notice of Hearing Rights (DMAP 3030), or comparable Department-approved form for such notification.

(B) This notification requirement does not apply if an action is part of, or fully consistent with, the individual's ISP and the individual, or as applicable the individual's legal or designated representative, has agreed with the action by signature to the ISP.

(b) The individual, or as applicable the individual's legal or designated representative, may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the CDDP. At the time the CDDP denies a written request for additional or different services, the CDDP must notify the individual, or as applicable the individual's legal or designated representative, in writing, of the information specified in section (2)(c) of this rule.

(c) A notice required by sections (2)(a) or (2)(b) of this rule must be served upon the individual, or as applicable the individual's legal or designated representative, personally or by certified mail. The notice must state:

(A) What action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that supports, or the change in federal or state law that requires, the action;

(D) The right of the individual, or as applicable the individual's legal or designated representative, to a contested case hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules, and 42 CFR Part 431, Subpart E;

(E) That the CDDP's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice take effect by default if the Department representative does not receive a request for a hearing from the individual, or as applicable the individual's legal or designated representative, within 45 days from the date that the CDDP mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing shall be granted; and

(H) An explanation of the circumstances under which CDDP services shall be continued if a hearing is requested.

(d) If the individual, or as applicable the individual's legal or designated representative, disagrees with a decision or proposed action by the CDDP, the individual, or as applicable the individual's legal or designated

representative, may request a contested case hearing. The Department representative must receive the signed form within 45 days after the CDDP mailed the notice of action.

(e) The individual, or as applicable the individual's legal or designated representative, may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health if the normal timing of the hearing process is followed.

(f) If the individual, or as applicable the individual's legal or designated representative, requests an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department must continue the services. The Department shall continue the services until whichever of the following occurs first, but in no event shall services be continued in excess of 90 days from the date of the individual's, or as applicable the individual's legal or designated representative's request for an administrative hearing:

(A) The current authorization expires;

(B) The hearings officer or the Department renders a decision about the complaint; or

(C) The individual is no longer eligible for Medicaid benefits.

(g) The Department must notify the individual, or as applicable the individual's legal or designated representative, that the Department is continuing the service. The notice must inform the individual, or as applicable the individual's legal or designated representative, that if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(h) The Department must reinstate services if:

(A) The Department takes an action without providing the required notice and the individual, or as applicable the individual's legal or designated representative, requests a hearing;

(B) The Department does not provide the notice in the time required in this rule and the individual, or as applicable the individual's legal or designated representative, requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual, or as applicable the individual's legal or designated representative, but the location of the individual, or as applicable the individual's legal or designated representative, becomes known during the time that the individual is still eligible for services.

(D) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or the Department decides in the individual's favor before the hearing.

(i) The Department representative and the individual, or as applicable the individual's legal or designated representative, may have an informal conference without the presence of the hearings officer to discuss any of the matters listed in OAR 137-003-0575 (Prehearing Conferences). The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual, or as applicable the individual's legal or designated representative, to settle the matter;

(B) Ensure the individual, or as applicable the individual's legal or designated representative, understands the reason for the action that is the subject of the hearing request;

(C) Give the individual, or as applicable the individual's legal or designated representative, an opportunity to review the information that is the basis for the contested action;

(D) Inform the individual, or as applicable the individual's legal or designated representative, of the rules that serve as the basis for the contested action;

(E) Give the individual, or as applicable the individual's legal or designated representative, and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual, or as applicable the individual's legal or designated representative, wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review the Department or CDDP's action.

(j) At any time prior to the hearing, the individual, or as applicable the individual's legal or designated representative, may request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if the conference shall facilitate the hearing process.

(k) The Department may provide to the individual, or as applicable the individual's legal or designated representative, the relief sought at any time before the final order is served.

(l) WITHDRAWALS. An individual, or as applicable the individual's legal or designated representative, may withdraw a hearing request at any time. The withdrawal shall be effective on the date the Department or the hearings officer receives the request. The hearings officer must send a final order confirming the withdrawal to the last known address of the individual, or as applicable the individual's legal or designated representative. The individual, or as applicable the individual's legal or designated representative, may cancel the withdrawal up to 10 work days following the date such an order is issued.

(m) PROPOSED AND FINAL ORDERS.

(A) In a contested case, the hearings officer must serve a proposed order on the individual, or as applicable the individual's legal or designated representative, and the Department. The proposed order shall become a final order if no exceptions are filed within the time specified in subsection (B) of this section;

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual, or as applicable the individual's legal or designated representative, may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department no later than 10 days after service of the proposed order. The individual, or as applicable the individual's legal or designated representative, may not submit additional evidence after this period unless the Department prior-approves. After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0140
In-Home Support Service Operation

(1) PERSONNEL POLICIES AND PRACTICES. The CDDP must maintain up-to-date written position descriptions for all services coordinators coordinating in-home support services that includes written documentation of the following for each staff person:

(a) Reference checks and confirmation of qualifications prior to hire;

(b) Satisfactory completion of basic orientation, including mandatory abuse reporting training;

(c) Satisfactory completion of job-related in-service training;

(d) Department approval to work based on a background check;

(e) Notification and acknowledgement of mandatory abuse reporter status;

(f) Any founded reports of child abuse or substantiated abuse;

(g) Any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and

(h) Legal U.S. worker status.

(2) SERVICES COORDINATOR TRAINING. The CDDP must provide or arrange for services coordinators to receive training needed to provide or arrange for the in-home support services.

(3) RECORD REQUIREMENTS. The CDDP must maintain records in compliance with this rule, OAR 411-320-0070, applicable state and federal law, and other state rules regarding audits and clinical records and confidentiality.

(a) DISCLOSURE AND CONFIDENTIALITY. For the purpose of disclosure from individual medical records under these rules, the CDDPs are considered "providers" as defined in ORS 179.505(1) and ORS 179.505 is applicable.

(A) Access to records by the Department does not require authorization by an individual or an individual's legal or designated representative or family.

(B) For the purposes of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) INDIVIDUAL RECORDS. The CDDP must maintain, and make available on request for Department review, up-to-date records for each individual receiving in-home support services. These records must include:

(A) An easily-accessed summary of basic information including individual name, family name (if applicable), individual's legal or designated representative (as applicable), or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, and individual financial resource information.

(B) Records related to receipt and disbursement of public and private support funds including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-330-0070, and documentation that the individual, and as applicable the individual's legal or designated representative, understand and accept or delegate record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) ISP and reviews;

(F) Services coordinator correspondence and notes related to resource development and plan outcomes; and

(G) Customer satisfaction information.

(c) SPECIAL REQUIREMENTS FOR IHS DIRECT ASSISTANCE EXPENDITURES. The CDDP must develop and implement written policies and procedures concerning use of IHS funds to purchase goods and services to meet the supports needs of an individual that are described in the individual's ISP. These policies and procedures must include but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records must be maintained by the individual, or as applicable the individual's legal or designated representative or family:

(i) Itemized invoices and receipts to record the purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Signed contracts and itemized invoices for any services purchased from independent contractors and business providers; and

(iv) Pay records to record employee services, including timesheets signed by both employee and employer.

(B) Procedures for confirming the receipt and securing the use of specialized equipment and environmental accessibility adaptations:

(i) When specialized equipment is obtained for the exclusive use of an individual, the CDDP must record the purpose, final cost, and date of receipt;

(ii) The CDDP must secure use of equipment costing more than $500 through a written agreement between the CDDP and the individual, or as applicable the individual's legal or designated representative, that specifies the time period the item is to be available to the individual and the responsibilities of all parties if the item is lost, damaged, or sold within that time period;

(iii) The CDDP must obtain prior authorization from the Department for environmental accessibility adaptations to the home costing more than $1,500;

(iv) The CDDP must ensure that projects for environmental accessibility adaptations to the home costing $5,000 or more are:

(I) Reviewed and approved by the Department before work begins and before final payment is made;

(II) Completed or supervised by a contractor licensed and bonded in Oregon; and

(III) That steps are taken as prescribed by the Department for protection of the state's interest through liens or other legally available means.

(v) The CDDP must obtain written authorization from the owner of a rental structure before any minor physical environmental accessibility adaptations are made to the structure.

(C) Return of purchased goods.

(i) Any goods purchased with IHS funds that are not used according to an individual's ISP or according to an agreement securing the state's use may be immediately recovered.

(ii) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, or Centers for Medicare and Medicaid Services, or as applicable their authorized representatives, immediately or within timeframes specified in the written request, may be deemed reason to recover payments or deny further assistance.

(d) GENERAL FINANCIAL POLICIES AND PRACTICES. The CDDP must:

(A) Maintain up-to-date accounting records accurately and consistent with generally accepted accounting principles that reflect all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(e) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Individual records must be kept for a minimum of seven years.

(4) OTHER OPERATING POLICIES AND PRACTICES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish the CDDP's objectives and to meet the requirements of these rules and other applicable standards and rules.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0150

Quality Assurance

The CDDP must participate in statewide evaluation and regulation activities as directed by the Department in OAR 411-320-0045.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0160

Inspections and Investigations

(1) The CDDP must allow the following types of investigations and inspections to be performed by the Department, or other proper authority:

(a) Quality assurance and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) Any inspection or investigation may be unannounced.

(3) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department or other proper authority; and

(b) Submitted to or be made available for review by the Department, or other proper authority within the time allotted.

(4) When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Department has determined to initiate an investigation, the CDDP may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken.

(5) Abuse investigations must be completed as described in OAR 407-045-0250 to 407-045-0360 and must include an Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(6) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the CDDP may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(7) Upon completion of the Abuse Investigation and Protective Service Report, according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate service provider.

(8) The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) A plan of improvement must be submitted to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

411-330-0170
Variances

(1) A variance may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in these rules, if implementation of the proposed alternative services, methods, concepts, or procedures shall result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances. OAR 411-330-0060(6) and 411-330-0110 are specifically excluded from variance.

(2) The CDDP requesting a variance must submit a written application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's service, evidence that the variance is consistent with the individual's current ISP.

(3) The Department's director may approve or deny the request for a variance. The director's decision is final.

(4) The Department must notify the CDDP of the Department's decision. The decision notice must be sent within 45 calendar days of the receipt of the request by the Department with a copy sent to all relevant Department programs or offices.

(5) The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13

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Rule Caption: Employment and Alternatives to Employment Services for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: SPD 61-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 12-1-2013
Rules Amended: 411-345-0010, 411-345-0020, 411-345-0095, 411-345-0110, 411-345-0130, 411-345-0140, 411-345-0160, 411-345-0170, 411-345-0180, 411-345-0190, 411-345-0200, 411-345-0230, 411-345-0240, 411-345-0250, 411-345-0260, 411-345-0270
Rules Repealed: 411-345-0020(T), 411-345-0140(T)
Subject: The Department of Human Services is permanently amending the rules in OAR chapter 411, division 345 for employment and alternatives to employment services for adults with intellectual or developmental disabilities.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-345-0010
Statement of Purpose

The rules in OAR chapter 411, division 345 prescribe standards for providing employment and alternatives to employment services for adults with intellectual or developmental disabilities receiving residential services. These rules also prescribe the standards and procedures by which the Department endorses service providers to provide employment and alternatives to employment services.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0000, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0020
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 345:

(1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(3) "Activities of Daily Living (ADL)" mean basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "ADL" means "activities of daily living" as defined in this rule.

(5) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(6) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(7) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(8) "Alternatives to Employment Services" mean the services conducted away from an individual's residence that addresses the individual's academic, recreational, social, or therapeutic needs.

(9) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(10) "CDDP" means "community developmental disability program" as defined in this rule.

(11) "Certificate" means the document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed employment and alternatives to employment services.

(12) "Choice" means an individual's expression of preference, opportunity for, and active role in decision-making related to services received and from whom, including but not limited to case management, service providers, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated verbally, through sign language, or by other communication methods.

(13) "Community-Based Service" means any service or program providing opportunities for the majority of an individual's time to be spent in community participation or integration.

(14) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(15) "Community First Choice (K Plan)" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(16) "Complaint Investigation" means the investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(17) "Controlled Substance" means any drug classified as Schedules 1 to 5 under the Federal Controlled Substance Act.

(18) "Day" means a calendar day unless otherwise specified in these rules.

(19) "Department" means the Department of Human Services.

(20) "Designated Representative" means a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the individual's representative in connection with the provision of funded supports. An individual is not required to appoint a designated representative.

(21) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(22) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(23) "Discovery" is a focused time-limited service engaging an individual in identifying the individual's strengths, needs, and interests to prepare for integrated employment.

(24) "Employment Services" means any service that has the employment of individuals as the primary goal, including job assessment, job development, training, and ongoing supports.

(25) "Endorsement" means the authorization to provide employment and alternatives to employment services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(26) "Entry" means admission to a Department-funded developmental disability service.

(27) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of employment and alternatives to employment services.

(28) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(29) "Facility Based Service" means any service or program operated by a service provider that occurs in a location supporting more than eight individuals as a group.

(30) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(31) "Functional Needs Assessment" means a comprehensive assessment that documents the following:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(32) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(33) "Important for an Individual" means the areas of an individual's life that relate to being healthy, safe, and a valued member of the community.

(34) "Important to an Individual" means an individual's perspective on the people, places, and things the individual likes, personal values, spirituality, and a sense of self. This is learned by listening to what is being said by words or actions. When there is a conflict between words and actions, actions are considered first.

(35) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(36) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(37) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(38) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the individual's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(39) "Individual Support Plan (ISP) Action Plan" means the written documentation of an ISP team's commitment in supporting an individual to resolve or improve particular aspects of the individual's life. An ISP Action Plan identifies the necessary measurable steps to be taken, who is accountable for assuring implementation, and timelines for completion.

(40) "Individual Support Plan (ISP) Meeting" means an annual meeting facilitated by a services coordinator and attended by an individual's ISP team. The purpose of the ISP meeting is to determine the individual's needs, coordinate services and training, and develop the individual's ISP.

(41) "Individual Support Plan (ISP) Team" means a team composed of an individual receiving services and the individual's legal or designated representative (as applicable), services coordinator, and others chosen by the individual or the individual's representative, such as service providers and family members.

(42) "Integration" as defined in ORS 427.005 means:

(a) The use by an individual with an intellectual or developmental disability of the same community resources used by and available to a person without an intellectual or developmental disability;

(b) Participation by an individual with an intellectual or developmental disability in the same community activities in which a person without an intellectual or developmental disability participates, together with regular contact with a person without an intellectual or developmental disability; and

(c) An individual with an intellectual or developmental disability resides in a home or home-like setting that is in proximity to community resources and fosters contact with people in the community.

(43) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(44) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the individual's legal or designated representative, has not given prior approval.

(45) "ISP" means "individual support plan" as defined in this rule.

(46) "Job Development" means assistance and support for an individual to pursue employment and obtain job placement.

(47) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(48) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260, who is a staff or volunteer working with an adult, who while acting in an official capacity comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with an intellectual or developmental disability. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(49) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(50) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(51) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(52) "Natural Supports" means the voluntary resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community that are not paid for by the Department.

(53) "Oregon Intervention System (OIS)" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(54) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(55) "Path to Employment" means a concept that identifies an individual's preferences in moving toward employment using principles of self-determination and a set of questions and strategies that assist the Individual Support Plan team when planning.

(56) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual with an intellectual or developmental disability that gathers and organizes information that helps an individual:

(A) Determine and describe choices about employment, personal goals, activities, services, service providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with the individual's cultural considerations, needs, and preferences.

(57) "Person-Centered Process" means a practice of identifying what is important to and for an individual, and the supports necessary to address issues of health, safety, behavior, and financial support.

(58) "Plan of Care" means the written plan of Medicaid services required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(59) "PRN" means the administration of medication to an individual on an 'as needed' basis (pro re nata).

(60) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(61) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard an individual's person, property, and funds.

(62) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement.

(63) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(64) "Self-Administration of Medication" means an individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon the written order of a physician, and safely maintains the medication without supervision.

(65) "Self-Determination" means a philosophy and process by which an individual is empowered to gain control over the selection of services that meets the individual's needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely chosen family, friends, and professionals, to plan for employment beyond the parameters of a predefined program;

(b) Authority. The ability for an individual, together with the Individual Support Plan team, to declare a chosen employment path and to plan supports accordingly.

(c) Autonomy. Planning for and accessing resources that support an individual to seek employment; and

(d) Responsibility. The acceptance of a valued role in an individual's community through employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals.

(66) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(67) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor services, and to act as a proponent for individuals with intellectual or developmental disabilities. A services coordinator is an individual's person-centered plan coordinator as defined in the Community First Choice state plan.

(68) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds contracted with the community developmental disability program or contracted directly through the Department.

(69) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(70) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(71) "Supported Employment" means the provision of situational assessment, job development, job training, and ongoing support necessary to place, maintain, or change the employment of an individual in an integrated work setting. The individual is compensated in accordance with the Fair Labor Standards Act.

(72) "These Rules" mean the rules in OAR chapter 411, division 345.

(73) "Transfer" means movement of an individual from one site to another site administered or operated by the same service provider.

(74) "Transition Plan" means the written plan of services and supports for the period of time between an individual's entry into a particular service and the development of the individual's Individual Support Plan (ISP). The Transition Plan is approved by the individual's services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(75) "Unit of Service" means the equivalent of an individual receiving services 25 hours per week, 52 weeks per year, minus the following:

(a) Personal, vacation, or sick leave allowed by a service provider or employer;

(b) Holidays as recognized by the state of Oregon; and

(c) Up to four days for all-staff in-service training.

(76) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(77) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a service provider.

(78) "Volunteer" means any person assisting a service provider without pay to support the services and supports provided to an individual.

(79) "Waiver Services" means "home and community-based waiver services" as defined in this rule.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0005, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 26-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0095
Provider Service Payment Limitation

(1) Effective July 1, 2011, monthly service rates as authorized in Department payment and reporting systems for individuals enrolled in employment and alternatives to employment services and paid to certified service providers for delivering employment or alternatives to employment services as described in these rules, shall be limited to a maximum of $1,728 per month.

(2) An exception to the provider service payment limitation may be granted by the Department for costs of directly supporting the individual if documentation supports the following criteria are met:

(a) The individual has a current behavior or health condition, as well as a documented history of such, posing a risk to the individual's health and welfare or that of others;

(b) The individual has a current service rate and ISP requiring at least 1:1 staffing for purposes of meeting behavioral or medical support needs; and

(c) Steps have been taken to address the existing behavior or condition within the rate cap and there is continued risk to health and safety of self or others, regardless of setting.

(3) Special conditions shall be required in the service provider's contract. The Department or the Department's designee shall monitor services to assure the delivery and the continued need for additional funds.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0110
Individual Rights

(1) ABUSE. Any individual as defined in OAR 411-345-0020 must not be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the service provider.

(2) PROTECTION AND WELLBEING.

(a) The service provider must have and implement written policies and procedures that protect individuals' rights during the hours individuals are receiving services. The service provider must encourage and assist individuals to understand and exercise their rights. The policies and procedures must at a minimum provide for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens;

(B) Adherence to all applicable state and federal labor rules and regulations;

(C) Opportunities for individuals to be productive;

(D) Services that promote independence and that are appropriate to the age and preferences of the individual;

(E) Confidentiality of personal information regarding the individual;

(F) Adequate medical and health care, supportive services, and training;

(G) Opportunities for visits to legal and medical professionals when necessary;

(H) Private communication, including personal mail and access to a telephone, consistent with the service provider's policies for all employees;

(I) Fostering of personal control and freedom regarding personal property;

(J) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical or mechanical restraints;

(K) Freedom from unauthorized protective physical intervention; and

(L) Transfer within a service as described in OAR 411-345-0140.

(b) At entry to service and in a timely manner as changes occur, the service provider must inform each individual, and as applicable the individual's legal or designated representative, orally and in writing of the service provider's policy and procedures and a description of how the individual may exercise their rights.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0050, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0130
Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send a copy of the grievance to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual, and as applicable the individual's legal or designated representative, orally and in writing of the service provider's grievance policy and procedures and a description of how the individual may utilize them.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0060, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0140
Entry, Exit and Transfer

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters employment or alternatives to employment services is subject to eligibility as described in this section.

(a) To be eligible for home and community-based waiver services or Community First Choice state plan services, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OSIP-M;

(C) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080; and

(D) After completion of an assessment, meet the level of care defined in OAR 411-320-0020.

(b) To be eligible for employment and alternatives to employment services, an individual must:

(A) Be an Oregon resident;

(B) Be referred by the CDDP;

(C) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080;

(D) Be 18 years of age or older; and

(E) Be eligible for home and community-based waiver services or Community First Choice state plan services as described in subsection (a) of this section; or

(F) Be receiving residential services that are paid for or regulated by the Department, including but not limited to:

(i) Comprehensive residential services regulated by OAR chapter 411, division 325;

(ii) An adult foster home regulated by OAR chapter 411, division 360;

(iii) A supported living program regulated by OAR chapter 411, division 328; or

(iv) An individual's own home or family home when the individual receives comprehensive in-home support services regulated by OAR chapter 411, division 330.

(3) ENTRY. An entry ISP team meeting must be conducted prior to the initiation of services to an individual.

(a) A service provider must acquire the following information prior to or upon an individual's entry ISP team meeting:

(A) A copy of the individual's eligibility determination document;

(B) A statement indicating the individual's safety skills, including the individual's ability to evacuate from a building when warned by a signal device;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) Documentation of the individual's current physical condition, including any physical limitations that may affect employment;

(E) Documentation of any guardianship, conservatorship, health care representation, or any other legal restriction on the rights of the individual (if applicable); and

(F) A copy of the individual's most recent ISP (if applicable).

(b) The findings of the entry meeting must be recorded in the individual's file and include at a minimum:

(A) The name of the individual proposed for services;

(B) The date of the meeting;

(C) The date determined to be the individual's date of entry;

(D) Documentation of the participants included in the meeting;

(E) Documentation as required by OAR 411-345-0190 and 411-345-0200;

(F) Documentation of the pre-entry information required by subsection (a) of this section;

(G) Documentation of the proposed Transition Plan for services to be provided;

(H) Documentation of any deviation from the unit of service;

(I) Documentation of the type of employment or alternatives to employment service the individual is to receive; and

(J) Documentation of the decision to serve the individual requesting services.

(4) VOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must promptly notify an individual's services coordinator if an individual, or as applicable the individual's legal or designated representative, gives notice of the individual's intent to exit or the individual abruptly exits services.

(b) A service provider must notify an individual's services coordinator prior to an individual's voluntary transfer or exit from services.

(c) Notification and authorization of an individual's voluntary transfer or exit must be documented in the individual's record.

(5) INVOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must only transfer or exit an individual involuntarily for one or more of the following reasons:

(A) The individual's behavior poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The individual's service needs exceed the ability of the service provider;

(D) The individual fails to pay for services; or

(E) The service provider's certification or endorsement described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. A service provider must not transfer or exit an individual involuntarily without 30 days advance written notice to the individual, the individual's legal or designated representative (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The individual's right to a hearing as described in subsection (d) of this section.

(B) A notice is not required when an individual, or as applicable the individual's legal or designated representative, requests a transfer or exit.

(c) A service provider may give less than 30 days advanced written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others. The notice must be provided to the individual, the individual's legal or designated representative (as applicable), and the services coordinator immediately upon determination of the need for a transfer or exit.

(d) HEARING RIGHTS. An individual must be given the opportunity for a contested case hearing under ORS chapter 183 to dispute an involuntary transfer or exit. If an individual or the individual's legal or designated representative (as applicable) requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advanced written notice of a transfer or exit as described in subsection (c) of this section and the individual or the individual's legal or designated representative (as applicable) has requested a hearing, the service provider must reserve service availability for the individual until receipt of the final order.

(6) EXIT.

(a) An individual's ISP team must meet before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the meeting;

(C) Documentation of the participants included in the meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the individual's exit from services (unless the individual, or as applicable the individual's legal or designated representative, is requesting the exit);

(F) Documentation of the decision regarding the individual's exit, including verification of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and

(G) Documentation of the proposed plan for services for the individual after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:

(A) The individual, or as applicable the individual's legal or designated representative, requests an immediate removal from services; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(7) TRANSFER. An individual's ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call;

(c) Documentation of the participants included in the meeting or telephone call;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the individual's legal or designated representative or family members, cannot be honored;

(g) Documentation of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and

(h) The individual's written plan for services after the transfer.

(8) APPEAL. Any member of the ISP team may file an appeal in cases where an individual, or as applicable the individual's legal or designated representative, objects to an entry refusal, a request to exit the service, or a transfer within a service. In the case of a request to exit or transfer, the individual may continue to receive the same services received prior to the appeal until the appeal is resolved.

(a) All appeals must be made in writing to the CDDP director or the CDDP director's designee for decision using the CDDP's appeal process. The CDDP director or the CDDP director's designee must make a decision within 30 working days of receipt of the appeal and notify the appellant of the decision in writing.

(b) The decision of the CDDP director may be appealed by the individual, the individual's legal or designated representative (as applicable), or the service provider by notifying the Department in writing within 10 working days of receipt of the CDDP's decision.

(A) The Department's director shall appoint a committee composed of a Department representative, a service representative, and a services coordinator.

(B) In case of a conflict of interest, as determined by the Department's director, alternative representatives may be temporarily appointed to the committee by the director.

(C) The committee must review the appealed decision and make a written recommendation to the Department's director within 45 working days of receipt of the notice of appeal.

(D) The Department's director shall make a decision on the appeal within 10 working days after receipt of the recommendation from the committee.

(E) If the decision is for admission or continued placement and the service provider refuses admission or continued placement, the funding for that unit of service may be withdrawn by the contractor.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; MHD 2-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-047-0065, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 26-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0160

Individual Support Plan

(1) An individual has the right to participate in his or her ISP meeting and must be afforded every opportunity to develop and direct his or her ISP.

(2) The ISP must be implemented and a copy of each individual's ISP must be available at the service site within 60 days of entry and updated at least annually or as changes occur.

(3) The service provider must:

(a) Assign a staff member to participate as a team member in the development of an individual's ISP when invited by the individual or the individual's legal or designated representative (as applicable);

(b) Follow any required process and format as described in this rule;

(c) Train staff to understand each individual's ISP and supporting documents and to provide individual services; and

(d) Comply with Department rules and policies regarding the ISP.

(4) A face-to-face meeting must be conducted annually with an individual's ISP team. An exception is made when:

(a) The individual chooses not to participate in the meeting or the individual's legal representative objects to the individual's participation in the face-to face meeting. The individual must receive a copy of the ISP related to the necessary delivery of services; or

(b) The individual, or as applicable the individual's legal or designated representative, objects to the participation of a service provider during the face-to-face meeting. The service provider must receive a copy of the ISP related to the necessary delivery of services.

(5) In preparation for the ISP meeting, the service provider must:

(a) Gather person-centered information regarding preferences, interests, and desires of the individual supported;

(b) Review the individual's current ISP to determine the ongoing appropriateness and adequacy of the services and supports identified in the ISP; and

(c) Share all materials drafted in preparation for the ISP meeting with the ISP team one week in advance of the ISP meeting.

(6) The format and content for the ISP is based on the residential service being provided.

(a) For adults residing in 24-hour residential services, the ISP must be in accordance with OAR 411-325-0430, 411-320-0120, and this rule.

(b) For adults residing in foster care, the ISP must be in accordance with OAR 411-360-0170, 411-320-0120, and this rule.

(c) For adults residing in supported living services, the ISP must be in accordance with OAR 411-328-0750, 411-320-0120, and this rule.

(d) For adults residing in comprehensive in-home services, the ISP must be in accordance with OAR 411-330-0050, 411-320-0120, and this rule.

(7) The ISP must include the content required in the rules identified in section (6) of this rule for the residential service being provided. In addition, the ISP must:

(a) Address the individual's interest in pursuing a path to employment;

(b) Include action plans that further the individual's achievement of employment or the individual's goals for other types of day activities;

(c) Reflect decisions and agreements made by the ISP team during planning;

(d) Include documentation of the commitments made by the ISP team to support the individual's accomplishment of personal goals;

(e) Identify the type of services needed, how services are delivered, and the frequency of provided services;

(f) Identify timeframes for completion of goals or activities: and

(g) Contain signature of all ISP team members.

(8) Any deviation from the unit of service must be agreed to and documented by the ISP team.

(9) To meet the changing needs of the individual throughout the authorized ISP period:

(a) The ISP and supporting documents must be amended with ISP team approval; and

(b) The documentation must be kept current and be available for review by the individual, the individual's legal or designated representative (as applicable), the CDDP, and the Department.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0075, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0170

Behavior Support

(1) The service provider must have and implement a written policy for behavior support utilizing individualized positive support techniques and prohibiting abusive practices.

(2) The service provider must inform the individual, and as applicable the individual's legal or designated representative, of the behavior support policy and any applicable procedures at the time of entry to services and as changes to the behavior policy occur.

(3) Prior to the development of a Behavior Support Plan, the service provider must conduct a functional behavioral assessment of the behavior, which must be based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior that includes (as applicable) frequency, duration, and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior that includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) The Behavior Support Plan must include:

(a) An individualized summary of the individual's needs, preferences, and relationships;

(b) A summary of the functions of the behavior as derived from the functional behavioral assessment;

(c) Strategies that are related to the functions of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies, including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with OIS;

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan that includes a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Service providers must maintain the following additional documentation for implementation of Behavior Support Plans:

(a) Written evidence that the individual, the individual's legal or designated representative (as applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0080, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0180

Protective Physical Intervention

(1) The service provider must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection ordered by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(2) Staff supporting an individual must be trained by an instructor certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying OIS training for staff must be maintained in the staff person's personnel file.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of protective physical intervention techniques must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Use of protective physical intervention techniques in emergency situations that are not part of an approved Behavior Support Plan must:

(a) Be reviewed by the service provider's executive director or the executive director's designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Be documented as an incident report and submitted to the services coordinator or other Department designee (if applicable) and the individual's legal representative (if applicable), no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if an emergency intervention is used more than three times in a six-month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances as described in section (8) of this rule. The incident report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the protective physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member applying the protective physical intervention;

(f) The name and position of the staff witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of an administrative review by the service provider's executive director or the executive director's designee who is knowledgeable in OIS as evident by a job description that reflects this responsibility, that includes the follow-up to be taken to prevent a recurrence of the incident.

(6) The service provider must forward a copy of the incident report within five working days of the incident to the services coordinator and the individual's legal representative (if applicable).

(a) The services coordinator or the Department designee (if applicable) must receive a complete copy of the incident report.

(b) A copy of an incident report may not be provided to an individual's legal representative or other service provider when the report is part of an abuse or neglect investigation.

(c) A copy of an incident report provided to an individual's legal representative or other service provider must have confidential information

about other individuals removed or redacted as required by federal and state privacy laws.

(7) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the services coordinator or other Department designee (if applicable), within one working day of the incident.

(8) The service provider may substitute a behavior data summary in lieu of individual incident reports when:

(a) There is no injury to the individual or others;

(b) The intervention utilized is not a protective physical intervention;

(c) There is a formal written functional behavioral assessment and a written Behavior Support Plan;

(d) The individual's Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

(e) The protective physical intervention techniques and the behaviors for which the protective physical intervention techniques are applied remain within the parameters outlined in the individual's Behavior Support Plan and the OIS curriculum;

(f) The behavior data collection system for recording observation, intervention, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record items as required in section (5) of this rule; and

(g) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports.

(9) A copy of the behavior data summary must be forwarded every 30 days to the services coordinator or other Department designee (if applicable) and the individual's legal representative (if applicable).

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0085, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0190

Medical Services

(1) All individuals' medical records must be kept confidential as described in OAR 411-323-0060.

(2) The service provider must have and implement written policies and procedures that describe the medical management system, including medication administration, early detection and prevention of infectious disease, self-administration of medication, drug disposal, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records.

(3) Individuals must receive care that promotes their health and well being as follows:

(a) The service provider must observe the health and physical condition of an individual and take action in a timely manner in response to identified changes in condition that may lead to deterioration or harm;

(b) The service provider must assist an individual with the use and maintenance of prosthetic devices as necessary for the activities of the service;

(c) The service provider, with the individual's knowledge, must share information regarding medical conditions with the individual's residential contact and the services coordinator; and

(d) The service provider must provide rest and lunch periods at least as required by applicable law unless the individual's needs dictate additional time.

(4) The service provider must maintain records on each individual to aid physicians, medical professionals, and the service provider in understanding the individual's medical history and current treatment program. These records must be kept current and organized in a manner that permits a staff and medical person to easily follow the individual's course of treatment. Such documentation must include:

(a) A medical history obtained prior to entry to services including where available:

(A) A copy of a record of immunizations; and

(B) A list of known communicable diseases and allergies.

(b) A record of the individual's current medical condition including:

(A) A copy of all current orders for medication administered and maintained at the service provider's site;

(B) A list of all current medications; and

(C) A record of visits to medical professionals, consultants, or therapists if facilitated or provided by the service provider.

(5) The administration of medication at the service site must be avoided whenever possible. When medications, treatments, equipment, or special diets must be administered or monitored for self-administration, the service provider must:

(a) Obtain a copy of a written order signed by a physician, physician's designee, or medical practitioner prescribing the medication, treatment, special diet, equipment, or other medical service; and

(b) Follow written orders.

(6) PRN orders are not accepted for psychotropic medication.

(7) All medications administered or monitored in the case of self-administration must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the physician's or licensed health care practitioner's written order;

(c) Kept in a secured locked container and stored as indicated by the product manufacturer; and

(d) Recorded on an individualized Medication Administration Record (MAR), including treatments and PRN orders.

(8) The MAR must include:

(a) The name of the individual;

(b) The brand or generic name of the medication, including the prescribed dosage and frequency of administration as contained on the physician's order and medication;

(c) For topical medications and basic first aid treatments utilized without a physician's order, a transcription of the printed instructions from the package or the description of the basic first aid treatment provided;

(d) Times and dates of administration or self-administration of the medication;

(e) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(f) Method of administration;

(g) Documentation of any known allergies or adverse reactions to a medication;

(h) Documentation and an explanation of why a PRN medication was administered and the results of such administration; and

(i) An explanation of any medication administration irregularity with documentation of administrative review by the service provider's executive director or the executive director's designee.

(9) Safeguards to prevent adverse medication reactions must be utilized to include:

(a) Maintaining information about each prescribed medication's effects and side-effects;

(b) Communicating any concerns regarding any medication usage, effectiveness, or effects to the residential contact and the services coordinator; and

(c) Prohibiting the use of one individual's medications by another.

(10) The service site or service provider may not keep unused, discontinued, outdated, or recalled medication, or medication containers with worn, illegible, or missing labels. All unused, discontinued, outdated, or recalled medication or medication containers with worn, illegible, or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the possession of people other than for whom the medication was prescribed. The service provider must maintain a written record of all disposed medications that includes:

(a) Date of disposal;

(b) A description of the medication, including amount;

(c) The name of the individual for whom the medication was prescribed;

(d) The reason for disposal;

(e) The method of disposal;

(f) Signature of staff disposing; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) For any individual who is self-administering medication, the service provider must:

(a) Have documentation that a training program was initiated with approval of the individual's ISP team or that training for the individual is unnecessary;

(b) If necessary, have a training program that is consistent with the self-administration training program in place at the individual's residence;

(c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication, or time of delivery;

(d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

(e) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program or when training for the individual has been deemed necessary by the individual's ISP team.

(12) The service provider must ensure that individuals able to self-administer medications keep the medications secured, unavailable to any other person, and stored as recommended by the product manufacturer.

(13) The service provider must immediately contact the services coordinator when an individual's medical, behavioral, or physical needs change to a point that the individual's needs may not be met by the service provider. The ISP team may determine alternative placement or arrangement if necessary.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0090, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0200
Individual Summary Sheets and Emergency Information

(1) A current one to two page summary sheet record must be maintained at the service provider's primary place of business for each individual receiving services. The record must include:

(a) The individual's name, current address, telephone number, date of entry into services, date of birth, gender, preferred hospital, medical prime and private insurance number (if applicable), and guardianship status; and

(b) The name, address, and telephone number of:

(A) The individual's legal or designated representative, family, and other significant person (as applicable);

(B) The individual's preferred physician, secondary physician, and clinic;

(C) The individual's preferred dentist;

(D) The individual's services coordinator; and

(E) Other agencies and representatives providing services and supports to the individual.

(2) A service provider must maintain emergency information for each individual receiving supports and services from the service provider in addition to an individual summary sheet identified in section (1) of this rule.

(a) The emergency information must be kept current and must include:

(A) The individual's name;

(B) The service provider's name, address, and telephone number;

(C) The address and telephone number of the residence where the individual lives;

(D) The individual's physical description, which may include a picture and the date the picture was taken, and identification of:

(i) The individual's race, gender, height, weight range, hair, and eye color; and

(ii) Any other identifying characteristics that may assist in identifying the individual may the need arise, such as marks or scars, tattoos, or body piercing.

(E) Information on the individual's abilities and characteristics including:

(i) How the individual communicates;

(ii) The language the individual uses or understands;

(iii) The ability of the individual to know and take care of bodily functions; and

(iv) Any additional information that may assist a person not familiar with the individual to understand what the individual may do for him or herself.

(F) The individual's health support needs including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person needs to know when taking care of the individual;

(iv) Special dietary or nutritional needs, such as requirements around the textures or consistency of foods and fluids;

(v) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(vi) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(vii) Physical limitations that may affect the individual's ability to communicate, respond to instructions, or follow directions; and

(viii) Specialized equipment needed for mobility, positioning, or other health related needs.

(G) The individual's emotional and behavioral support needs including:

(i) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(ii) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(H) Any court ordered or legal representative authorized contacts or limitations;

(I) The individual's supervision requirements and why; and

(J) Any additional pertinent information the service provider has that may assist in the care and support of the individual in the event of a natural or man-made disaster.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0095, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0230
Incident Reports and Emergency Notifications

(1) A written incident report describing any injury, accident, act of physical aggression, or unusual incident involving an individual must be placed in the individual's record. The incident report must include:

(a) Conditions prior to, or leading to, the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review and follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression, or unusual incident.

(2) Copies of incident reports for all unusual incidents (as defined by OAR 411-345-0020) must be sent to the services coordinator within five working days of the unusual incident.

(3) The service provider must immediately notify the CDDP of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(4) In the case of an unusual incident requiring emergency response, the service provider must immediately notify:

(a) The individual's legal representative, parent, next of kin, designated representative, and other significant person (as applicable);

(b) The CDDP;

(c) The individual's residential contact; and

(d) Any other agency responsible for the individual.

(5) In the case of an individual who is missing or absent without supervision beyond the time frames established by the ISP team, the service provider must immediately notify:

(a) The individual's designated representative (if applicable);

(b) The individual's legal representative or nearest responsible relative (as applicable);

(c) The individual's residential contact;

(d) The local police department; and

(e) The CDDP.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0110, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0240
Emergency Plan and Safety Review

(1) Service providers must develop, keep current, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster.

(a) The emergency plan must:

(A) Be practiced at least annually;

(B) Consider the needs of the individuals being supported and address all natural and human-caused events identified as a potential significant risk to the individuals, such as a pandemic or an earthquake;

(C) Coordinate with each residential provider or residential contact to address the possibility of emergency or disaster resulting in the following:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to provide food or supplies; and

(iv) Staff unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies:

(i) The duties of staff during evacuation, transport, and housing of individuals;

(ii) The requirement for staff to notify the Department and the local CDDP office of the plan to evacuate or the evacuation of the facility, as soon as the emergency or disaster reasonably allows;

(iii) The method and source of transportation;

(iv) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals;

(v) A method that provides a person unknown to the individual the ability to identify the individual by the individual's name and to identify the name of the individual's service provider; and

(vi) A method for tracking and reporting to the Department, local CDDP office, or designee, the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individual, including medical needs; and

(F) Be submitted to the Department as a summary, per Department format, at least annually and upon revision and change of ownership.

(2) Service providers must post the following emergency telephone numbers in close proximity to all phones used by staff:

(a) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the service provider's executive director and additional people to be contacted in the case of an emergency.

(3) If an individual regularly accesses the community independently, the service provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(4) A documented safety review must be conducted quarterly to ensure the service site is free of hazards. The service provider must keep the quarterly safety review reports for five years and must make them available upon request by the CDDP or the Department.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0115, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0250
Evacuation

(1) The service provider must train all individuals immediately upon entry to each service site to leave the site in response to an alarm or other emergency signal to exit.

(2) The service provider must document the level of assistance needed by each individual to safely evacuate and such documentation must be maintained in the individual's entry records.

(3) Facility-based service providers must conduct unannounced evacuation drills one per quarter each year when individuals are present, unless required more often by the Oregon Occupational Safety and Health Division.

(a) Drills must occur at different times of the day.

(b) Exit routes must vary based on the location of a simulated emergency.

(c) Any individual failing to evacuate the service site unassisted within three minutes, or an amount of time set by the local fire authority for the site, must be provided specialized training and support in evacuation procedures.

(4) Facility-based service providers must make written documentation at the time of each drill and keep the documentation for at least two years following the drill. Documentation must include:

(a) The date and time of the drill;

(b) The location of the simulated emergency and exit route;

(c) The last names of all individuals and staff present in the service area at the time of the drill;

(d) The type of evacuation assistance provided by staff to individuals' that need more than three minutes to evacuate as specified in an individual's safety plan;

(e) The amount of time required by each individual to evacuate if the individual needs more than three minutes to evacuate;

(f) The amount of time for all individuals to evacuate exclusive of individuals with specialized support as described in section (3)(c) of this rule; and

(g) The signature of the staff conducting the drill.

(5) The service provider must develop a written safety plan for individuals who are unable to evacuate the site within the required evacuation time or who, with concurrence of the ISP team, request not to participate in evacuation drills. The safety plan must include:

(a) Documentation of the risk to the individual's medical, physical condition, and behavioral status;

(b) Identification of how the individual must evacuate the site, including level of support needed;

(c) The routes to be used to evacuate the individual to a point of safety;

(d) Identification of assistive devices required for evacuation;

(e) The frequency the plan must be practiced and reviewed by the individual and staff;

(f) The alternative practices;

(g) Approval of the plan by the individual's legal representative, services coordinator, and the service provider's executive director; and

(h) A plan to encourage future participation in evacuation drills.

(6) The service provider must provide necessary adaptations or accommodations to ensure evacuation safety for individuals with sensory and physically impairments.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0120, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0260
Physical Environment

(1) All supported employment and community-based services must ensure that the service site has no known health or safety hazards in its immediate environment and that individuals are trained to avoid recognizable hazards.

(2) The service provider must assure that at least once every five years a health and safety inspection is conducted of owned, leased, or rented buildings and property.

(a) The inspection must cover all areas and buildings where services are delivered to individuals, administrative offices, and storage areas.

(b) The inspection may be performed by:

(A) Oregon Occupational Safety and Health Division;

(B) The service provider's workers compensation insurance carrier;

(C) An appropriate expert, such as a licensed safety engineer or consultant approved by the Department; or

(D) The Oregon Public Health Division, when necessary.

(c) The inspection must cover:

(A) Hazardous material handling and storage;

(B) Machinery and equipment used by the service provider;

(C) Safety equipment;

(D) Physical environment; and

(E) Food handling, when necessary.

(d) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the service provider for five years.

(3) The service provider must ensure buildings and property at each owned, leased, or rented service site has annual fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes, and documentation of any resulting action taken must be kept by the service provider for five years.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0125, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

411-345-0270
Vehicles and Drivers

(1) Service providers that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Oregon Driver and Motor Vehicle Services Division laws;

(c) Maintain insurance coverage; and

(d) Carry a first-aid kit in the vehicles.

(2) Drivers operating vehicles to transport individuals must meet applicable Oregon Driver and Motor Vehicle Services Division requirements.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0130, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13

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Rule Caption: Foster Homes for Children with Intellectual or Developmental Disabilities
Adm. Order No.: SPD 62-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-28-13
Notice Publication Date: 11-1-2013
Rules Amended: 411-346-0100, 411-346-0110, 411-346-0120, 411-346-0130, 411-346-0140, 411-346-0150, 411-346-0160, 411-346-0165, 411-346-0170, 411-346-0180, 411-346-0190, 411-346-0200, 411-346-0210, 411-346-0220, 411-346-0230
Rules Repealed: 411-346-0110(T), 411-346-0180(T)
Subject: The Department of Human Services (Department) is permanently amending the rules in OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities.

The permanent rules:

- Adopt the changes made by temporary rulemaking that became effective on July 1, 2013 to implement the 1915(k) Community First Choice state plan option, comply with the Code of Federal Regulations, and implement corrective actions required by the Centers for Medicare and Medicaid Services;

- Bring definitions in alignment with the Community First Choice state plan option and clarify by definition that a child's support needs are identified through a functional needs assessment, that an individual support plan (ISP) reflects the manner in which services are delivered and the frequency of services, and that an ISP reflects whether services are purchased through a waiver, state plan, or provided through natural supports;

- Clarify the process, notice requirements, and hearing rights for an involuntary transfer or exit from services;

- Specify under what conditions a foster provider may transfer or exit a child involuntarily;

- Clarify that an alternate caregiver, consultant, or volunteer may not be a child's parent or legal guardian;

- Reflect new Department terminology and current practice; and

- Correct formatting and punctuation.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-346-0100
Statement of Purpose

The rules in OAR chapter 411, division 346 prescribe the standards and procedures for the provision of care and services for children with intellectual or developmental disabilities in child foster homes certified by the Department of Human Services as a condition for certification and payment.

Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0100, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0110
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 346:

(1) "Abuse" means:

(a) "Abuse" as defined in ORS 419B.005 for a child under the age of 18; and

(b) "Abuse" as defined in OAR 407-045-0260 when an individual between the ages of 18 and 21 resides in a certified child foster home.

(2) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Alternate Caregiver" means any person 18 years of age and older responsible for the care or supervision of a child in foster care.

(5) "Alternative Educational Plan" means any school plan that does not occur within the physical school setting.

(6) "Appeal" means the process for a contested hearing under ORS chapter 183 that a foster provider may use to petition the suspension, denial, non-renewal, or revocation of their certificate or application.

(7) "Applicant" means a person who wants to become a child foster provider, lives at the residence where a child in foster care is to live, and is applying for a child foster home certificate or is renewing a child foster home certificate.

(8) "Aversive Stimuli" means the use of any natural or chemical product to alter a child's behavior, such as the use of hot sauce or soap in the mouth and spraying ammonia or lemon water in the face of a child. Psychotropic medications are not considered aversive stimuli.

(9) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(10) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a foster provider to follow to cause a child's challenging behaviors to become unnecessary and to change the provider's own behavior, adjust environment, and teach new skills.

(11) "Behavior Supports" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to a child's intellectual or developmental disability that prevents the child from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and cognitive supports to mitigate behavior. Behavior supports are provided in the home or community.

(12) "Case Plan" means the goal-oriented, time-limited, individualized plan of action for a child and the child's family developed by the child's family and the Department's Children, Adults, and Families Division for promotion of the child's safety, permanency, and well being.

(13) "Case Worker" means an employee of the Department's Children, Adults, and Families Division.

(14) "Certificate" means a document issued by the Department that notes approval to operate a child foster home for a period not to exceed two years.

(15) "Certifying Agency" means the Department, Community Developmental Disability Program, or an agency approved by the Department who is authorized to gather required documentation to issue or maintain a child foster home certificate.

(16) "Child" means:

(a) An individual who is less than 18 who has a provisional determination of an intellectual or developmental disability by the Community Developmental Disability Program; or

(b) A young adult age 18 through 21 with an intellectual or developmental disability who is remaining in the same foster home for the purpose of completing their Individualized Education Plan, based on their Individual Support Plan team recommendation and an approved certification variance.

(17) "Child Foster Home" means a home certified by the Department that is maintained and lived in by the person named on the foster home certificate.

(18) "Child Foster Home Contract" means an agreement between a provider and the Department that describes the responsibility of the foster care provider and the Department.

(19) "Child Placing Agency" means the Department, Community Developmental Disability Program, or the Oregon Youth Authority.

(20) "Commercial Basis" means providing and receiving compensation for the temporary care of individuals not identified as members of the household.

(21) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for plan authorization, delivery, and monitoring of developmental disability services according to OAR chapter 411, division 320.

(22) "Denial" means the refusal of the certifying agency to issue a certificate of approval to operate a child foster home because the certifying agency has determined that the home or the applicant is not in compliance with one or more of these rules.

(23) "Department" means the Department of Human Services.

(24) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(25) "DHS-CW" means the child welfare program area within the Department's Children, Adults, and Families Division.

(26) "Direct Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for the foster provider or alternate caregivers.

(27) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(28) "Discipline" means "behavior supports" as defined in this rule.

(29) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(30) "Educational Surrogate" means the person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the child's parent cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of the child's parent or adult student.

(31) "Emergency Certificate" means a foster home certificate issued for 30 days.

(32) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(33) "Foster Care" means a child is placed away from their parent or guardian in a certified child foster home.

(34) "Foster Provider" means the certified care provider who resides at the address listed on the foster home certificate. A foster provider is considered a private agency for purposes of mandatory reporting of abuse.

(35) "Founded Reports" means the Department's or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(36) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

(37) "Guardian" means a child's parent or a person or agency appointed and authorized by a court to make decisions about services for a child in foster care.

(38) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(39) "Home Inspection" means the on-site, physical review of an applicant's home to assure the applicant meets all health and safety requirements within these rules.

(40) "Home Study" means the assessment process used for the purpose of determining an applicant's abilities to care for a child in need of foster care placement.

(41) "ICWA" means the Native American Child Welfare Act.

(42) "IEP" means "Individualized Education Plan" as defined in this rule.

(43) "Incident Report" means the written report of any injury, accident, act of physical aggression, or unusual incident involving a child in foster care.

(44) "Individual" means a person with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(45) "Individualized Education Plan (IEP)" means the written plan of instructional goals and objectives developed in conference with a teacher, a student, the student's parent or guardian, and a representative of the school district.

(46) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for a child to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is the child's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(47) "Individual Support Plan (ISP) Team" means a team composed of:

(a) The child in foster care (when appropriate);

(b) The foster provider;

(c) The child's parent or guardian;

(d) The Community Developmental Disability Program services coordinator; and

(e) Others chosen by the child or the child's parent or guardian.

(48) "Instrumental Activities of Daily Living (IADL)" means the activities other than activities of daily living required to continue independent living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(49) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(50) "Involuntary Transfer" means a foster provider has made the decision to transfer a child and the child or the child's parent or guardian has not given prior approval.

(51) "ISP" means "Individual Support Plan" as defined in this rule.

(52) "Licensed Medical Professional" means a person who meets the following:

(a) Holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in Oregon;

(B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(C) Physician's assistant licensed to practice in Oregon; and

(b) Whose training, experience, and competence demonstrate expertise in children's mental health, the ability to conduct a mental health assessment, and provide psychotropic medication management for a child in foster care.

(53) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who:

(a) Is a foster provider, staff, or volunteer working with a child who, comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(b) Is a foster provider, staff, or volunteer working with individuals 18 years and older who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with an intellectual or developmental disability. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(54) "MAR" means medication administration record.

(55) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(56) "Member of the Household" means any adults and children living in the home, including any employees or volunteers assisting in the care provided to a child placed in the home. A child in foster care is not considered a member of the household.

(57) "Mental Health Assessment" means the determination of a child's need for mental health services by interviewing the child and obtaining all pertinent biopsychosocial information as identified by the child, the child's family, and collateral sources that:

(a) Addresses the current complaint or condition presented by the child;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(58) "Misuse of Funds" includes but is not limited to a provider or staff:

(a) Borrowing from, or loaning money to, a child in foster care;

(b) Witnessing a will in which the provider or a staff is a beneficiary;

(c) Adding the provider's name to a child's bank account or other titles for personal property without approval of the child when of age to give legal consent, or the child's guardian and authorization of the child's Individual Support Plan team;

(d) Inappropriately expending or theft of a child's personal funds;

(e) Using a child's personal funds for the provider's or staff's own benefit; or

(f) Commingling a child's funds with the provider's or another child's funds.

(59) "Monitoring" means the observation by the Department or the Department's designee of a certified child foster home to determine continuing compliance with these rules.

(60) "Natural Supports" means the parental responsibilities for a child who is less than 18 years of age and the voluntary resources available to a child from the child's relatives, friends, neighbors, and the community that are not paid for by the Department.

(61) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN) pursuant to ORS chapter 678.

(62) "Nursing Care Plan" means the plan developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs are met. The Nursing Care Plan includes the tasks that are taught or delegated to the foster provider and alternate caregivers. When a Nursing Care Plan exists, it is a supporting document for an Individual Support Plan.

(63) "Occupant" means any person having official residence in a certified child foster home.

(64) "OIS" means "Oregon Intervention System" as defined in this rule.

(65) "Oregon Intervention System (OIS)" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(66) "Oregon Youth Authority (OYA)" means the agency that has been given commitment and supervision responsibilities over youth offenders by order of the juvenile court under ORS 137.124 or other statute, until the time that a lawful release authority authorizes release or terminates the commitment or placement.

(67) "OYA" means "Oregon Youth Authority" as defined in this rule.

(68) "Permanent Foster Care" means the long term contractual agreement between a foster provider and the Department's Children, Adults, and Families Division, approved by the juvenile court that specifies the responsibilities and authority of the foster provider and the commitment by the permanent foster provider to raise a child until the age of majority or until the court determines that permanent foster care is no longer the appropriate plan for the child.

(69) "Protected Health Information" means any oral or written health information that identifies a child and relates to the child's past, present, or future physical or mental health condition, health care treatment, or payment for health care treatment.

(70) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts the child's freedom of movement.

(71) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(72) "Qualified Mental Health Professional" means a person who meets both of the following:

(a) Holds at least one of the following educational degrees:

(A) Graduate degree in psychology;

(B) Bachelor's degree in nursing and licensed in Oregon;

(C) Graduate degree in social work;

(D) Graduate degree in a behavioral science field;

(E) Graduate degree in recreational, art, or music therapy;

(F) Bachelor's degree in occupational therapy and licensed in Oregon; and

(b) Whose education and experience demonstrates the competencies to:

(A) Identify precipitating events;

(B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;

(C) Assess family, social, and work relationships;

(D) Conduct a mental status examination;

(E) Document a multiaxial DSM diagnosis;

(F) Write and supervise a treatment plan;

(G) Conduct a mental health assessment; and

(H) Provide individual, family, or group therapy within the scope of his or her practice.

(73) "Relief Care" means intermittent services provided on a periodic basis of not more than 14 consecutive days for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(74) "Revocation" means the action taken by the certifying agency to rescind a child foster home certificate of approval after determining that the child foster home is not in compliance with one or more of these rules.

(75) "Services Coordinator" means an employee of the Department, Community Developmental Disability Program, or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor services, and to act as a proponent for individuals with intellectual or developmental disabilities. A services coordinator is a child's person-centered plan coordinator as defined in the Community First Choice state plan.

(76) "Significant Medical Needs" includes but is not limited to total assistance required for all activities of daily living, such as access to food or fluids, daily hygiene that is not attributable to a child's chronological age, and frequent medical interventions required by a care plan for health and safety of a child.

(77) "Special Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order, such as low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets.

(78) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(79) "Suspension of Certificate" means a temporary withdrawal of the approval to operate a child foster home after the certifying agency determines that the child foster home is not in compliance with one or more of these rules.

(80) "These Rules" mean the rules in OAR chapter 411, division 346.

(81) "Transfer" means movement of a child from one home to another home administered or operated by the same foster provider.

(82) "Unauthorized Absence" means any length of time when a child is absent from a foster home without prior approval as specified in the child's Individual Support Plan.

(83) "Unusual Incident" means any incident involving a child that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(84) "Urgent Medical Need" means the onset of psychiatric symptoms requiring attention within 48 hours to prevent a serious deterioration in a child's mental or physical condition.

(85) "Variance" means the temporary exemption from a regulation or provision of these rules that may be granted by the Department upon written application by the certifying agency.

(86) "Volunteer" means any person assisting in a child foster home without pay to support the services and supports provided to a child placed in the child foster home.

Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0110, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 27-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0120
Certification Required

(1) Any home that meets the definition of a child foster home must be certified by one of the following agencies:

(a) The Department;
(b) DHS-CW; or
(c) The OYA.
(2) A child in foster care shall only be placed in a certified child foster home.
Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0120, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0130
Indian Child Welfare Act

The Native American Child Welfare Act (ICWA) gives federally recognized Native American tribes the authority to select a home for a child protected by the ICWA. Tribes and Alaskan Native Regional Corporations may license, approve, or specify a foster home for a child protected by the ICWA. The tribe is authorized to decide which of the following three preferences to use or whether to request that the Department or DHS-CW certify the home. When the tribe requests the Department to certify the home, the Department shall use these rules for certification. Native American children placed in relative homes whether licensed, certified, or selected by the tribe are eligible for foster care payments when DHS-CW has legal custody. Preference shall be given for placement with:

(1) A member of the Native American child's extended family;
(2) A foster home licensed, approved, or specified by the child's tribe; or
(3) A Native American foster home licensed or approved by an authorized non-Native American licensing authority.
Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0130, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0140
Selection

(1) The Department or the CDDP shall recruit foster providers who have the abilities and commitment to carry out the responsibilities set forth in these rules to meet the Department's specific need for homes. The Department shall determine which applicants are certified. The CDDP staff shall determine which home is best for a particular child.

(2) A foster provider must be a responsible, stable, emotionally mature adult who exercises sound judgment and has the capacity to meet the mental, physical, and emotional needs of a child placed in foster care.

(3) A foster provider must demonstrate the following traits:
(a) Capacity to give and receive affection;
(b) Kindness;
(c) Flexibility;
(d) A sense of humor; and
(e) The ability to deal with frustration and conflict.
Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0140, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0150
General Requirements for Certification

(1) An applicant or foster provider must participate in certification and certification renewal studies and in the ongoing monitoring of their homes.

(2) An applicant or foster provider must give the information required by the Department to verify compliance with all applicable rules, including change of address and change of number of persons in the household, such as relatives, employees, or volunteers.

(3) An applicant seeking certification from the Department must complete the Department application forms. When two or more adults living in the home share foster provider responsibilities to any degree, each adult must be listed on the application as applicant and co-applicant.

(4) Applicants must disclose each state or territory they have lived in the last five years and for a longer period if requested by the certifying agency. The disclosure must include the address, city, state, and zip code of previous residences.

(5) Applicants must provide the following information:

(a) Names and addresses of any agencies in the United States where any occupant of the home has been licensed or certified to provide care to children or adults and the status of such license or certification. This may include but is not limited to licenses or certificates for residential care, nurse, nurse's aide, and foster care;

(b) Proposed number, gender, age range, disability, and support needs of children to be served in foster care;

(c) School reports for any child of school age living in the home at the time of initial application. School reports for any child of school age living in the home within the last year may also be required;

(d) Names and addresses of at least four persons, three of whom are unrelated, who have known each applicant for two years or more and who can attest to the applicant's character and ability to care for children. The Department may contact schools, employers, adult children, and other sources as references;

(e) Reports of all criminal charges, arrests, or convictions, including the date of offense and the resolution of those charges for all employees or volunteers and persons living in the home. If an applicant's minor children shall be living in the home, the applicant must also list reports of all criminal or juvenile delinquency charges, arrests, or convictions, including the date of offense and the resolution of those charges;

(f) Founded reports of child abuse or substantiated abuse, including dates, locations, and resolutions of those reports for all persons living in the home, as well as all applicant or provider employees, independent contractors, and volunteers;

(g) Demonstration, upon initial certification, of successful completion of 15 hours of pre-service training.

(h) Demonstration, upon initial certification, of income sufficient to meet the needs and to ensure the stability and financial security of the family independent of the foster care payment;

(i) All child support obligations in any state, including whether the obligor is current with payments or in arrears and whether any applicant's or foster provider's wages are being attached or garnished for any reason;

(j) A physician's statement, on a form provided by the Department, that each applicant is physically and mentally capable of providing care;

(k) A floor plan of the house showing the location of:

(A) Rooms, indicating the bedrooms for the child in foster care, caregiver, and other occupants of the home;
(B) Windows;
(C) Exit doors;
(D) Smoke alarms and fire extinguishers; and
(E) Wheel chair ramps, if applicable; and

(l) A diagram of the house and property showing safety devices for fire places, wood stoves, water features, outside structures, and fencing.

(6) Falsification or omission of any of the information for certification may be grounds for denial or revocation of the child foster home certification.

(7) Applicants must be at least 21 years of age. Applicants who are "Native American" as defined in the Native American Child Welfare Act may be 18 years of age or older if a Native American child to be placed is in the legal custody of DHS-CW.

(8) Applicants, providers, alternate caregivers, providers' employees, volunteers, other occupants in the home who are 18 years of age or older, other adults having regular contact in the home with a child in foster care, and any subject individual as defined in OAR 407-007-0210 must consent to a background check by the Department, in accordance with OAR 407-007-0200 to 407-007-0370 (Background Check Rules) and under ORS 181.534. The Department may require a background check on members of the household less than 18 years of age if there is reason to believe that a member may pose a risk to a child placed in the home. All persons subject to a background check are required to complete an Oregon background check and a national background check as described in OAR 407-007-0200 to 407-007-0370, including the use of fingerprint cards.

(a) Effective July 28, 2009, public funds may not be used to support, in whole or in part, a person described in section (8) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) A person does not meet qualifications as described in this rule if the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(c) Section (8)(a) and (b) of this rule do not apply to employees hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(d) Any person as described in section (8) of this rule must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or the Department's designee within 24 hours.

(9) The Department may not issue or renew a certificate if an applicant or member of the household:

(a) Has, after completing the Department's background check, a fitness determination of "denied".

(b) Has, at any time, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Criminal activity against children, including child pornography; or

(D) Rape, sexual assault, or homicide.

(c) Has, within the past five years from the date the background check was signed, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Physical assault or battery (other than against a spouse or child); or

(B) Any drug-related offense.

(d) Has been found to have abused or neglected a child or adult as defined in ORS 419B.005 or as listed in OAR 407-045-0260.

(e) Has, within the past five years from the date the child foster home application was signed, been found to have abused or neglected a child or adult in the United States as defined by that jurisdiction or any other jurisdiction.

(10) An applicant or foster provider may request to withdraw an application any time during the certification process by notifying the certifying agency in writing. Written documentation by the certifying agency of verbal notice may substitute for written notification.

(11) The Department may not issue or renew a certificate for a minimum of five years if an applicant is found to have a license or certificate to provide care to children or adults suspended, revoked, or not renewed by other than voluntary request. This shall be grounds for suspension and revocation of the certificate.

(12) The Department may not issue or renew a certificate based on an evaluation of any negative references, school reports, physician's statement, or previous licensing or certification reports from other agencies or states.

(13) A Department employee may be a foster provider, or an employee of an agency that contracts with the Department as a foster provider, if the employee's position with the Department does not influence referral, regulation, or funding of such activities. Prior to engaging in such activity, the employee must obtain written approval from the Department's director. The written approval must be on file with the Department's director and in the Department's certification file.

(14) An application is incomplete and void unless all supporting materials are submitted to the Department within 90 days from the date of the application.

(15) An application may not be considered complete until all required information is received and verified by the Department. Within 60 days upon receipt of the completed application, a decision shall be made by the Department to approve or deny certification.

(16) The Department shall determine compliance with these rules based on receipt of the completed application material, an investigation of information submitted, an inspection of the home, a completed home study, and a personal interview with the provider. A certificate issued on or after February 1, 2010 is valid for a maximum of two years unless revoked or suspended.

(17) The Department may attach conditions to the certificate that limit, restrict, or specify other criteria for operation of the child foster home.

(18) A condition may be attached to the certificate that limits a provider to the care of a specific child. No other referrals shall be made to a provider with this limitation.

(19) A child foster home certificate is not transferable or applicable to any location or persons other than those specified on the certificate.

(20) A foster provider who cares for a child funded by the Department must enter into a contract with the Department and follow the Department rules governing reimbursement for services and refunds.

(21) A foster provider may not be the parent or legal guardian of any child placed in their home for foster care services funded by the Department.

(22) If an applicant or foster provider intends to provide care for a child with significant medical needs, at least one provider or applicant must have the following:

(a) An equivalent of one year of full-time experience in providing direct care to individuals;

(b) Health care professional qualifications, such as a registered nurse (RN) or licensed practical nurse (LPN) or the equivalent of two additional years full-time experience providing care and support to an individual who has a medical condition that is serious and may be life-threatening;

(c) Copies of all current health related license or certificates and provide those documents to the certifying agent;

(d) Current certification in First Aid and Cardiopulmonary Resuscitation (CPR). The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the child served in the foster home;

(e) Current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver. The medical professional references serve as two of the four references in section (5)(d) of this rule; and

(f) Positive written recommendation from the Department's Medically Fragile Children's Unit (MFCU) if the provider or applicant has provided services through the MFCU or if the provider or applicant has historically received services through the MFCU for a child in their family home or foster home.

(23) A foster provider may not accept a child with significant medical needs unless an initial care plan addressing the health and safety supports is in place at the time of placement.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0150, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0160

Renewal of Certificate

(1) At least 90 days prior to the expiration of a certificate, the Department shall send a reminder notice and application for renewal to the currently certified provider. Submittal of a renewal application prior to the expiration date keeps the certificate in effect until the Department takes action. If the renewal application is not submitted prior to the expiration date, the child foster home shall be treated as an uncertified home.

(2) The certification renewal process includes the renewal application and the same supporting documentation as required for a new certification. With the discretion of the certifying agency, a financial statement, physician statement, and floor plan may not be required.

(3) A copy of the services coordinator's monitoring check list or recommendations from the services coordinators who have had children in the home within the last year may be requested at the time of certification renewal.

(4) School reports may not be required if the Department or the certifying agency reasonably assumes this information has not changed or is not necessary.

(5) The Department or the certifying agency may investigate any information in the renewal application and shall conduct a home inspection.

(6) The provider shall be given a copy of the inspection form documenting any deficiencies and a time frame to correct deficiencies. Deficiencies must be corrected no longer than 60 days from the date of inspection. If documented deficiencies are not corrected within the time frame specified, the renewal application shall be denied.

(7) Applicants, providers, providers' substitute caregivers, employees, volunteers, and any other occupants in the home 18 years of age and older must submit to an Oregon background check and must continue to meet all certification standards as outlined in these rules.

(8) Each foster provider must provide documentation of a minimum of 10 hours of Department approved training per year prior to the renewal of the certificate. A mutually agreed upon training plan may be part of the re-certification process.

(9) When serving children with significant medical needs, the foster provider must have a minimum of 6 of the 10 hours of annual training requirements in specific medical training beyond First Aid and CPR. The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the children served in the foster home.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0160, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0165

Emergency Certification

(1) An emergency certificate may be issued by the Department for up to 30 days, provided the following conditions are met:

(a) An Oregon background check indicates no immediate need for fingerprinting for all persons living in the home;

(b) A DHS-CW background check identifies no founded reports of child abuse committed by persons living in the home;

(c) Applicant has no previous revocations or suspensions of any license or certificate by any issuing agency for a foster home, group home, or any other care or support services;

(d) A review of support enforcement obligations and public assistance cases identifies no substantial financial concerns;

(e) An application and two references are submitted;

(f) An abbreviated home study is done; and

(g) A satisfactory home inspection and a Health and Safety Checklist are completed.

(2) When a child with significant medical needs shall be living in the foster home, the following additional requirements must be met before an emergency certificate may be issued:

(a) Current satisfactory references from at least two medical professionals, such as a physician and registered nurse who have direct knowledge of the applicant's ability and past experiences as a caregiver;

(b) A positive written recommendation from the Department's Medically Fragile Children's Unit (MFCU) if the provider or applicant has provided services through the MFCU or has historically received services through the MFCU for a child in their family home or foster home;

(c) Current certification in First Aid and CPR. The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the children served in the foster home;

(d) Copies of all current medical related licenses or certificates must be provided to the certifying agency; and

(e) Six hours of medical training beyond CPR and First Aid training as appropriate to the ages of the children served in the foster home; or

(f) Licensed as a registered nurse, licensed practical nurse, emergency medical technician, nurse practitioner, or physician's assistant.

(3) Emergency certificates may be issued if the renewal process is incomplete at the time of the renewal.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0170

Personal Qualifications of the Applicant and Foster Provider

((1) The applicant and foster provider must:

(a) Be responsible, stable, emotionally mature adults who exercise sound judgment;

(b) Have the interest, motivation, and ability to nurture, support, and meet the mental, physical, developmental, and emotional needs of a child placed in the foster home;

(c) Be willing to receive training and have the ability to learn and use effective child-rearing practices to enable a child placed in the foster home to grow, develop, and build positive personal relationships and self esteem;

(d) Demonstrate the knowledge and understanding of positive, non-punitive discipline and ways of helping a child in foster care build positive personal relationships, self-control, and self esteem;

(e) Respect the child's relationship with his or her parents and siblings and be willing to work in partnership with family members, agencies, and schools involved with the child to attain the goals as listed in the IEP, ISP, and Case Plan;

(f) Respect the child's privacy in accordance with the child's age;

(g) Have supportive ties with others who might support, comfort, and advise them, such as family, friends, neighborhood contacts, churches, or community groups;

(h) Demonstrate a lifestyle and personal habits free from abuse or misuse of alcohol or drugs;

(i) Be at least 21 years of age, unless otherwise specified through ICWA and requirements for placement of Native American children; and

(j) Be able to realistically evaluate which children they may accept, work with, and integrate into their family.

(2) HEALTH QUALIFICATIONS.

(a) The applicant and foster provider must provide the Department with the health history of each member of the household, including physical and mental health services and treatment received. Within one working day, the foster provider must inform the Department if any member of the household has or develops a serious communicable disease or other serious health condition that may affect the provider's ability to care for the child, or may affect the health and safety of the child.

(b) The applicant, foster provider, and other adults in the household caring for a child in foster care must be physically and mentally able to perform the duties of a foster provider as described in these rules.

(c) The applicant, foster provider, and others in the household must be free from abuse or misuse of alcohol or drugs. In the case of alcoholism or substance abuse, the applicant, foster provider, or others in the household must demonstrate that they have been substance-free and sober for at least two years prior to making application for certification.

(d) When requested by the Department either during the application process or while certified, the applicant or foster provider must, at their expense and from a source acceptable to the Department, supply psychological, medical or physical, sex-offender, drug and alcohol, and psychiatric reports and evaluations to the Department.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0170, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0180

Professional Responsibilities of the Foster Provider

(1) TRAINING AND DEVELOPMENT.

(a) The foster provider must complete a minimum of 15 hours of pre-service training prior to certification and 10 hours annually for certification renewal. The Department or the certifying agency may require additional hours of training based on the needs of the child served in the home.

(b) The foster provider must participate in training provided or approved by the Department or the certifying agency. Such training must include educational opportunities designed to enhance the foster provider's awareness, understanding, and skills to meet the special needs of a child placed in their home.

(c) The foster provider must complete mandatory reporter training prior to initial certification and annually thereafter.

(d) Mandatory reporter training must be appropriate to the ages of the individuals living in the child foster home.

(2) RELATIONSHIP WITH THE CHILD PLACING AGENCY. The foster provider must:

(a) Take part in planning, preparation, pre-placement activities, and visitation for the child placed in their home;

(b) Participate as team members in developing and implementing the ISP when initiated by the CDDP services coordinator for the child placed in their home;

(c) In advance or within one working day, notify the certifying agency of changes likely to affect the life and circumstances of the foster family or the safety in the home, including but not limited to the following:

(A) Foster family illness;

(B) Divorce, legal separation, or loss of a household member;

(C) Significant change in financial circumstances;

(D) New household members or placement of a child in foster care by another agency, including relief care;

(E) Arrests or criminal involvement;

(F) The addition of hunting equipment and weapons;

(G) The addition of a swimming pool; or

(H) The addition of a pet.

(d) Immediately notify the child's CDDP services coordinator and guardian of a child's injury, illness, accident, or any unusual incident or circumstance that may have a serious effect on the health, safety, physical, or emotional well-being of the child in foster care;

(e) Notify the guardian and CDDP staff of any unauthorized absence of a child in foster care within 12 hours or other mutually agreed upon time as determined by the ISP team;

(f) Sign and abide by the responsibilities described in the Child Foster Home Contract;

(g) Allow the certifying agency and child placing agency reasonable access to their home and to the child placed in their care. This includes access by a child's family members when placement is voluntary. For the purpose of these rules, reasonable access means with prior notice unless there is cause for not giving such notice;

(h) Allow the Department or certifying agency staff access to:

(A) Investigate reports of abuse and violations of a regulation or provision of these rules;

(B) Inspect or examine the home, the child's records and accounts, and the physical premises including the buildings, grounds, equipment, and any vehicles; and

(C) Interview the child, adult, or alternate caregivers.

(i) Participate in interviews conducted by the Department or the certifying agency; and

(j) Authorize substitute caregivers to permit entrance by the Department or the certifying agency for the purpose of inspection and investigation.

(3) ACCEPTING CHILDREN FOR CARE.

(a) Except as described in section (3)(c) of this rule, a certified provider may not exceed the following maximum number of children in the foster home including the provider's biological children:

(A) A total of four children when one certified adult lives in the home; or

(B) A total of seven children when two certified adults live in the home.

(b) All homes are limited to two children under the age of three.

(c) Any providers certified prior to July 1, 2007 with a capacity greater than the numbers listed in section (3)(a) of this rule must meet the standard through attrition as children move out of the foster home.

(d) Any child foster home provider contracted by a proctor agency to provide proctor care services is limited to serving a total of two children in foster care.

(e) At the time of referral, the foster provider must be given available information about the child, including behavior, skill level, medical status, and other relevant information. The foster provider is obligated to decline the referral of any child based on the referral information, parameters of their certification, or if they feel their skill level may not safely or effectively support the child.

(f) A foster provider may provide relief care in the provider's home for a child upon approval by the certifying agency or the Department.

(g) A foster provider must obtain approval from the certifying agency prior to accepting a child for placement.

(h) A child who turns 18 may continue to reside in their current certified child foster home when it has been determined by the ISP team it is in the best interest of the child to remain in the same home. When it has been determined by the ISP team a child who is turning 18 may remain in their current certified child foster home the foster provider must:

(A) Submit a variance request to the Department in accordance with OAR 411-346-0210; and

(B) Submit to the Department and the certifying agency, a copy of the ISP addendum signed by the ISP team noting it is in the best interest of the child to remain in the current certified foster home.

(i) Any variance to subsections (3)(a) through (3)(h) of this section must take into consideration the maximum safe physical capacity of the home including:

(A) Sleeping arrangements;

(B) The ratio of adult to child;

(C) The level of supervision available;

(D) The skill level of the foster provider;

(E) Individual plans for egress during fire;

(F) The needs of the other children in placement; and

(G) The desirability of keeping siblings placed together.

(j) The foster provider may not care for unrelated adults on a commercial basis in their own home or accept children for day care in their own home while currently certified as a foster provider.

(k) The foster provider must notify the Department prior to a voluntary closure of a child foster home and give the child's guardian and the CDDP 30 day's written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of the child or foster provider.

(4) INVOLUNTARY TRANSFERS AND EXITS.

(a) A foster provider must only transfer or exit a child involuntarily for one or more of the following reasons:

(A) The child's behavior poses an imminent risk of danger to self or others;

(B) The child experiences a medical emergency;

(C) The child's service needs exceed the ability of the foster provider;

(D) Failure to pay for services; or

(E) The foster provider's certification is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY EXIT. A foster provider must not transfer or exit a child involuntarily without 30 days advance written notice to the child's parent or guardian and the CDDP services coordinator, except in the case of a medical emergency or when a child is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The right to a hearing as described in subsection (e) of this section.

(B) A notice is not required when a child's parent or guardian requests a transfer or exit.

(c) A foster provider may give less than 30 days advanced written notice only in a medical emergency or when a child is engaging in behavior that poses an imminent danger to self or others. The notice must be provided to the child's parent or guardian and CDDP services coordinator immediately upon determination of the need for a transfer or exit.

(d) A foster provider is responsible for the provision of services until a child exits the home.

(e) HEARING RIGHTS. A child and the child's parent or guardian must be given the opportunity for a contested case hearing under ORS chapter 183 to dispute an involuntary transfer or exit. If a child or the child's parent or guardian requests a hearing, the child must receive the same services until the hearing is resolved. When a child has been given less than 30 days advanced written notice of a transfer or exit as described in subsection (c) of this section and the child or the child's parent or guardian has requested a hearing, the foster provider must reserve the child's room until receipt of the final order.

(5) RELATIONSHIP WITH THE CHILD'S FAMILY. In accordance with the child's ISP and the guardian, the foster provider must:

(a) Support the child's relationship with the child's family members, including siblings;

(b) Assist the CDDP staff and the guardian in planning visits with the child and the child's family members; and

(c) Provide the child reasonable opportunities to communicate with their family members.

(6) CONFIDENTIALITY.

(a) The foster provider and the provider's family must treat personal information about a child or a child's family in a confidential manner. Confidential information is to be disclosed on a need to know basis to law enforcement, certifying agency staff, CDDP staff, DHS-CW child protective services staff, DHS-CW case workers, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health, safety, and service needs of the child.

(b) In addition to the requirements in subsection (6)(a) of this section, the foster provider and the provider's family must comply with the provisions of ORS 192.518 to 192.523 and therefore may use or disclose a child's protected health information only:

(A) To law enforcement, certifying agency staff, CDDP staff, and DHS-CW staff;

(B) As authorized by the child's personal representative or guardian appointed under ORS 125.305, 419B.370, 419C.481, or 419C.555;

(C) For purposes of obtaining health care treatment for the child;

(D) For purposes of obtaining payment for health care treatment; or

(E) As permitted or required by state or federal law or by order of a court.

(c) The foster provider must keep all written records for each child in a manner that ensures their confidentiality.

(7) MANDATORY REPORTING.

(a) The foster provider and their employees and volunteers are mandatory reporters of suspected abuse of any child as defined by ORS 419B.005. Upon reasonable cause to believe that abuse has occurred, all adult members of the household and any foster provider, employees, independent contractors, or volunteers must report pertinent information to DHS-CW or law enforcement.

(b) When the certified child foster provider, their employees, independent contractors, or volunteers are providing services to an individual 18 years or older and have reason to believe abuse as defined in OAR 407-045-0260 has occurred, they must report the pertinent information to the CDDP or law enforcement in accordance with ORS 430.737.

(c) Any protective physical intervention that results in an injury to the child, as defined in ORS 419B.005, must be reported by the foster provider. Same day verbal notification is required. The foster provider must notify DHS-CW and the child's CDDP services coordinator.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0180, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-

1-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0190
Standards and Practices for Care and Services

(1) The foster provider must:

(a) Provide structure and daily activities designed to promote the physical, social, intellectual, cultural, spiritual, and emotional development of the child in their home.

(b) Provide playthings and activities in the foster home, including games, recreational and educational materials, and books appropriate to the chronological age, culture, and developmental level of the child.

(c) In accordance with the ISP and if applicable as defined in the DHS-CW case plan, encourage the child to participate in community activities with family, friends, and on their own when appropriate.

(d) Promote the child's independence and self-sufficiency by encouraging and assisting the child to develop new skills and perform age-appropriate tasks.

(e) In accordance with the ISP and if applicable as defined in the DHS-CW case plan, ask the child in foster care to participate in household chores appropriate to the child's age and ability that commensurate with those expected of the provider's own children.

(f) Provide the child with reasonable access to a telephone and to writing materials.

(g) In accordance with the ISP and if applicable as defined in the DHS-CW Case Plan, permit and encourage the child to have visits with family and friends.

(h) Allow regular contacts and private visits or phone calls with the child's CDDP services coordinator and if applicable the DHS-CW case worker.

(i) Not allow a child in foster care to baby-sit in the foster home or elsewhere without permission of the child's CDDP services coordinator and the guardian.

(2) RELIGIOUS, ETHNIC, AND CULTURAL HERITAGE.

(a) The foster provider must recognize, encourage, and support the religious beliefs, ethnic heritage, cultural identity, and language of a child and the child's family.

(b) In accordance with the ISP and guardian preferences, the foster provider must participate with the ISP team to arrange transportation and appropriate supervision during religious services or ethnic events for a child whose beliefs and practices are different from those of the provider.

(c) The foster provider may not require a child to participate in religious activities or ethnic events contrary to the child's beliefs.

(3) EDUCATION. The foster provider:

(a) Must enroll each child of school age in public school, within five school days of the placement, and arrange for transportation.

(b) Must comply with any Alternative Educational Plan described in the child's IEP.

(c) Must be actively involved in the child's school program and must participate in the development of the child's IEP. The foster provider may apply to be the child's educational surrogate if requested by the parent or guardian.

(d) Must consult with school personnel when there are issues with the child in school and report to the guardian and CDDP services coordinator any serious situations that may require Department involvement.

(e) Must support the child in his or her school or educational placement.

(f) Must assure the child regularly attends school or educational placement and monitor the child's educational progress.

(g) May sign consent to the following school related activities:

(A) School field trips within the state of Oregon;

(B) Routine social events;

(C) Sporting events;

(D) Cultural events; and

(E) School pictures for personal use only unless prohibited by the court or legal guardian.

(4) ALTERNATE CAREGIVERS.

(a) The foster provider must arrange for safe and responsible alternate care.

(b) A Child Care Plan for a child in foster care must be approved by the Department, the CDDP, or DHS-CW before it is implemented. When a child is cared for by a child care provider or child care center, the provider or center must be certified as required by the State Child Care Division (ORS 657A.280) or be a certified foster provider.

(c) The foster provider must have a Respite Plan approved by the certifier or the Department when using alternate caregivers.

(d) The foster provider must assure the alternate caregivers, consultants, and volunteers are:

(A) 18 years of age or older;

(B) Capable of assuming foster care responsibilities;

(C) Present in the home;

(D) Physically and mentally capable to perform the duties of the foster provider as described in these rules;

(E) Cleared by a background check as described in OAR 411-346-0150(8) including a DHS-CW background check;

(F) Able to communicate with the child, individuals, agencies providing care to the child, CDDP services coordinator, and appropriate others;

(G) Trained on fire safety and emergency procedures;

(H) Trained on the child's ISP, Behavior Support Plan, and any related protocols and able to provide the care needed for the child;

(I) Trained on the required documentation for health, safety, and behavioral needs of the child;

(J) A licensed driver and with vehicle insurance in compliance with the Oregon DMV laws when transporting children by motorized vehicle; and

(K) Not be a person who requires care in a foster care or group home.

(e) When the foster provider uses an alternate caregiver and the child shall be staying at the alternate caregiver's home, the foster provider must assure the alternate caregiver's home meets the necessary health, safety, and environmental needs of the child.

(f) When the foster provider arranges for social activities of the child for less than 24 hours, including an overnight arrangement, the foster provider must assure that the person shall be responsible and capable of assuming child care responsibilities and be present at all times. The foster provider still maintains primary responsibility for the child.

(5) FOOD AND NUTRITION.

(a) The foster provider must offer three nutritious meals daily at times consistent with those in the community.

(A) Daily meals must include food from the four basic food groups, including fresh fruits and vegetables in season, unless otherwise specified in writing by a physician or physician assistant.

(B) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(C) Consideration must be given to cultural and ethnic background in food preparation.

(b) Any home canned food used must be processed according to current guidelines of Oregon State University extension services (http://extension.oregonstate.edu/fch/food-preservation).

(c) All food items must be used prior to the item's expiration date.

(d) The foster provider must implement specialized diets only as prescribed in writing by the child's physician or physician assistant.

(e) The foster provider must prepare and serve meals in the foster home where the child lives. Payment for meals eaten away from the foster home (e.g. restaurants) for the convenience of the foster provider is the responsibility of the foster provider.

(f) The foster provider, when serving milk, must only use pasteurized liquid or powdered milk for consumption by a child in foster care.

(g) A child who must be bottle-fed and cannot hold the bottle, or is 11 months or younger, must be held during bottle-feeding.

(6) CLOTHING AND PERSONAL BELONGINGS.

(a) The foster provider must assure that each child has his or her own clean, well-fitting, seasonal clothing appropriate to age, gender, culture, individual needs, and comparable to the community standards.

(b) A school-age child must participate in choosing their own clothing whenever possible.

(c) The foster provider must allow a child to bring and acquire appropriate personal belongings.

(d) The foster provider must assure that when a child leaves the child foster home, the child's belongings including all personal funds, medications, and personal items remain with the child. This includes all items brought with the child and obtained while living in the home.

(7) BEHAVIOR SUPPORT AND DISCIPLINE PRACTICES.

(a) The foster provider must teach and discipline a child with respect, kindness, and understanding, using positive behavior management techniques. Unacceptable practices include but are not limited to:

(A) Physical force, spanking, or threat of physical force inflicted in any manner upon the child;

(B) Verbal abuse, including derogatory remarks about the child or the child's family that undermine a child's self-respect;

(C) Denial of food, clothing, or shelter;

(D) Denial of visits or contacts with family members, except when otherwise indicated in the ISP or if applicable the DHS-CW case plan;

(E) Assignment of extremely strenuous exercise or work;

(F) Threatened or unauthorized use of physical interventions;

(G) Threatened or unauthorized use of mechanical restraints;

(H) Punishment for bed-wetting or punishment related to toilet training;

(I) Delegating or permitting punishment of a child by another child;

(J) Threat of removal from the foster home as a punishment;

(K) Use of shower or aversive stimuli as punishment; and

(L) Group discipline for misbehavior of one child.

(b) The foster provider must set clear expectations, limits, and consequences of behavior in a non-punitive manner.

(c) If time-out separation from others is used to manage behavior, it must be included on the child's ISP and the foster provider must provide it in an unlocked, lighted, well-ventilated room of at least 50 square feet. The ISP must include whether the child needs to be within hearing distance or within sight of an adult during the time-out. The time limit must take into consideration the child's chronological age, emotional condition, and developmental level. Time-out is to be used for short duration and frequency as approved by ISP team.

(d) No child in foster care or other child in a foster home shall be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury, or threats of harm as defined in ORS 419B.005 and OAR 407-045-0260.

(e) BEHAVIOR SUPPORT PLAN (BSP). For a child who has demonstrated a serious threat to self, others, or property and for whom it has been decided a BSP is needed, the BSP must be developed with the approval of the ISP team.

(f) PROTECTIVE PHYSICAL INTERVENTION. A protective physical intervention must be used only for health and safety reasons and under the following conditions:

(A) As part of the child's ISP team approved BSP.

(i) When protective physical intervention shall be employed as part of the BSP, the foster provider and alternate caregivers must complete OIS training prior to the implementation of the BSP.

(ii) The use of any modified OIS protective physical intervention must have approval from the OIS Steering Committee in writing prior to their implementation. Documentation of the approval must be maintained in the child's records.

(B) As in a health-related protection prescribed by a physician or qualified health care provider, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for protection during the time that a medical condition exists.

(C) As an emergency measure if absolutely necessary to protect the child or others from immediate injury and only until the child is no longer an immediate threat to self or others.

(g) MECHANICAL RESTRAINT.

(A) The foster provider may not use mechanical restraints on a child in foster care other than car seat belts or normally acceptable infant safety products unless ordered by a physician or health care provider and with an agreement of the ISP team.

(B) The foster provider must maintain the original order in the child's records and forward a copy to the CDDP services coordinator and guardian.

(h) DOCUMENTATION AND NOTIFICATION OF USE OF PROTECTIVE PHYSICAL INTERVENTION.

(A) The foster provider must document the use of all protective physical interventions or mechanical restraints in an incident report. A copy of the incident report must be provided to the CDDP services coordinator and guardian.

(B) If an approved protective physical intervention is used, the foster provider must send a copy of the incident report within five working days to the services coordinator and guardian.

(C) If an emergency or non ISP team approved protective physical intervention is used, the foster provider must send a copy of the incident report within 24 hours to the services coordinator and guardian. The foster provider must make verbal notification to the CDDP services coordinator and guardian no later than the next working day.

(D) The original incident report must be on file with the foster provider in the child's records.

(E) The incident report must include:

(i) The name of the child to whom the protective physical intervention was applied;

(ii) The date, location, type, and duration of entire incident and protective physical intervention;

(iii) The name of the provider and witnesses or persons involved in applying the protective physical intervention;

(iv) The name and position of the person notified regarding the use of the protective physical intervention; and

(v) A description of the incident, including precipitating factors, preventive techniques applied, description of the environment, description of any physical injury resulting from the incident, and follow-up recommendations.

(8) MEDICAL AND DENTAL CARE. The foster provider must:

(a) Provide care and services, as appropriate to the child's chronological age, developmental level, and condition of the child, and as identified in the ISP.

(b) Assure that physician or qualified health care provider orders and those of other licensed medical professionals are implemented as written.

(c) Inform the child's physicians or qualified health care providers of current medications and changes in health status and if the child refuses care, treatments, or medications.

(d) Inform the guardian and CDDP services coordinator of any changes in the child's health status except as otherwise indicated in the DHS-CW Permanent Foster Care contract agreement and as agreed upon in the child's ISP.

(e) Obtain the necessary medical, dental, therapies, and other treatments of care including but not limited to:

(A) Making appointments;

(B) Arranging for or providing transportation to appointments; and

(C) Obtaining emergency medical care.

(f) Have prior consent from the guardian for medical treatment that is not routine, including surgery and anesthesia except in cases where a DHS-CW Permanent Foster Care contract agreement exists.

(g) Keep current medical records. The records must include, when applicable:

(A) Any history of physical, emotional, and medical problems, illnesses, or mental health status;

(B) Current orders for all medications, treatments, therapies, use of protective physical intervention, specialized diets, adaptive equipment, and any known food or medication allergies;

(C) Completed medication administration record (MAR) from previous months;

(D) Pertinent medical and behavioral information such as hospitalizations, accidents, immunization records including Hepatitis B status and previous TB tests, and incidents or injuries affecting the health, safety, or emotional well-being of the child;

(E) Documentation or other notations of guardian consent for medical treatment that is not routine including surgery and anesthesia;

(F) Record of medical appointments;

(G) Medical appointment follow-up reports provided to the foster provider; and

(H) Copies of previous mental health assessments, assessment updates including multi-axial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services.

(h) Provide, when requested, copies of medical records and medication administration records to the child's legal guardian, services coordinator, and DHS-CW caseworker.

(i) Provide copies, as applicable, of the medical records described in section (8)(g)(H) above to the licensed medical professional prior to the medical appointment or no later than the time of the appointment with the licensed medical professional.

(9) MEDICATIONS AND PHYSICIAN OR QUALIFIED HEALTH CARE PROVIDER ORDERS.

(a) There must be authorization by a physician or qualified health care provider in the child's file prior to the usage of or implementation of any of the following:

(A) All prescription medications;

(B) Non prescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Therapies and use of mechanical restraint as a health and safety related protection;

(E) Modified or specialized diets;

(F) Prescribed adaptive equipment; and

(G) Aids to physical functioning.

(b) The foster provider must have:

(A) A copy of an authorization in the format of a written order signed by a physician or a qualified health care provider; or

(B) Documentation of a telephone order by a physician or qualified health care provider with changes clearly documented on the MAR, includ-

ing the name of the person giving the order, the date and time, and the name of the person receiving the telephone order; or

(C) A current pharmacist prescription or manufacturer's label as specified by the physician's order on file with the pharmacy.

(c) A provider or alternate caregiver must carry out orders as prescribed by a physician or a qualified health care provider. Changes may not be made without a physician or a qualified health care provider's authorization.

(d) Each child's medication, including refrigerated medication, must be clearly labeled with the pharmacist's label, or in the manufacturer's originally labeled container, and kept in a locked location, or stored in a manner that prevents access by children.

(e) Unused, outdated, or recalled medications may not be kept in the foster home and must be disposed of in a manner that shall prevent illegal diversion into the possession of people other than for which it was prescribed.

(f) The foster provider must keep a MAR for each child. The MAR must be kept for all medications administered by the foster provider or alternate caregiver to that child, including over the counter medications and medications ordered by physicians or qualified health care providers and administered as needed (PRN) for the child.

(g) The MAR must include:

(A) The name of the child in foster care;

(B) A transcription of the written physician's or licensed health practitioner's order including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) A transcription of the printed instructions from the package for topical medications and treatments without a physician's order;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN medication was administered;

(H) Documented effectiveness of any PRN medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

(J) Any known allergy or adverse drug reactions and procedures that maintain and protect the physical health of the child placed in the foster home.

(h) Any errors in the MAR must be corrected by circling the error and then writing on the back of the MAR what the error was and why.

(i) Treatments, medication, therapies, and specialized diets must be documented on the MAR when not used or applied according to the order.

(j) SELF-ADMINISTRATION OF MEDICATION. For any child who is self-administering medication, the foster provider must:

(A) Have documentation that a training program was initiated with approval of the child's ISP team or that training for the child was unnecessary;

(B) Have a training program that provides for retraining when there is a change in dosage, medication, and time of delivery;

(C) Provide for an annual review, at a minimum as part of the ISP process, upon completion of the training program;

(D) Assure that the child is able to handle his or her own medication regime;

(E) Keep medications stored in a locked area inaccessible to others; and

(F) Maintain written documentation of all training in the child's medical record.

(k) The foster provider may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a licensed medical professional.

(l) Any medication that is used with the intent to alter behavior of a child with a developmental disability must be documented on the ISP.

(m) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the foster provider must obtain a signed balancing test from the prescribing health care provider using the Department's Balancing Test Form. Foster providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed as well as any side effects observed.

(n) PRN prescribed psychotropic medication is prohibited.

(o) A mental health assessment by a qualified mental health professional or licensed medical professional must be completed, except as noted in subsection (A) of this section, prior to the administration of a new medication for more than one psychotropic or any antipsychotic medication to a child in foster care.

(A) A mental health assessment is not required in the following situations:

(i) In a case of urgent medical need;

(ii) For a substitution of a current medication within the same class; or

(iii) A medication order given prior to a medical procedure; or

(B) When a mental health assessment is required, the foster provider:

(i) Must notify the DHS-CW caseworker when the child is in legal custody of DHS-CW worker; or

(ii) Shall arrange for a mental health assessment when the child is a voluntary care placement.

(C) The mental health assessment:

(i) Must have been completed within three months prior to the prescription; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Whenever possible, information from the mental health assessment must be communicated to the licensed medical professional prior to the issuance of a prescription for psychotropic medication.

(p) Within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for the child in foster care, the foster provider must notify:

(A) The child's parent when the parent retains legal guardianship;

(B) The child's family member or the person who has legal guardianship; or

(C) DHS-CW when DHS-CW is the legal guardian of the child; and

(D) The CDDP services coordinator.

(q) The notification from the foster provider to the legal guardian and the CDDP services coordinator must contain:

(A) The name of the prescribing physician, or qualified health care provider;

(B) The name of the medication;

(C) The dosage, any change of dosage or suspension, or discontinuation of the current psychotropic medication;

(D) The dosage administration schedule prescribed; and

(E) The reason the medication was prescribed.

(r) The foster provider must get a written informed consent prior to filling a prescription for any new psychotropic medication except in a case of urgent medical need from DHS-CW when DHS-CW is the legal guardian.

(s) The foster provider shall cooperate as requested, when a review of psychotropic medications is indicated.

(10) DIRECT NURSING SERVICES.

(a) When direct nursing services are provided to a child the foster provider must:

(A) Coordinate with the nurse and the ISP team to ensure that the services being provided are sufficient to meet the child's health needs; and

(B) Implement the Nursing Care Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(b) When nursing tasks are delegated, they must be delegated by a licensed registered nurse in accordance with OAR chapter 851, division 047.

(11) CHILD RECORDS.

(a) GENERAL INFORMATION OR SUMMARY RECORD. The provider must maintain a record for each child in the home. The record must include:

(A) The child's name, date of entry into the foster home, date of birth, gender, religious preference, and guardianship status;

(B) The names, addresses, and telephone numbers of the child's guardian, family, advocate, or other significant person;

(C) The name, address, and telephone number of the child's preferred primary health provider, designated back up health care provider and clinic, dentist, preferred hospital, medical card number and any private insurance information, and Oregon Health Plan choice;

(D) The name, address, and telephone number of the child's school program; and

(E) The name, address, and telephone number of the CDDP services coordinator and representatives of other agencies providing services to the child.

(b) EMERGENCY INFORMATION. The foster provider must maintain emergency information for each child receiving foster care services in

the child foster home. The emergency information must be kept current and must include:

(A) The child's name;

(B) The child's address and telephone number;

(C) The child's physical description which may include a picture and the date it was taken, and identification of:

(i) The child's race, gender, height, weight range, hair and eye color; and

(ii) Any other identifying characteristics that may assist in identifying the child should the need arise, such as marks or scars, tattoos, or body piercing.

(D) Information on the child's abilities and characteristics including:

(i) How the child communicates;

(ii) The language the child uses or understands;

(iii) The ability of the child to know how to take care of bodily functions; and

(iv) Any additional information that could assist a person not familiar with the child to understand what the child can do for him or herself.

(E) The child's health support needs including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person would need to know when taking care of the child;

(iv) Special dietary or nutritional needs such as requirements around textures or consistency of foods and fluids;

(v) Food or fluid limitations, due to allergies, diagnosis, or medications the child is taking that may be an aspiration risk or other risk for the child;

(vi) Additional special requirements the child has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the child;

(vii) Physical limitations that may affect the child's ability to communicate, respond for instructions, or follow directions;

(viii) Specialized equipment needed for mobility, positioning, or other health related needs;

(ix) The child's emotional and behavioral support needs including:

(I) Mental health or behavioral diagnosis and the behaviors displayed by the child; and

(II) Approaches to use when supporting the child to minimize emotional and physical outbursts.

(x) Any court ordered or guardian authorized contacts or limitations;

(xi) The child's supervisions requirements and why; and

(xii) Any additional pertinent information the provider has that may assist in the care and support of the child should a natural or man-made disaster occur.

(c) EMERGENCY PLANNING. The foster provider must post emergency telephone numbers in close proximity to all phones utilized by the foster provider or substitute caregivers. The posted emergency telephone numbers must include:

(A) Telephone numbers of the local fire, police department, and ambulance service if not served by a 911 emergency services; and

(B) The telephone number of any emergency physician and additional persons to be contacted in the case of an emergency.

(d) WRITTEN EMERGENCY PLAN.

(A) Foster providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all children in foster care in the event of an emergency or disaster. The Emergency Plan must:

(i) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the provider's and alternative caregiver's responsibilities.

(ii) Consider the needs of the child and address all natural and human-caused events identified as a significant risk for the home such as a pandemic or an earthquake.

(iii) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place, when unable to relocate, for a minimum of three days under the following conditions:

(I) Extended utility outage;

(II) No running water;

(III) Inability to replace food supplies; and

(IV) Alternative caregiver is unable provide respite or additional support and care.

(iv) Include provisions for evacuation and relocation that identifies:

(I) The duties of the alternative caregivers during evacuation, transporting, and housing of the child including instructions to notify the child's parent or legal guardian, the Department or designee, the CDDP services coordinator, and DHS-CW as applicable, of the plan to evacuate or the evacuation of the home as soon as the emergency or disaster reasonably allows;

(II) The method and source of transportation;

(III) Planned relocation sites that are reasonably anticipated to meet the needs of the child;

(IV) A method that provides persons unknown to the child the ability to identify each child by the child's name, and to identify the name of the child's supporting provider; and

(V) A method for tracking and reporting to the Department or the Department's designee and the local CDDP, the physical location of each child in foster care until a different entity resumes responsibility for the child,

(v) Address the needs of the child including provisions to provide:

(I) Immediate and continued access to medical treatment, information necessary to obtain care, treatment, food, and fluids for the child, during and after an evacuation and relocation;

(II) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(III) Behavior support needs anticipated during an emergency; and

(IV) The supports needed to meet the life-sustaining and safety needs of the child.

(B) The foster provider must provide and document all training to alternative caregivers regarding their responsibilities for implementing the emergency plan.

(C) The foster provider must re-evaluate and revise the Emergency Plan at least annually or when there is a significant change in the home.

(D) The foster provider must complete the Emergency Plan Summary, on the form supplied by the Department, and must send it to the Department annually and upon change of licensee or location of the child foster home.

(e) INDIVIDUAL SUPPORT PLAN (ISP). Within 60 days of placement, the child's ISP must be prepared by the ISP team and, at a minimum, updated annually.

(A) The foster provider must participate with the ISP team in the development and implementation of the ISP to address each child's behavior, medical, social, financial, safety, and other support needs.

(B) Prior to or upon entry to or exit from the foster home, the foster provider must participate in the development and implementation of a Transition Plan for the child.

(i) The Transition Plan must include a summary of the services necessary to facilitate the adjustment of the child to the foster home or after care plan; and

(ii) Identify the supports necessary to ensure health, safety, and any assessments and consultations needed for ISP development.

(f) FINANCIAL RECORDS.

(A) The foster provider must maintain a separate financial record for each child. Errors must be corrected with a single strike through and initialed by the person making the correction. The financial record must include:

(i) The date, amount, and source of all income received on behalf of the child;

(ii) The room and board fee that is paid to the provider at the beginning of each month;

(iii) The date, amounts, and purpose of funds disbursed on behalf of the child; and

(iv) The signature of the person making the entry.

(B) Any single transaction over $25 purchased with the child's personal funds, unless otherwise indicated in the child's ISP, must be documented including receipts in the child's financial record.

(C) The child's ISP team may address how the child's personal spending money shall be managed.

(D) If the child has a separate commercial bank account, records from that account must be maintained with the financial record.

(E) The child's personal funds must be maintained in a safe manner and separate from other members of the household funds.

(F) Misuse of funds may be cause for suspension, revocation, or denial of renewal of the child foster home certificate.

(g) PERSONAL PROPERTY RECORD.

(A) The foster provider must maintain a written record of each child's property of monetary value of more than $25 or that has significant personal value to the child, parent, or guardian, or as determined by the ISP team. Errors must be corrected with a single strike through and initialed by the person making the correction.

(B) Personal property records are not required for children who have a court approved Permanent Foster Care contract agreement unless requested by the child's guardian.

(C) The personal property record must include:

(i) The description and identifying number, if any;

(ii) The date when the child brought in the personal property or made a new purchase;

(iii) The date and reason for the removal from the record; and

(iv) The signature of the person making the entry.

(h) EDUCATIONAL RECORDS. The foster provider must maintain the following educational records when available:

(A) The child's report cards;

(B) Any reports received from the teacher or the school;

(C) Any evaluations received as a result of educational testing or assessment; and

(D) Disciplinary reports regarding the child.

(i) Child records must be available to representatives of the Department, the certifier, and DHS-CW conducting inspections or investigations, as well as to the child, if appropriate, and the guardian, or other legally authorized persons.

(j) Child records must be kept for a period of three years. If a child moves or the foster home closes, copies of pertinent information must be transferred to the child's new home.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0190, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0200

Environmental Standards

(1) GENERAL CONDITIONS.

(a) The buildings and furnishings must be clean and in good repair and grounds must be maintained.

(b) Walls, ceilings, windows, and floors must be of such character to permit frequent washing, cleaning, or painting.

(c) There must be no accumulation of garbage, debris, or rubbish.

(d) The home must have a safe, properly installed, maintained, and operational heating system. Areas of the home used by the child in foster care must be maintained at normal comfort range during the day and during sleeping hours. During times of extreme summer heat, the provider must make reasonable effort to make the child comfortable using available ventilation, fans, or air-conditioning.

(2) EXTERIOR ENVIRONMENT.

(a) The premises must be free from objects, materials, and conditions that constitute a danger to the occupants.

(b) Swimming pools, wading pools, ponds, hot tubs, and trampolines must be maintained to assure safety, kept in clean condition, equipped with sufficient safety barriers or devices to prevent injury, and used by a child in foster care only under direct supervision by the provider or approved alternate caregiver.

(c) The home must have a safe outdoor play area on the property or within reasonable walking distance.

(3) INTERIOR ENVIRONMENT.

(a) KITCHEN.

(A) Equipment necessary for the safe preparation, storage, serving, and cleanup of meals must be available and kept in working and sanitary condition.

(B) Meals must be prepared in a safe and sanitary manner that minimizes the possibility of food poisoning or food-borne illness.

(C) If the washer and dryer are located in the kitchen or dining room area, soiled linens and clothing must be stored in containers in an area separate from food and food storage prior to laundering.

(b) DINING AREA. The home must have a dining area so the child in foster care may eat together with the foster family.

(c) LIVING OR FAMILY ROOM. The home must have sufficient living or family room space that is furnished and accessible to all members of the family, including the child in foster care.

(d) BEDROOMS. Bedrooms used by the child in foster care must:

(A) Have adequate space for the age, size, and specific needs of each child;

(B) Be finished and attached to the house, have walls or partitions of standard construction that go from floor to ceiling, and have a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(C) Have windows that open, provide sufficient natural light, and ventilation with window coverings that take into consideration the safety, care needs, and privacy of the child;

(D) Have no more than four children to a bedroom;

(E) Have safe, age appropriate furnishings that are in good repair provided for each child, including:

(i) A bed or crib with a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, and a water proof mattress cover if the child is incontinent;

(ii) A private dresser or similar storage area for personal belongings that is readily accessible to the child;

(iii) A closet or similar storage area for clothing that is readily accessible to the child; and

(iv) An adequate supply of clean bed linens, blankets, and pillows. Bed linens are to be properly fitting and provided for each child's bed.

(F) Be on the ground level for a child who is non-ambulatory or has impaired mobility;

(G) Provide flexibility in the decoration for the personal tastes and expressions of the child placed in the provider's home;

(H) Be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies or be equipped with a working monitor;

(I) Have doors that do not lock;

(J) Have no three-tier bunk beds in bedrooms occupied by a child in foster care; and

(K) Not be located on the third floor or higher from the ground level.

(e) A child of the foster provider may not be required to sleep in a room also used for another purpose in order to accommodate a child in foster care.

(f) The foster provider may not permit the following sleeping arrangements for a child placed in their home:

(A) Children of different sexes in the same room when either child is over the age of five years of age; and

(B) Children over the age of 12 months sharing a room with an adult.

(g) BATHROOMS.

(A) Bathrooms must have:

(i) Tubs or showers, toilets, and sinks operable and in good repair with hot and cold water;

(ii) A sink located near each toilet;

(iii) At least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(iv) Hot and cold water in sufficient supply to meet the needs of the child for personal hygiene. Hot water temperature sources for bathing and cleaning areas that are accessible by the child in foster care may not exceed 120 degrees F;

(v) Grab bars and non-slip floor surfaces for toilets, tubs, or showers for the child's safety as necessary for the child's care needs; and

(vi) Barrier-free access to toilet and bathing facilities with appropriate fixtures for a child who utilizes a wheel chair or other mechanical equipment for ambulation. Barrier free must be appropriate for the non-ambulatory child's needs for maintaining good personal hygiene.

(B) The foster provider must provide each child with the appropriate personal hygiene and grooming items that meet each child's specific needs and minimize the spread of communicable disease.

(C) Window coverings in bathrooms must take into consideration the safety, care needs, and privacy of the child.

(4) GENERAL SAFETY.

(a) The foster provider must protect the child from safety hazards.

(b) Stairways must be equipped with handrails.

(c) A functioning light must be provided in each room and stairway.

(d) In homes with a child in foster care three years of age or less, or a child with impaired mobility, the stairways must be protected with a gate or door.

(e) Hot water heaters must be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(f) Adequate safeguards must be taken to protect a child who may be at risk for injury from electrical outlets, extension cords, and heat-producing devices.

(g) The foster home must have operable phone service at all times that is available to all persons in the foster home, including when there are power outages. The home must have emergency phone numbers readily accessible and in close proximity to the phone.

(h) The foster provider must store all medications, poisonous chemicals, and cleaning materials in a way that prevents access by a child.

(i) The foster provider must restrict a child's access to potentially dangerous animals. Only domestic animals may be kept as pets. Pets must be properly cared for and supervised.

(j) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by local ordinances must be made available to the Department upon request.

(k) The foster provider must take appropriate measures to keep the house and premises free of rodents and insects.

(l) To protect the safety of a child in foster care, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the child.

(m) The foster provider must have first aid supplies in the home in a designated place easily accessible to adults.

(n) There must be emergency access to any room that has a lock.

(o) An operable flashlight, at least one per floor, must be readily available in case of emergency.

(p) House or mailbox numbers must be clearly visible and easy to read for easy identification by emergency vehicles.

(q) Use of video monitors must only be used as indicated in the ISP or BSP.

(5) FIRE SAFETY.

(a) Smoke alarms must be installed in accordance with manufacturer's instructions, equipped with a device that warns of low battery, and maintained to function properly.

(A) A smoke alarm must be installed in each bedroom, adjacent hallways leading to the bedrooms, common living areas, basements, and at the top of every stairway in multi-story homes.

(B) Ceiling placement of smoke alarms is recommended. If wall-mounted, smoke alarms must be mounted as per the manufacturer's instructions.

(b) At least one fire extinguisher, minimally rated 2:A:10:B:C, must be visible and readily accessible on each floor, including basements. A qualified professional who is well versed in fire extinguisher maintenance must inspect every fire extinguisher at least once per year. All recharging and hydrostatic testing must be completed by a qualified entity properly trained and equipped for this purpose.

(c) Use of space heaters must be limited to only electric space heaters equipped with tip-over protection. Space heaters must be plugged directly into the wall. Extension cords may not be used with space heaters. Freestanding kerosene, propane, or liquid fuel space heaters may not be used in the foster home.

(d) An Emergency Evacuation Plan must be developed, posted, and rehearsed at least once every 90 days with at least one drill practice per year occurring during sleeping hours. Alternate caregivers and other staff must be familiar with the Emergency Evacuation Plan and a new child placed in foster care must be familiar with the Emergency Evacuation Plan within 24 hours. Fire drill records must be retained for one year.

(A) Fire drill evacuation rehearsal must document the date, time for full evacuation, location of proposed fire, and names of all persons participating in the evacuation rehearsal.

(B) The foster provider must be able to demonstrate the ability to evacuate all children in foster care from the home within three minutes.

(e) Foster homes must have two unrestricted exits in case of fire. A sliding door or window that may be used to evacuate a child may be considered a usable exit.

(f) Barred windows or doors used for possible exit in case of fire must be fitted with operable quick release mechanisms.

(g) Every bedroom used by a child in foster care must have at least one operable window, of a size that allows safe rescue, with safe and direct exit to the ground, or a door for secondary means of escape or rescue.

(h) All external and inside doors must have simple hardware with an obvious method of operation that allows for safe evacuation from the home. A home with a child that is known to leave their place of residence without permission must have a functional and activated alarm system to alert the foster provider.

(i) Fireplaces and wood stoves must include secure barriers to keep a child safe from potential injury and away from exposed heat sources.

(j) Solid or other fuel-burning appliances, stoves, or fireplaces must be installed according to manufacturer's specifications and under permit, where applicable. All applicants applying for a new child foster home certificate after July 1, 2007 must have at least one carbon monoxide sensor installed in the home in accordance with manufacturer's instructions if the home has solid or other fuel-burning appliances, stoves, or fireplaces. All foster providers certified prior to July 1, 2007 and moving to a new location that uses solid or other fuel-burning appliances, stoves, or fireplaces, must install a carbon monoxide sensor in the home in accordance with manufacturer's instructions prior to being certified at the new location.

(k) Chimneys must be inspected at the time of initial certification and if necessary the chimney must be cleaned. Chimneys must be inspected annually unless the fireplace and or solid fuel-burning appliance was not used through the certification period and may not be used in the future. Required annual chimney inspections must be made available to the certifying agency during the certification renewal process.

(l) A signed statement by the foster provider and certifying agency assuring that the fireplace, or solid fuel-burning appliance, or both may not be in use must be submitted to the Department with the renewal application if a chimney inspection is not completed.

(m) Flammable and combustible materials must be stored away from any heat source.

(6) SANITATION AND HEALTH.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, the water source must be tested for coliform bacteria by a certified agent yearly and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) All plumbing must be kept in good working order. If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, and removed weekly.

(d) SMOKING.

(A) The foster provider may not provide tobacco products in any form to a child under the age of 18 placed in their home.

(B) A child in foster care may not be exposed to second hand smoke in the foster home or when being transported.

(7) TRANSPORTATION SAFETY.

(a) The foster provider must ensure that safe transportation is available for children to access schools, recreation, churches, scheduled medical care, community facilities, and urgent care.

(b) If there is not a licensed driver and vehicle at all times there must be a plan for urgent and routine transportation.

(c) The foster provider must maintain all vehicles used to transport a child in a safe operating condition and must ensure that a first aid kit is in each vehicle.

(d) All motor vehicles owned by the foster provider and used for transporting a child must be insured to include liability.

(e) Only licensed adult drivers may transport a child in foster care in a motor vehicle. The motor vehicle must be insured to include liability.

(f) When transporting a child in foster care, the driver must ensure that the child uses seat belts or appropriate safety seats. Car seats or seat belts must be used for transporting a child in accordance with the Department of Transportation under ORS 815.055.

Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0200, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0210
Variance

(1) The Department may grant a variance to these rules based upon demonstration by the foster provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of the child.

(2) The foster provider requesting a variance must submit to the certifying agency, a Department variance request form that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to a child's services, evidence that the variance is consistent with a currently approved ISP.

(3) The certifying agency must forward the signed variance request form to the Department within 30 days of receipt of the request indicating the certifying agency's position on the proposed variance.

(4) The Department's director of the Department may approve or deny the request for a variance.

(5) The Department shall notify the foster provider and the certifying agency of the decision. The Department shall send this notice within 30 cal-

endar days of receipt of the request with a copy to other relevant Department programs or offices.

(6) Any grievance of a denial for a variance request must be made in writing within 30 days to the Department's director of the Department with a copy sent to the certifying agency. The Department director's decision is final.

(7) The Department shall determine the duration of the variance.

(8) Granting a variance does not set a precedent that must be followed by the child placing agency when evaluating subsequent requests for variances.

(9) The foster provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0210, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0220

Inactive Referral Status; Denial, Suspension, Revocation, Refusal to Renew

(1) INACTIVE REFERRAL STATUS. The Department may require that a foster provider go on inactive referral status. Inactive referral status is a period, not to exceed 24 months or beyond the duration of the foster provider's current certificate, when during that time an agency may not refer additional children to the home and the provider may not accept additional children. The foster provider may request to be placed on inactive referral status. The certifying agency may recommend that the Department initiate inactive referral status.

(a) The Department may place a foster provider on inactive referral status for reasons, including but not limited to the following:

(A) The Department or DHS-CW is currently assessing an allegation of abuse in the home;

(B) The special needs of the child currently in the home require so much of the foster provider's care and attention that additional children may not be placed in the home;

(C) The foster provider has failed to meet individualized training requirements or the Department has asked the foster provider to obtain additional training to enhance his or her skill in caring for the child placed in the home; or

(D) The family or members of the household are experiencing significant family or life stress or changes in physical or mental health conditions that may be impairing their ability to provide care, including but not limited to:

(i) Separation or divorce and relationship conflicts;

(ii) Marriage;

(iii) Death;

(iv) Birth of a child;

(v) Adoption;

(vi) Employment difficulties;

(vii) Relocation;

(viii) Law violation; or

(ix) Significant changes in the care needs of the foster provider's own family members (children or adults).

(b) The Department shall notify the foster provider immediately upon placing them on inactive referral.

(c) Within 30 days of initiating inactive referral status, the Department shall send a letter to the foster provider that confirms the inactive status, states the reason for the status, and the length of inactive referral status.

(d) When the foster provider initiates inactive referral status, the inactive status ends at the request of the foster provider and when the Department has determined the conditions that warranted the inactive referral status have been resolved.

(A) There must be no conditions in the home that compromise the safety of the child already placed in the home.

(B) If applicable, a mutually agreed upon plan must be developed to address the issues prior to resuming active status.

(C) The foster provider must be in compliance with all certification rules, including training requirements, prior to a return to active status.

(2) DENIAL, SUSPENSION, REVOCATION, REFUSAL TO RENEW.

(a) The Department shall deny, suspend, revoke, or refuse to renew a child foster care certificate where it finds there has been substantial failure to comply with these rules.

(b) Failure to disclose requested information on the application or providing falsified, incomplete, or incorrect information on the application shall constitute grounds for denial or revocation of the certificate.

(c) The Department shall deny, suspend, revoke, or refuse to renew a certificate if the foster provider fails to submit a plan of correction, implement a plan of correction, or comply with a final order of the Department.

(d) Failure to comply with OAR 411-346-0200(5) may constitute grounds for denial, revocation, or refusal to renew.

(e) The Department may deny, suspend, revoke, or refuse to renew the child foster home certificate where imminent danger to health or safety of a child exists, including any founded report or substantiated abuse.

(f) The Department shall deny, suspend, revoke, or refuse to renew a certificate if the foster provider has been convicted of any crime that would have resulted in an unacceptable background check as defined in OAR 407-007-0210 upon certification.

(g) Suspension shall result in the removal of a child placed in the foster home and no placements shall be made during the period of suspension.

(h) The applicant or foster provider whose certificate has been denied or revoked may not reapply for certification for five years after the date of denial or revocation.

(i) The Department shall provide the applicant or the foster provider a written notice of denial, suspension, or revocation that states the reason for such action.

(j) Such revocation, suspension, or denial shall be done in accordance with the rules of the Department and ORS chapter 183 that govern contested cases.

Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0220, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

411-346-0230

Appeals

(1) Upon written notice of denial, suspension, revocation, or non-renewal of a certificate from the Department, an applicant or foster provider may request a contested case hearing to appeal the decision pursuant to ORS 183.413 to 183.470.

(2) The written request must be submitted within 10 days of the denial, suspension, revocation, or non-renewal notification date and must specifically state the reasons for the appeal.

Stat. Auth.: ORS 409.050 & 443.835
Stats. Implemented: ORS 430.215, 443.830, 443.835
Hist.: MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01cert. ef. 5-28-01; Renumbered from 309-046-0240, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13

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Department of Human Services, Child Welfare Programs
Chapter 413

Rule Caption: Changing OARs affecting Child Welfare programs
Adm. Order No.: CWP 11-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 12-31-13
Notice Publication Date:
Rules Renumbered: 413-100-0580 to 413-100-0455, 413-100-0590 to 413-100-0445
Subject: The Department of Human Services, Office of Child Welfare Programs is renumbering two rules related to Title XIX and General Assistance Medical Eligibility. The renumbering of these rules does not involve substantive changes.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-100-0445

Youth in Detention

Youth held in a county or state juvenile detention facility are ineligible for Title XIX or GA medical coverage. Payment is made for emergency medical services only for a child in the Department's custody. The payment is made from the field office's "Other Medical" budget. The Medical Assistance Resource Coordinator provides assistance in determining whether a payment may be made.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Renumbered from 413-100-0590 by CWP 11-2013, f. & cert. ef. 12-31-13

413-100-0455
Title XIX Eligibility Under COBRA for Out-of-State Placements

(1) The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides for Title XIX coverage in the state of residence for children receiving Title IV-E foster care payments.

(2) A child receiving Title IV-E foster care payments from another state who moves to Oregon must be evaluated for eligibility for Medicaid. A child in the custody of another state is not eligible to receive a Medical Care Identification (medical card). A child who is found eligible for benefits under Title IV-E in Oregon and then moves to another state is eligible for Title XIX in the state of residence. The medical card is issued by the state of residence.

(3) A child who receives SSI payments who moves outside of Oregon is eligible for Title XIX in the state of residence.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Renumbered from 413-100-0580 by CWP 11-2013, f. & cert. ef. 12-31-13

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Rule Caption: Changing OARs affecting Child Welfare programs
Adm. Order No.: CWP 12-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Amended: 413-010-0000, 413-010-0010, 413-010-0030, 413-010-0035, 413-010-0045, 413-010-0055, 413-010-0065, 413-010-0068, 413-010-0075
Subject: These rules about confidentiality of client information are being amended to implement changes made by Senate Bills (SB) 622 and 623 (2013), to update the rules, and keep them consistent with other Department wide rules that apply to child welfare programs. SB 622 relating to juvenile court proceedings clarifies the records that are contained in juvenile court files, the confidential nature of those records, and the rights of access to those records. SB 623 relating to adoption proceedings allows the Department to access, use, or disclose sealed adoption records in its possession without a court order for the purpose of providing adoption services or administering child welfare services. In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-010-0000
Purpose

The purpose of these rules (OAR 413-010-0000 to 413-010-0075) is to describe circumstances in which the Department may and may not disclose client information without a court order.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 409.225 & 419A.255
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0010
Definitions

As used in these rules (OAR 413-010-0000 to 413-010-0075):

(1) "Adoption records, papers, and files" means all documents, writings, information, exhibits and other filings retained in the court's record of an adoption case pursuant to Oregon Laws 2013, Chapter 346, Section 6 (SB 623), and includes but is not limited to the Adoption Summary and Segregated Information Statement described in OL 2013, Ch. 346, Sec. 5 and exhibits attached to the statement, the petition and exhibits attached to the petition pursuant to OL 2013, Ch. 346, Sec. 4, and any other motion, judgment, document, writing, information, exhibit or filing retained in the court's record of the adoption case.

(2) "Adult" means a person 18 years of age or older.

(3) "Child" means a person under 18 years of age.

(4) "Client" means a person to whom the Department provides services.

(5) "Client file" means an electronic or paper file that the Department marks with the names of one or more clients, into which the Department places all of the named clients' records. A "client file" may contain confidential information about other clients and persons who are not clients.

(6) "Client information" means confidential information about a client or identified with a client.

(7) "Client record " means any record, which includes client information and is created by, requested by, or held by the Department. A "client record" does not include general information, policy statements, statistical reports or similar compilations of data, which are not identified with an individual child, family or other recipient of services.

(8) "Confidential information" means information that is unavailable to the public by statute, rule, or court order.

(9) "Court Appointed Special Advocate (CASA)" means a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419A.170.

(10) "Department" means the Department of Human Services, Child Welfare.

(11) "Disclose" means reveal or provide client information outside of the Department of Human Services to a person, agency, organization, or other entity. Disclosing includes, but is not limited to:

(a) Showing or providing a client record or copy of a client record; and

(b) Orally transmitting client information.

(12) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(13) "Legally emancipated " means a person under 18 years of age who is married or has been emancipated by the court in accordance with the requirements of ORS 419B.558.

(14) "Record" means a record, file, paper, or communication and includes but is not limited to any writing or recording of information including automated records and printouts, handwriting, typewriting, printing, photostating, photographing, magnetic tapes, videotapes or other documents. "Record" includes records that are in electronic form.

(15) "Service" means assistance that the Department provides clients.

(16) "Voluntary services" means services that the Department provides at the request of a person or persons and there is no open and related juvenile court proceeding.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.225, 419A.170 & 419A.255
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0030
Protection of Information

In the interest of family privacy and to protect children, families, and other recipients of services, except as provided by Oregon statutes and these rules (OAR 413-010-0000 to 413-010-0075):

(1) Client information is confidential.

(2) Client records are not available for public inspection.

(3) Oregon statutes, OAR 407-014, and these rules regulate the Department's disclosure of client information by prohibiting disclosure of some client information, mandating disclosure of some information, and giving the Department discretion to disclose some information, as provided in OAR 413-010-0035, 413-010-0045, 413-010-0055, 413-010-0065, and 407-014.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.010, 409.225, 419A.255 & 419B.035
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0035
Prohibited Disclosures

(1) If a court order or a specific statute requires the Department to disclose information that this rule protects, the Department must disclose the information.

(2) The Department may not disclose client information:

(a) For purposes not directly connected with the administration of child welfare laws; or

(b) When disclosure is not required nor authorized by:

(A) ORS 419B.035 (governing confidentiality of child abuse records), set out in section (11) of this rule;

(B) ORS 419A.255 (governing confidentiality of juvenile court records) set out in section (12) of this rule; or

(C) Another statute.

(3) The Department may not disclose investigatory information compiled for criminal law purposes, including the record of an arrest or a report of a crime, unless law enforcement explicitly authorizes the Department to disclose such information.

(4) Department employees may not disclose the information described in section (3) of this rule unless authorized to do so by the branch manager or designee.

(5) A person authorized to review client records may not review the complete case file if the complete file contains confidential information about other persons, including, but not limited to other clients, ex-spouses, battering partners, housemates, and half-siblings unless the other person provides written consent that meets the requirements of OAR 413-010-0045(2)(a).

(6) The Department may not disclose the records of a patient at a drug and alcohol abuse treatment facility to any person without the consent of the patient.

(7) The Department may not disclose client information contained in a record sealed by a court order of expunction or any part of the expunged record.

(8) Adoption Records, Papers, and Files.

(a) The Department may not access, use, or disclose adoption records, papers, and files in its possession except as provided in OL 2013, Ch. 346, Sec. 6.

(b) Subject to subsection (c) of this section, the Department may, without a court order, access, use, or disclose adoption records, papers, and files in its possession for the purpose of providing adoption services or administering child welfare services that the Department is authorized to provide under federal or state law.

(c) The Child Permanency or Post-Adoption Program Manager, or their designee, must authorize access to, use of, or disclosure of adoption records, papers, and files by other Department employees.

(9) Adoption Assistance Records. Records and information obtained or created by the Department for the purposes of determining eligibility or making payment for adoption assistance are client records and may only be accessed, used, and disclosed for purposes directly connected with the administration of the adoption assistance program or child welfare laws in accordance with OAR 413-010-0000 to 413-010-0075.

(10) Reporter of Abuse. The identity of the person making a report of suspected child abuse, and any identifying information about the reporting person, must be removed from the records or shielded from view before records are viewed or copied. The name, address or other identifying information may only be disclosed to a law enforcement officer or district attorney in order to complete an investigation report of child abuse.

(11) Reports and Records Compiled Pursuant to the Child Abuse Reporting Law.

(a) Each report of suspected child abuse must be immediately reported to a law enforcement agency.

(b) The Department must assist in the protection of a child who is believed to have been abused or neglected by providing information as needed to:

(A) The juvenile court;

(B) The district attorney;

(C) Any law enforcement agency or a child abuse registry in another state investigating a child abuse report;

(D) Members of a child protection team or consultants involved in assessing whether or not abuse occurred and determining appropriate treatment for the child and family;

(E) A physician who is examining a child or providing care or treatment, and needs information about the child's history of abuse; and

(F) A non-abusing parent, foster parent, or other non-abusing person responsible for the care of the child.

(c) A report, record, or findings of an assessment of child abuse may not be disclosed until the assessment is completed, except for the reasons stated in paragraphs (e)(A) and (B) of this section. An assessment will not be considered completed while either a protective service assessment or a related criminal investigation is in process. The Department determines when the protective service assessment is completed. The district attorney determines when a criminal investigation is completed.

(d) Records or findings of completed child abuse assessments must be released upon request to the following:

(A) Attorneys of record for the child or child's parent or guardian in a juvenile court proceeding for use in that proceeding; and

(B) A citizen review board established by the Department or by a juvenile court to review the status of children under the jurisdiction of the court for the purpose of completing a case review. Before providing information to a citizen review board, the Department must assure that the board has informed participants of their statutory responsibility to keep the information confidential, and will maintain records in an official, confidential file.

(e) Records or information from records of abuse and neglect assessments may be disclosed to other interested parties if the Department determines that disclosure to a person or organization is necessary to:

(A) Administer child welfare services and is in the best interests of the affected child. When disclosure is made for the administration of child welfare services, the Department will release only the information necessary to serve its purpose; and

(B) Prevent abuse and neglect, assess reports of abuse or neglect, or protect children from further abuse or neglect.

(12) Juvenile Court Records in Department Files.

(a) The Department may not disclose records and information in its possession that are also contained in the juvenile court's record of the case or supplemental confidential file, defined in subsections (b) and (c) of this section, except as provided in ORS 419A.255 and other federal and state confidentiality laws pertaining to client records.

(b) Record of the Case.

(A) The juvenile court's "record of the case", as defined in OL 2013, Ch. 417, Sec. 1 (SB 622), includes but is not limited to the summons, the petition, papers in the nature of pleadings, answers, motions, affidavits, and other papers filed with the court, orders and judgments, including supporting documentation, exhibits and materials offered as exhibits whether or not received in evidence, and other records listed in OL 2013, Ch. 417, Sec. 1.

(B) The record of the case is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.

(c) Supplemental Confidential File.

(A) The juvenile court's "supplemental confidential file", as defined in OL 2013, Ch. 417, Sec. 1, includes reports and other material relating to the child's history and prognosis, including but not limited to reports filed under ORS 419B.440, that are not or do not become part of the record of the case and are not offered or received as evidence in the case.

(B) The supplemental confidential file is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.

(C) The Department is entitled to copies of material maintained in the supplemental confidential file and if such material is obtained, the Department must ensure the confidentiality of that material as provided in ORS 419A.255.

(d) Reports and other materials relating to the child's history and prognosis in the record of the case or in the supplemental confidential file are privileged and except at the request of the child, are unavailable for public inspection but are open to inspection and copying as provided in ORS 419A.255.

(e) When the Department inspects or obtains copies of reports, materials, or documents pursuant to ORS 419A.255(4), the Department may not use or disclose the reports, materials, or documents except as provided in ORS 419A.255.

(13) Records Received from the Oregon Youth Authority or the Juvenile Department. The Department must preserve the confidentiality of reports and other materials it receives from the Oregon Youth Authority or the juvenile department relating to the child, ward, youth or youth offender's history and prognosis, as provided in ORS 419A.257.

Stat. Auth.: ORS 409.050, 418.005 & 418.340

Stats Implemented: ORS 409.010, 409.194, 409.225, 418.005, 419A.102, 419A.255, 419A.263, 419B.035, 432.420, OL 2013, Ch. 417, OL 2013, Ch. 346

Hist.: SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0045

Mandatory Disclosure

(1) The Department must disclose client information if disclosure is required by ORS 419A.255 or 419B.035.

(2) Unless a client record is exempt from disclosure under the Public Records Law, ORS 192.410 through 192.505, the Department must disclose the client record in the circumstances described below:

(a) If the client is 18 years or older or legally emancipated, the Department must disclose, upon request:

(A) The client's records to the client if no court order prohibits the disclosure; or

(B) The client's records to a third party if no court order prohibits the disclosure and the client has authorized the Department in writing to disclose the records to the third party.

(b) Upon the request of a child's parent or guardian, the Department must disclose a child's client records to the parent or guardian if the child is receiving voluntary Department services.

(c) Upon the request of a child's parent or guardian, the Department must disclose a child's client records to the parent or guardian if the child is or has been in the Department's custody unless:

(A) The child objects;

(B) Disclosure would be contrary to the best interests of any child; or

(C) Disclosure could be harmful to the person caring for the child, including, but not limited to, foster parents, treatment providers and relatives other than the child's parent or guardian.

(d) The Department must disclose a child's client record to the juvenile court in juvenile proceedings, including tribal proceedings regarding the child;

(e) The Department must disclose a child's client records to an attorney who identifies himself or herself as the child's attorney if the juvenile court confirms that he or she is the attorney of record in a juvenile proceeding.

(3) Information related to the Department's activities and responsibilities in child abuse or neglect cases. Upon request, the Director or the Director's designee must review the information related to the Department's activities and responsibilities:

(a) When child abuse or neglect causes the death or near death of a child or an adult is charged with a crime related to child abuse or neglect; and

(b) Unless the information is exempt from disclosure under other law, the Director or the Director's designee must determine an appropriate time for disclosing the information and that determination must depend on, among other things, the status of any child abuse or criminal investigations and the privacy interests of the victims.

(4) Disclosure to Court Appointed Special Advocate (CASA):

(a) Access to information. Upon presentation of the order of appointment by the court, a CASA, without the consent of the child or children or parents, may inspect and copy any records relating to the child or children involved in the case held by the following entities:

(A) The Department, the state courts, and any other agency, office or department of the state; and

(B) Hospital, school organization, division, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic.

(b) All records and information acquired or reviewed by a CASA during the course of official duties are confidential;

(c) When a CASA is also the guardian ad litem pursuant to federal law, this rule governs the guardian ad litem's access to information.

(5) If, in the professional judgment of the caseworker, information about a child indicates that the child presents a clear and immediate danger to another person or entity, the Department must disclose the information to the appropriate authority and to the person or entity in danger. The decision to release information in these circumstances will be made in consultation with a supervisor.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS Ch. 192.410–192.505, 409.225, 419A.170 & 419B.035
Hist.: SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0055
Mandatory Disclosure if in the Child's Best Interest

(1) Unless client information is exempt from disclosure under another provision of law, and if disclosure is in the child's best interest, the Department will disclose client information records to the following persons:

(a) Employees of the Department of Human Services to the extent necessary to perform their official duties, determine the child's or family's eligibility for services, or provide services to the child or family;

(b) The Division of Child Support of the Department of Justice, when information is needed in order to locate children or absent parents, and to establish support for children in substitute care; and

(c) Treatment providers, foster parents, adoptive parents, school officials or other persons providing services to the child or family to the extent that such disclosure is necessary to provide services to the child or family. Such services include, but are not limited to, those provided by foster parents, child care centers, private child caring agencies, treatment centers, Indian social service or child welfare agencies, physicians and other health care providers, mental health professionals, volunteers, student interns, and child protection teams.

(2) Sensitive Review Committee.

(a) The Director of the Department of Human Services (Director) may choose to convene, either on the Director's own motion or upon a request of the President of the Senate or the Speaker of the House, a sensitive review committee for the purpose of reviewing the actions of the Department, in order to improve the quality of and strengthen child welfare practice in future cases. If the Director convenes a committee at the request of the President or the Speaker, then the Director must submit the final written report containing the findings, conclusions, and recommendations of the committee to the President and the Speaker no more than 180 days after receiving the request from the President or the Speaker.

(b) Unless client information is exempt from disclosure under ORS Chapter 192 or another provision of law, and if disclosure is in the child's best interest, the Director or the Director's designee must direct disclosure of relevant client information to persons appointed to a sensitive review committee convened by the Director.

(A) Any record disclosed to the committee members must be kept confidential by the members of the committee and must be used only for the purpose for which the record was disclosed.

(B) Any records disclosed to the committee members must be returned to the Department upon completion of the review.

Stat. Auth.: ORS 409.050, 409.194 & 418.005
Stats. Implemented: ORS 409.010, 409.194, 409.225 & 418.005
Hist.: SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 17-2010(Temp), f. & cert. ef. 7-19-10 thru 1-15-11; CWP 24-2010, f. & cert. ef. 12-29-10; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0065
Discretionary Disclosure

(1) The Department may disclose client information when disclosure is required or authorized by:

(a) ORS 491B.035 (governing confidentiality of child abuse reports and records), set out in OAR 413-010-0035(11); or

(b) ORS 419A.255 (governing confidentiality of juvenile court records) set out in OAR 413-010-0035(12).

(2) The Department may disclose client information for purposes directly connected with the administration of child welfare laws including, but not limited to:

(a) Disclosure to employees of the Secretary of State's Office, the Department of Administrative Services, the Department of Health and Human Services, and the Department who require information to complete audits, program reviews and quality control;

(b) Disclosure to law enforcement officers and district attorneys' offices needing information for child abuse assessments, criminal investigations, civil and criminal proceedings connected with administering the agency's child welfare programs; and

(c) Disclosure to the public if a child in the Department's legal custody has been abducted or is missing and believed to be abducted, and is in danger of harm or a threat to the welfare of others. The Department may disclose limited information to the extent necessary to identify, locate, or apprehend the child, including the child's name, description, and that the child may pose a threat to the public or himself or herself.

(3) The Department may disclose general information including, but not limited to policy statements, statistical reports or similar compilations of data which are not identified with an individual child, family or other recipient of services, unless protected by other provisions of law.

(4) Presumed Waiver of Protection of ORS 409.225(1). The Department may disclose the information described in section (5) of this rule if the Director or the Director's designee determines that all of the following circumstances are present:

(a) An adult client is the subject of client information made confidential by ORS 409.225(1);

(b) The Public Records Law does not exempt the information from disclosure;

(c) The adult client has publicly revealed or caused to be revealed any significant part of the confidential information and thus is presumed to have voluntarily waived the confidentiality protection of ORS 409.225(1);

(d) Disclosure is in the best interest of the child; and

(e) Disclosure is necessary to the administration of the child welfare laws.

(5) If disclosure is authorized under section (4) of this rule, the Department may disclose information about the person making or causing the public disclosure, not already disclosed, but related to the information made public.

(6) Review of Department records for research purposes. The Director or the Director's designee may authorize a person or organization to review Department records for research purposes. The Department may not approve the request until the researcher has agreed, in writing, to maintain the confidentiality of individual clients, not to copy the Department records, and not to include identifying information about any client in the report or reports of the research.

(7) Investigation of Other Crime:

(a) Except as authorized by subsection (2)(b) of this rule, and ORS 409.225, Department employees may not disclose to law enforcement client information obtained from client records, conversations with clients or other sources if the employee or employees acquired the information because a person is or has been a client of the Department;

(b) A manager or the manager's designee may disclose to law enforcement a client's current address when:

(A) The law enforcement officer provides the name and social security number of the client; and

(B) The officer satisfactorily demonstrates that the client is a fugitive felon (as defined by the state), the location or apprehension of such felon is within the law officer's official duties, and the request is made in the proper exercise of those duties.

Stat. Auth.: ORS 418.005 & 419B.035
Stats. Implemented: ORS 409.225, 409B.230, 419A.225 & 419B.035
Hist.: SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0068
Disclosure of Information Exempt Under the Public Records Law

Unless required by court order or specific statute, the Department may not disclose information in a client file if the information is exempt under the Public Records Law.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 192.410–192.505 & 418.005
Hist.: SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0075
Disclosure Procedures

(1) The manager or the manager's designee must supervise access to records.

(2) The manager or manager's designee must approve in writing the disclosure or redisclosure of client information in the following circumstances:

(a) The Department currently is the child's legal custodian or guardian or the Department was the child's legal custodian or guardian when the Department authorized services;

(b) The Department currently is serving the child pursuant to an Interstate Compact or other interstate agreement; and

(c) The child is or was evaluated or provided services in conjunction with the Department assessment following a protective service report, regardless of the child's legal status at the time.

(3) The Department may require a reasonable period of time to prepare a client's record for review at the branch or disclosure by mail.

(4) The Department may require that a person who seeks to review client records, review the records at an appointed time.

(5) Except as provided in OAR 413-010-0065(6), (access to records for research purposes), a person authorized to review the Department record may copy the record.

(6) Any record disclosed must be kept confidential by the person to whom the record is disclosed and must be used only for the purpose for which disclosure was made.

(7) To redisclose lawfully, the person must obtain, before the redisclosure, the written consent of the branch manager or the branch manager's designee.

(8) All social service agencies, courts, foster parents, service providers (including medical providers), or agents of the Department providing services to the Department's client at the request of the agency are subject to the Oregon statutes and the Department rules governing disclosure of client information.

(9) The Department may not permit a person authorized to review a particular client's file to review the complete file if the file includes information about any other client. The Department must permit review of the particular client's records.

(10) When copies of confidential information are released, the material must be stamped: "Confidential not to be redisclosed".

(11) When confidential records and information are part of the record in an administrative hearing before the Department, the Department and all participants in the hearing must take all reasonable measures to maintain the confidentiality of the information.

Stat. Auth.: ORS 418.005 & 419B.035
Stats. Implemented: ORS 418.005 & 419A.255
Hist.: SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 18-2011, f. & cert. ef. 9-2-11; CWP 12-2013, f. 12-31-13, cert. ef. 1-1-14

Rule Caption: Changing OARs affecting Child Welfare programs
Adm. Order No.: CWP 13-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Adopted: 413-010-0185
Rules Amended: 413-010-0170, 413-010-0175, 413-010-0180
Subject: These rules about the rights of children and young adults are being changed to implement Senate Bill 123 (2013), which requires the Department to adopt rules establishing the Oregon Foster Children's Bill of Rights. The rule changes clarify the existing rights of every child and young adult in the Department's custody, and highlight the rights of children and young adults in substitute care. The rules also specify the Department's responsibilities to implement SB 123.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-010-0170
Purpose

The purpose of these rules, OAR 413-010-0170 to 413-010-0185, is to:

(1) Describe the rights and protection each child and young adult in the legal custody of the Department is entitled to receive from the Department; and

(2) Establish the Oregon Foster Children's Bill of Rights, as provided in Oregon Laws 2013, Chapter 515 (Senate Bill 123).

Stat. Auth.: ORS 418.005, OL 2013 Ch. 515
Stats. Implemented: ORS 418.005, 419B.343, OL 2013 Ch. 515
Hist.: SOSCF 6-1998, f. 2-10-98, cert. ef. 2-15-98; CWP 14-2009, f. & cert. ef. 11-3-09; CWP 13-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0175
Definitions

(1) "Case plan" means a written, goal oriented, and time limited individualized plan for the child and the child's family, developed by the Department and the parents or guardians, to achieve the child's safety, permanency, and well being.

(2) "Child" means a person under 18 years of age.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "Discipline" means a training process a family uses to help a child or young adult develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.

(5) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(6) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(7) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(8) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(9) "Young adult" means a person 18 through 20 years of age.

Stat. Auth.: ORS 418.005, OL 2013 Ch. 515
Stats. Implemented: ORS 418.005, OL 2013 Ch. 515
Hist.: CWP 14-2009, f. & cert. ef. 11-3-09; CWP 13-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0180
Rights of Children and Young Adults

(1) Every child and young adult in the legal custody of the Department has rights, including but not limited to the right:

(a) To be placed in the least restrictive environment that appropriately meets individual needs;

(b) To be provided basic needs such as adequate food, clothing, and shelter;

(c) To receive appropriate care, supervision, and discipline, and to be taught to act responsibly and respect the rights of others;

(d) To be provided routine and necessary medical, dental, and mental health care and treatment;

(e) To be provided with free and appropriate public education;

(f) To be protected from physical and sexual abuse, emotional abuse, neglect, and exploitation;

(g) To be provided services designed for reunification with the parent or guardian except when there is clear evidence that the parent or guardian may not protect the child's or young adult's welfare;

(h) To be provided services to develop a safe permanent alternative to the family, when family resources are not available;

(i) To be accorded the least restrictive legal status that is consistent with the need for protection, to have the Department present its position on best interests to the court, and to attend court hearings and speak directly to the judge;

(j) To receive respect, be nurtured, and attend activities in accordance with his or her background, religious heritage, race, and culture within reasonable guidelines as set by the case plan, the visitation plan, and the court;

(k) To visit and communicate with a parent or guardian, siblings, members of his or her family, and other significant people within reasonable guidelines as set by the case plan, the visitation plan, and the court;

(l) To be involved, in accordance with his or her age and ability and with the law, in making major decisions that affect his or her life, to participate in the development of his or her case plan, permanency plan, and comprehensive transition plan and to discuss his or her views about the plans with the judge;

(m) To receive encouragement and be afforded reasonable opportunities to participate in extracurricular, cultural, and personal enrichment activities consistent with his or her age and developmental level; and

(n) To earn and keep his or her own money and to receive guidance in managing resources to prepare him or her for living independently.

(2) Every child and young adult in the legal custody of the Department who is or was in substitute care also has the rights specified in Oregon Laws 2013, Chapter 515, Section 2 (Senate Bill 123).

(3) Children and young adults in the legal custody of the Department may have other rights not specified in this rule as appropriate to the child's or young adult's age and developmental stage.

Stat. Auth.: ORS 418.005, OL 2013 Ch. 515
Stats. Implemented: ORS 418.005, 419B.343, OL 2013 Ch. 515
Hist.: SOSCF 6-1998, f. 2-10-98, cert. ef. 2-15-98; CWP 14-2009, f. & cert. ef. 11-3-09; CWP 13-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0185
Department Responsibilities

(1) The Department will develop information and materials to be provided to children and young adults in the legal custody of the Department who are or were in substitute care regarding their rights under Oregon Laws 2013, Chapter 515, Section 2. The Department will review and update the information and materials as needed, and may develop other information and materials it determines will be helpful in informing children and young adults about their rights and how to assert and protect them.

(2) The Department will make training available to caseworkers and other employees who will provide the information and materials specified in section (1) to children and young adults, to ensure the information and materials are provided in a manner that is timely and appropriate to age and developmental stage.

(3) The Department will make training available to caseworkers and other employees about the Department's obligations under Oregon Laws 2013, Chapter 515, Section 2, to ensure the obligations are carried out in a manner that is timely and appropriate to age and developmental stage.

(4) The Department will develop information and materials and make training available to substitute caregivers regarding their obligations to ensure the children and young adults in their care are informed of their rights in a manner that is timely and appropriate to age and developmental stage.

(5) The Department will develop and publish a process for children and young adults in substitute care to make complaints regarding their care. The process will include a phone number that is available at all times.

Stat. Auth.: ORS 418.005, OL 2013 Ch. 515
Stats. Implemented: ORS 418.005, OL 2013 Ch. 515
Hist.: CWP 13-2013, f. 12-31-13, cert. ef. 1-1-14

Rule Caption: Changing OARs affecting Child Welfare programs
Adm. Order No.: CWP 14-2013
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Rules Amended: 413-010-0300, 413-010-0310, 413-010-0320, 413-010-0330, 413-010-0340, 413-070-0800, 413-070-0810, 413-070-0830, 413-070-0840, 413-070-0855, 413-070-0860, 413-070-0870, 413-070-0880
Subject: These rules about rights of relatives, visits, and other types of child and family contact are being changed as part of the implementation of House Bill 3249 (2013) relating to grandparent rights which (1) requires the Department to make diligent efforts to identify and obtain contact information for legal grandparents of a child in the Department's custody and give the grandparents notice of hearings concerning the child; (2) gives the grandparents the opportunity to be heard at hearing; and (3) provides that grandparents may ask for court-ordered visitation or other contact with the child. These rules are also being amended to clarify and update terminology and references.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-010-0300
Purpose

The Department recognizes the importance of preserving the family ties and relationships of a child or young adult who is placed in the legal custody of the Department. These rules, OAR 413-010-0300 to 413-010-0340, describe the rights of relatives and the responsibilities of the Department regarding involvement of a child or young adult's relatives in a child welfare case.

Stat. Auth.: ORS 109.119, 418.005
Stats. Implemented: ORS 109.119, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0310
Definition

The following definitions apply to OAR 413-010-0300 to 413-010-0340:

(1) "Child" means a person under 18 years of age.

(2) "Department" means the Department of Human Services, Child Welfare.

(3) "Indian child" means any unmarried person who is under 18 years of age and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(4) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(5) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with ORS 106.300 to 106.340.

(6) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the child or young adult's parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been

filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the child or young adult's tribe if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(25)(e) or former stepparent if the child or young adult had a relationship with the former stepparent prior to entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the child or young adult's parent or a former registered domestic partner of the child or young adult's parent if the child or young adult had a relationship with the former domestic partner prior to the child or young adult entering substitute care.

(E) The adoptive parent of a child or young adult's sibling.

(F) The unrelated legal or biological father or mother of a child or young adult's half-sibling when the child or young adult's half-sibling is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the child or young adult's family, or an individual who self-identifies, related to the child or young adult through the child or young adult's parent by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the child or young adult's family; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the child or young adult's family prior to time the Department placed the child in substitute care.

(e) For the purposes of eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative under these rules unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may be considered for Guardianship Assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) A Permanency Committee has recommended the foster parent for consideration as a guardian.

(7) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(8) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(9) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(10) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 109.119, 418.005, 419A.004
Stats. Implemented: ORS 109.119, 418.005, 419A.004
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0320

Relative Involvement in Case Planning and Court Hearings

(1) The Department may involve a relative as a safety service provider after the assessment that determines the individual is a safe and appropriate resource for involvement in managing a child's safety as required under Child Welfare Policy I-AB.7, "Assessment of an Individual as a Safety Service Provider", OAR 413-015-1200 to 413-015-1230.

(2) The Department must consider a family decision-making meeting as described in ORS 417.365 and when the family decision-making meeting is held, the Department may include any family member as defined in ORS 417.371(4)(a) or relative in this meeting under Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan", OAR 413-040-0008.

(3) The Department must provide notice of a court hearing to:

(a) A relative who is currently providing substitute care for a child in the legal custody of the Department pursuant to juvenile court jurisdiction as set forth in ORS 419B.875(6); and

(b) A grandparent of a child or young adult in the Department's custody, as required by ORS 419B.875(7) (HB 3249). For purposes of this subsection, "grandparent" means the legal parent of the child or young adult's legal parent, as defined in ORS 109.119.

(4) A relative who expresses to the Department an interest in a child has a right to provide information about the child's background and to provide input on the safety, attachment, and permanency needs of the child.

(5) Unless an exception to contact is provided by the child welfare program manager or designee under Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0072(1) or an order of a court, under 42 USC 671(a)(29) the Department must provide notice, within 30 calendar days after the removal of a child from the custody of the parent or parents of the child, to all grandparents and other adult relatives of the child known to the Department, that complies with all of the following subsections:

(a) Specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(b) Explains options under federal and state law to participate in the care and placement of the child;

(c) Describes the requirements the individual must meet to become a relative caregiver and the services and supports available for a child placed with a relative caregiver under federal and state law; and

(d) Describes the eligibility criteria for and availability of Guardianship Assistance benefits when all Guardianship Assistance eligibility criteria are met under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to 413-070-0974.

(6) An exception to contact by the Child Welfare program manager or designee under Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0072(1) does not relieve the Department of its obligation to provide notice of court hearings to grandparents under subsection (3)(b) of this rule.

Stat. Auth.: ORS 109.119 - 109.123, 417.365, 417.371, 418.005, 419B.875
Stats. Implemented: ORS 109.119-109.123, 417.365, 417.371, 418.005, 419B.875
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0330

Communication and Visitation

A relative has the right to communicate and visit with a child or young adult in the Department's legal custody when such communication or contact is set forth in:

(1) The child or young adult's visitation plan developed under Child Welfare Policy I-E.3.5, "Visits and Other Types of Child and Family Contact", OAR 413-070-0800 to 413-070-0880;

(2) The opportunities for ongoing connection and support developed under Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087 and approved by the caseworker; or

(3) An order of a court.

Stat. Auth.: ORS 109.119, 418.005
Stats. Implemented: ORS 109.119, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-010-0340

Department Responsibility to Make Diligent Efforts to Place a Child or Young Adult with Relatives

The Department must:

(1) Make diligent efforts to place a child or young adult in substitute care with a relative or person who has a caregiver relationship, as defined in ORS 419B.116, to the child pursuant to 419B.192(1).

(2) Make diligent efforts to place a child or young adult in substitute care with his or her siblings so long as placement with the siblings is in the best interests of the child or young adult and the child or young adult's siblings pursuant to ORS 419B.192(2).

(3) In making the diligent efforts described in sections (1) and (2) of this rule, the Department must consider the factors set forth in ORS 419B.192(3) and follow the assessment process described in Child Welfare Policies I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087 and II-B.1.1, "Responsibilities for Certification and Supervision of Foster Parents, Relative Caregivers and Approval of Potential Adoptive Resources", OAR 413-200-0270 to 413-200-0296.

Stat. Auth.: ORS 109.119, 418.005, 419B.116, 419B.192
Stats. Implemented: ORS 109.119, 418.005, 419B.116, 419B.192
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-070-0800
Purpose

The purpose of these rules (OAR 413-070-0800 to 413-070-0880) is to describe the Department's responsibilities in arranging frequent contact between the child or young adult in substitute care, the child or young adult's parents or guardians, siblings, and other people with whom the child or young adult has a significant connection. In all cases, the contact is intended to:

(1) Be in the best interest of the child or young adult, develop or enhance attachment with the child or young adult's family, including siblings, and continue the child or young adult's relationships with significant others, including siblings;

(2) Reduce the trauma to the child or young adult associated with separation from primary attachment figures; and

(3) Assure that the safety and well-being of the child or young adult are the paramount concerns in developing a child-family contact plan.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-070-0810
Definitions

The following definitions apply to OAR 413-070-0800 to 413-070-0880:

(1) "Child" means a person under 18 years of age.

(2) "Child-family contact" means communication between the child or young adult and family and includes but is not limited to visitation with the child or young adult, participation in the child or young adult's activities, and appointments, phone calls, e-mail, and written correspondence.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "Family member" means any person related to the child by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes the registered domestic partner of a person related to the child, a child 12 years of age or older, and when appropriate, a child younger than 12 years of age. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(6) "Grandparent" for purposes of visitation, contact, or communication ordered by the court under Oregon Laws 2013, Chapter 436, Section 3 (HB 3249) means the legal parent of the child or young adult's legal parent, as defined in ORS 109.119.

(7) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(9) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(10) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(11) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(12) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(13) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(14) "Supervised visit" means a child-family contact that includes a designated third party to protect the emotional and physical safety of a child or young adult.

(15) "Visit" means planned, in-person contact between the child or young adult and one or more family members.

(16) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.337, 419B.440, OL 2013 Ch. 436 Sec. 3
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-070-0830
The Right to Visit

Subject to the limitation of section (4) of this rule:

(1) The child or young adult, a parent or guardian, and each sibling have the right to visit each other while the child or young adult is in substitute care. The child or young adult, the parent or guardian, and each sibling have a right to visit as often as reasonably necessary to develop and enhance their attachment to each other.

(2) The Department will prohibit or cancel visits, unless otherwise ordered by the court, when:

(a) There is reason to believe a parent or guardian's acts or omissions would result in child abuse or neglect during the visit;

(b) The child or young adult's safety cannot be managed by supervision;

(c) The visit does not meet the best interests of the child; or

(d) A court order prohibits visits.

(3) When Department resources alone cannot meet the family contact and visitation needs of the child or young adult, the caseworker must solicit help from family and community resources.

(4) If a parent or guardian objects to the contact and visit requirements and limitations that the Department imposes, the parent or guardian may seek the juvenile court's review of the requirements and limitations.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-070-0840
Orientation Activities

Prior to the first contact and after each revision of the Visit and Contact Plan developed under OAR 413-070-0860, the Department must explain to the child or young adult's family and substitute caregiver (and the child or young adult when appropriate) the rights and expectations regarding child-family visitation and contact, including its importance to the child or young adult. The Department must explain the reason for arranging supervised or unsupervised visits to the involved parties.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-070-0855
Determining Priority in Visit and Contact Plans

(1) Unless the court has entered an order regarding visitation by the child or young adult's parents, guardians, siblings, or grandparents, the caseworker determines a hierarchy of the child or young adult's attachments and prioritizes visits with the child or young adult's parents or guardians, and siblings. The caseworker may consider the preferences expressed by the child or young adult.

(2) When the permanency plan is reunification with a parent or guardian, the first priority of the caseworker will be to provide visits with parents or guardians, siblings, and each intervenor granted visitation by the court.

(3) When the permanency plan is a plan other than return to the parents or guardians, the visitation priority of the caseworker shall be to both preserve the child or young adult's attachment to parents or guardians and siblings and promote the child or young adult's attachment to the permanent placement resource.

(4) When appropriate, the caseworker may consider establishing visits with the child or young adult's family members.

(5) When appropriate, the caseworker may consider establishing visits with the child or young adult and non-related persons with whom the child or young adult has a significant attachment.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, OL 2013 Ch. 436 Sec. 3
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-070-0860
Types of Visit and Contact Plans

(1) The Temporary Visit and Contact Plan.

(a) The caseworker must jointly develop a written Temporary Visit and Contact Plan with the parents or guardians, and may involve the child, family members, safety service providers and the substitute caregiver to participate in facilitating visitation and supporting the ongoing safety plan when the child first enters substitute care or at the time of the first court hearing required by ORS 419B.183, whichever is first. The visits must be planned to manage child safety.

(b) The court may make an order regarding visitation between the child or young adult's parents, siblings, or grandparents.

(c) The caseworker must arrange a Temporary Visit and Contact Plan that assures child safety.

(d) The plan must include the following:

(A) The names of each person, including the child's siblings, with whom the child may have contact; and

(B) A description of the contact permitted with each person that includes:

(i) The type, time of day, frequency, length, and location of the visits; and

(ii) The reason for supervised visits when supervision is required.

(e) If the first visit with the parent or guardian does not occur within the first week of a child's placement in substitute care, the caseworker must document the reason the visit did not occur in case notes in the Department's electronic information system.

(f) The caseworker must provide a copy of the Temporary Visit and Contact Plan to the parents or guardians and to others participating in the Temporary Visit and Contact Plan.

(2) The Ongoing Visit and Contact Plan.

(a) The caseworker must develop an Ongoing Visit and Contact Plan with the parents or guardians within 30 days from the date that the child enters substitute care. The caseworker may involve the child, family members, safety service or treatment providers, and the substitute caregiver to participate in facilitating visitation in the development of the visit and contact plan. A copy of the written plan is given to each participant. The visits must be in the least restrictive manner in which the child or young adult's safety can be managed.

(b) The caseworker may involve grandparents and other relatives, as identified in Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087, in the development of the Ongoing Visit and Contact Plan.

(c) The caseworker must arrange an Ongoing Visit and Contact Plan that supports child safety, the ongoing safety plan, the best interests of the child, and any orders of the court regarding visitation with a child or young adult's parents, siblings, or grandparents.

(d) When an Ongoing Visit and Contact Plan is revised, the caseworker completes a revised Ongoing Visit and Contact Plan and provides a copy of the revised plan to each participant.

(e) A plan that prohibits a parent, guardian, or sibling's visit must include the reason for each prohibition and state, if applicable, the conditions under which the Department would begin or resume contact.

(f) The caseworker must document the implementation of the Ongoing Visit and Contact Plan in the case plan.

(g) The caseworker must develop the written Ongoing Visit and Contact Plan which must:

(A) Include the purpose and conditions of visits and contacts including type, time of day, frequency, length, and location;

(B) Describe the reason for supervision when supervision is required;

(C) Identify the individual who will supervise the visit or assist a parent or guardian in meeting the needs of the child or young adult during visitation;

(D) Support the ongoing safety plan; and

(E) Use language that parents or guardians can understand.

(h) In developing an Ongoing Visit and Contact Plan, the caseworker must:

(A) Arrange visits so that the type, time of day, frequency, length, and location of visits maximize contact between the parents or guardians and the child or young adult, support the ongoing safety plan and support the child or young adult's permanency plan as described in OAR 413-070-0855(2) and (3);

(B) Meet the unique needs of the child or young adult, especially the child or young adult's chronological or developmental age and sense of time as they affect the child or young adult's attachment to a parent or guardian and other family members;

(C) Arrange visits that do not disrupt the school schedule of the child or young adult whenever possible;

(D) Arrange additional contact such as telephone calls, e-mail, and letters, and other activities the family and child or young adult may do together that support the ongoing safety plan, such as attendance by parents or guardians at doctor appointments, school events, and church;

(E) Address barriers to visitation that must be overcome in order for the parent, guardian, child or young adult to participate in the visits, including transportation, adaptations for those traveling long distances, health care requirements, and arranging child care for a child's sibling;

(F) Work within each parent's or guardian's employment and treatment obligations;

(G) Ensure that the Ongoing Visit and Contact Plan considers the safety needs of any non-offending parent or guardian in cases involving domestic violence, including but not limited to different visiting schedules or arranging safe drop-off and pick-up locations;

(H) Explain to a parent or guardian the consequences of failure to attend a visit;

(I) Explain known or anticipated reasons for ending the visit (such as health or safety);

(J) Take the actions necessary to assure culturally relevant and language appropriate visitation services; and

(K) Discuss alternatives when visits are canceled due to circumstances of the parent or guardian, substitute caregiver, or the Department.

(3) The Ongoing Visit and Contact Plan may be reviewed or revised at any time and must be reviewed every 90 days.

(4) An Ongoing Visit and Contact Plan must comply with the Interstate Compact on the Placement of Children (ORS 417.200, Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children", OAR 413-040-0200 to 413-040-0330).

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.337, 419B.440, 419B.449, OL 2013 Ch. 436 Sec. 3
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-070-0870
Supervision of Visits

(1) If supervision of visits is necessary to protect the child from harm, manage child safety, or provide therapeutic intervention, the Ongoing Visit and Contact Plan must state the reason for the supervision.

(2) When delegating supervision to a person who is not an employee of the Department, the Department will ensure that the person supervising the visit receives a copy of the Ongoing Visit and Contact Plan, understands the dynamics of the individual family, the purpose of supervision, the specific circumstances that require the supervision, the documentation requirements, and complies with the ongoing safety plan.

(3) When delegating supervision to other Department staff, the Department will ensure the Department employee who participates in the Ongoing Visit and Contact Plan receives a copy of the Ongoing Visit and Contact plan, understands the dynamics of the individual family, the purpose of supervision, the specific circumstances that require the supervision, and the documentation requirements of OAR 413-070-0880.

(4) The caseworker must inform the parents or guardians of the reason for the supervision of the visits or contact, and, as resources allow, all supervision should be culturally relevant and language appropriate.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

413-070-0880
Documentation of Contact

(1) When Department staff supervise a visit, documentation of the visit must be included in the case file and must document:

(a) The location of the visit, who attended, and the length of the visit;

(b) Activities that occurred during the supervised visit;

(c) The impact of the visit on the child or young adult;

(d) Any missed visit and the reasons for the missed visit; and

(e) Any interrupted or terminated visits and reasons for the interruption or termination.

(2) When the caseworker arranges supervision by a person other than Department staff, the caseworker must require that the person supervising the visit provides complete written documentation of the visit, as required by section (1) of this rule, to the caseworker within seven days of each visit.

(3) When the child or young adult is in the legal custody or guardianship of the Department, the caseworker must report to the court no less frequently than every six months, the place and date of the child's or young adult's visits with his or her parents or siblings since the child or young adult has been in the guardianship or legal custody of the Department, and whether the frequency is in the best interest of the child or young adult. Reports must be filed with the court more frequently if the court so orders.

(4) When other types of contact in addition to face-to-face visits are included in the Ongoing Visit and Contact Plan, the caseworker must request regular feedback from the participants regarding the impact of the contact on the child or young adult.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.337, 419B.440 & 419B.449
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 9-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14

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Rule Caption: Changing OARs affecting Child Welfare programs
Adm. Order No.: CWP 15-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Adopted: 413-140-0031, 413-140-0032, 413-140-0033, 413-140-0047
Rules Amended: 413-140-0000, 413-140-0010, 413-140-0026, 413-140-0030, 413-140-0035, 413-140-0040, 413-140-0065, 413-140-0110
Rules Repealed: 413-140-0045, 413-140-0055, 413-140-0080, 413-140-0120
Subject: OAR 413-140-0000 to 413-140-0120 about non-departmental adoptions (formerly called independent adoptions) are being changed to reflect new legislation (SB 623, 2013) that goes into effect in January 2014. These rule changes also clarify the role and administrative procedures of the Department for non-departmental adoptions. Additionally, these rule changes also modify fees that may impact the public.

OAR 413-140-0000 about the purpose of the independent adoption rules is being amended to better describe the purposes of the rules about non-departmental adoptions.

OAR 413-140-0010 about definitions used in the non-departmental adoption rules is being amended to adjust the definitions certain common terms as used in the revised rules.

OAR 413-140-0026 is being amended to set out the current requirements regarding service of an adoption petition upon the Department.

OAR 413-140-0030 about required documentation is being amended to update which documents will be considered, consistent with SB 623, when determining whether the Department may issue a waiver of the 90-day waiting period, adoption home study, or placement report.

OAR 413-140-0031 is being adopted to describe administrative procedures followed by the Department once an adoption petition has been served upon the Department.

OAR 413-140-0032 is being adopted to summarize the types of waivers that may be granted by the Department as well as to describe eligibility for those waivers and required documentation to obtain each waiver. The policy on waivers had been set out in OAR 413-140-0035.

OAR 413-140-0033 is being adopted to comply with ORS 109.309(7)(a) by setting forth administrative rules regarding minimum standards for Oregon adoptive homes.

OAR 413-140-0035 is being amended to set out conditions that must be met in order for an adoption home study to be considered valid in a Non-Departmental adoption. This rule is also being amended to remove the Department policy on waivers, which will be set out in OAR 413-140-0032, and the policy on fees which will be covered in OAR 413-140-0047.

OAR 413-140-0040 is being amended to revise the Department's procedures for placement report assignments and completion, remove the policy about the placement report fee (which will be covered in OAR 413-140-0047), and remove the policy about waiver of the report (which will be covered in OAR 413-140-0032).

OAR 413-140-0045 about waiver of fees is being repealed because this policy will be addressed in OAR 413-140-0047.

OAR 413-140-0047 is being adopted to set out the fees for the placement report (previously in OAR 413-140-0040). Under this rule, the maximum allowable fee that can be charged is increasing. This rule changes the fee policy associated with Non-Departmental adoptions and revises steps the public must take to obtain a waiver of those fees.

OAR 413-140-0055 about limits to adoption is being repealed because this policy will be set out in OAR 413-140-0035.

OAR 413-140-0065 is being amended to state the types of background checks required for the Department to consider a home study waiver request.

OAR 413-140-0080 about interviewing birth parents and OAR 413-140-0120 about storage and destruction of information about adoptions are being repealed because these topics do not need to be set out in Department rules.

OAR 413-140-0110 about release of information and confidentiality is being amended to implement SB 623 (2013) and clarify cross-references to other rules.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-140-0000
Purpose

The purpose of these rules (OAR 413-140-0000 to 413-140-0110) is to:

(1) Define the role of the Department in an Oregon Non-Departmental adoption of a child;

(2) Provide appropriate Department procedures regarding Non-Departmental adoptions in Oregon;

(3) Specify documents and information required for Non-Departmental adoption waivers issued by the Department; and

(4) Specify fees applicable to the completion of an independent adoption placement report.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 109.309, 109.311, 409.010
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 17-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0010
Definitions

The following definitions apply to OAR 413-140-0000 to 413-140-0110:

(1) "Adoption home study" means a written report documenting the result of an assessment to evaluate the suitability of an individual or individuals to adopt and make a lifelong commitment to a child or children, conducted by a licensed adoption agency, the Department, or — when authorized by under the law of another state, country, or territory — another public agency, private individual, or entity.

(2) "Certificate of approval" for the purpose of an adoption home study is a document that:

(a) Is issued by an Oregon licensed adoption agency, and

(b) Approves an adoption home study and certifies that the prospective adoptive family has met the requirements of OAR 413-140-0033.

(3) "Child" means an unmarried person under 18 years of age.

(4) "Contracted adoption agency" means an Oregon licensed adoption agency holding a current contract with the Department to conduct placement reports for independent adoptions and to file those reports with the court.

(5) "Department" means the Oregon Department of Human Services, Child Welfare.

(6) "Household" means all individuals living in the home.

(7) "Independent adoption" means an adoption that is being finalized in Oregon of a child:

(a) That is not a re-adoption, private agency adoption, or out-of-state public agency adoption; and

(b) The child is not in the custody of the Department.

(8) "Licensed adoption agency" means:

(a) An approved child-caring agency of this state acting by authority of ORS 418.270 and OAR 413-215-0401 to 413-215-0481; and

(b) An agency or other organization that is licensed, or otherwise authorized, to provide adoption services pursuant to the laws of that state, country or territory.

(9) "Non-Departmental adoption" means an adoption that is finalized in Oregon for a child who is not in the custody of the Department, and includes:

(a) Re-adoption;

(b) Independent adoption;

(c) Private agency adoption; or

(d) Out-of-state public agency adoption.

(10) "Out-of-state public agency adoption" means an adoption of a child who is a ward of another state and consent for the adoption to finalize in Oregon is given by the out-of-state child welfare agency in loco parentis.

(11) "Petitioner" as used in this rule, means an individual person who has filed an adoption petition in an Oregon court.

(12) "Placement report" commonly known as "court report" or "post-placement report" is a comprehensive written report and recommendation to the court prepared after:

(a) The filing of an adoption petition;

(b) The child has been placed for the purpose of adoption; and

(c) A licensed adoption agency has evaluated the status and adjustment of the child and the adoptive parents.

(13) "Private agency adoption" means an adoption of a child that is being finalized in Oregon in which consent in loco parentis from a licensed adoption agency is required.

(14) "Re-adoption" means an adoption of a child who was originally adopted in another country and who is being re-adopted in Oregon.

(15) "Surrogate mother" means an adult woman who:

(a) Agrees to become pregnant with the intention of gestating, bearing, and giving birth to a child of another individual or couple who are the intended parents; and

(b) Intends and agrees to assert or retain no parental rights or obligations with regard to the resulting child.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 109, 409.010, 418.240, 418.270
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-2000, f. & cert. ef. 1-14-00; SOSCF 50-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 24-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 17-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0026
Service of Petition for Adoption and Required Documentation

(1) Within 30 days of filing an adoption petition with the court, the petitioner must serve a copy of the adoption petition and related documents upon the Department as set forth in Oregon Laws 2013, Chapter 346, Section 4(5)(a).

(2) Documents initially filed with the court must be delivered by registered or certified mail with return receipt or by personal service to the following address: Department of Human Services, Attention: Independent Adoptions, 500 Summer Street NE, E-71, Salem, OR 97301-1066.

Stat. Auth.: ORS 409.050, 418.005, OL 2013 Ch. 346
Stats. Implemented: ORS 409.010, 418.005, OL 2013 Ch. 346 Sect. 4(5)(a)
Hist: CWP 17-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0030
Required Documentation

The following documents are required to be submitted by the petitioner to the court pursuant to ORS 109.309(12)(a). The Department may consider any or all of the following documents in determining whether a waiver may be granted for the 90-day waiting period, adoption home study requirement or placement report:

(1) Petition for adoption containing information as outlined in Oregon Laws 2013, Chapter 346, Section 4(1).

(2) Exhibits attached to petition in accordance with Oregon Laws 2013, Chapter 346, Section 4(3).

(3) Unless waived by the Department, written evidence documenting a current adoption home study and certificate of approval in accordance with Child Welfare Policy I-G.4, "Non-Departmental Adoptions", OAR 413-140-0035.

(4) Unless waived by the Department, a placement report in accordance with Child Welfare Policy I-G.4, "Non-Departmental Adoptions", OAR 413-140-0040.

(5) The Adoption Summary and Segregated Information Statement as outlined in Oregon Laws 2013, Chapter 346, Section 5(1).

(6) Exhibits attached to the Adoption Summary and Segregated Information Statement in accordance with Oregon Laws 2013, Chapter 346, Section 5 (2).

Stat. Auth.: ORS 109.309, 409.050, 418.005
Stats. Implemented: ORS 109.092, 109.094, 109.096, 109.239, 109.243, 109.309, 109.311, 109.312, 109.326, 109.330, 109.342, 109.353, 109.385, 109.400, 109.450, 109.701 to 109.784, 409.010, 417.200
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1998, f. & cert. ef. 1-28-98; SOSCF 2-2000, f. & cert. ef. 1-14-00; SOSCF 32-2000, f. & cert. ef. 11-7-00; SOSCF 50-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 24-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 17-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0031
Actions Performed by the Department upon Receipt of an Adoption Petition

Following receipt of an adoption petition:

(1) The Department will review the adoption petition, along with accompanying documentation to determine whether a placement report is required under OAR 413-140-0032(3) and, when applicable, will assign the placement report as outlined in 413-140-0040.

(2) The Department will provide written notification to the court and the petitioner indicating:

(a) The Department's determination regarding any waivers that have been requested in accordance with OAR 413-140-0032;

(b) When applicable, information regarding the assignment of a placement report; and

(c) Other considerations regarding documentation required to be served upon the Department pursuant to Oregon Laws 2013, Chapter 346, Section 4(5)(a).

(3) The Department must notify the court, in writing, when the Department reasonably suspects that the conduct of a person involved in an adoption or the conduct of an adoption agency violates Oregon law. Examples of such violations include but are not limited to:

(a) Any actions that constitute a violation or possible violation of ORS 109.311.

(b) Prohibitions regarding placement of a child for adoption pursuant to ORS 418.300.

(c) Prohibitions regarding buying and selling a person under 18 years of age pursuant to ORS 163.537.

(d) Fees charged by an Oregon licensed adoption agency that are not in accordance with ORS 109.311(3) and OAR 413-140-0035(3).

(4) The Department must provide a copy of the notification described in section (3) of this rule to the petitioner and when applicable, to the licensed adoption agency.

Stat. Auth.: ORS 109.309, 409.050, 418.005
Stats. Implemented: ORS 163.537, 109.309, 109.311, 409.010, 418.300
Hist.: CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0032
Waivers the Department May Issue

(1) Waiver of the 90-day waiting period.

(a) In accordance with ORS 109.309(10), the Department may waive the required 90-day waiting period for an adoption.

(b) Upon receipt of the adoption petition and accompanying documents, the Department will review and consider all items listed in OAR 413-140-0030 when determining whether to waive the required 90-day waiting period.

(c) The Department will provide written notification regarding the determination of the 90-day waiver request to the court, petitioner and, when applicable, the Oregon licensed adoption agency involved.

(d) The Department may reconsider the initial determination of the 90-day waiver request provided:

(A) All remaining items outlined in the Department's prior written notification have been sufficiently addressed; and

(B) The required 90-day waiting period has not expired.

(2) Waiver of the Adoption Home Study.

(a) In accordance with ORS 109.309(7)(b), the Department has discretion to waive the home study requirement for some adoptions.

(b) The Department may consider a waiver of the adoption home study in an independent adoption when:

(A) One biological parent or adoptive parent retains parental rights.

(B) The petitioner qualifies as a relative, for the purpose of this rule, under the following conditions:

(i) At least one of the adopting petitioners is the biological or adoptive sibling or half-sibling, aunt, uncle, grandparent, great-aunt, great-uncle, or great-grandparent of the child; and either

(ii) The child has lived with the petitioner since birth and for at least six months immediately prior to the petitioner's request to waive the adoption home study requirement; or

(iii) The child has lived with the petitioner on a continuous basis for at least one year prior to the petitioner's request to waive the adoption home study requirement.

(c) The Department may consider waiving the adoption home study requirement in an independent adoption involving a child born to a surrogate mother when there is evidence documenting that the following conditions, as applicable, are met:

(A) At least one of the petitioners is a biological parent of the child; and

(B) When the surrogate mother is married:

(i) Her husband has consented to the adoption; or

(ii) There is a joint affidavit of non-paternity completed by the surrogate and her husband.

(d) The following documents must be submitted to the Department before consideration may be given to a waiver of the adoption home study requirement:

(A) A Request for Waiver of the Adoption Home Study Form.

(B) Background checks as described in OAR 413-140-0065.

(C) A copy of the petition for adoption.

(D) Verification that the child being adopted shares a residence with the adopting petitioner.

(E) Additional information, when requested by the Department, to clarify any concerns that could compromise the safety, permanency or well-being of the child being adopted.

(e) The Department does not waive the adoption home study requirement when there are safety, permanency, or well-being concerns that warrant completion of an adoption home study.

(f) Any concerns that come to the attention of the Department regarding the ability of a petitioner to meet the standards set forth in OAR 413-140-0033 may also be considered when determining whether the Department will waive the adoption home study.

(g) Upon receipt of all requested documents listed in subsection (d) of this section, the Department will:

(A) Make a determination as to whether an adoption home study waiver is appropriate;

(B) Provide written notification of the Department's determination regarding the adoption home study waiver request to the court and petitioner or petitioner's attorney;

(C) Outline in written notification any remaining information the Department determines is needed to reconsider the petitioner's adoption home study waiver request; and

(D) Provide petitioner or petitioner's attorney with a list of Oregon licensed adoption agencies authorized to complete an adoption home study if the Department determines petitioner's request for waiver cannot be granted.

(3) Waiver of the Placement Report.

(a) In accordance with ORS 109.309(8)(a), the Department has the authority to waive the placement report requirement.

(b) The Department must waive the placement report for an adoption in which one biological or adoptive parent retains parental rights.

(c) When a written request is received from the petitioner, the Department may waive the placement report for any of the following:

(A) An adoption for which the Department has waived the adoption home study;

(B) An independent or out-of-state public agency adoption in which the petitioner and the child are currently receiving services from the Department or a licensed adoption agency or have received services in the past 12 months and the Department or an Oregon licensed adoption agency provides a written recommendation that adoption is in the best interests of the child.

(C) When the adoptee is 14 years of age or older, has consented to his or her adoption, and an Oregon licensed adoption agency provides a written recommendation that adoption is in the best interest of the child.

Stat. Auth.: ORS 109.309, 409.050, 418.005
Stats. Implemented: ORS 109.243, 109.309, 109.328, 409.010, OL 2013, Ch. 346, Sect. 4
Hist.: CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0033
Minimum Standards for Adoptive Homes

(1) The Department is authorized under ORS 109.309(7)(a) to set forth the minimum standards for adoptive homes.

(2) Minimum standards for an adoptive home that must be addressed in a written adoption home study include:

(a) Approved background checks in accordance with OAR 413-140-0065 for all adult household members;

(b) Documented completion of minimum pre-adoption training required under Child Welfare Policy II-C.1.3, "Licensing Adoption Agencies", OAR 413-215-0456, or by the Department of State under the Inter-Country Adoption Act of 2000 (42 USC 14923), 22 CFR 96.48, when applicable; and

(c) Evidence that the adoptive applicant demonstrates the following:

(A) Capability to meet the child's specific emotional and physical needs;

(B) Ability to ensure the safety of the child being sought for adoption;

(C) Financial ability within the household to ensure the stability and financial security of the family;

(D) Understanding that adoption is a lifelong commitment to provide a safe and permanent family for a child not born to them; and

(E) Consideration of the benefits and challenges of open adoption and the various levels of openness in the adoption plan, as applicable.

Stat. Auth.: ORS 109.309, 181.537, 409.050, 418.005, 418.240
Stats. Implemented: ORS 109.309, 409.010, 418.005
Hist.: CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0035
Adoption Home Study

(1) Unless waived by the Department in accordance with OAR 413-140-0032, an adoption home study is required for the filing of a petition for the adoption of a child in Oregon.

(2) For the purpose of private agency and independent adoptions, an adoption home study must have a certificate of approval issued by an Oregon licensed adoption agency.

(3) Prior to issuing a certificate of approval, the Oregon licensed adoption agency is responsible for ensuring that:

(a) The adoption home study meets criteria outlined in section (7) of this rule; and

(b) Verification is received that the private individual, entity or licensed adoption agency that completed the adoption home study is authorized to perform adoption services under the laws of the state, country or territory where the prospective adoptive parents reside.

(4) Any fees charged to a petitioner by an Oregon licensed adoption agency must be based on reasonable costs and the actual expenses incurred by the adoption agency as a result of completing the required services.

(5) In accordance with Child Welfare Policy I-G.1.3, "Adoption Applications, Adoption Home Studies, and Standards for Adoption", OAR 413-120-0220, the Department completes adoption home studies for Oregon residents applying to adopt a child in substitute care and who is within the custody of the Department or another public child welfare agency. An adoption home study may only be completed by the Department for this purpose. A home study completed for this purpose may only be considered for later use in an independent or private agency adoption if approved by the Permanency Program Manager or designee.

(6) In the interest of promoting safety, well-being, and permanency of children residing in Oregon, upon approval of the Post Adoption Services Manager or designee, the Department may assign a contracted adoption agency to complete an adoption home study for an independent adoption.

(7) Validity of an adoption home study.

(a) With the exception of a re-adoption, an adoption home study is valid for a maximum of two years from the date of completion, providing significant changes have not occurred in the petitioner's household.

(b) When significant changes occur in the petitioner's household after the completion of the home study but before the adoption is finalized, a licensed adoption agency must complete an update of the adoption home study.

(c) Except in the case of a re-adoption, the adoption home study must not have been used for a previously finalized adoption.

(d) The adoption home study must:

(A) Demonstrate that the standards set forth in OAR 413-215-0451 and 413-140-0033 have been met;

(B) Comply with standards for inter-country adoptions set forth in Child Welfare Policy II-C.1.3, "Licensing Adoption Agencies", OAR 413-215-0476, when applicable; and

(C) Include the date and signature of one of the following:

(i) An authorized representative of the licensed adoption agency completing the adoption home study; or

(ii) The private individual or entity authorized to complete an adoption home study under the laws of another state, country or territory.

(8) For an independent adoption, when there are seven or more children under the age of 18 residing in the adoptive home, before the Oregon licensed adoption agency may approve the adoption home study:

(a) The director of the Oregon licensed adoption agency must convene a review committee of at least three human services professionals not employed by the adoption agency with experience in adoption and services to families and children, to determine whether the adoption home study should be approved.

(b) The decision of the review committee must be determined by a majority vote.

(c) The original adoption home study or a home study addendum by the Oregon licensed adoption agency issuing a certificate of approval must include:

(A) The name and professional title of each participant;

(B) The date when the committee convened; and

(C) The findings and recommendations of the review committee, including any dissenting or minority findings.

Stat. Auth.: ORS 109.309, 409.050, 418.005, 418.240
Stats. Implemented: ORS 109.304, 109.309, 409.010
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1998, f. & cert. ef. 1-28-98; SOSCF 3-1999, f. & cert. ef. 3-22-99; SOSCF 2-2000, f. & cert. ef. 1-14-00; SOSCF 50-2001, f. 12-31-01 cert. ef. 1-1-02; Renumbered from 413-140-0020, CWP 17-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0040

Placement Report

(1) Unless waived by the Department under OAR 413-140-0032, a placement report must be completed after the filing of an adoption petition and after the placement of a child in the adoptive home.

(2) Placement Report Assignment and Format.

(a) Within 30 days of receipt of an adoption petition and when applicable, the placement report fee as indicated in OAR 413-140-0047, the Department must:

(A) Assign the completion of the placement report to one of the following:

(i) A contracted adoption agency for an independent adoption;

(ii) The Oregon licensed adoption agency that has authority to give consent in loco parentis to the private agency adoption; or

(iii) For a private agency adoption involving an out-of-state licensed adoption agency, the Oregon licensed adoption agency completing the certificate of approval.

(B) Supply all information and materials as provided to the Department to the designated Oregon adoption agency for completion of the placement report.

(b) The adoption agency designated under paragraph (a)(A) of this section must:

(A) Prepare a placement report in accordance with ORS 109.304(2) that:

(i) Includes the adoption agency's recommendation to the court regarding whether the adoption should be granted;

(ii) Evaluates the status and adjustment of the child and the prospective adoptive parent; and

(iii) Documents information gathered by the Department or the adoption agency during the preparation of the placement report.

(B) Complete and file an original report with the court within 60 days of the assignment from the Department.

(C) In the event a placement report cannot be completed within 60 days of assignment, the adoption agency must:

(i) Notify the court of the delay in writing, stating specific reasons for the delay, and the anticipated additional time needed to prepare and submit a complete report to the court; and

(ii) Provide a copy of the notification of delay to the Department.

(D) Serve a true copy of the report filed with the court on the Department and the petitioner or petitioner's attorney within 10 days of filing the report with the court.

(E) As needed, coordinate with an out-of-state adoption agency that provided the original adoption home study to ensure the completion of the placement report according to the above timeframe requirements.

(3) A suggested reporting format for the required placement report is provided on the Department's Independent Adoptions website for Non-Departmental adoptions or may be obtained by sending a written request to the following address: Department of Human Services, Attention: Independent Adoptions, 500 Summer Street NE, E-71, Salem, OR 97301-1066.

Stat. Auth.: ORS 109.309, 409.050, 418.005, 418.240
Stats. Implemented: ORS 109.304, 109.309, 409.010
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1998, f. & cert. ef. 1-28-98; SOSCF 3-1999, f. & cert. ef. 3-22-99; SOSCF 50-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 17-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0047

Fees for the Placement Report and Certificate of Approval

Fees associated with the adoption of a minor child must be charged in accordance with ORS 109.311. The Department sets forth the following fee for an independent adoption placement report:

(1) Unless the fee is waived under section (2) of this rule, the assignment and completion of a placement report for an independent adoption may be charged at a maximum rate of $800 per report. The fee must be:

(a) Paid by the petitioner in check or money order directly to the Department; and

(b) Submitted within 30 days of service of the petition on the Department.

(2) Waiver of Fee for an Independent Adoption Placement Report.

(a) The Department may, upon petitioner's request, consider waiving all or a portion of the fee set under this rule to complete a placement report.

(b) The Department's determination of a reduction or waiver of the placement report fee is based upon the federal poverty guidelines that the United States Department of Health and Human Services establishes each calendar year. Fee waiver eligibility is calculated using the size of the household in correlation to the following federal poverty guidelines:

(A) A household income at or below 100% of the federal poverty guideline may qualify for a full (100%) waiver.

(B) A household income at or below 115% (and above 100%) of the federal poverty guideline may qualify for a 75% waiver.

(C) A household income at or below 130% (and above 115%) of the federal poverty guideline may qualify for a 50% waiver;

(D) A household income at or below 145% (and above 130%) of the federal poverty guideline may qualify for a 25% waiver.

(c) The Department may, on a case by case basis, allow partial waiver of the fee for the placement report after reviewing the following documentation submitted by the petitioner to the Department:

(A) Request for Waiver of Independent Adoption Placement Report Fee Statement of household earnings, CF 239B; and

(B) A copy of the petitioner's most recent Federal Tax Report 1040 and verification of household income (see subsection (c) of this section).

(d) For the purpose of this rule, "household income" includes all of the following:

(A) Before tax cash receipts from all sources such as wages or salaries.

(B) Public assistance.

(C) Entitlement and benefits.

(D) Private support and assistance payments.

(E) Payments that include, but are not limited to:

(i) Investments and annuities;

(ii) Rents;

(iii) Pensions;

(iv) Allotments;

(v) Child support;

(vi) Alimony;

(vii) Tax refunds; and

(viii) Grants, interest, and winnings.

(e) After review of the petitioner's request for a waiver of the independent adoption placement report fee, the Department must:

(A) Provide written notification to the petitioner and the court regarding the Department's determination of the fee waiver request; and

(B) When applicable, assign a contracted adoption agency to complete the necessary report in accordance with the procedures described in OAR 413-140-0040(2)(b).

(f) The Department may, at any time, require updated financial information to be re-submitted by petitioner.

(g) In the event a fee waiver is authorized based upon erroneous information, the petitioner is liable for the full cost of the placement report and any amounts associated with the recovery of those costs.

Stat. Auth.: ORS 109.309, 409.050, 418.005, 418.240
Stats. Implemented: ORS 109.304, 109.309, 109.311, 418.005, 409.010, 418.005
Hist.: CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0065
Background Checks for Consideration of Home Study Waiver

(1) Before the Department may approve a request for waiver of an adoption home study, the following background check requirements must be met:

(a) For a petitioner residing in Oregon, except as described in section (3) of this rule, each adopting petitioner and all adult members of the petitioner's household must provide documentation of required background checks as follows:

(A) A criminal history check from the Oregon State Police, using Form CF249g, Request for Oregon Criminal History Information; and

(B) When the petitioner has resided outside of Oregon for a period of more than sixty consecutive days in the last five years:

(i) A criminal history check from the Federal Bureau of Investigation (FBI); and

(ii) A child abuse and neglect registry check from an authorized agency of each state or country where the individual has lived in the preceding five years immediately prior to the petitioner's request to waive the adoption home study requirement.

(b) For a petitioner who is a resident of Oregon as defined in ORS 109.309(2) but is temporarily residing outside the state for a period of more than sixty consecutive days for purposes such as, but not limited to, military service, academics or vacation, except as described in section (3) of this rule, each petitioner and all adult members of the petitioner's household must provide documentation of required background checks as follows:

(A) A criminal history check from the FBI and an authorized agency of the state or country where the adopting petitioner currently resides and has lived in the preceding five years immediately prior to the filing of the petition; and

(B) A child abuse and neglect registry check from an authorized agency of each state or country where the adopting petitioner currently resides and has lived in the preceding five years immediately prior to the petitioner's request to waive the adoption home study requirement.

(c) For a petitioner who is not a resident of Oregon, except as described in section (3) of this rule, each adopting petitioner and all adult members of the petitioner's household must provide documentation of required background checks as follows:

(A) A criminal history check from the petitioner's current state of residence;

(B) A criminal history check from the FBI; and

(C) A child abuse and neglect registry check from an authorized agency of each state or country where the individual has lived in the preceding five years immediately prior to the petitioner's request to waive the adoption home study requirement.

(2) The Department must conduct a check of the child abuse and neglect registry maintained by the Department for an Oregon resident.

(3) When a waiver of the adoption home study is requested, the biological or adoptive parent retaining rights is only exempt from submitting a criminal history clearance to the Department.

(4) Background checks may also be required for a household member under the age of 18 if there is reason to believe that the individual may pose a safety threat to children placed in the home.

(5) For the purpose of this rule, criminal background checks and child abuse and neglect registry checks are valid up to one year after completion. The Department may request updated background checks from the adopting petitioner at any time when making a determination regarding the waiver of a home study.

(6) The Department is not responsible for paying any fees associated with the application for, acquisition of, and provision of background checks.

Stat. Auth.: ORS 109.309, 409.050, 418.005
Stats. Implemented: ORS 109.309, 181.534, 181.537, 409.010, 418.005
Hist.: SOSCF 2-1998, f. & cert. ef. 1-28-98; SOSCF 50-2001, f. 12-31-01 cert. ef. 1-1-02; Renumbered from 413-140-0025, CWP 17-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

413-140-0110
Confidentiality

Adoption records contain confidential information. The Department may only disclose confidential information relating to an adoption as follows:

(1) As provided in Child Welfare Policies I-A.3.2, "Confidentiality of Client Information", OAR 413-010-0000 to 413-010-0075; I-G.3.3, "Adoption Registry", OAR 413-130-0300 to 413-130-0360; and I-G.3.4, "Assisted Search Program", OAR 413-130-0400 to 413-130-0520; or

(2) As otherwise authorized by law.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 7.211, 109.440, 409.010, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 17-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 15-2013, f. 12-31-13, cert. ef. 1-1-14

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Rule Caption: Changing OARs affecting Child Welfare programs
Adm. Order No.: CWP 16-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Adopted: 413-100-0435
Rules Amended: 413-100-0400, 413-100-0410, 413-100-0420, 413-100-0430, 413-100-0445, 413-100-0455, 413-100-0460, 413-100-0530
Rules Suspended: 413-100-0440, 413-100-0450, 413-100-0470, 413-100-0480, 413-100-0490, 413-100-0500, 413-100-0510, 413-100-0520, 413-100-0540, 413-100-0550, 413-100-0560, 413-100-0600, 413-100-0610
Subject: These rules about Title XIX and General Assistance Medicaid Eligibility for children and young adults in substitute care or under an adoption assistance or guardianship assistance agreement are being changed to clarify the rules and to remove earned income and resources as eligibility criteria for Child Welfare Title XIX Medicaid, consistent with Oregon's Medicaid State Plan Amendment. OAR 413-100-0400 (Purpose) is amended to clarify to whom these rules apply. OAR 413-100-0410 (Definitions) is amended to include definitions of terms used in the rules which were not previously defined, and to remove definitions of terms no longer used. OAR 413-100-0420 (Child Welfare Title XIX Medicaid Program Eligible Populations) is amended to more clearly describe the populations to which these rules apply. OAR 413-100-0430 (Eligibility Determination for Children in Substitute Care) is amended for clarity. Language from other rules is moved into this rule to provide greater clarity regarding the eligibility determination. OAR 413-100-0440 (Earned Income), 413-100-0450 (Resources), and 413-100-0500 (Lump Sum) are suspended as earned income and resources are no longer considered in determining eligibility. OAR 413-100-0435 (Title XIX Medicaid Eligibility for Children and Young Adults Receiving Adoption Assistance or Guardianship Assistance) is adopted because this topic was not previously addressed in the rules. In addition, independent and private adoptions are now addressed. OAR 413-100-0445 (Youth in Detention) is amended to clarify when youth in detention may be eligible for Child Welfare Title XIX Medicaid. OAR 413-100-0455 (Out-of-State Placements) is amended to add language regarding children and young adults not eligible for Title IV-E benefits. OAR 413-100-0460 (Citizenship and Alienage) is amended to include applicable language from OAR 461-120-0125 regarding qualified non-citizens, and to remove redundant language. OAR 413-100-0470 (Social Security Number), 413-100-0480 (Retroactive Eligibility), 413-100-0490 (Assignment of Medical Benefits), 413-100-0520 (Reviews), and 413-100-0540 (GA Medical Policy) are suspended and the topics previously addressed in those rules are now addressed in 413-100-0430. OAR 413-100-0510 (Title XIX Coverage) is suspended as it is no longer needed. OAR 413-100-0530 (Compliance) is amended to provide more specificity and update references. OAR 413-100-0550 (Non-Paid Relative Placements) and 413-100-0600 (Children in Residential Care with Payment by Another Public Agency) are suspended because these populations are now addressed in 413-100-0420. OAR 413-100-0560 (Medical Eligibility for Children in Adoptive Homes) is suspended

and the topic is now addressed in 413-100-0435. OAR 413-100-0610 (Temporary Medical Card Issuance) is suspended as it is procedure that does not need to be addressed in administrative rule.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-100-0400
Purpose

The purpose of these rules (OAR 413-100-0400 to 413-100-0530) is to set forth procedures and criteria that the Department uses to determine eligibility under Title XIX of the Social Security Act (Title XIX) for children and young adults in substitute care and in the custody of the Department; for children and young adults under an adoption assistance agreement; and for General Assistance medical for those children and young adults who do not meet the eligibility criteria for Title XIX Medicaid.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0410
Definitions

As used in OAR 413-100-0400 to 413-100-0530:

(1) "Adjudication" means the legal process by which a child or young adult is under a court's jurisdiction as a result of having engaged in delinquent behavior and not having a legal guardian that could be responsible for the child or young adult.

(2) "Adoption assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with adopting and meeting the ongoing needs of the child or young adult. "Adoption assistance" may be in the form of payments, medical coverage, reimbursement of nonrecurring expenses, or special payments.

(3) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the pre-adoptive family or adoptive family and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(4) "Child" means an unmarried person under 18 years of age.

(5) "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985 which is a federal mandate that requires employers sponsoring group health plans for twenty (20) or more employees to offer continuation of coverage to employees, their spouses, and dependent children who become unemployed.

(6) "Custody" means legal custody described in ORS 419B.370.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Foster care" means 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the Department or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(9) "General Assistance" means services paid using the state General Fund.

(10) "Guardianship assistance" means assistance on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(11) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(12) "ICPC" means the Interstate Compact for the Placement of Children (see ORS 417.200).

(13) "Independent Living Program" or "ILP" means the services provided by the Department to an eligible foster child or former foster child.

(14) "OCCS Medical" means Title XIX Medical provided through the Office of Client and Community Services under the Oregon Health Authority.

(15) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(16) "Substitute care" means the out-of home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(17) "Title IV-E" means Title IV-E of the Social Security Act, which provides federal payments to the states for foster care maintenance and adoption assistance payments made on behalf of certain eligible children. It provides for guardianship assistance payments as well.

(18) "Title XIX Medicaid" means federal and state funded medical assistance established by Title XIX of the Social Security Act.

(19) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0420
Child Welfare Title XIX Medicaid Program Eligible Populations

Only the following children and young adults may be eligible for medical services under Child Welfare Title XIX Medicaid:

(1) A child or young adult in substitute care, which may include:

(a) A child or young adult in foster care.

(b) A child or young adult receiving Supplemental Security Income (SSI).

(c) A child or young adult held temporarily in a county or state juvenile detention facility.

(d) A child or young adult in a subsidized Independent Living Program.

(e) A child or young adult who returned home in a trial reunification, up to six months.

(f) A child or young adult in a pre-adoptive placement.

(g) A child or young adult on runaway status who would otherwise be in care, as long as the Department retains custody of the child or young adult and the child or young adult would continue to be in substitute care and Child Welfare Title XIX Medicaid eligible if not on runaway status.

(h) A child or young adult hospitalized while under the Department's protective custody is eligible if at the time of hospitalization the Department's intent was to place the child or young adult in substitute care.

(i) An ICPC child or young adult from Oregon in foster care in another state that has denied the child or young adult medical coverage.

(j) A child or young adult admitted to the hospital prior to entering substitute care and a newborn released from the hospital into substitute care. Eligibility for these children and young adults is effective on the date the Department finds the child or young adult is eligible but not earlier than the date the Department obtains custody of the child or young adult.

(k) Newborns in the following situations:

(A) A baby born to a mother receiving medical benefits under Child Welfare Title XIX Medicaid from the Department.

(B) A baby born to a mother not receiving medical benefits under Child Welfare Title XIX Medicaid from the Department, for coverage of birth expenses only, if:

(i) The Department obtains custody of the baby during its hospitalization, and

(ii) Child Welfare Title XIX Medicaid coverage is entered in the Department's electronic information system effective the date of birth.

(2) A child or young adult who is the subject of an effective Adoption Assistance Agreement administered by the Department.

(3) A child or young adult who is the subject of an effective Guardianship Assistance Agreement administered by the Department.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0430
Eligibility Determination for Children and Young Adults in Substitute Care

The following policies apply to a child or young adult in substitute care:

(1) Before a child or young adult in substitute care may receive a medical card providing Child Welfare Title XIX Medicaid services, the Department must determine the eligibility of the child or young adult for Child Welfare Title XIX Medicaid.

(2) Children or young adults covered by OAR 413-100-0420 who meet the following criteria are categorically eligible for Child Welfare Title XIX Medicaid:

(a) Are eligible for Title IV-E foster care payments; or

(b) Are receiving Supplemental Security Income (SSI).

(3) As part of an eligibility determination for Child Welfare Title XIX Medicaid:

(a) The child or young adult must meet the citizenship or alien (or citizenship and alien) status requirements in OAR 413-100-0460.

(b) All income and resources will be disregarded.

(c) The child or young adult must have a verified Social Security number (SSN) or verification that an application for an SSN has been made and is documented in the case file.

(d) The Department must determine if the child or young adult has other insurance.

(A) All known or potential health insurance benefits or resources and all other third-party medical benefits, including casualty insurance available to the child or young adult, must be assigned to the Department.

(B) A form MSC 415H, "Notification of Other Health Insurance," must be completed and sent to the Department for every child or young adult with health insurance coverage.

(4) Child Welfare Title XIX Medicaid coverage ends the day the child or young adult leaves state custody or enrolls into OCCS Medical. Child Welfare Title XIX Medicaid eligibility ends the day the child or young adult leaves care. The child or young adult is eligible for enrollment in OCCS Medical for the remainder of their most recent 12-month eligibility period.

(5) Redetermination of the eligibility of each child or young adult for Child Welfare Title XIX Medicaid must be reviewed every 12 months.

(6) Retroactive eligibility.

(a) A child or young adult receiving medical assistance through General Assistance rather than through Child Welfare Title XIX Medicaid due solely to the lack of a Social Security number (SSN) is eligible for Child Welfare Title XIX Medicaid retroactive to the date of placement once the Department receives verification of an application for an SSN from the Social Security Administration.

(b) A child or young adult may be enrolled retroactively to the date of initial placement.

(c) A child or young adult who has been found to have dual prime numbers in the Medicaid Management Information System (MMIS) with dual coverage may receive retroactive coverage to the earliest date of coverage for either prime number.

(7) Corrections to the record of the child or young adult in the Department's electronic information system may be made when it has been determined that the child or young adult was incorrectly shown as Child Welfare Title XIX Medicaid eligible for prior months.

(8) General Assistance coverage will be provided when a child or young adult in substitute care does not meet the eligibility requirements for Child Welfare Title XIX Medicaid coverage. Eligibility redeterminations for a child or young adult receiving General Assistance must be completed every 12 months

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0435
Title XIX Medicaid Eligibility for Children and Young Adults Receiving Adoption Assistance or Guardianship Assistance

(1) The Child Welfare Post Adoption Program will determine and maintain Child Welfare Title XIX Medicaid eligibility for the following children and young adults:

(a) A child or young adult who has exited Department custody as the result of a finalized adoption, and the child or young adult is the subject of an effective Adoption Assistance Agreement administered by the Department. Prior to the adoption finalization the child or young adult receives medical assistance as described in OAR 413-100-0430.

(b) A child or young adult who is determined eligible for Guardianship Assistance and is the subject of an effective Guardianship Assistance Agreement administered by the Department.

(c) A child or young adult determined eligible for Adoption Assistance where the Department is not required to consent to the adoption.

(2) Before a child or young adult described in section (1) of this rule may receive a medical card providing Child Welfare Title XIX Medicaid services, the Child Welfare Post Adoption Program must determine the eligibility of the child or young adult for Child Welfare Title XIX Medicaid.

(3) The requirements listed in OAR 413-100-0430(3) also apply to children and young adults described in section (1) of this rule.

(4) A child or young adult described in section (1) of this rule who is the subject of a guardianship assistance agreement where a Title IV-E funded payment is being made to the guardian will be determined eligible and provided Child Welfare Title XIX medical assistance.

(5) A child or young adult described in section (1) of this rule who is the subject of an adoption assistance agreement where the pre-adoptive parent or adoptive parent is eligible to receive a Title IV-E funded payment will be determined eligible and provided Child Welfare Title XIX medical assistance.

(6) A child or young adult described in section (1) of this rule determined ineligible to receive Child Welfare Title XIX Medicaid will be provided General Assistance medical when:

(a) The child or young adult resides in Oregon; or

(b) The child or young adult resides outside of Oregon but in the United States or a territory or possession thereof and is not able to receive medical assistance through the state of residence.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0440
Earned Income

(1) Earned income of the following children is disregarded when determining eligibility:

(a) A child who is a full-time student (as defined by the school) attending grade 12 or below or who attends a course of vocational or technical training or GED classes in lieu of high school, or who plans to return to school or vocational training.

(b) A child who is a part-time student who is not employed full time and is attending grade 12 or below, is attending an equivalent level of vocational or technical training or GED classes, or is planning to return to school or training.

(2) The Department disregards as follows the earnings of a child who is attending school part-time and is employed full-time or who is not attending school. The first $90 of earned income is disregarded.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0445
Youth in Detention

Youth held in a county or state juvenile detention facility are ineligible for Title XIX or GA medical coverage. Payment is made for emergency medical services only for a child in the Department's custody. The payment is made from the field office's "Other Medical" budget. The Medical Assistance Resource Coordinator provides assistance in determining whether a payment may be made.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Renumbered from 413-100-0590 by CWP 11-2013, f. & cert. ef. 12-31-13; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0450
Resources

(1) A child with resources valued in excess of $2,000 is not eligible for medical assistance under Title XIX. If a child has a motor vehicle, the first $1,500 of equity value of that vehicle is exempt. The equity value over $1,500 is counted towards the $2,000 resource limitation.

(2) A child receiving SSI is eligible for medical assistance under Title XIX. If the value of the assets in the trust account maintained by the Department for the child exceeds the limitation for SSI eligibility, the Department is required to report that to the Social Security Administration. The Department's rules for maintaining the trust accounts are at OAR 413-310-0400 to 413-310-0510.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0455
Out-of-State Placements

(1) The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides for Child Welfare Title XIX Medicaid coverage in the state of residence for a child or young adult receiving Title IV-E foster care payments.

(2) A child or young adult receiving Title IV-E foster care payments from another state who moves to Oregon must be evaluated for eligibility for Child Welfare Title XIX Medicaid.

(3) A child or young adult who is found eligible for benefits under Title IV-E in Oregon and then moves to another state is eligible for Child Welfare Title XIX Medicaid in the state of residence.

(4) A child or young adult who receives Supplemental Security Income payments who moves outside of Oregon is eligible for Child Welfare Title XIX Medicaid in the state of residence.

(5) A non-Title IV-E child or young adult placed in another state is referred to the Child Welfare Title XIX Medicaid agency in that state for a Child Welfare Title XIX Medicaid determination. If that state determines there is no Child Welfare Title XIX Medicaid eligibility, the child or young adult may be eligible for OCCS Medical or General Assistance medical if the child or young adult meets the eligibility requirements (see OAR 413-100-0430).

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Renumbered from 413-100-0580 by CWP 11-2013, f. & cert. ef. 12-31-13; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0460
Citizenship and Alienage

(1) To be eligible for medical assistance under Child Welfare Title XIX Medicaid, the child or young adult must meet the requirements of one of the following subsections:

(a) Be a United States citizen.

(b) Meet the alien status requirements in OAR 461-120-0125. A qualified non-citizen is any of the following:

(A) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 USC 1101 et seq.);

(B) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 USC 1157);

(C) A non-citizen who is granted asylum under section 208 of the INA (8 USC 1158);

(D) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 USC 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 USC 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(E) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 USC 1182(d)(5)) for a period of at least one year;

(F) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 USC 1153(a)(7)) as in effect prior to April 1, 1980;

(G) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(H) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under section 101(a)(27) of the INA; or

(I) A battered spouse or dependent child who meets the requirements of 8 USC 1641(C) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(c) Be a citizen of Puerto Rico, Guam, the Virgin Islands, or Saipan, Tinian, Rota, or Pagan of the Northern Mariana Islands; or

(d) Be a national from American Samoa or Swains Islands.

(2) In order to authorize benefits, there must be proof that a child or young adult is a U.S. citizen or is in the country legally. Birth certificates, citizenship papers, alien registration cards, permanent visas, and Cuban and Refugee registration cards may be used.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0470
Social Security Number

The child must have a social security number (SSN) or verification that an application for an SSN has been made. When a child does not have an SSN, verification of application for the social security number must be documented in the case file.

Stat. Auth.: HB 2004
Stats. Implemented: Title XIX
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0480
Retroactive Eligibility

A child receiving medical assistance through the GA program rather than through a medical program under Title XIX due solely to the lack of an SSN is eligible for Title XIX retroactive to the date of placement once the Department receives verification of an application for an SSN from the Social Security Administration. A form DHS 148 titled "Recipient Subsystem, Claims Processing, Addition/Correction" must be completed on each case and sent to the Client Maintenance Unit, for retroactive claiming of Title XIX. Title XIX eligibility retroactive to the date of placement must also be entered into the Department's FACIS system.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0490
Assignment of Medical Benefits

(1) All known or potential health insurance benefits or resources and all other third-party medical benefits, including casualty insurance available to the child, must be assigned to the Department.

(2) The caseworker or the caseworker's designee, as guardian of the child, may assign the benefits by signing the form CF 190.

(3) A form DHS 415H, "Medical Resource Report Form," must be completed and sent to the Department for every child with health insurance coverage.

(4) A form CF 969A, "Adoption Assistance Application Supplement," must be completed and sent to the Department's Health Insurance Group for each child approved for Adoption Assistance prior to finalization of the adoption.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0500
Lump Sum Benefits

If a sufficient portion of a lump sum (any income received as a one-time payment) is spent during the month it is received by the Department's Receipting and Trust Unit so that the ending Trust and Agency balance is less than the Medically Needy resource limit of $2,000, medical eligibility is not affected by receipt of the lump-sum income.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0510
Title XIX Coverage

If a child leaves paid substitute care, Title XIX eligibility continues for the remainder of the calendar month the child was in care as long as the child was eligible the day the medical card was issued.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0520
Reviews

(1) Each child's eligibility for Title XIX must be reviewed every 12 months unless the child is receiving SSI. A review is not required for a child receiving SSI.

(2) When there is a change in income or resources, the Department's form CF 190 must be completed in the month the change occurs in order to update the medical eligibility for the following month.

(3) When it has been determined that a child was incorrectly shown as Title XIX eligible for prior months, the Department completes a form DHS 148 to retroactively correct the child's record.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0530
Compliance

(1) The Department is responsible for compliance with the requirements of the Office of Management and Budget, OMB Circular A-133,

available at: http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2011.

(2) All cases to be reviewed by state auditors, including internal audits, or federal auditors are requested through the Department's Federal Compliance Unit. All case material (eligibility and service records) are made available for review upon request. The cases are randomly selected and must meet the criteria specific to the requirements of state and federal auditors.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0540
GA Medical Policy

(1) A child in paid substitute care who does not meet the eligibility requirements for Title XIX, is eligible for medical assistance through the General Assistance medical program.

(2) A form CF 190 indicates the child is eligible for GA medical when the child is no longer eligible for Title XIX. These cases are reviewed every 12 months to determine whether the child is again eligible under Title XIX due to a change in income or resources.

(3) Infrequently a non-relative foster care provider is the designated payee for a foster child's benefits. Until payee status is transferred to the agency and a foster care maintenance payment is made, the child is eligible for GA medical as long as its income is less than the standard cost of foster care for the child.

(4) Youth in non-subsidized Independent Living are eligible for GA medical unless their income exceeds the standard cost of foster care for their age level.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0550
Non-Paid Relative Placements

(1) For the Department to determine Medicaid eligibility for a child placed with a non-paid relative, a completed form SREL 190 must be submitted to the Department. A child in this situation is not eligible to receive a GA medical card. The Federal Program Coordinator provides assistance to eligibility specialists working with non-citizen children placed with a non-paid relative.

(2) A child placed in a relative's home in another state is referred to the Title XIX agency in that state for a Title XIX determination. If that state determines there is no Title XIX eligibility, the child may be eligible for a GA medical card only if the child's income is below the foster care rate (*see* OAR 413-090-0000). The Department will not place a child in another state without following the procedures required by the rules on the Interstate Compact on the Placement of Children, OAR 413-040-0200 to 413-040-0330.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0560
Medical Eligibility for Children in Adoptive Homes

(1) A child placed in an adoptive home prior to the entry of a final decree of adoption is eligible for a medical card.

(2) If no foster care payment is made, the child is GA eligible prior to execution of any Adoption Assistance agreements.

(3) If no medical eligibility is initially established, the medical eligibility may be determined using the criteria in section (2) of this rule any time during the adoption supervisory period.

(4) Title XIX eligibility for a child in an adoptive placement for whom Adoption Assistance has been approved is determined according to OAR 413-130-0100, " Medical Assistance."

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0600
Children in Residential Care with Payment by Another Public Agency

(1) A child in substitute care approved by a public agency of this state for whom a public agency of this state is assuming some financial responsibility may be eligible for medical coverage.

(2) A child in the custody of the Department who is placed in residential care paid by another public agency may be eligible for medical coverage.

(3) Before a medical card can be issued to a child in the Department's custody or in non-paid residential care funded by another public agency, the following must be entered on the Department's FACIS system:

(a) Medical eligibility after completion of a form CF 190;

(b) An SRES non-pay service;

(c) The child's address on IKMB (the child's individual screen).

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-100-0610
Temporary Medical Card Issuance

The form DMAP 1086, "Temporary Medical Care Identification Card," may be issued when a child requires medical care prior to receiving the computer-generated medical card (Medical Care Identification Card, DMAP 1417). The temporary card may also be issued when the child is placed or moved to a new placement or when the card is lost and medical care is needed before a new card can be issued. The eligibility data must be entered into the system at the time of issuance in order for the provider to be paid.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; Suspended by CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

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Rule Caption: Changing OARs affecting Child Welfare programs
Adm. Order No.: CWP 17-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Suspended: 413-330-0000, 413-330-0010, 413-330-0020, 413-330-0030, 413-330-0040, 413-330-0050, 413-330-0060, 413-330-0080
Subject: These Child Welfare rules regarding criteria for personal and professional services contracting are being suspended because they are no longer needed, and they contain language that could be interpreted to be inconsistent with the recent directive that state agencies recognize same-sex marriages validly performed in other jurisdictions for purposes of administering Oregon law. The contracting and procurement functions are now centralized in the Department's Office of Contracts and Procurement, and are subject to the Public Contracting Code, Department of Administrative Services rules, and Department of Justice Model Public Contract rules. In the meantime, these rules regarding criteria for personal and professional services contracting are being suspended to eliminate any inconsistency.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-330-0000
Definitions

(1) "Consideration": To perform or provide something of value in exchange for something of value.

(2) "Independent Contractor": An independent contractor is distinguished from an employe by the following characteristics:

(a) An independent contractor is free from control and direction as to the methods or strategy used to provide the agreed-upon service; and

(b) Such independent contractor is customarily engaged in an independently-established business of the same nature as that involved in the contract of service.

(3) "Personal and Professional Service Contract": Contracts for services performed as an independent contractor in the professional capacity, including but not limited to the services of an attorney, physician or dentist; contracts for services of a specialized, creative, and research oriented, noncommercial nature; contracts for services as a consultant or trainer; and contracts for human care and treatment, education services, consultation and training.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 291.021
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 17-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-330-0010
Contract Principles

(1) The State utilizes contracts to pay for personal and professional services provided by an organization or private individual. State law normally prohibits payment for personal and professional services which are provided prior to there being an appropriately written, fully signed contract. Any person who authorizes services to be performed prior to entry of a contract, signed in accordance with state law, may be held personally responsible to pay for the services.

(2) The State Office for Services to Children and Families (SOSCF) contracts shall be in writing to create an enforceable means of assuring that each of the parties faithfully discharge the obligations they have assumed and receive the benefits and protections guaranteed to them by the contract.

(3) Contracts will be written prospectively. SOSCF is not bound to pay for services which were given beyond or outside of a legal contract. Contracts will not be written retroactively to cover work performed prior to the effective date of the contract.

(4) Contracts may be amended during the term of the contract to extend the contract term ending date or to modify the statement of work to be performed, the consideration to be paid, or any other provision of the contract to reflect the intentions of the parties, or to reflect the actual nature of the services being provided and the parties agreement.

(5) A contract may not be amended to change the effective date to a date prior to the date the contract was approved by the Department of Administrative Services and the Department of Justice. A contract may not be amended to authorize and pay for work not already covered by that contract and already performed without benefit of an effective contract.

Example: If a current contractor undertakes to provide SOSCF with additional kinds of services, or to develop a new program, etc., without first obtaining SOSCF approval and executing a contract for that new work, an existing contract may not be amended to retroactively authorize and pay for that work.

(6) Contracts will be written with contractors who have the power to enter into a binding agreement. For SOSCF contracts, such contractors include an individual acting for her/himself, husband and wife acting together, a partnership, a corporation; and may include others acting "jointly and severally" under certain conditions. The contracting parties will be clearly identified. Contracting individuals, partners, and the president or board chair person of a corporation are assumed to be authorized to sign contracts. If any other person is designated to sign for the contractor, the SOSCF representative obtaining the signature will require the signer to produce an official document (e.g., corporation by-laws, minutes of a board meeting, etc.) authorizing such signature.

Stat. Auth.: OL 1993, Ch. 676
Stats. Implemented: ORS 279.727 & 279.729
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 5-1998, f. 2-5-98, cert. ef. 2-6-98; Suspended by CWP 17-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-330-0020
Approved Programs

Contracts for services shall be executed only in support of those programs that have been approved for contracting by SOSCF. When federal funds will be claimed for contract services, the services will be in support of a program for which the federal funds are authorized.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 291.021
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 17-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-330-0030
Authorizing Contract Funds

Funds for the services shall be authorized in a legislatively approved budget or have been approved for the services by the Emergency Board of the Legislature.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 291.021
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 17-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-330-0040
Independent Contractor

Contracts will be entered into with independent contractors only as defined in ORS 670.600 and in accordance with Department of Administrative Services Administrative Rules. Contracts will not be written with persons who are, by definition, SOSCF employees.

Stat. Auth.: OL 1993, Ch. 676
Stats. Implemented: ORS 279.727 & 279.729
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 5-1998, f. 2-5-98, cert. ef. 2-6-98; Suspended by CWP 17-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-330-0050
Contracts with Individuals

Contracts with individuals to provide services similar to services regularly provided by state employees will not be approved since, in most cases, an employer-employee relationship will exist and the services must be obtained through the personnel hiring system.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 291.021
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 17-2013(Temp), f. 12-31-13, cert. ef. 1-1-14

413-330-0060
Authority to Sign Contracts and to Represent SOSCF

(1) The agency director is the only person in SOSCF who, by virtue of the position, is authorized to sign contracts for SOSCF. The director may delegate signatory authority to others. The delegation will be in writing and will identify any conditions or limitations which may apply. A current record of such delegation shall be maintained on file in the DHR Contracts Section.

(2) SOSCF personnel may be assigned to represent SOSCF in matters related to developing and administering contracts. Such persons are agents of the state and the state is responsible for and is obligated by their actions when they act in accord with state law and pertinent agency rules and directives. Persons committing the state to pay for services rendered outside of a contract written in accordance with these rules, or acting outside their authority may be held personally responsible and liable for obligations incurred by them for the state.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 291.021
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 17-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

413-330-0080
Responsibility to Implement Contracts

(1) The appropriate SOSCF manager from whose budget the contract is to be funded, or designee, will be responsible to determine the need to contract, what is to be purchased, and the maximum amount which may be spent.

(2) The DHR Contracts Section will be responsible to assure compliance with SOSCF rules and policy in contractor selection and in writing and processing the contract.

(3) The DHR Contracts Section will be responsible to assure the legal sufficiency of all standard contracting forms, including the CF 44 (Emergency Contract) and the CF 996 (Family Foster Home/Shelter Care Contract). Any changes to these forms must have the approval of Management Operations.

(4) The DHR Contracts Section will prepare and process all contracts between SOSCF and another party or agency except those listed in paragraphs (5) through (7) of this rule.

(5) Family Foster Home/Shelter Care Contracts will be prepared and processed by field staff in accordance with OAR 413-330-0100, with the use of the CF 996 (Family Foster Home/Shelter Care Contract).

(6) Emergency contracts will be prepared and processed by field and/or Central Office staff as needed in accordance with OAR 413-330-0500 through 413-330-0540, with use of a CF 44 (Emergency Contract).

(7) Exceptions to OAR 413-330-0010(1), where payments would be authorized, can only be granted after a Departmental finding has been made, in consultation with the Department of Justice, that there is a substantial basis in law for the claim and a substantial risk of liability to the agency.

Stat. Auth.: OL 1993, Ch. 676
Stats. Implemented: ORS 279.727 & 279.729
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 5-1997, f. 6-19-97, 7-1-97; SCF 7-1997(Temp), f. & cert. ef. 8-11-97; SOSCF 5-1998, f. 2-5-98, cert. ef. 2-6-98; Suspended by CWP 17-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

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Department of Human Services, Self-Sufficiency Programs
Chapter 461

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients
Adm. Order No.: SSP 37-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013

Rules Amended: 461-001-0000, 461-001-0030, 461-025-0315, 461-025-0375, 461-101-0010, 461-105-0100, 461-105-0130, 461-110-0210, 461-115-0030, 461-115-0050, 461-120-0330, 461-135-0010, 461-135-0505, 461-135-0780, 461-135-0832, 461-135-0835, 461-135-0841, 461-135-0845, 461-135-0875, 461-140-0020, 461-140-0300, 461-145-0220, 461-145-0250, 461-145-0580, 461-150-0060, 461-155-0180, 461-155-0225, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0015, 461-160-0580, 461-160-0620, 461-160-0780, 461-165-0070, 461-175-0206, 461-175-0210, 461-180-0010, 461-180-0090, 461-180-0140, 461-185-0050, 461-195-0301, 461-195-0310, 461-195-0551

Rules Repealed: 461-001-0000(T), 461-101-0010(T), 461-110-0210(T), 461-115-0030(T), 461-115-0050(T), 461-135-0010(T), 461-135-0875(T), 461-135-1125, 461-145-0220(T), 461-145-0250(T), 461-145-0580(T), 461-150-0055, 461-150-0060(T), 461-155-0180(T), 461-155-0225(T), 461-160-0015(T), 461-175-0210(T), 461-180-0010(T), 461-180-0090(T), 461-180-0140(T)

Subject: OAR 461-001-0000 defining terms used in Chapter 461, OAR 461-101-0010 about program acronyms and overview, and OAR 461-155-0225 about income standards are being amended as part of the process to move policies about financial eligibility for medical assistance from OAR 461 (DHS) into the OAR 410-200 (under OHA), and as part of the implementation efforts for the federal Affordable Care Act (ACA). For applications for medical assistance starting on October 1, 2013, financial eligibility policies are changing and will be set out in OAR 410-200. These amendments make permanent temporary rule changes adopted October 1, 2013.

OAR 461-001-0030 about definitions for OSIP and OSIPM for long-term care or home and community-based care is being amended to modify the definition of an eligible dependent to clarify this rule.

OAR 461-025-0315 about expedited hearings, OAR 461-025-0375 about final orders, OAR 461-105-0100 about release of client information to law enforcement officers, OAR 461-105-0130 about disclosure of client information, OAR 461-135-0505 about categorical eligibility for SNAP, OAR 461-140-0300 about adjustments to the disqualification for asset transfer, and OAR 461-175-0206 about benefit standard change notices are being amended to address for the removal of "medical assistance" from the definition of "public assistance" in HB 2859 (2013) while continuing existing policies.

OAR 461-110-0210 about household groups is being amended to clarify how to determine household groups in the QMB programs as well as in the OSIPM program for individuals in non-standard living situations.

OAR 461-115-0030 about dates of request for medical programs is being amended to correct an inadvertent omission of the Qualified Medicare Beneficiary (QMB) programs from the rule. QMB programs are subject to the same rules regarding dates of requests as for other medical programs; therefore, a reference to the QMB programs is being added to this rule.

OAR 461-115-0050 about when an application must be filed, OAR 461-180-0010 about effective dates for adding a new person to an open case, and OAR 461-180-0090 about effective dates for initial month of medical benefits are being amended as part of the process to move policies about financial eligibility for medical assistance from OAR 461 (DHS) into the OAR 410-200 (under OHA), and as part of the implementation efforts for the federal Affordable Care Act (ACA). For applications for medical assistance starting on October 1, 2013, financial eligibility policies are changing and will be set out in OAR 410-200. These amendments make permanent temporary rule changes adopted October 1, 2013.

OAR 461-120-0330 is being amended to indicate that any parent or caretaker relative that is exempt from JOBS (Jobs Opportunity and Basic Skills) is not required to apply unemployment benefits.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to indicate that Medicaid eligibility for individuals receiving or deemed eligible for SSI is not absolute, and is subject to additional eligibility factors, aligning with federal policy consistent with clarification from the Centers for Medicare and Medicaid Services. Individuals receiving or deemed eligible for SSI are subject to additional eligibility requirements, such as residency, pursuit of assets and/or health care coverage prior to approval of Medicaid benefits. This rule is also being amended to include the policy about continuous eligibility for certain children because the current rule in which this policy appears (OAR 461-135-1149) is being repealed.

OAR 461-135-0780 about eligibility for Pickle Amendment clients in the OSIPM program, OAR 461-145-0220 about treatment of the home, OAR 461-155-0250 about income and payment standard for OSIPM, OAR 461-155-0270 about room and board standards for OSIPM, OAR 461-155-0300 about shelter-in-kind standard for OSIP, OSIPM and QMB, OAR 461-160-0015 about resource limits, OAR 461-160-0580 about excluded resources (community spouse provision) OSIPM program (except OSIP-EPD and OSIPM-EPD), and OAR 461-160-0620 and income deductions and client liability for Long Term Care Services and Waivered Services are being amended to adjust these standard to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living.

OAR 461-135-0832 is being amended to change references of "public assistance" to "assistance." Oregon Laws 2013, Chapter 688, Section 32 has changed the statutory definition of "public assistance" to exclude "medical assistance." "Assistance" will be defined in OAR 461-135-0832 and includes "medical assistance."

OAR 461-135-0835 is being amended to change references of "public assistance" to "assistance." Oregon Laws 2013, Chapter 688, Section 32 has changed the statutory definition of "public assistance" to exclude "medical assistance." "Assistance" will be defined in OAR 461-135-0832 and includes "medical assistance."

OAR 461-135-0841 is being amended to change references of "public assistance" to "assistance." Oregon Laws 2013, Chapter 688, Section 32 has changed the statutory definition of "public assistance" to exclude "medical assistance." "Assistance" is now defined in OAR 461-135-0832 and includes "medical assistance."

OAR 461-135-0845 is being amended to change references of "public assistance" to "assistance." Oregon Laws 2013, Chapter 688, Section 32 has changed the statutory definition of "public assistance" to exclude "medical assistance." "Assistance" will be defined in OAR 461-135-0832 and includes "medical assistance."

OAR 461-135-0875 about specific requirements for retroactive medical benefits is being amended to correct an inadvertent omission of two of the Qualified Medicare Beneficiary (QMB) programs from the rule, specifically QMB-SMB and QMB-SMF. These particular QMB programs are subject to the same rules regarding retroactive benefits for other medical programs; therefore, a reference to the QMB-SMB and QMB-SMF programs is being added to this rule. This rule is also being amended to remove a redundant and potentially confusing reference to the QMB-BAS program, which is not subject to the same rules regarding retroactive benefits. This rule is being further amended to remove medical programs whose eligibility requirements are now covered in OAR 410-200, making permanent a temporary rule change adopted October 1, 2013.

OAR 461-135-1125 about reservation lists and eligibility is being repealed as part of the implementation of the Affordable Care Act because this policy is no longer necessary.

OAR 461-140-0020 about availability of resources is being amended to align Department policy with the Social Security Administration's (SSA) Program Operations Manual System (POMS), setting forth the rebuttable assumption that jointly-held resources are assumed to be entirely available to the client. Currently the Department considers a jointly-owned resource available to the extent that the client owns the resource. As with the POMS, the Department is

adding the provision to this amendment indicating that the assumption of full availability is rebuttable.

OAR 461-145-0250 about income-producing property is being amended to align with the Social Security Administration's (SSA) Program Operations Manual System (POMS) and to clarify in the GA, GAM, OSIP, OSIPM, and QMB programs what types of property is excluded or exempt. Without these changes, this rule can be interpreted to apply trade or business definitions to non-business property, thus creating the potential for incorrect eligibility determinations. This amendment provides clearer guidelines for determining if property is used in a trade or business and gives examples of property types. This rule is also being amended to remove programs whose eligibility requirements are now covered under OAR 410-200, making permanent temporary rule changes adopted October 1, 2013.

OAR 461-145-0580 about veterans' benefits is being amended to correct an inadvertent omission of the Oregon Supplemental Income Program Medical (OSIPM) program from the policy setting out how aid-and-attendance payments are treated in determining eligibility for clients in standard living situations. This rule is also being amended to removed eligibility requirements now set out in OAR 410-200, making permanent a temporary rule change adopted October 1, 2013.

OAR 461-150-0055 about eligibility and budgeting in the HKP and OHP programs is being repealed as part of the process to move policies about financial eligibility for medical assistance from OAR 461 (DHS) into the OAR 410-200 (under OHA), and as part of the implementation efforts for the federal Affordable Care Act (ACA). For applications for medical assistance starting on October 1, 2013, financial eligibility policies are changing and will be set out in OAR 410-200. This repeal makes permanent the temporary suspension of this rule that started October 1, 2013.

OAR 461-150-0060 about prospective budgeting and eligibility is being amended to clarify that actual income is used when there is a new or terminated source of income in the initial month of eligibility for the Temporary Assistance for Needy Families (TANF) and Refugee programs. This rule is also being amended as part of the process to move policies about financial eligibility for medical assistance from OAR 461 (DHS) into the OAR 410-200 (under OHA), and as part of the implementation efforts for the federal Affordable Care Act (ACA). For applications for medical assistance starting on October 1, 2013, financial eligibility policies are changing and will be set out in OAR 410-200. This amendment makes permanent temporary rule changes adopted on August 1, 2013 and October 1, 2013.

OAR 461-155-0180 about poverty-related income standards is being amended to reflect the 2014 poverty level standards. The poverty guidelines are updated each year by the Department of Health and Human Services. The poverty guidelines are adjusted based on the Consumer Price Index for All Urban Consumers (CPI-U). The poverty guidelines are then used to determine financial eligibility for the programs covered by this rule except OSIP, OSIPM and QMB. The Department converts the annual poverty guidelines published in the Federal Register to a monthly, rounded amount and uses the result to determine the new income limits. This rule is also being amended to make permanent a temporary rule amendment adopted August 23, 2013 setting out the standards for 300 percent of the federal poverty level instead of 201 percent.

OAR 461-160-0580 is also being amended to change the manner of computing the amount necessary to raise the community spouse's income to the monthly maintenance needs allowance. Instead of being an amount which, if invested, would raise the interest income of the community spouse to the allowance, it will be the amount required to purchase a single premium immediate annuity.

OAR 461-160-0620 about income deductions and client liability for long-term care services and home and community-based care in the Oregon Supplemental Income Program Medical (OSIPM) is also being amended to change the need standard deduction for home and community-based care in-home services from the OSIPM maintenance standard (currently $710) to the OSIPM maintenance standard plus $500.

OAR 461-160-0780 about determining adjusted income in the OSIP-EPD and OSIPM-EPD programs is being amended to remove a statement about a deduction from unearned income that is unnecessary as the only place that is available to deduct it from is earned income.

OAR 461-165-0070 about immediate issuance of benefits is being amended to remove the policy about temporary medical cards because these temporary cards are no longer issued by branch staff.

OAR 461-175-0210 about notices sent to clients when they move or their location is unknown is being amended to make permanent a temporary rule change adopted October 3, 2013 stating that no notice is needed in the SNAP program when a SNAP case is closed for returned mail and the clients whereabouts are unknown. This rule is also being amended to make permanent a temporary rule change adopted October 1, 2013 removing the policies for certain medical assistance programs from this rule because this topic is now covered in OAR 410-200-0120.

OAR 461-180-0140 about effective dates for retroactive medical benefits is being amended to clarify policy in the OSIPM, QMB, and REFM programs. This rule is also being amended to remove medical program eligibility now addressed in OAR 410-200.

OAR 461-185-0050 about the client pay-in system is being amended to correct a rule reference, remove misleading language, and to clarify current policy. The rule would no longer be subject to being interpreted to instruct staff to apply a second income deduction based on an obsolete payment standard (which was removed in 2006 from OAR 461-155-0250(3).

OAR 461-195-0301 is being amended to modify the definition of "assistance" include payments by coordinate care organizations. This rule is being amended to remove the definition of "net settlement", update cross references, and clarify the rule.

OAR 461-195-0310 is being amended to add a requirement that an assistance applicant or recipient provide notice to the coordinated care organization providing benefits about any action or claim for a personal injury the individual may have against a third party. This rule is also being amended to replace phrase "public assistance" with "assistance", to remove superfluous language, and to add that an applicant or recipient's failure to notify the individual's coordinated care organization about an action or claim against a third party for a personal injury may result in civil liability for the applicant or recipient. This amendment also adds a requirement that a coordinated care organization, a prepaid managed care plan, and the Personal Injury Lien Unit consult with each other prior to pursuing civil liability against an applicant or recipient.

OAR 461-195-0551 about methods of recovering overpayments is being amended to update its terminology consistent with HB 2859 (2013).

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0000
Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except:

(a) The rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(b) OCCS medical program eligibility rules are set out in the 410-200 division of Oregon Administrative Rules.

(2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing

address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(3) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(5) "Assets" mean income and resources.

(6) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(7) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to $50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of $100 or more.

(12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) "Caretaker relative" means:

(a) In the Pre-TANF, REF, SFPSS, and TANF programs, a dependent child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece who lives in a residence maintained by one or more of the relatives as the child's or the relative's own home.

(b) In all programs not covered under subsection (a) of this section, a caretaker who meets the requirements of one of the following paragraphs:

(A) Is one of the following relatives of the dependent child:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(ii) Stepfather, stepmother, stepbrother, and stepsister.

(iii) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(B) Is or was a spouse of an individual listed in paragraph (A) of this subsection.

(C) Met the definition of caretaker relative under paragraph (A) or (B) of this subsection before the child was adopted (notwithstanding the child's subsequent adoption).

(14) "Certification period" means the period for which a client is certified eligible for a program.

(15) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) "Community based care" is any of the following:

(a) Adult foster care - Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services - People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).

(17) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(19) "Cover Oregon" means Oregon Health Insurance Exchange Corporation.

(20) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(21) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(22) "Department" means the Department of Human Services (DHS).

(23) "Dependent child", in the REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(24) "Disability" means:

(a) In the SNAP program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(25) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(e) As used in this section, "family members" and "household members" mean any of the following:

(A) Spouse;

(B) Former spouse;

(C) Individuals related by blood, marriage, or adoption;

(D) Individuals who are cohabitating or have cohabited with each other;

(E) Individuals who have been involved in a sexually intimate or dating relationship; or

(F) Unmarried parents of a child.

(26) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(27) "Electronic application" is an application electronically signed and submitted through the internet.

(28) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(29) "Equity value" means fair market value minus encumbrances.

(30) "Fair market value" means the amount an item is worth on the open market.

(31) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(32) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(33) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(34) "Income producing property" means any real or personal property that generates income for the financial group. Examples of income producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(35) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the SNAP program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the SNAP program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) For a new applicant to the GA, GAM, OSIP, or OSIPM program living in a nonstandard living arrangement, for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(36) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(37) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(38) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of his or her life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(39) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(40) "Long term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(41) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings, and personal injury claims.

(42) "Marriage" means the union of a man and a woman who are legally married.

(43) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than $35,000.

(44) "Minor parent", in the ERDC, REF, REFM, and TANF programs, means a parent under the age of 18.

(45) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility in which the client receives long-term care services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community based care (see section (16) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a nonstandard living arrangement.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care facility.

(C) Drug or alcohol residential treatment facility.

(D) Homeless or domestic violence shelter.

(E) Lodging house if paying for room and board.

(F) Correctional facility.

(G) Medical institution.

(46) "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program eligibility policy, community outreach, OCCS Medical Program eligibility determinations, and the OHA Customer Service Call Center.

(47) "OCCS Medical Programs" refers to programs for which eligibility policy can be found in division 410-200 of Oregon Administrative Rule, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:

(a) MAGI Child;

(b) MAGI Parent or Other Caretaker Relative;

(c) MAGI Pregnant Woman; and

(d) MAGI CHIP.

(48) "Ongoing month" means one of the following:

(a) For all programs except the SNAP program, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the SNAP program, any month in the certification period following the initial month of eligibility.

(49) "Parent" for all programs except the SNAP program, means the biological or legal (step or adoptive) mother or father of an individual or unborn child. For the SNAP program, a parent means the biological or legal (step or adoptive) mother or father of an individual.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the

father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce, or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control, and supervision of the child.

(50) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(51) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(52) "Periodic income" means income received on a regular basis less often than monthly.

(53) "Primary person" for all programs except the SNAP program, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For the TANF program, the parent or caretaker relative.

(b) For the ERDC program, the caretaker.

(c) For SNAP, see OAR 461-001-0015.

(d) For the GA, GAM, OSIP, OSIPM, and QMB programs: the client or client's spouse.

(e) For the REF and REFM programs: the applicant, caretaker, caretaker relative, or parent.

(54) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(55) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(56) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(57) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(58) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.

(59) "Shelter in kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs of the financial group. Shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.

(60) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(61) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group (see OAR 461-110-0530).

(62) "Spouse" means an individual who is legally married to another individual. In the ERDC program, spouse includes an individual who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors, or tradespeople; and

(b) Sharing living expenses or household duties.

(63) "Stable income" means income that is the same amount each time it is received.

(64) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(65) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(66) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(67) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(68) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(69) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.001, 412.006, 412.014 & 412.049

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; Administrative correction 4-21-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 29-2013(Temp), f. & cert. ef. 10-1-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-001-0030

Definitions; OSIP, OSIPM Long-Term Care or Home and Community-Based Care

These terms apply to rules in Chapter 461 about OSIP and OSIPM long-term care and home and community-based care clients:

(1) Community spouse: An individual who is legally married (see OAR 461-001-0000) to an institutionalized spouse and is not in a medical institution or nursing facility.

(2) Continuous period of care: Reside for a period of at least 30 consecutive days or until death in a long term care facility, home and community-based care setting, or an acute care hospital. There must be sufficient evidence to show there is a reasonable expectation that the client will remain in care for at least 30 consecutive days. For the purposes of this policy, an interruption in care (for example, leaving and then returning to a nursing home, or switching from one type of care to another) that lasts less than 30 days is not considered a break in the 30 consecutive days of care. A new period of care begins if care is interrupted for 30 or more days.

(3) Eligible dependent:

(a) For cases with a community spouse:

(A) An "eligible dependent" is the child of the institutionalized spouse or community spouse and must also be either a minor (under the age of 21) or 21 or older but still a dependent.

(B) A grandchild of the institutionalized spouse or community spouse is not considered an "eligible dependent".

(C) An "eligible dependent" is a dependent parent or sibling of the institutionalized spouse or community spouse who is residing with the community spouse and claimed as a tax dependent by either spouse.

(b) For cases without a community spouse, an "eligible dependent" is a minor (under the age of 21) or dependent child residing with and claimed as a tax dependent by the client.

(4) Home and community-based care: Title XIX services needed to keep an individual out of a long-term care facility. These services are:

(a) In-home services except for state plan personal care services.

(b) Residential care facility services.

(c) Assisted living facility services.

(d) Adult foster care services.

(e) Home adaptations to accommodate a client's physical condition.

(f) Home-delivered meals provided in conjunction with in-home services.

(g) Specialized living facility services.

(h) Adult day care services.

(i) Community transition services.

(5) Home and community-based care client: A client receiving home and community-based care for a continuous period.

(6) Institutionalized spouse: An individual who is in long-term care or receiving home and community-based care for a continuous period and is married to a community spouse.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; Renumbered from 461-160-0560, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-025-0315

Expedited Hearings

(1) A claimant has the right to an expedited hearing in each of the following situations:

(a) The Department denies or fails to issue a timely decision on claimant's request for:

(A) Emergency assistance; or

(B) TA-DVS (see OAR 461-135-1235).

(b) The claimant contests the form or amount of a TA-DVS or an emergency assistance payment.

(c) The claimant has the right to a hearing over a reduction, suspension, or closure and disagrees with the Department's decision to deny the continuation of one or more of the following pending a requested hearing:

(A) Cash benefits.

(B) Supplemental Nutrition Assistance Program benefits.

(C) Medical benefits.

(D) Nursing Home services or home and community-based care (see OAR 461-001-0030) that have been reduced or closed as a result of a service re-assessment conducted in accordance with OAR division 411-015.

(d) The claimant's request for expedited SNAP service or DSNAP is denied, or the claimant is aggrieved by an action of the Department that affects the expedited participation of the household in the SNAP program.

(e) In the JOBS program, the Department denies an application for a support service payment or a payment for a basic living expense authorized by OAR 461-190-0211, or the Department reduces or closes a support service payment authorized by 461-190-0211, or the Department does not issue a JOBS support service payment within the time frames required under 461-115-0190.

(2) Public assistance and medical assistance programs: An expedited hearing is a telephone hearing held within five working days of the Department's receipt of a properly submitted hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service, by overnight mail, or if the claimant agrees by electronic mail. The final order must be issued within three working days from the date the hearing closes.

(3) Supplemental Nutrition Assistance Program: An expedited hearing is a telephone hearing held within five working days of the receipt of a verbal or written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service, by overnight mail, or if the claimant agrees by electronic mail. Following the expedited hearing, a final order must be issued not later than the ninth working day after the hearing was requested.

(4) If the Office of Administrative Hearings grants a face-to-face hearing, the hearing may be postponed or continued as necessary to accommodate the claimant. However, the hearing must be held not later than 21 days following the receipt by the Department of the request for hearing if the claimant lives within 100 miles of Salem, Oregon, and not later than 35 days in all other cases.

Stat. Auth.: ORS 411.060, 411.095, 411.404, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.095, 411.099, 411.103, 411.117, 411.404, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 21-1990(Temp), f. 8-28-90, cert. ef. 9-1-90; AFS 2-1991, f. 1-15-91, cert. ef. 2-1-91; AFS 4-1995, f. & ef. 2-1-95; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-025-0375

Final Order; Timeliness and Effective Date

(1) A Final Order will be issued or the case otherwise resolved:

(a) In public assistance and medical assistance cases not later than 90 days following the request for hearing;

(b) In cases involving only the SNAP program not later than 60 days following the request for hearing; and

(c) In IPV cases within 90 days of the date the claimant was notified in writing that a hearing had been scheduled.

(2) Delay due to a postponement or continuance granted at claimant's request shall not be counted in computing the time limits specified in section (1) of this rule.

(3) The final order is effective immediately upon being signed or as otherwise provided in the order.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-101-0010

Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program and acronyms for each subprogram.

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code.

(4) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(5) DSNAP; Disaster Supplemental Nutrition Assistance Program. Following a presidential declaration of a major disaster in Oregon, DSNAP provides emergency DSNAP program benefits to victims. OAR 461-135-0491 to 461-135-0497 cover DSNAP eligibility and benefits.

(6) EA; Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(7) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(8) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(9) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(10) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(11) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(12) JOBS Plus. Provides subsidized jobs rather than SNAP or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for SNAP clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, SNAP clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) TANF-PLS; Clients eligible for JOBS Plus based on TANF.

(b) SNAP-PLS; Clients eligible for JOBS Plus based on SNAP.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(13) JPI; Job Participation Incentive. An additional $10 food benefit to help increase the ability of single parents with small children, that meet federal TANF participation rate, to meet the nutritional needs of their families.

(14) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(15) OFSET. The Oregon Food Stamp Employment Transition Program, which helps SNAP program benefit recipients find employment. This program is mandatory for some SNAP program benefit recipients.

(16) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program - Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program - Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program - Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program - Old Age Assistance.

(17) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(18) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(19) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(20) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries - Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries - Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries - Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries - Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.

(21) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(22) REFM; Refugee Assistance Medical. Medical coverage for low-income refugees.

(23) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(24) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(25) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(26) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(27) SNAP; Supplemental Nutrition Assistance Program. Helps low-income households maintain proper nutrition by giving them the means to purchase food. SNAP used to be known as FS or Food Stamps, any reference to SNAP also includes FS and Food Stamps.

(28) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(29) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment.

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231

Stats. Implemented: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 29-2013(Temp), f. & cert. ef. 10-1-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-105-0100

Release of Client Information to Law Enforcement Officers

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department may provide client information to a law enforcement officer in any of the following situations:

(a) The law enforcement officer is involved in carrying out public assistance or medical assistance laws, or any investigation, criminal or civil proceedings connected with administering the Department's benefit programs.

(b) A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department.

(c) The disclosure is authorized by statute or administrative rule.

(2) Except as provided in section (3) of this rule, the Department may give a client's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(a) Is a fugitive felon or is violating parole or probation; or

(b) For all programs except SNAP, has information that is necessary for the officer to conduct official duties of the officer, and the location or apprehension of the client is within the officer's official duties. For clients only in the SNAP program, has information that is necessary to conduct an official investigation of a fugitive felon or someone violating parole or probation.

(3) If domestic violence has been identified in the household, section (2) of this rule does not authorize the release of information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating probation or parole.

(4) For purposes of the rules in Division 461-105, a fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony

(5) For purposes of the rules in Division 461-105, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose job duties include arrest authority.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412,049

Stats. Implemented: ORS 409.010, 410.150, 411.060, 411.117, 411.320, 411.335, 411.404, 411.816, 411.837, 412.014, 412.049

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-105-0130
Disclosure of Client Information

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department may disclose the minimum necessary client information without client authorization for purposes directly connected with:

(a) Administering the public assistance, medical assistance, and SNAP program laws, except for social security numbers, health, treatment, and domestic violence information.

(b) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(c) Any legally authorized audit or review by a governmental entity conducted in connection with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(2) Client information, other than health or treatment information, may be exchanged with other governmental or private, non-profit agencies to only the extent necessary to assist applicants or recipients of public assistance, medical assistance, or SNAP benefits to access and receive other governmental or private, non-profit services that will benefit or serve the applicant or recipient. Reasonable efforts must be made to obtain applicant or recipient authorization in advance.

(3) For all programs except SNAP, client information may be disclosed without the client's authorization for purposes directly connected with foster care and adoption assistance programs under Title IV-E of the Social Security Act.

(4) Notwithstanding any rule in this division, client information-— other than health or treatment information — may be disclosed to an Oregon attorney who represents that client if both of the following requirements are met:

(a) The attorney states that he or she currently is representing the client.

(b) The attorney states that the client has authorized disclosure of the client information to the attorney.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 412.049
Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 412.049, 418.130
Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-110-0210
Household Group

(1) This rule describes who is included in the household group. The household group generally consists of the individuals who live together with or without the benefit of a dwelling. For homeless people, the household group consists of the individuals who consider themselves living together.

(2) A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has, separate from any other dwelling, an access to the outside that does not pass through another dwelling, a functional sleeping area, bathroom, and kitchen facility.

(3) Each individual in the household group who applies for benefits is an applicant. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(4) For all programs except the SNAP program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following subsections are true:

(a) There is a landlord-tenant relationship between the two household groups in which the tenant is billed by the landlord at fair market value (see OAR 461-001-0000) for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

(A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at fair market value.

(5) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:

(a) In the ERDC program, if a child (see OAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.

(b) In the TANF program:

(A) If a parent (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the dependent child (see OAR 461-001-0000), the parent is in the same household group as the dependent child.

(B) A dependent child is included in the household group with the caretaker relative (see OAR 461-001-0000), who usually has the major responsibility for care and control of the dependent child, if the dependent child lives with two household groups in the same calendar month for at least one of the following reasons:

(i) Education.

(ii) The usual caretaker relative is gone from the household for part of the month because of illness.

(iii) A family emergency.

(c) In the SNAP program:

(A) The individual is a member of the household group that provides the individual more than half of his or her 21 weekly meals. If the individual is a child, the child is a member of the household group credited with providing the child more than half of his or her 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the child departs that group's home for school, even if the child eats no breakfast or lunch at that home.

(B) During the month in which a resident of a domestic violence shelter (see OAR 461-001-0000) enters the domestic violence shelter, the resident may be included both in the household group he or she left and in a household group in the domestic violence shelter.

(6) In the OSIPM program, individuals receiving or applying for home and community-based care (see OAR 461-001-0030) or nursing facility care are each an individual household group regardless of others living in the individual's dwelling or facility.

(7) Individuals absent from the household for 30 days or more are no longer part of the household group, except for the following:

(a) In all programs except the SNAP program, an individual in an acute care medical facility remains in the household group unless the individual enters long-term care.

(b) In the ERDC, REF, REFM, SAC, and TANF programs:

(A) A caretaker relative who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.

(B) A child who is absent for 30 days or more is in the household group if the child is:

(i) Absent for illness (unless the child is in a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days.

(c) In the ERDC program, an individual in the household group who is absent because of education, training, or employment, including long-haul truck driving, fishing, or active duty in the U.S. armed forces.

(d) In the REFM program, in a two-parent household, a parent remains in the household group if the requirements of both of the following paragraphs are met:

(A) The parent is absent because of education, training or employment — including absence while working or looking for work outside the area of his or her residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; and

(B) The other parent remains in the home.

(e) In the REF and TANF programs when a filing group includes more than one caretaker relative (see OAR 461-001-0000), a caretaker relative in the household group who is absent because of education, training, or employment -- including absence while working or looking for work outside the area of his or her residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces.

(8) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.001, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 5-1999(Temp), f. & cert. ef. 4-1-99 thru 6-30-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-115-0030
Date of Request

(1) For all programs covered by Chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The date of request is one of the following:

(a) In the EA, ERDC, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the date of request is the day the request for benefits is received by the Department.

(b) In the SNAP program, this section does not apply. See OAR 461-115-0040.

(c) In the GAM, OSIPM, QMB, REFM, and SAC programs, for a new applicant, the date of request is determined as follows:

(A) The day the request for medical benefits is received by a Department representative, except as described in paragraph (B) of this subsection.

(B) If the request for medical benefits is received by a Department representative no later than the next business day after medical services are received, the date of request is the day these medical services were received.

(d) In the OSIPM, QMB, REFM, and SAC programs, for a current recipient, the date of request is one of the following:

(A) The date the client reports a change requiring a redetermination of eligibility.

(B) The date the Department initiates a review.

(C) The date the client establishes a date of request by contacting the Department orally or in writing or by submitting an application.

(e) In the SFPSS program:

(A) Except as provided in paragraph (B) of this subsection, the date of request is the day the client signs the program's Interim Assistance Agreement.

(B) The date of request for support service payments is the day the request for benefits is received by the Department.

Stat. Auth: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 414.839

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-2008(Temp), f. & cert. ef. 4-17-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 2-21-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 23-2011(Temp), f. & cert. ef. 8-1-11 thru 1-27-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-115-0050
When an Application Must Be Filed

(1) A client must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:

(a) A client may apply for the TA-DVS program as provided in OAR 461-135-1220.

(b) In all programs except the TA-DVS program:

(A) Except as provided otherwise in this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(B) An application is complete if all of the following requirements are met:

(i) All information necessary to determine the individual's eligibility and benefit amount is provided on the application for each individual in the filing group.

(ii) The applicant, even if homeless, provides a mailing address.

(iii) The application is signed. An individual required but unable to sign the application may sign with a mark, witnessed by another individual.

(iv) The application is received by the Department, except an electronic application (see OAR 461-001-0000) meets the requirements of this paragraph only when submitted to and received by the Department with an electronic signature.

(2) A new application is not required in the following situations:

(a) In the SNAP program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when:

(A) Anticipated changes make the filing group (see OAR 461-110-0370) eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), under OAR 461-180-0080.

(b) In all programs except the SNAP program, when a single application can be used both to determine a client is ineligible on the date of request (see OAR 461-115-0030) and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950, notwithstanding subsection (g) of this section.

(f) In the GAM, OSIPM, and QMB programs, when a client's medical benefits are suspended because the client lives in a public institution (see OAR 461-135-0950), if the inmate is released within 12 months of admission and the inmate provides notification to the Department within 10 days of the release.

(3) When a client establishes a new date of request (see OAR 461-115-0030) prior to the end of the month following the month of case closure, unless the Department determines a new application is required, a new application is not required in the following situations:

(a) In the OSIPM program, when the client's case closed due to failure to make a liability payment required under OAR 461-160-0610.

(b) In the OSIPM-EPD program, when the client's case closed due to failure to make a participant fee payment required under OAR 461-160-0800.

(4) A new application is required to add a newborn child to a benefit group (see OAR 461-110-0750) according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the REFM program, no additional application is required to add a newborn to a benefit group receiving benefits from one of the listed programs if eligibility can be determined without submission of a new application.

(c) In the GAM, OSIPM, QMB, and REFM programs, no additional application is required to add an assumed eligible newborn to a benefit group currently receiving Department medical program benefits.

(d) In the ERDC and SNAP programs, an application is not required to add the child to the benefit group.

(e) In all programs other than ERDC, GAM, QMB, REF, REFM, SNAP, and TANF, an application is required.

(5) A new application is required to add an individual, other than a newborn child, to a benefit group according to the following requirements:

(a) In the ERDC and SNAP programs, a new application is not required.

(b) In the REF, REFM, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all programs other than the ERDC, REF, REFM, SNAP, and TANF programs, a new application is required.

(6) A client whose TANF grant is closing may request ERDC orally or in writing.

(7) Except for an applicant for the SNAP program, a client may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes an oral or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) In the OSIP, OSIPM, and QMB programs, a new application is not required to redetermine eligibility if the following conditions are met:

(a) The client currently is receiving benefits from one of these programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.839

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 17-2009(Temp), f. 7-29-09, cert. ef. 8-1-09 thru 1-28-10; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 1-28-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 19-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 1-28-14; SSP 28-2013(Temp), f. & cert. ef. 10-1-13 thru 1-28-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0330

Requirement to Pursue Assets

(1) In all programs, except the ERDC and SNAP programs, an individual must make a good faith effort to obtain any asset (other than support and medical coverage, which are covered in OAR 461-120-0340 and 461-120-0345, respectively) to which the individual has a legal right or claim, except as follows:

(a) A parent (see OAR 461-001-0000) or caretaker relative (see OAR 461-001-0000) who is exempt from participation in the JOBS program is not required to apply for unemployment insurance benefits.

(b) Except as specified by law, an individual applying for or receiving any program benefits from the Department is not required to apply for other programs it administers or for supplemental security income (SSI).

(c) An individual applying for the EA program is required to pursue, obtain, and use an asset only if the asset can be made available in time to meet the emergent need.

(d) An individual is not required to borrow money.

(e) An individual is not required to make a good faith effort to obtain any asset if the individual can show good cause for not doing so. Good cause means a circumstance beyond the ability of the individual to control.

(2) In all programs except the ERDC, SNAP, and medical assistance programs:

(a) The effect of failing to comply with this rule is that everyone in the filing group is ineligible. In addition, when a REF, SFPSS, or TANF program payment ends due to the penalty described in this subsection, eligibility for and the level of SNAP benefits are determined as if the individual were receiving benefits without the effects of this rule.

(b) The penalty provided by subsection (2)(a) of this rule is effective until all members of the filing group comply with the requirements of section (1) of this rule.

(3) In the medical assistance programs:

(a) An individual is ineligible for benefits if he or she fails to comply with the requirements of this rule.

(b) The penalty provided by section (3)(a) of this rule is effective until the individual complies with the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 411.087, 411.404, 411.706, 411.816, 412.006, 412.014, 412.024, 412.049, 412.124, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.087, 411.404, 411.706, 411.816, 412.006, 412.014, 412.024, 412.049, 412.124, 414.23

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0010

Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for the OSIPM or SAC program until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(3) A pregnant woman who was eligible for and receiving medical assistance under any Medicaid program and becomes ineligible while pregnant is assumed eligible for Medicaid until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A child (see OAR 461-001-0000) born to a mother eligible for and receiving OSIPM or SAC benefits is assumed eligible for medical benefits under this section until the end of the month the child turns one year of age.

(5) The following children are assumed eligible for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(6) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c), (d), or (e) of this section applies:

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable resources exceed the limit after performing the calculation under OAR 461-160-0580.

(e) An individual described in subsection (a) or (b) of the section who does not meet the pursuit of assets requirements (see OAR 461-120-0330), the health care coverage requirements (see OAR 461-120-0345), or the residency requirements (see OAR 461-120-0010) is not assumed eligible for OSIPM.

(7) For the purposes of this section the definition of a "child" means an unmarried individual under age 19 and includes natural, step, and adoptive children. A child found eligible for OSIPM is assumed eligible until the end of the twelfth month following the determination of the child's OSIPM eligibility unless the child:

(a) No longer meets the definition of a child given in this section;

(b) Moves out of state; or

(c) Voluntarily ends benefits.

(8) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program unless the individual does not meet the pursuit of assets requirements (see OAR 461-120-0330), the health care coverage requirements (see OAR 461-120-0345), or the residency requirements (see OAR 461-120-0010).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404 & 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 412.049 & 414.025

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-11-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0505
Categorical Eligibility for SNAP

(1) An individual is categorically eligible for SNAP benefits if the individual:

(a) Receives or is authorized to receive GA or SSI benefits;

(b) Receives or is authorized to receive cash, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;

(c) Is deemed to be receiving SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)); or

(d) Is a member of a financial group (see OAR 461-110-0530) with countable (see OAR 461-001-0000) income less than 185 percent of the federal poverty level as described in OAR 461-155-0180(6) — and has received a pamphlet about Information and Referral Services.

(2) For an entire filing group to be categorically eligible for SNAP benefits, it must contain only clients who are categorically eligible for SNAP benefits. For the purpose of determining who is categorically eligible for SNAP benefits, in the ERDC and TA-DVS programs all members of the filing group are considered receiving the benefits of the program even if not all members receive the benefit.

(3) A filing group that is eligible for transition services or the TA-DVS program is considered receiving benefits for the entire period of eligibility even if benefits are not received during each month of that period.

(4) An individual categorically eligible for the SNAP program is presumed to meet the eligibility requirements for resources and countable and adjusted income limits. The individual is also presumed to meet the requirements for a social security number, sponsored alien information, and residency, if verified in a public assistance or medical assistance program.

(5) When a filing group contains both members who are categorically eligible for SNAP benefits and those who are not, a resource owned in whole or in part by a categorically eligible member is excluded.

(6) An individual may not be categorically eligible for SNAP benefits in either of the following circumstances:

(a) The individual is disqualified from receiving SNAP benefits because of an intentional program violation.

(b) The individual is a primary person (see OAR 461-001-0015) disqualified from receiving SNAP benefits for failure to comply with an OFSET activity or component contained in an OFSET case plan (see OAR 461-001-0020).

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 29-2000(Temp), f. & cert. ef. 12-1-00 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 2-2003(Temp); f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0780
Eligibility for Pickle Amendment Clients; OSIPM

(1) An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94 566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving Social Security Benefits (SSB);

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the individual when he or she became ineligible for SSI or OSIP is used as the individual's countable Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined using the information provided by the SSA, it is calculated in accordance with sections (3) and (5) of this rule.

(3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (5) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's countable Social Security for purposes of this rule and the Pickle Amendment.

(4) Add the amount determined in accordance with section (2) or (3) of this rule to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the $20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment.

(a) For spouses in the same financial group (see OAR 461-110-0530), determine the spouse's SSB benefit amount in the year the individual lost his/her SSI or perform the above calculation for the spouse's Social Security benefit using the same multiplier, regardless of whether or not the spouse received SSI, combine the results and add the subtotal to all other countable unearned and adjusted earned income.

(b) If the total is less than the full SSI standard for a couple plus the $20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

(5) The following guide contains the calculations used to determine the SSB for prior years (use this table only if you cannot determine the prior year's amount using information provided by SSA): [Calculations not included. See ED. NOTE.]

[ED. NOTE: Calculations referenced are available from the agency.]
Stat. Auth.: ORS 411.060, 411.070, 411.404
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0832
Estate Administration; Definitions

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 410.075, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse (see OAR 461-001-0000); by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

(2) "Assign" means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

(3) "Assistance" means general assistance and public assistance as defined in ORS 411.010 and medical assistance as defined in ORS 414.025.

(4) "Blind child" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

(a) Vision of 20/200 or less in the better eye with a corrective lens; or

(b) A limitation in vision field to an angle of 20 degrees or less; or

(c) Meeting any other SSI criteria for blindness.

(5) "Bona fide purchaser for value" means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.

(6) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(7) "Consideration furnished test" means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to

the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed $2,500 and the other $7,500 to the purchase price of a $10,000 property in 1960; in 1995, the property is appraised at $50,000. The co-owner who contributed $2,500 is considered to own 25% of the property in 1995.

(8) "Convincing evidence" includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(9) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(10) "Disabled child" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(11) "Estate" means:

(a) With respect to the collection of payments made for assistance provided prior to July 18, 1995, or for exclusively state funded assistance, all real property, personal property, or other assets included within a recipient's estate, or the estate of the recipient's spouse, as such estate is defined by applicable state probate law.

(b) With respect to the collection of payments made for assistance provided on or after July 18, 1995:

(A) For recipients who die prior to October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's surviving spouse and any successor-in-interest to the recipient's surviving spouse, through:

(i) Tenancy by the entirety;

(ii) Joint tenancy;

(iii) Tenancy in common;

(iv) Not as tenants in common, but with the right of survivorship;

(v) Life estate;

(vi) Transfer on death deed;

(vii) Living trust;

(viii) Annuity purchased on or after April 1, 2001; or

(ix) Other similar arrangement.

(B) For recipients who die on or after October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death of the recipient, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

(i) Tenancy by the entirety;

(ii) Joint tenancy;

(iii) Tenancy in common;

(iv) Not as tenants in common, but with the right of survivorship;

(v) Life estate;

(vi) Transfer on death deed;

(vii) Living trust;

(viii) Annuity purchased on or after April 1, 2001; or

(ix) Other similar arrangement, such as an interspousal transfer of assets, including one facilitated by a court order, which occurred no earlier than 60 months prior to the first date of request established from the recipient's and the recipient's spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the assistance programs referenced in OAR 461-135-0835(2).

(12) "Heir" means any individual, including the surviving spouse, who is entitled under intestate succession to the real property, personal property, and assets of a decedent who died wholly or partially intestate.

(13) "Interest" means any form of legal, beneficial, equitable or ownership interest.

(14) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(15) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(16) "Intestate succession" means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.

(17) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(18) "Legal title" means legal ownership by a person.

(19) "Life estate" means an interest in real or personal property that terminates upon the death of a measuring life.

(20) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(21) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to home and community-based care (see OAR 461-001-0030) in-home services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(22) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or legal title held by a person.

(23) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(24) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(25) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(26) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, Interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. Real property includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the real property may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

(27) "Recipient of property" means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.

(28) "Survivor" means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

(29) "Survivorship" means an interest in real or personal property that expires upon the death of an individual whereby the Interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(30) "Tenancy in common" means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.

(31) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest

in real or personal property or other assets may:

(a) Pass by survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(32) "Transfer on death deed" has the meaning set out in ORS 93.949.

(33) "Value" means the fair market value. Fair market value is the price at which real or personal property would change hands between a willing buyer and a willing seller. In the event the real or personal property was not reported to the Department by the deceased Medicaid recipient, the value would be established based on its fair market value at the time of discovery.

Stat. Auth: ORS 93.268, 410.070, 410.075, 411.060, 411.070, 416.340, 416.350
Stats. Implemented: ORS 93.268, 410.070, 410.075, 411.010, 411.060, 411.694, 411.708, 411.795, 416.310, 416.340, 416.350, 2011 OL 212 sec. 2, 2011 OL 720 sec. 224
Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0835
Limits on Estate Claims

(1) In the BCCTP, GA, GAM, OHP, OSIP, OSIPM, and QMB programs:

(a) The Department has a priority claim against the property or any interest therein belonging to the estate of any deceased person as provided in ORS Chapters 411 and 416. The Estate Administration Unit of the Department (EAU) is authorized to present and file such claim against the estate. It will be treated as a preferred claim and filed in a like manner as the claims of other creditors.

(b) In determining the extent of the estate resources subject to the Department's claim, except as provided in subsection (c) of this section, the Department must disregard resources in an amount equal to the value of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a qualified partnership policy (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to Medicaid benefits received after the effective date of the Medicaid eligibility determination in which a qualified partnership policy was considered and approved. The amount of any Medicaid assistance incurred in a prior Medicaid eligibility period where qualified partnership policy benefits were not considered would not be subject to the estate resource disregard.

(c) There is no disregard of resources under subsection (b) of this section if the client, or the spouse (see OAR 461-001-0000) of the client, at any time transferred the value of the qualified partnership policy excluded resource amount to another individual for less than fair market value prior to the death of the client or the client's surviving spouse, or exhausted the disregarded resource amount by purchasing things of value to the client or the client's surviving spouse while either was living.

(d) For a recipient who died prior to October 1, 2008:

(A) If there is a surviving spouse, the Department has a claim against the estate of the surviving spouse for assistance paid to the surviving spouse.

(B) In addition, the Department has a claim against the estate of the surviving spouse for assistance paid to the pre-deceased spouse, but only to the extent that the surviving spouse received property or other assets from the pre-deceased spouse through any of the following:

(i) Probate.

(ii) Operation of law.

(C) If estate recovery is deferred until the surviving spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current value (see OAR 461-135-0832) of the property in the surviving spouse's estate.

(D) However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving child under age 21 (see OAR 461-135-0832), no surviving blind child (see OAR 461-135-0832) of any age, and no surviving disabled child (see OAR 461-135-0832) of any age.

(e) For a recipient who died on or after October 1, 2008:

(A) If there is a surviving spouse, the Department has a claim against the estate of the surviving spouse for assistance paid to the surviving spouse.

(B) In addition, the Department has a claim against the estate of the recipient's spouse for assistance paid to the recipient, but only to the extent that the recipient's spouse received property or other assets from the recipient through any of the following:

(i) Probate.

(ii) Operation of law.

(iii) An interspousal transfer, including one facilitated by a court order, which occurs:

(I) Before, on, or after October 1, 2008; and

(II) No earlier than 60 months prior to the first date of request (see OAR 461-135-0832) established from the applications of the recipient and the recipient's spouse, or at any time thereafter, whether approved, withdrawn, or denied, for the assistance programs referenced in section (2) of this rule.

(C) If estate recovery is deferred until the recipient's spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current value of the property in the estate of the recipient's spouse.

(D) However, neither claim is enforceable until after the death of the recipient's spouse (if any) and only when there is no surviving child under age 21, no surviving blind child of any age, and no surviving disabled child of any age.

(E) The October 1, 2010 amendment to paragraph (B) of this subsection applies to claims asserted on or after April 1, 2010.

(2) The amount of the claim is as follows:

(a) Any payments made at any age under the General Assistance provisions of ORS Chapter 411, categorized as GA, are recoverable from the estate of any deceased recipient or the estate of the recipient's spouse. In the GA and GAM programs, the amount of the claim will not exceed the total amount of cash and medical benefits paid. The claim will include home and community-based care (see OAR 461-001-0030) benefits. This applies to all General Assistance programs, even those that are no longer active.

(b) In the BCCTP, OSIP AD, OSIP OAA, OSIPM AD, OSIPM OAA, and QMB programs, the amount of the claim includes all GA category benefits paid at any age and all Title XIX benefits provided after the recipient reached age 55, except any QMB program payment. If the recipient was permanently institutionalized (see OAR 461-135-0832), the claim includes the total amount of all GA category benefits and Title XIX benefits paid at any age. This applies to all Old Age Assistance and Aid to the Disabled recipients, including recipients of home and community-based care. It also includes recipients covered by programs that are no longer active.

(c) In the OHP, OSIP AB, and OSIPM AB programs, the claim includes the total amount of GA category benefits paid at any age and all Title XIX benefits provided after the recipient reached age 55. If the recipient was permanently institutionalized, the claim includes the total amount of GA category and Title XIX benefits paid at any age. The claim includes home and community-based care benefits.

(d) In the OSIP, OSIPM-AB, OSIPM AD, and OSIPM-OAA programs, the amount of the claim also includes the total amount of GA category and Title XIX benefits provided to recipients who were age 55 to 64 on the date the GA category and Title XIX benefits were provided if the benefits were provided after July 18, 1995. GA category and Title XIX benefits will be considered to have been provided to a recipient on the day of provision of medical services for which medical assistance payments are made.

(3) The priority for payment of claims against the estate will be as established under ORS 115.125.

(4) EAU may nominate a personal representative for an estate if the Department has a claim and it appears that no person with a higher preference, as established in ORS 113.085, is willing to be the representative.

(5) Property disposal will be in accordance with OAR 461-135-0838.

Stat. Auth.: ORS 410.070, 411.060 & 416.350
Stats. Implemented: ORS 410.070, 411.060, 411.708, 411.795, 416.310, 416.340, 416.350
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 16-2010(Temp), f. & cert. ef. 5-27-10 thru 11-23-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0841
Undue Hardship Waiver Criteria

(1) The Department may waive enforcement of any estate recovery claim if it finds that enforcing the claim would result in an undue hardship to the beneficiaries, heirs, or family members of the deceased client claiming entitlement to receive the assets of the deceased client.

(2) In determining whether an undue hardship exists, the Department may consider the following criteria:

(a) Whether enforcement of the claim would cause the waiver applicant to become eligible for assistance; and

(b) Whether enforcement of the claim would cause the waiver applicant, who would otherwise be eligible for assistance, to become homeless.

(3) Waiver of an estate recovery claim may include, but is not limited to, the following:

(a) Forgiveness of all or part of the claim, or any other relief the Department deems fit; or

(b) Taking a mortgage or trust deed in lieu of enforcement of the claim.

(4) No waiver will be granted if the Department finds that the undue hardship was created by resort to estate planning methods by which the waiver applicant or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid estate recovery.

(5) No waiver will be granted if the Department finds that the undue hardship will not be remedied by the grant of the waiver.

Stat. Auth.: ORS 410.070, 411.060 & 414.106
Stats. Implemented: ORS 414.106 & 416.340
Hist.: AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 8-1999, f. 5-27-99, cert. ef. 6-1-99; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0845
Valuation of Life Estate, Reversionary Interest and Property

(1) Effective July 18, 1995, the value of an expressly created life estate or other interest in real or personal property or other asset measured by or valued with respect to a life span, including that of the relevant recipient of public assistance, is established by reference to the life estate valuation tables set forth in this rule and is valued as of the time of death of the recipient of public assistance irrespective of the actual life span of the measuring life. [Table not included. See ED. NOTE.]

(2) For assistance recovery purposes, the interest of a person in real or personal property or other asset held in joint tenancy with right of survivorship (including transfers with right of survivorship covered by ORS 93.180) or other form of concurrent ownership with one or more other persons with right of survivorship, other than a spouse or a transfer on death deed (see OAR 461-135-0832), is presumed to be the value of the fractional share held by the person. The fractional share of a person is presumed to be the share reflected in the ownership documents. Such presumption may be rebutted under the Consideration Furnished Test or by Convincing Evidence of the actual consideration contributed by another co-owner of the property or asset. In the absence of any stated fractional share on the Ownership Documents, each co-owner is presumed to have an equal fractional share of ownership of the whole, unless rebutted by the Consideration Furnished Test or as otherwise established by Convincing Evidence.

(3) With respect to Real or Personal Property or an Asset held jointly by spouses, as Tenants in Common, tenants by the entirety, with right of survivorship or otherwise, such property or asset is conclusively deemed to be owned one-half by each spouse; provided, however, that in the event the Ownership Documents expressly set forth a different fractional share of ownership, and such fractional share is lawful in the appropriate jurisdiction, then the fractional share set forth in such Ownership Documents is presumed to be the fractional share owned by each spouse. Such presumption may be rebutted by Convincing Evidence.

(4) With respect to a transfer on death deed, for assistance recovery purposes, the transferor is presumed to own the full value of the real property. If there is more than one transferor their respective interests are determined in accordance with sections (2) and (3) of this rule.

(5) The Value of Real Property at, or prior to, the Time of Death is determined by establishing the fair market value of the property to the satisfaction of the Department. The burden of proof for establishing the Real Property's fair market value to the satisfaction of the Department lies with the person or, after the Time of Death of the person, with the person's representative, and may be established by any methodology, including the provision of an appraisal performed by an appraiser certified or licensed in the applicable jurisdiction, that the Department determines most accurately reflects the Value of the Real Property. The Value of liens and other encumbrances against the Real Property that is established by Convincing Evidence, if appropriate, is subtracted from the fair market value of the Real Property in order to derive a net fair market value of the Real Property.

(6) The Value of Personal Property consisting of shares of stock or other securities traded on an exchange is evidenced by the average of the bid and ask prices on the date of the Time of Death, or the next trading day thereafter. If such bid and ask prices are unavailable for certain stocks or securities, the Value may be established by a written estimate from the corporation or other entity issuing such shares or securities of the Value, or if such estimate is unobtainable, an estimate from a broker, trader or other Person with knowledge in the field of the Value. Liens and encumbrances established by Convincing Evidence against shares of stock or other securities is subtracted from the value of such stock or securities established by the foregoing procedure.

(7) The Value of tangible Personal Property, including, but not limited to, livestock, furniture, vehicles and other tangible items may be established:

(a) By a written estimate from a Person knowledgeable in the field of appraising such items of Personal Property; or

(b) From published sources such as catalogs of antiques or collectibles, blue books or other Convincing Evidence that accurately establishes the Value of the property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(8) The Value of intangible Personal Property not otherwise provided for in this rule, is established by a written estimate from a Person knowledgeable in the field of appraising such items of intangible Personal Property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(9) Notwithstanding anything to the contrary contained in this rule, in cases where an inventory has been filed with the appropriate court or an estate tax return has been filed with the appropriate governmental authority, the Value of any Real or Personal Property or other Asset is presumptively established by the amounts set forth on such inventory or estate tax return. The presumptive Value established by such inventory or return may be rebutted by Convincing Evidence.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 410.070, 411.060, 411.070, 416.340, 416.350
Stats. Implemented: ORS 411.708, 411.795, 416.310, 416.340, 416.350, 2011 OL 212 sec. 13, 2011 OL 720 sec. 224
Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2004(Temp), f. & cert. ef. 2-5-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0875
Specific Requirements; Retroactive Eligibility

(1) Clients are evaluated for retroactive eligibility as follows:

(a) Clients applying for Medicaid are evaluated for retroactive eligibility in the OSIPM, QMB-DW, QMB-SMB, QMB-SMF, REFM, and SAC programs. This includes deceased individuals who would have been eligible for Medicaid covered services had they, or someone acting on their behalf, applied.

(b) Clients found ineligible for the OSIPM or SAC program solely because they do not meet the citizenship requirements of OAR 461-120-0125. Clients eligible under this subsection are eligible only for CAWEM program benefits (see OAR 461-135-1070).

(2) If eligible for medical assistance retroactively, the client's eligibility cannot start earlier than the date indicated by OAR 461-180-0140.

(3) In the QMB-BAS program, there are no retroactive medical benefits.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 8-1993(Temp), f. & cert. ef. 4-26-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-140-0020
Availability of Resources

(1) Except as provided in sections (2) to (4) of this rule:

(a) In the SNAP program, a resource owned jointly by a client and another person is available in its entirety to the client.

(b) In all other programs except in the OSIPM and QMB programs, jointly owned resources are available to members of a financial group (see OAR 461-110-0530) only to the extent they own the resource.

(c) In the OSIPM and QMB programs, jointly-owned liquid resources (including bank and other financial institution accounts) are assumed to be available in their entirety to the client. The client has the right to provide evidence rebutting the ownership assumption. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days.

(2) A resource is not available to a client in each of the following situations:

(a) The client has a legal interest in the resource, but the resource is not in the client's possession and the client is unable to gain possession of it. In the REF and REFM programs, if a resource remains in the applicant's country of origin, it is not available.

(b) The resource is jointly owned with others not in the financial group who are unwilling to sell their interest in the resource, and the client's interest is not reasonably saleable.

(c) The client verifiably lacks the competence to gain access to or use the resource and there is no legal representative available to act on the client's behalf.

(d) The client is a victim of domestic violence (see OAR 461-001-0000) and:

(A) Attempting to use the resource would subject the client to risk of domestic violence; or

(B) The client is using the resource to avoid the abusive situation.

(e) Except as provided in OAR 461-145-0540, the resource is included in an irrevocable or restricted trust and cannot be used to meet the basic monthly needs of the financial group.

(3) A resource is not considered available during the time the owner does not know he or she owns the resource.

(4) If a resource is subject to an early withdrawal penalty, the amount of the penalty is not available.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-140-0300
Adjustments to the Disqualification for Asset Transfer

(1) The disqualification imposed under OAR 461-140-0260 is not adjusted once applied in the SNAP program.

(2) In all other programs, the disqualification ends if the transfer that caused the disqualification is rescinded. The duration of the disqualification is recalculated if the terms of the transfer are modified.

(3) In the GA, GAM, OSIP, OSIPM, and REFM programs, the Department may waive the disqualification if the disqualification would create an undue hardship on the client. For purposes of this section, the disqualification would create an undue hardship if the requirements of subsections (a) and (b) of this section are met:

(a) The client has no other means for meeting his or her needs. The client has the burden of proving that no other means exist by---

(A) Exploring and pursuing all reasonable means to recover the assets to the satisfaction of the Department, including legal remedies and consultation with an attorney; and

(B) Cooperating with the Department to take action to recover the assets.

(b) The disqualification would deprive the client of---

(A) Medical care such that the client's health or life would be endangered; or

(B) Food, clothing, shelter, or other necessities of life without which the health or life of the client would be endangered.

(4) As authorized by ORS 411.620, the Department retains the authority to bring a civil suit or action to set aside a transfer of assets for less than fair market value and may seek recovery of all costs associated with such an action.

(5) Notwithstanding the granting of an undue hardship waiver under section (3) of this rule, the Department is not precluded from recovering public assistance or medical assistance from any assets in which the client held an interest, or in which the client previously held an interest, at the time the undue hardship waiver was granted.

Stat. Auth: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.632, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 26-2000, f. & cert. ef. 10-4-00; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 27-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0220
Home

(1) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For a client who has an initial month (see OAR 461-001-0000) of long-term care on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The equity value of a home is excluded if the requirements of at least one of the following subparagraphs are met:

(i) The child of the client occupies the home.

(ii) The spouse of the client occupies the home.

(iii) The equity in the home is $543,000 or less, and the requirements of at least one of the following sub-subparagraphs are met:

(I) The client occupies the home.

(II) The home equity is excluded under OAR 461-145-0250.

(III) The home is listed for sale per OAR 461-145-0420.

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than $543,000 and the client is unable legally to convert the equity value in the home to cash.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461 145 0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the SNAP program, when the financial group is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-

06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07;SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0250

Income-Producing Property

(1) Income from income producing property (see OAR 461-001-0000) is counted as follows:

(a) If a member of the financial group (see OAR 461-110-0530) actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0910, 461-145-0920, and 461-145-0930).

(b) If a member of the financial group does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920. In the SNAP program, if the financial group owns more than one property, the exclusions for one property may not be used to offset income from a different property.

(2) The equity value (see OAR 461-001-0000) of income-producing property is treated as follows:

(a) In the EA and ERDC programs, it is excluded.

(b) In the SNAP program, it is counted as a resource except to the extent described in each of the following situations:

(A) If the property produces an annual countable income similar to other properties in the community with comparable market value, the equity value of the property is excluded.

(B) The property is excluded under OAR 461-145-0600.

(C) The equity value of income-producing livestock, poultry, and other animals is excluded.

(D) If selling the resource would produce a net gain to the financial group of less than $1,500, the equity value is excluded.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, it is counted as a resource, except:

(A) If the non-business income-producing property (including houses or apartments for rent and land other than the primary residence) produces an annual countable income of at least six percent of its equity value, the value of the property is excluded up to a maximum of $6,000.

(B) If the annual countable income drops below six percent of the non-business property's equity value due to circumstances beyond the client's control, the client has up to 24 months from the end of the tax year in which the earnings dropped below six percent to meet the six percent requirement.

(C) The total equity value is excluded (regardless of value or rate of return) if either all the requirements of subparagraphs (i), (ii), and (iii) or subparagraph (iv) or subparagraph (v) are met:

(i) The property is used in the trade or business of a member of the financial group, as evidenced by two or more of the following:

(I) The good faith intention of making a profit.

(II) Its use is part of a regular occupation for a member of the financial group.

(III) Holding out to others as being engaged in the selling of goods or services.

(IV) Continuity of operations, repetition of transactions, or regularity of activities.

(ii) The property is in current use or, if not in use for reasons beyond the control of the financial group, there must be a reasonable expectation that the required use will resume.

(iii) The property is essential to the client's self-support.

(iv) The government has issued a permit granting the client to engage in income-producing activity on or with the property.

(v) Personal property is used by an employee for work.

(d) In the REF, REFM, and TANF programs, it is counted as a resource, except that in the TANF program, it is excluded for a self-employed client participating in the microenterprise (see OAR 461-001-0025) component of the JOBS program.

Stat. Auth.: ORS 411.060, 411.400, 411.404, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.400, 411.404, 411.700, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0580

Veterans' Benefits

(1) Veterans' benefits, other than the educational and training and rehabilitation program benefits, are treated as follows:

(a) Except as specified in sections (2) and (5) of this rule, monthly payments are counted as unearned income.

(b) Other payments are counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Veterans' benefits that include aid-and-attendance payments are treated as follows:

(a) For OSIP and OSIPM clients receiving long-term care or home and community-based care (see OAR 461-001-0030):

(A) When determining eligibility, the entire veterans' benefit payment is excluded.

(B) When calculating monthly benefits or patient liability, the entire veterans' benefit payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home and community-based care provided to the client during the months covered by the payment. A client's failure to reimburse the Department in this instance constitutes an overpayment of public assistance in accordance with OAR 461-195-0501 and 461-195-0521 and ORS 411.640 and 411.690. Any excess veterans' benefit payment made to the client is counted as lump sum or periodic income.

(b) For all other clients not covered under subsection (a) of this section:

(A) In the SNAP program, aid-and-attendance payments used to pay for an attendant are treated as a reimbursement and excluded (see OAR 461-145-0440). The remaining benefits, if any, are counted as unearned income.

(B) In the OSIPM and QMB programs, the aid-and-attendance payments are excluded. The remaining benefits are counted unless excluded under another rule or another section of this rule.

(C) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client as an overpayment of public assistance pursuant to OAR 461-195-0501, 461-195-0521, and 461-195-0551. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income (see OAR 461-140-0110 and 461-140-0120).

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) A subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated ---

(a) In the SNAP program, as earned income (see OAR 461-145-0130).

(b) In all other programs, as unearned income.

(5) The following payments are excluded:

(a) Payments under 38 USC 1805 to biological children of Vietnam veterans who are born with spina bifida.

(b) Payments under 38 USC 1815 to children with birth defects born to female Vietnam veterans.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.620, 411.640, 411.690, 411.700, 411.816, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 26-2012(Temp), f. & cert. ef. 7-11-12 thru 1-7-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-150-0060

Prospective or Retrospective Eligibility and Budgeting; ERDC, REF, REFM, SNAP, TANF

In the ERDC, REF, REFM, SNAP, and TANF programs, the Department determines how and when to use prospective or retrospective eligibility (see OAR 461-001-0000) and budgeting (see OAR 461-001-0000) as follows:

(1) For the initial month (see OAR 461-001-0000):

(a) In the ERDC program, income is budgeted so the anticipated amount is the same for each month, including the initial month.

(b) For a SNAP case in CRS, the Department uses actual income (see subsection (h) of this section) in the initial month.

(c) For a SNAP program case in SRS, actual income is used in the initial month if that income is not reflective of ongoing monthly income due to a new or terminated source or a significant change in ongoing income. All other income is processed under section (3) of this rule.

(d) In the REF and TANF programs, ongoing income, processed under section (2) of this rule, is used in the initial month, except when the source of income is a new or terminated source. When there is a new or terminated source of income, actual income is used in the initial month.

(e) In the REFM program, the Department uses only the initial month for eligibility and budgeting.

(f) The Department uses prospective eligibility and budgeting under OAR 461-150-0020 for cases not covered under subsections (a) to (e) of this section, including for a client who leaves a filing group because of domestic violence (see OAR 461-001-0000) and enters a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000).

(g) No supplement is issued based on incorrectly anticipated information.

(h) "Actual income" is the income already received in the initial month plus all the income that reasonably may be expected to be received within the initial month.

(2) Income is budgeted so that the anticipated amount is the same for each month. The type of income is determined and calculated as follows:

(a) Income that must be annualized is calculated under OAR 461-150-0090 to arrive at a monthly figure.

(b) Educational income (see OAR 461-145-0150) is assigned to the months it is intended to cover, regardless of when it is received. The income is prorated over these months.

(c) Ongoing stable income (see OAR 461-001-0000) is anticipated under OAR 461-150-0070.

(d) Ongoing variable income (see OAR 461-001-0000) is anticipated under OAR 461-150-0080.

(e) Periodic income (see OAR 461-001-0000) is anticipated under OAR 461-140-0100 and 461-140-0110.

(f) Lump-sum income (see OAR 461-001-0000) is anticipated under OAR 461-140-0100, 461-140-0200, and 461-140-0123.

(g) In the ERDC program, for temporary income and other situations when the child care need will last two consecutive months or less, the income is anticipated to be received in the months of child care need and calculated under OAR 461-150-0080.

(3) For an ongoing month (see OAR 461-001-0000):

(a) For a benefit group (see OAR 461-110-0750), the Department uses prospective eligibility and budgeting. The type of income is determined and calculated under section (2) of this rule.

(b) If the budgeting method changes from prospective to retrospective, the Department treats income from a terminated source that was counted prospectively as follows:

(A) If the actual amount received was less than or equal to the anticipated amount, the income is excluded.

(B) If the actual amount received was greater than the anticipated amount, the Department counts the difference between actual and anticipated amounts.

(4) When an individual is added to an ongoing filing and benefit group, prospective budgeting is used to determine eligibility.

(5) In the ERDC and SNAP programs, income reported on the Interim Change Report form under OAR 461-170-0011 and 461-170-0102 is used to determine eligibility and benefit level. Income for the fifth month of the SNAP program certification period (see OAR 461-001-0000) is used to determine the income for the seventh and following months in the certification period if the client anticipates it will remain the same throughout the period. If the client anticipates the income will change, the client and the Department jointly estimate the income for the remaining months of the certification period. For a client who had self-employment income annualized, no change is made unless there is a substantial change in the revenue of the business.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 19-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 1-28-14; SSP 28-2013(Temp), f. & cert. ef. 10-1-13 thru 1-28-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-155-0180

Poverty Related Income Standards; Not OSIP, OSIPM, QMB

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2013 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2013 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2013 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 163 percent of the 2013 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 185 percent of the 2013 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(7) A monthly income standard set at 200 percent of the 2013 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(8) A monthly income standard set at or below 300 percent of the 2013 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816 & 412.049
Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 4-2010, f. & cert. ef. 3-31-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2011(Temp), f. & cert. ef. 1-20-11 thru 7-19-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 2-2012, f. & cert. ef. 1-25-12; SSP 3-2013, f. & cert. ef. 1-30-13; SSP 5-2013(Temp), f. & cert. ef. 2-1-13 thru 7-31-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-155-0225

Income Standard; REFM

In the REFM program, the income standard is 200 percent of the federal poverty level, as listed in OAR 461-155-0180(7), based on the size of the need group (see OAR 461-110-0630).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404 & 414.231
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 414.231
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 31-2010(Temp), f. & cert. ef. 9-15-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 29-2013(Temp), f. & cert. ef. 10-1-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-155-0250

Income and Payment Standard; OSIPM

(1) A client who is assumed eligible per OAR 461-135-0010(6) is presumed to meet the income limits for the OSIPM program.

(2) A client in a nonstandard living arrangement (see OAR 461-001-0000) meeting the requirements of OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule, must have countable income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-EPD) or have established a qualifying trust as specified in 461-145-0540(9)(c).

(3) The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(4) A client, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020. [Table not included. See ED. NOTE.]

(5) In the OSIPM program, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), $90 is allowed.

(b) For all other clients, $30 is allowed.

(6) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

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

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704 & 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f.& cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 2-2009(Temp), f. 2-27-09, cert. ef. 3-1-09 thru 8-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 5-2012(Temp), f. & cert. ef 2-1-12 thru 7-30-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-155-0270

Room and Board Standard; OSIPM

For an OSIPM program client in a community based care (see OAR 461-001-0000) facility, the room and board standard is $561.00. A client residing in a community based care facility must pay room and board.

Stat. Auth.: ORS 411.060, 411.070, 411.704 & 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.704 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 1-2013(Temp), f. & cert. ef. 1-8-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-155-0300

Shelter-in-Kind Standard

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, $443 for total shelter or $266 for housing costs only.

(b) Living with others, $205 for total shelter or $123 for housing costs only.

(2) For a couple:

(a) Living alone, $547 for total shelter or $328 for housing costs only.

(b) Living with others, $203 for total shelter or $122 for housing costs only.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-160-0015

Resource Limits

(1) In the EA program, all countable (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC and REFM programs, there is no resource limit.

(3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) $2,000 for a one-person need group (see OAR 461-110-0630) and $3,000 for a two-person need group.

(b) $1,000 for an OSIP need group eligible under OAR 461 135 0771. The total cash resources may not exceed $500 for a one-person need group or $1,000 for a two-person need group.

(c) $5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(4) In the REF and TANF programs, the resource limit is:

(a) $2,500 for any of the following:

(A) A new REF or TANF applicant for benefits.

(B) REF and TANF need groups which do not have at least one caretaker relative or parent who is receiving TANF.

(C) REF and TANF need groups which have at least one JOBS participant who is:

(i) Receiving TANF and not progressing in an activity (see OAR 461-001-0025) of an open JOBS case plan (see OAR 461-001-0025); or

(ii) Serving a current JOBS disqualification.

(b) $10,000 for a need group not covered under subsection (a) of this section.

(5) In the QMB program, the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Effective January 1, 2014 the resource limit is $7,160 for a one-person need group and $10,750 for a need group containing two or more individuals.

(6) In the SNAP program, the resource limit is:

(a) $3,250 for a financial group (see OAR 461-110-0530) with at least one member who is elderly (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) $2,000 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-1; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 27-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-160-0580

Excluded Resource; Community Spouse Provision (OSIPM except OSIPM-EPD)

In the OSIPM (except OSIPM-EPD) program:

(1) This rule applies to an institutionalized spouse (see OAR 461-001-0030) who has applied for benefits because he or she is in or will be in a continuous period of care (see OAR 461-001-0030).

(2) Whether a legally married (see OAR 461-001-0000) couple lives together or not, the determination of whether the value of the couple's resources exceeds the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIPM describe which of the couple's resources are countable resources, and are

applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIPM clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than $117,240.

(B) $23,448 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this paragraph and paragraph (2)(f)(C) of this rule, the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph is the amount required to purchase a single premium immediate annuity to make up the shortfall; and the amount described in this paragraph is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIPM resource standard for one person (under OAR 461-160-0015(4)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than $117,240) plus the OSIPM resource standard for one person.

(B) $23,448 (the state community-spouse resource allowance), plus the OSIPM resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIPM resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the court-ordered community spouse resource allowance.)

(D) The OSIPM resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. This amount is the amount required to purchase a single premium immediate annuity to make up the shortfall. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

(4) The provisions of paragraph (2)(c)(C) of this rule requiring income to be considered first may be waived if the Department determines that the resulting community resource allowance would create an undue hardship on the spouse of the client.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-160-0620

Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM

In the OSIPM program:

(1) Deductions from income are made for a client residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

(a) One standard earned income deduction of $65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is $85 in the OSIPM-AB program.

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

(c) One of the following need standards:

(A) A $30 personal needs allowance for a client receiving long-term care services.

(B) A $90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The $90 allowance is allowed only when the VA benefit has been reduced to $90.

(C) The OSIPM maintenance standard for a client who receives home and community-based care.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. $1,939 is added to the amount over $582 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or $2,931 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below $1,939. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from $1,939.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home if the client meets the criteria in OAR 461-160-0630.

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving home and community-based care (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the home and community-based care or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for home and community-based care. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or home and community-based care is as follows:

(a) One standard earned income deduction of $65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of $85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060, 411.070 & 411.706
Stats. Implemented: ORS 411.060, 411.070 & 411.706
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991. f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 23-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thu 12-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 16-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 25-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-160-0780

Determining Adjusted Income; OSIP-EPD and OSIPM-EPD

Adjusted income for OSIP-EPD and OSIPM-EPD is determined as follows:

(1) All unearned income is excluded.

(2) From gross earned income, one standard income deduction of $20 is deducted.

(3) One standard earned income deduction of $65, or $85 for individuals whose disability is based on blindness, is deducted.

(4) The remainder is divided by two.

(5) Any costs allowed as employment and independence expenses, Impairment Related Work Expenses, or Blind Work Expenses as defined in OAR 461-001-0035 are deducted.

(6) The remainder is adjusted income.

Stat. Auth.: ORS 409.050, 411.060, 411.404
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404
Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-165-0070

Immediate Issuance of Benefits

Clients whose cases are new, reopened or restored are eligible for immediate issuance of benefits if the standard procedure for issuing benefits would not meet an emergent need of the client, as provided in this rule.

(1) A client with an emergent need is entitled to immediate cash benefits.

(2) A client eligible for expedited SNAP service (see OAR 461-135-0575) is entitled to receive the benefits within seven calendar days after filing an application.

Stat. Auth.: ORS 411.060, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.816 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-175-0206

Notice Situation; Benefit Standard Changes; Not SNAP

(1) If the basis for a decision to reduce, suspend, or close a grant of public assistance or medical assistance is a change to a benefit standard, a timely continuing benefit decision notice is sent at least 30 calendar days before the effective date of the action, or if the Department has fewer than 60 days before the effective date to implement a change to a benefit standard:

(a) At least 15 working days before the effective date of the action for clients in the Address Confidentiality Program (see OAR 461-001-0000).

(b) At least 10 working days before the effective date of the action for clients not in the Address Confidentiality Program.

(2) For purposes of this rule, the term "change to a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.

(3) This rule does not apply in the SNAP program.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 412.014, 412.049
Stats. Implemented: ORS 192.856, 409.010, 411.060, 411.095, 411.404, 412.014, 412.049
Hist.: SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-175-0210

Notice Situation; Client Moved or Whereabouts Unknown

(1) To end benefits if a client has moved out of state, the Department sends the following decision notice (see OAR 461-001-0000):

(a) In the ERDC, GA, GAM, OSIP, OSIPM, QMB, REF, REFM, and TANF programs:

(A) The Department sends a timely continuing benefit decision notice (see OAR 461-001-0000) to clients who have moved out of state.

(B) The Department sends a basic decision notice (see OAR 461-001-0000) if the client becomes eligible for benefits in another state.

(b) In the SNAP program, no decision notice is required if the Department determines that the benefit group (see OAR 461-110-0750) has moved out of Oregon.

(2) If Department mail or benefits have been returned with no forwarding address, the Department gives the client the benefits if the client's whereabouts become known during the period covered by the returned benefits. See OAR 461-165-0130 for when SNAP benefits can be sent out of state. If the client's whereabouts are unknown, the Department ends benefits by sending the following decision notice to their last known address:

(a) In all programs except the SNAP program, a basic decision notice.

(b) In the SNAP program, no decision notice is required.

Stat. Auth.: ORS 411.060, 411.095, 411.404 & 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.095, 411.404 & 411.816 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 32-2010, f. & cert. ef. 10-1-10;

SSP 37-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-29-12; SSP 22-2012, f. 6-29-12, cert. ef. 6-30-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 33-2013(Temp), f. & cert. ef. 10-3-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-180-0010
Effective Dates; Adding a New Person to an Open Case

(1) In the following programs, the effective date for adding an individual (other than an assumed eligible newborn) to the benefit group (see OAR 461-110-0750) is one of the following:

(a) In the GAM, OSIPM, and REFM programs, it is whichever occurs first:

(A) The date the client requests benefits, if the client was eligible as of that date.

(B) The date all eligibility requirements are met.

(b) In the SNAP program:

(A) If adding the individual increases benefits, it is the first of the month after the filing group (see OAR 461-110-0370) reports the person has joined the household group (see OAR 461-110-0210). If verification is requested, the effective date for the change is:

(i) The first of the month following the date the change was reported if verification is received by the Department no later than the due date for the verification.

(ii) The first of the month following the date the verification is received by the Department, if received after the verification due date.

(B) If adding the individual reduces benefits, it is the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

(c) In the GA, OSIP, REF, SFPSS, and TANF programs, it is the date on which all eligibility requirements are met and verified. If benefits have been issued for the month and adding the new person would reduce benefits, the person is added the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

(d) In the QMB-BAS and QMB-DW programs, it is the first of the month after the new individual has been determined to meet all QMB eligibility criteria and the Department receives the required verification.

(e) In the QMB-SMB program, it is the first of the month in which the new individual has been determined to meet all QMB-SMB eligibility criteria and the Department receives the required verification.

(f) In the SFPSS and TANF programs, for adding a child (see OAR 461-001-0000) to be covered by a provider-direct child care payment, it is the first of the month in which the child is added to the benefit group.

(2) In the following programs, the effective date for adding an assumed eligible newborn to the benefit group is one of the following:

(a) In the GAM, OSIPM, and REFM programs, it is the date of birth if all the following paragraphs are true. If any of the following paragraphs is not true, the newborn is added to the benefit group in accordance with section (1) of this rule.

(A) A request for benefits is made within one year of the birth. For purposes of this paragraph, a telephone call from the attending physician, another licensed practitioner, a hospital, or the family is considered a request for benefits.

(B) The newborn has continuously lived with the mother since the date of birth.

(C) The mother was receiving GAM or OSIPM on the date of birth, even if she is not currently eligible for benefits.

(b) In the SFPSS and TANF programs, it is:

(A) The date of birth, if all eligibility requirements are met and verified within 45 days after the birth; or

(B) The date all eligibility factors are met and verified, if the verification is completed more than 45 days after the date of birth.

(3) In the ERDC program, the effective date for adding an individual to the need group (see OAR 461-110-0630) or benefit group is as follows:

(a) If adding the individual to the need group will decrease the copay, the effective date is the first of the month after the client reports the person has joined the household.

(b) If adding the individual to the need group increases the copay — for instance, because the individual receives income--the effective date is the first of the month following the end of the decision notice period (see OAR 461-175-0050).

(c) The effective date for adding a child to the benefit group - that is, covering the cost of the child's care — is the earliest of the following:

(A) For newborns, the date of birth, if all eligibility requirements are met and verified within 45 days after the birth.

(B) For all other children, the first of the month in which the change is reported, if all eligibility requirements are met and verified within 45 days.

(C) For newborns and other children, if eligibility cannot be verified within 45 days, the effective date is the first of the month in which all eligibility factors are met and verified.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 19-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 1-28-14; SSP 28-2013(Temp), f. & cert. ef. 10-1-13 thru 1-28-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-180-0090
Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the GAM, OSIPM, QMB-DW, and REFM programs:

(a) Except as provided for in subsections (b) and (c) of this section:

(A) If the client meets all eligibility requirements on the date of request (see OAR 461-115-0030), it is the date of request. An OSIPM program client who is assumed eligible under OAR 461-135-0010(7) meets "all eligibility requirements" for the purposes of this section as follows:

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

(B) If the client does not meet all eligibility requirements on the date of request, it is the first day following the date of request that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(c) Except for OSIPM long-term care services eligibility, if an HKC program client meets all eligibility requirements for the OSIPM program, it is the first of the month following the month in which the Department makes the eligibility determination.

(2) In the QMB-BAS program, it is the first of the month after the benefit group (see OAR 461-110-0750) has been determined to meet all QMB-BAS program eligibility criteria and the Department receives the required verification.

(3) In the QMB-SMB and QMB-SMF programs, it is:

(a) The first of the month in which the benefit group meets all program eligibility criteria and the Department receives the required verification; or

(b) The first of the month in which the Low Income Subsidy (LIS) information is received by the Social Security Administration (SSA), if the SMB or SMF program application was generated by the electronic transmission of LIS data from the SSA and the benefit group meets all program eligibility criteria.

(4) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (1)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 1-2010(Temp), f. & cert. ef. 1-26-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 19-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 1-28-14; SSP 28-2013(Temp), f. & cert. ef. 10-1-13 thru 1-28-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-180-0140
Effective Dates; Retroactive Medical Benefits

(1) In the OSIPM program:

(a) If an applicant requests and is eligible for retroactive medical benefits, the earliest date the applicant may be eligible is three months before the date of request (see OAR 461-115-0030). For example, if the applicant requests benefits on July 10th, eligibility may begin as early as April 10.

(b) After the earliest date is established, eligibility is determined on a month-by-month basis. The period starts on the earliest established date and

ends on the date the applicant requests benefits. For example, if the applicant requests benefits on August 10th, the earliest date is May 10. Eligibility is established separately for May 10 through May 31, June 1 through June 30, July 1 through July 31, and August 1 through August 9.

(2) If an applicant requests and is eligible for retroactive QMB DW, the earliest date the applicant may be eligible is three months before the date of request.

(3) If a QMB SMB or QMB-SMF applicant requests and is eligible for retroactive payment of Part B Medicare premiums, the earliest date the applicant may be eligible is three months before the date of request.

(4) If an applicant applying for REFM is eligible for retroactive medical benefits, the earliest the applicant may be eligible is the most recent of the following:

(a) The date the applicant arrived in the United States; or

(b) Three months before the date of request.

Stat. Auth.: ORS 409.050, 411.060, 411.404

Stats. Implemented: ORS 409.010, 411.060, 411.404

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-185-0050

Client Pay-In System

(1) Except as provided in sections (2) and (3) of this rule, a client who receives home and community-based care (see OAR 461-001-0030) in-home services and has countable income above the payment standard for the benefit group must pay to the Department the lesser of the following amounts as a condition of being eligible for home and community-based care in-home services:

(a) The client's adjusted income (see OAR 461-160-0620).

(b) The actual cost of home and community-based care in-home services.

(2) The service liability of clients in the OSIP-IC and OSIPM-IC programs is calculated in accordance with section (1) of this rule. Clients in the OSIP-IC and OSIPM-IC programs do not pay the Department directly. The IC service payment of these clients will be reduced by the amount of their liability.

(3) A client exempt from payments under OAR 461-160-0610 is exempt from the payment required by this rule.

(4) Each month, the Department will send the client an invoice requesting payment based on the calculation in section (1) of this rule.

(5) Payments must be received by the Department in the month of service.

Stat. Auth.: ORS 411.060, 411.070, 411.404

Stats. Implemented: ORS 411.060, 411.070, 411.404

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-195-0301

Definitions

For purposes of OAR 461-195-0301 to 461-195-0350, the following definitions shall apply:

(1) "Action" means an action, suit, or proceeding.

(2) "Applicant" means an applicant for assistance.

(3) "Assistance" means moneys for the needs of a recipient and for the needs of other individuals living with the recipient whom the recipient has an obligation to support which are paid by the Department, by a prepaid managed care health services organization, or by a coordinated care organization (see OAR 410-141-0000) either directly to the recipient or to others for the benefit of the recipient. Assistance includes both cash and medical assistance programs. Assistance does not include SNAP benefits. The assistance must be directly related to the personal injury. Assistance is received by the recipient on the date of issuance of a check for cash assistance and the date of service for medical assistance, regardless of the actual payment date by the Department, the prepaid managed care health services organization, or the coordinated care organization.

(4) "Claim" means a legal action or a demand by, or on behalf of, a recipient for damages for or arising out of a personal injury which is against any person, public body, agency, or commission other than the State Accident Insurance Fund Corporation or Workers' Compensation Board.

(5) "Compromise" means a compromise between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

(6) "Judgment" means a judgment in any action or proceeding brought by a recipient to enforce the claim of the recipient.

(7) "Personal injury" means a physical or emotional injury to an individual including but not limited to assault, battery, or medical malpractice arising from such physical or emotional injury.

(8) "Prepaid managed care health services organization" means a managed health, dental or mental health care organization that contracts with the Department on a prepaid basis under the Oregon Health Plan (see OAR 410-200-0020). Prepaid managed care health organizations may be dental care organizations, fully capitated health plans, mental health organizations, physician care organizations, or chemical dependency organizations.

(9) "Recipient" means an individual who receives assistance or whose needs are included in a public assistance grant.

(10) "Settlement" means a settlement between a recipient and any person or public body, agency or commission against whom the recipient has a *claim*.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 412.049, 413.033, 413.042, OLs 2013 Ch 14 sec. 10

Stats. Implemented: ORS 409.010, 411.060, 411.070, 412.049, 413.033, 413.042, 416.510 - 416.610

Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0100; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-195-0310

Notice of Claim or Action by Applicant or Recipient

(1) An applicant for or recipient of assistance who has a claim for a personal injury or begins an action to enforce such claim, or the attorney or authorized representative (see OAR 461-115-0090) for the applicant or recipient, is required to notify the Department, the prepaid managed care health services organization, and the coordinated care organization (see OAR 410-141-0000) of the recipient, if the recipient is receiving services from the organization, within ten days of initiating that claim or action, unless the action was initiated prior to the application for assistance.

(a) If the action was initiated prior to the application for assistance, the applicant must notify the Department at the time of application.

(b) The notification must include:

(A) The names and addresses of all parties against whom the action is brought or claim is made;

(B) A copy of each claim demand; and

(C) If an action is brought, identification of the case number and the county where the action is filed.

(c) A parent, guardian, foster parent or caretaker relative must make the notification on behalf of a minor or incompetent adult.

(2) The reporting requirements in section (1) of this rule are mandatory reporting requirements.

(3) Notification by an attorney or authorized representative for an applicant or recipient or other person required to provide notification must be sent to the Personal Injury Liens Unit, Office of Payment Accuracy and Recovery, Department of Human Services, either by mail or fax.

(4) The mailing address for the Personal Injury Liens Unit is: Personal Injury Liens Unit, PO Box 14512, Salem OR 97309-0416.

(5) The Personal Injury Liens Unit's fax number is (503) 378-2577 and telephone number is (503) 378-4514.

(6) If an applicant for or recipient of assistance fails to give the notification as required by this rule, the Department or the prepaid managed care health services organization of the recipient, if the recipient is receiving services from the organization, will have a cause of action under ORS 416.610 against the recipient for amounts received by the recipient pursuant to a judgment, settlement, or compromise to the extent that the Department or the prepaid managed care health services organization could have had a lien against such amounts had such notice been given. At least 30 days prior to commencing an action under ORS 416.610, the Personal Injury Liens Unit and the prepaid managed care health services organization, if any, must consult with each other.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 412.049, 413.033, 413.042, OL 2013 Ch 14 sec. 20

Stats. Implemented: ORS 416.530, 416.610

Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0110; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

461-195-0551

Methods of Recovering Overpayments

(1) In addition to judicial process, the Department may recover an overpayment (see OAR 461-195-0501) through an agreed repayment plan,

reduction in benefits, voluntary payment from the client or authorized representative (see OAR 461-115-0090), and offset of the debt.

(2) The Department reduces current benefits to collect an overpayment only as follows:

(a) In the GA and OSIP programs, the Department may recover an overpayment by reducing cash benefit payments by the lesser of the following:

(A) The total overpayment amount;

(B) The total benefit amount; or

(C) Ten percent of the client's total benefit requirement at the standard of need.

(b) In the REF, SFPSS, and TANF programs, the Department:

(A) Allows only half of the 50 percent earned income deduction described in OAR 461-160-0160.

(B) Reduces the benefit payment by 10 percent of the total benefit requirement of the benefit group (see OAR 461-110-0750) at the adjusted income payment standard. The reduced benefit payment after such reduction, when combined with all other income may not be less than 90 percent of the benefit group's adjusted income payment standard for a family with no income. In the TANF program, the cooperation incentive (see OAR 461-135-0210) is not included in the calculations prescribed by this paragraph.

(c) In the SNAP program, unless the Department and the client agree to a repayment plan and the filing group (see OAR 461-110-0370) meets the terms of the plan, the Department collects an overpayment from a liable member of a filing group participating in the SNAP program by reducing the SNAP program benefit allotment of the benefit group each month as follows:

(A) For an overpayment caused by client error (see OAR 461-195-0501) or administrative error (see OAR 461-195-0501), 10 percent of the group's monthly allotment or $10 a month, whichever is greater.

(B) For an overpayment caused by an IPV (see OAR 461-195-0601), 20 percent of the group's monthly entitlement or $20 a month, whichever is greater.

(3) In the child care programs:

(a) The Department may not recover an overpayment through reduction of a client's child care program benefits.

(b) When a child care program provider is liable for a child care overpayment (see OAR 461-195-0501) the Department may recover the child care overpayment by reducing up to 100 percent any future child care payment for which the provider bills the Department.

(4) The Department may recover an overpayment by offset as follows:

(a) Using the collection services provided by the Department of Revenue and any other state or federal agency to collect a liquidated claim established by:

(A) A court judgment.

(B) A confession of judgment.

(C) A document signed or acknowledged by the debtor that acknowledges the debt, such as:

(i) The Department-designated form to acknowledge an IPV.

(ii) A plea bargain agreement.

(iii) Any other document acknowledging the overpayment.

(D) A written notification of overpayment from the Department to the debtor, advising the debtor of the basis and amount of the overpayment and the right to request a hearing, if the debtor has exhausted his or her rights of administrative appeal.

(E) A written communication from the debtor acknowledging the debt.

(b) The amount of any retroactive payment or restoration of lost benefits otherwise payable to the client, when the retroactive payment corrects a prior underpayment of benefits in the program in which the overpayment occurred.

(c) Through use of a warrant authorized by ORS 411.703. Upon issuance of the warrant, the Department may issue a notice of garnishment in accordance with ORS 18.854.

(d) In the SNAP program, by offsetting the full amount of the overpayment against restored benefits owed to the benefit group or to another benefit group that a liable member of the overpaid group has joined.

(5) A confession of judgment is used in the case of a client error (see OAR 461-195-0501) overpayment. The Department may not file a confession of judgment while the client receives public assistance or medical assistance, and may file one only if the client has refused to agree to or has defaulted on a repayment plan.

(6) The Department may not take collection action against a filing group while a member of the filing group is working under a JOBS Plus agreement.

Stat. Auth.: ORS 411.060, 411.660, 411.816, 412.049

Stats. Implemented: ORS 18.854, 18.900, 411.630, 411.635, 411.660, 411.703, 411.816, 412.049 & 416.350

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2001, f. & cert. ef. 11-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14

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

Adm. Order No.: SSP 38-2013

Filed with Sec. of State: 12-31-2013

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Rules Amended: 461-110-0330, 461-110-0340, 461-110-0530, 461-110-0630, 461-115-0071, 461-115-0150, 461-115-0430, 461-120-0030, 461-120-0050, 461-120-0125, 461-120-0210, 461-120-0310, 461-120-0315, 461-120-0345, 461-120-0350, 461-120-0510, 461-120-0630, 461-125-0150, 461-130-0328, 461-135-0070, 461-135-0080, 461-135-0900, 461-135-0930, 461-135-0950, 461-135-1070, 461-140-0040, 461-140-0120, 461-140-0210, 461-140-0270, 461-145-0040, 461-145-0050, 461-145-0080, 461-145-0086, 461-145-0090, 461-145-0110, 461-145-0120, 461-145-0130, 461-145-0150, 461-145-0230, 461-145-0300, 461-145-0330, 461-145-0340, 461-145-0360, 461-145-0365, 461-145-0380, 461-145-0410, 461-145-0420, 461-145-0430, 461-145-0433, 461-145-0440, 461-145-0455, 461-145-0460, 461-145-0470, 461-145-0505, 461-145-0510, 461-145-0540, 461-145-0590, 461-145-0600, 461-145-0820, 461-145-0830, 461-145-0860, 461-145-0910, 461-145-0920, 461-145-0930, 461-150-0020, 461-150-0070, 461-150-0080, 461-150-0090, 461-155-0030, 461-155-0350, 461-155-0670, 461-160-0040, 461-160-0060, 461-160-0100, 461-160-0160, 461-160-0630, 461-165-0030, 461-165-0120, 461-170-0011, 461-170-0130, 461-170-0200, 461-175-0200, 461-175-0270, 461-175-0305, 461-180-0020, 461-180-0050, 461-180-0065, 461-180-0085, 461-180-0100, 461-180-0105, 461-180-0120

Rules Repealed: 461-110-0330(T), 461-110-0340(T), 461-110-0400(T), 461-110-0530(T), 461-110-0630(T), 461-115-0071(T), 461-115-0430(T), 461-115-0530, 461-115-0705, 461-120-0030(T), 461-120-0050(T), 461-120-0125(T), 461-120-0210(T), 461-120-0310(T), 461-120-0315(T), 461-120-0345(T), 461-120-0350(T), 461-120-0510(T), 461-120-0630(T), 461-125-0150(T), 461-130-0328(T), 461-135-0070(T), 461-135-0080(T), 461-135-0095, 461-135-0096, 461-135-0170, 461-135-0900(T), 461-135-0930(T), 461-135-0950(T), 461-135-1060, 461-135-1070(T), 461-135-1100, 461-135-1101, 461-135-1102, 461-135-1120, 461-135-1149, 461-140-0040(T), 461-140-0120(T), 461-140-0210(T), 461-140-0270(T), 461-145-0040(T), 461-145-0050(T), 461-145-0080(T), 461-145-0086(T), 461-145-0090(T), 461-145-0110(T), 461-145-0120(T), 461-145-0130(T), 461-145-0150(T), 461-145-0230(T), 461-145-0300(T), 461-145-0330(T), 461-145-0340(T), 461-145-0360(T), 461-145-0365(T), 461-145-0380(T), 461-145-0410(T), 461-145-0420(T), 461-145-0430(T), 461-145-0433(T), 461-145-0440(T), 461-145-0455(T), 461-145-0460(T), 461-145-0470(T), 461-145-0505(T), 461-145-0510(T), 461-145-0540(T), 461-145-0590(T), 461-145-0600(T), 461-145-0820(T), 461-145-0830(T), 461-145-0860(T), 461-145-0870, 461-145-0910(T), 461-145-0920(T), 461-145-0930(T), 461-150-0020(T), 461-150-0070(T), 461-150-0080(T), 461-150-0090(T), 461-155-0235, 461-155-0350(T), 461-155-0670(T), 461-160-0040(T), 461-160-0060(T), 461-160-0100(T), 461-160-0120, 461-160-0125, 461-160-0160(T), 461-160-0190, 461-160-0200, 461-160-0630(T), 461-160-0700, 461-165-0030(T), 461-165-0120(T), 461-170-0011(T), 461-170-0130(T), 461-170-0200(T), 461-175-0200(T), 461-175-0203(T), 461-175-0270(T), 461-175-0305(T), 461-180-0020(T), 461-180-0050(T), 461-180-

0065(T), 461-180-0085(T), 461-180-0097(T), 461-180-0100(T), 461-180-0105(T), 461-180-0120(T), 461-155-0030(T)

Subject: These rules about eligibility for medical programs are being changed as part of the process to move policies about financial eligibility for medical assistance from OAR 461 (DHS) into the OAR 410-200 (under OHA), and as part of the implementation efforts for the federal Affordable Care Act (ACA). For applications for medical assistance starting on October 1, 2013, financial eligibility policies are changing and will be set out in OAR 410-200. These amendments make permanent temporary changes adopted October 1, 2013.

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

Rules Coordinator: Annette Tesch—(503) 945-6067

461-110-0330

Filing Group; TANF

(1) A filing group must include a dependent child (see OAR 461-001-0000) or unborn child and the following household group (see OAR 461-110-0210) members (even if the member is not an applicant or does not meet nonfinancial eligibility (see OAR 461-001-0000) requirements):

(a) Each parent (see OAR 461-001-0000) of a dependent child in the filing group.

(b) Each parent of an unborn child in the filing group.

(c) Each sibling (see OAR 461-001-0000) of a dependent child in the filing group, except as specified in paragraph (3)(b)(B) of this rule. The sibling must be less than 18 years of age, or 18 years of age and attending school full time.

(d) A caretaker relative (see OAR 461-001-0000) of the dependent child in the filing group, and the spouse (see OAR 461-001-0000) and each dependent child of the caretaker relative.

(2) A dependent child is not included in the filing group if he or she:

(a) Is or will be receiving foster care payments for more than 30 days (see OAR 461-145-0200);

(b) Is receiving adoption assistance (see OAR 461-145-0001); or

(c) Is receiving Title IV-E subsidized guardianship assistance payments (see OAR 461-145-0200).

(3) A parent of a minor parent (see OAR 461-001-0000) is not in the filing group of the minor parent if:

(a) The minor parent does not reside with his or her parent; or

(b) The parent of the minor parent is in the household group of the minor parent but is not applying for the TANF program for the minor parent or any sibling of the minor parent.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, 412.064, 412.124
Stats. Implemented: ORS 409.010, 411.060, 411.070, 412.006, 412.049, 412.064
Hist:. AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-110-0340

Filing Group; SAC

In the SAC program, the filing group includes each household group (see OAR 461-110-0210) member who meets all nonfinancial eligibility requirements.

Stat. Auth.: ORS 411.060, 411.070, 411.404 & 414.231
Stats. Implemented: ORS 411.060, 411.070, 411.404, 414.025 & 414.231
Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 16-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 27-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-110-0530

Financial Group

(1) Except as provided in section (5) of this rule, a "financial group" consists of the filing group members whose income and resources the Department considers in determining eligibility (see OAR 461-001-0000) and benefits.

(2) In the ERDC, GA, OSIPM-EPD, QMB, and SNAP programs, the financial group consists of each individual in the filing group.

(3) In the REF and REFM programs, the financial group consists of each individual in the filing group, except the following:

(a) A caretaker relative (see OAR 461-001-0000) other than a parent (see OAR 461-001-0000) who chooses not to be included in the need group (see OAR 461-110-0630); and

(b) An individual who is eligible for and receives an SSI cash payment.

(4) In the OSIPM (except OSIPM-EPD) program:

(a) For the purposes of this section of this rule, "ineligible" means an individual not eligible to receive either SSI or TANF program benefits.

(b) When an individual lives in a standard living arrangement (see OAR 461-001-0000):

(A) Except as provided in paragraph (B) of this subsection, each member of the filing group is in the financial group.

(B) When an individual is not assumed eligible (see OAR 461-135-0010) for OSIPM:

(i) The individual's spouse (see OAR 461-001-0000) who is ineligible and in the filing group is not in the financial group if the individual's adjusted income (see OAR 461-001-0000) using the deductions allowed under OAR 461-160-0550(3) is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250. The financial group consists only of the individual.

(ii) If the ineligible spouse's remaining income after allocation (see OAR 461-160-0551) to each ineligible child is equal to or less than the difference between the couple and the individual SSI standards: the spouse who is ineligible is not considered to be in the financial group when determining income eligibility; however, the spouse is considered to be in the financial group when determining resource eligibility.

(c) When an individual lives in a nonstandard living arrangement (see OAR 461-001-0000), the financial group consists only of the individual applying for benefits, except that the community spouse (see OAR 461-001-0030) is included in the financial group to determine initial eligibility. At initial eligibility, the resources of the community spouse are considered and the provisions of OAR 461-160-0580 apply. The income of the community spouse is not considered in determining initial eligibility, and the community spouse is not included in any other eligibility group.

(5) In the TANF program, the financial group consists of each individual in the filing group except the following:

(a) A caretaker relative, other than a parent, who chooses not to be included in the need group and has income less than the non-needy countable income limit standard (see OAR 461-155-0030) for the filing group of the caretaker relative;

(b) The spouse of a caretaker relative, when the caretaker relative meets the requirements under subsection (a) of this section;

(c) A dependent child of a caretaker relative when the caretaker relative meets the requirements under subsection (a) of this section;

(d) An individual in the filing group solely due to the requirements of OAR 461-110-0310(2)(b); and

(e) An individual who is eligible for and receives an SSI cash payment.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 414.231, 414.712
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 412.064, 412.124, 414.025, 414.231, 414.712, 414.826, 414.831, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 14-2009(Temp), f. & cert. ef. 7-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 16-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-110-0630

Need Group

(1) The "need group" consists of the individuals whose basic and special needs are used in determining eligibility (see OAR 461-001-0000) and benefit level.

(2) In the EA, REF, and REFM programs, the need group consists of the members of the financial group (see OAR 461-110-0530) who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(3) In the ERDC, OSIPM-EPD, and QMB programs, the need group consists of each member of the financial group.

(4) In the SNAP program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except the following individuals are not in the need group:

(a) A member disqualified for an intentional program violation (see OAR 461-195-0601).

(b) A fleeing felon under OAR 461-135-0560.

(c) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(5) In the GA and GAM programs, the need group consists of each member of the financial group except that the following individuals may not be in the need group:

(a) A fleeing felon under OAR 461-135-0560.

(b) An individual in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(c) An individual not complying with social security number requirements under OAR 461-120-0210.

(6) In the TANF program, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705.

(b) The need group may not include:

(A) A parent (see OAR 461-001-0000) who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program:

(i) An individual who may not be in the need group because of a disqualification penalty.

(ii) An individual who may not be in the need group because the individual has exceeded the 60-month time limit and does not meet any of the exceptions listed in OAR 461-135-0075.

(iii) A fleeing felon under OAR 461-135-0560.

(iv) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(7) In the OSIPM (except OSIPM-EPD) program:

(a) If a child is applying, the need group consists of the child.

(b) In all other situations, the need group consists of each member of the financial group.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.049 & 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831 & 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 16-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-115-0071

Who Must Sign the Application and Complete the Application Process

(1) In the ERDC, REF, REFM, and TANF programs, the following individuals must sign the application and complete the application process:

(a) In the REF, REFM, and TANF programs, at least one caretaker relative (see OAR 461-001-0000).

(b) In the ERDC program, a caretaker (see OAR 461-001-0000).

(2) In the EA program:

(a) A caretaker relative must sign the application and complete the application process for a child (see OAR 461-001-0000). If the child is not living with a caretaker relative, another adult may act on behalf of the child.

(b) If the caretaker relative lives with a spouse (see OAR 461-001-0000), both must sign the application.

(c) A dependent child 18 years of age who applies must sign the application and complete the application process.

(3) In the GA, GAM, OSIPM, and QMB programs, at least one adult requesting assistance must complete the application process and sign the application, if able. If there is no adult who is able to sign the application and complete the application process, this can be done by the authorized representative (see OAR 461-115-0090). If the applicant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the required verification.

(4) In the SNAP program, the primary person, the spouse of the primary person, or another adult member of the filing group (see OAR 461-110-0370) must sign the application and complete the application process.

(5) An individual required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the field office.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.087, 411.400, 411.404, 411.816, 412.049

Hist.: SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 23-2010(Temp), f. & cert. ef. 7-15-10 thru 1-11-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-115-0150

Offices Where Clients Apply

(1) For all programs, applicants must apply at the branch office (see OAR 461-001-0000) serving the area in which they live or work. Applicants temporarily in another area of the state should apply at the branch office serving that area. Applicants may also apply at other locations for the following programs:

(a) Homeless clients may apply with a Community Action Agency for the Housing Stabilization program.

(b) Applicants may apply for health coverage by:

(A) Calling the Cover Oregon toll-free number;

(B) Applying through the Cover Oregon online portal; or

(C) Contacting a federally qualified health center, a qualified hospital, a disproportionate-share hospital, or another entity authorized by rule.

(2) The Department has designated liaison branch offices for some groups of applicants (such as patients in state medical institutions and refugees). Those applicants must apply at the designated liaison branch office.

(3) SNAP applicants may apply at an office of the Social Security Administration if all members of the filing group (see OAR 461-110-0370) are applying for or are receiving SSI, and the filing group has not applied for or received SNAP benefits during the previous 30 days.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816 & 411.404

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.816 & 411.404

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-115-0430

Periodic Redeterminations; Not EA, ERDC, EXT, OHP, REF, REFM, SNAP, or TA-DVS

The Department periodically redetermines the eligibility of clients for benefits and assigns a redetermination date by which the next determination is required. The Department selects the redetermination date based on the client's circumstances and according to the following requirements:

(1) In the GA and GAM programs, the Department determines eligibility each 12 months.

(2) In the SAC program, the Department redetermines eligibility at least once every 12 months.

(3) In the OSIP and OSIPM programs, the Department determines eligibility each 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(4) In the QMB program, the Department determines eligibility each 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for OSIPM, a redetermination for QMB is completed with the redetermination of OSIPM.

(5) In the SFPSS program, the Department redetermines eligibility at least once every 12 months. The Department redetermines program eligibility by redetermining eligibility for the TANF program.

(6) In the TANF program, benefits will end the last day of the certification period (see OAR 461-001-0000). The Department redetermines eligibility according to the following schedule:

(a) At least once every six months for each of the following:

(A) Clients not participating in an activity (see OAR 461-001-0025) of an open case plan (see OAR 461-001-0025).

(B) Clients who are currently serving a JOBS disqualification.

(b) At least once every 12 months for all other clients.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994,

f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0030

State of Residence for an Individual in a Medical Facility

In the GAM, OSIPM, QMB, REFM, and SAC programs, the residency of an individual living in a state or private medical facility such as a hospital, mental hospital, nursing home, or convalescent center is determined as follows:

(1) An individual 21 years of age or older who is capable of indicating intent to reside is considered to be --

(a) A resident of the state where the individual is living with the intention to remain permanently or for an indefinite period, except when subsection (b) of this section indicates otherwise.

(b) When a state agency of another state places the individual (other than a child funded under Title IV-E), the individual is considered to be a resident of the state that makes the placement.

(2) An individual 21 years of age or older who became incapable of indicating intent to reside after attaining 21 years of age is considered to be a resident of the state where the facility is located unless the individual was placed in the facility by a state agency of another state. When a state agency of another state places an individual, the individual is considered to be a resident of the state that makes the placement.

(3) For an individual less than 21 years of age who is incapable of forming an intent to reside, or an individual of any age who became incapable of forming that intent before attaining 21 years of age (see OAR 461-120-0050), the state of residence is one of the following:

(a) The state of residence of the individual's parent or legal guardian at the time of application.

(b) The state of residence of the party who applies for benefits on the individual's behalf if there is no living parent or the location of the parent is unknown, and there is no legal guardian.

(c) Oregon, if the individual has been receiving medical assistance in Oregon continuously since November 1, 1981, or is from a state with which Oregon has an interstate agreement that waives the residency requirement.

(d) When a state agency of another state places the individual, the individual is considered to be a resident of the state that makes the placement.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0050

Incapable of Stating Intent to Reside; OSIPM, QMB, REFM, and SAC

In the OSIPM, QMB, REFM, and SAC programs, an individual is presumed to be incapable of forming an intent to reside if the individual meets the requirements of one or more of the following sections:

(1) The individual is assessed with an IQ of 49 or less, based on a test acceptable to the Department.

(2) The individual has a mental age of seven years or less, based on tests acceptable to the Department.

(3) The individual is judged legally incompetent by a court of competent jurisdiction.

(4) The individual is found incapable of indicating intent to reside based on documentation provided by a physician, psychologist or other professional licensed by the state of Oregon in the field of intellectual disabilities.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0125

Alien Status

(1) For purposes of this chapter of rules, an individual is a "qualified non-citizen" if the individual is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under section 101(a)(27) of the INA.

(i) In all programs except the SNAP program--a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(j) In the SNAP program--a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) In all programs except the REF and REFM programs, an individual meets the alien status requirements if the individual is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC, TA-DVS, and TANF programs, an individual meets the alien status requirements if the individual is one of the following:

(a) An individual who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(4) In the OSIPM, QMB, and SAC programs:

(a) A qualified non-citizen meets the alien status requirements if the individual satisfies one of the following situations:

(A) Effective October 1, 2009, is an individual under 19 years of age.

(B) Was a qualified non-citizen before August 22, 1996.

(C) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date qualified non-citizen status was obtained.

(D) Is an individual granted any of the following alien statuses:

(i) Refugee — under section 207 of the INA.

(ii) Asylum — under section 208 of the INA.

(iii) Deportation being withheld under section 243(h) of the INA.

(iv) Cubans and Haitians who are either public interest or humanitarian parolees.

(v) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(vi) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(vii) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(viii) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(E) Meets the alien status requirements in section (2), (6), or (7) of this rule.

(F) In the OSIPM program, is receiving SSI benefits.

(G) In the QMB program, is receiving SSI and Medicare Part A benefits.

(b) A non-citizen meets the alien status requirements if the individual is under the age of 19 and is one of the following:

(A) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.

(B) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);

(ii) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603 (8 USC 1255a), as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649 (8 USC 1255a), as amended;

(v) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or

(vii) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.

(C) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).

(5) In the GA and GAM programs, an individual meets the alien status requirement if the individual is one of the following:

(a) An individual who is blind or has a disability was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(c) An individual who meets one of the alien status requirements in section (2) or (6) of this rule.

(d) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(6) In all programs except the ERDC, REF, REFM, and TANF programs, a qualified non-citizen meets the alien status requirement if the individual is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the SNAP program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(7) Except as provided in section (2), subsection (4)(a), and sections (5) and (6) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(8) In the REF and REFM programs, an individual meets the alien status requirements if the individual is admitted lawfully under any of the following provisions of law:

(a) An individual admitted as a refugee under section 207 of the INA (8 USC 1157).

(b) An individual granted asylum under section 208 of the INA (8 USC 1158).

(c) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.

(d) An individual paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)). For purposes of this section, "Lautenberg" parolees, humanitarian interest parolees, and other public interest parolees do not qualify.

(e) An Amerasian from Vietnam who is admitted to the U.S. as an immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).

(f) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(g) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(h) Iraqi and Afghan aliens granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act.

(9) In the SNAP program, an individual meets the alien status requirement if the individual meets the requirements of one or more of the following subsections:

(a) An individual granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be cred-

ited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the SNAP program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means tested benefits include SNAP, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.231
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831
Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0210
Requirement to Provide Social Security Number (SSN)

(1) In the CAWEM, ERDC, REF, and REFM programs, a member of a need group (see OAR 461-110-0630) or a benefit group (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing group or need group provide an SSN on a voluntary basis.

(2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.

(3) Except as provided in section (5) of this rule, in the OSIPM, QMB, and SAC programs:

(a) An individual is not required to apply for or provide an SSN:

(A) If the individual does not have an SSN; and

(B) May only be issued an SSN for a valid non-work reason in accordance with 20 CFR 422.104.

(b) When subsection (a) does not apply, to be included in the benefit group, an individual must:

(A) Provide a valid SSN for the individual; or

(B) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.

(4) Except as provided in sections (5) to (7) of this rule, in the SNAP and TANF programs, to be included in the need group, an individual (other than an unborn) must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have one and provide the SSN when it is received.

(5) In the GA, GAM, OSIPM, QMB, SAC, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of a religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(6) The requirement to apply for or provide the SSN is delayed as follows:

(a) In the SAC program, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

(b) In the SNAP program:

(A) An applicant eligible for expedited services may receive his or her first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

(B) Before applying for or providing an SSN, a newborn may be included in a benefit group (see OAR 461-110-0750) for six months following the date the child is born or until the group's next recertification, whichever is later.

(c) In the TANF program, without meeting the SSN requirements of section (4) of this rule, a newborn child born in Oregon may be added to the benefit group for six months following the child's date of birth or until the next redetermination of eligibility of the filing group (see OAR 461-110-0330), whichever is sooner.

(7) In the SNAP program:

(a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in SNAP for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.

(c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a disability (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.

(8) This rule authorizes or requires the collection of an SSN for each of the following purposes.

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

(c) The operation of the program applied for or providing benefits.

(d) Conducting quality assessment and improvement activities.

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 12-2013(Temp), f. & cert. ef. 5-29-13 thru 11-25-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0310
Assignment of Support Rights; Not SNAP

In all programs except the SNAP program:

(1) To be eligible for any program funded in whole or in part with federal grants under Title IV-A (TANF) of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support that accrues during any time period that the group receives assistance, not to exceed the total amount of assistance paid.

(2) To be eligible for any program funded in whole or in part with federal grants under Title IV-E of the Social Security Act, the filing group must

assign to the state its right to receive, from any other person, child support that has accrued or that accrues during any time period that the group receives assistance, not to exceed the total amount of assistance paid.

(3) To be eligible for the OSIPM program, a filing group must assign to the state the right of any Medicaid-eligible child in the filing group to receive any cash medical support that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(4) Cash medical support received by the Department will be retained by the Department as is necessary to reimburse the Department for OSIPM program medical assistance payments made on behalf of an individual with respect to whom such assignment was executed. Once yearly, the remainder of such amount retained will be paid to such individual.

(5) When the Department provides benefits or services for the support of a child who is in a filing group in any program funded in whole or in part with a federal grant under Title IV-A (TANF) or IV-E of the Social Security Act, the right to child support for that child that any individual may have is deemed to be assigned to the state by operation of law.

Stat. Auth: ORS 411.060, 411.070, 411.404, 412.024, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 412.001, 412.024, 412.049, 414.025

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 12-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 3-29-07; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0315

Medical Assignment

In the GAM, OSIPM, QMB, REFM, and SAC programs:

(1) By signing the application for assistance, a client agrees to turn over the rights of each member of the benefit group (see OAR 461-110-0750) to reimbursement for medical care costs to the Department.

(a) If a client or the client's authorized representative (see OAR 461-115-0090) refuses to assign the rights to reimbursement for medical care costs to the Department, the filing group is ineligible until the client complies with this requirement. This includes a client eligible for long term care (see OAR 461-001-0000) insurance payments who fails to comply as described in subsection (b) of this section.

(b) When a client has long term care insurance, the client complies with the requirements of this rule by reducing the Department's share of the long term care service costs by taking the following actions for the entire period of time that the client is eligible for Department-covered long term care services:

(A) For a client in a nursing facility:

(i) Submitting the necessary paperwork to receive the long term care insurance payments and designating the long term care facility as the payee for the long term care insurance benefits; or

(ii) When the insurance company will not pay the long term care insurance benefits directly to the long term care facility, submitting the necessary paperwork to receive insurance payments and then promptly turning over the long term care insurance payments to the long term care facility upon receipt.

(B) For a client in community based care (see OAR 461-001-0000):

(i) Submitting the necessary paperwork to receive the long term care insurance payments and designating the Department as the payee for the long term care insurance benefits; or

(ii) When the insurance company will not pay the long term care insurance benefits directly to the Department, submitting the necessary paperwork to receive the insurance payments and then promptly turning over the long term care insurance payments to the Department upon receipt.

(2) The Department may refuse to pay medical expenses for anyone in the benefit group when another party or resource should pay first.

(3) The amount the Department may collect in reimbursement is limited to the amount of medical services paid by the Department on the client's behalf.

(4) The Department establishes an overpayment if it is discovered after-the-fact that during any period of time a client or another individual submitting a long term care insurance claim on the client's behalf received a long term care insurance payment that was not turned over to the long term care facility or Department as required by subsection (1)(b) of this rule.

Stat. Auth.: ORS 411.060, 411.404, 411.706, 414.231

Stats. Implemented: ORS 411.060, 411.404, 411.706, 414.231

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; ; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0345

Clients Required to Obtain Health Care Coverage and Cash Medical Support; GAM, OSIPM

This rule explains the obligation of clients to obtain health care coverage and cash medical support for members of the benefit group (see OAR 461-110-0750) in the GAM and OSIPM programs.

(1) Unless excused from the requirements of this section for good cause defined in OAR 461-120-0350, each adult client must assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial parent (see OAR 461-001-0000) of a child (see OAR 461-001-0000) in the benefit group to provide:

(a) Cash medical support for that child; and

(b) Health care coverage for that child.

(2) Each adult client must make a good faith effort to obtain available coverage under Medicare.

(3) To be eligible for the GAM and OSIPM programs, once informed of the requirement, an individual who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). In the GAM and OSIPM programs, the client is not required to incur a cost for the health insurance.

(4) An individual who fails to meet an applicable requirement in sections (1), (2), or (3) of this rule is removed from the need group (see OAR 461-110-0630).

(5) In the case of an individual failing to meet the requirements of section (1) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(6) The penalty provided by this rule ends when the client meets the requirements of this rule.

Stat. Auth: ORS 411.060, 411.070, 412.024, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 412.001, 412.024, 412.049, 414.025, 414.042

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0350

Clients Excused for Good Cause from Compliance with Requirements to Pursue Child Support, Health Care Coverage, and Medical Support

(1) A client is excused from the requirements of OAR 461-120-0340(1) and 461-120-0345(1)(a) if:

(a) The client's compliance would result in emotional or physical harm to the dependent child (see OAR 461-001-0000) or to the caretaker relative (see OAR 461-001-0000). The statement of the caretaker relative alone is prima facie evidence that harm would result;

(b) The child was conceived as a result of incest or rape and efforts to obtain support would be detrimental to the dependent child. The statement of the caretaker relative alone is prima facie evidence on the issues of conception and detrimental effect to the dependent child;

(c) Legal proceedings are pending for adoption of the needy child; or

(d) The parent is being helped by a public or licensed private social agency to resolve the issue of whether to release the child for adoption.

(2) In the GAM and REFM programs, a pregnant client is excused from the requirements of OAR 461-120-0345.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0510

Age Requirements for Clients to Receive Benefits

(1) If the year of an individual's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be eligible for the TANF program:

(a) A dependent child (see OAR 461-001-0000) must be:

(A) Under 18 years of age; or

(B) Under 19 years of age and regularly attending school (see subsection (c) of this section) full time, as determined by the school.

(b) A caretaker relative (see OAR 461-001-0000) may be any age.

(c) "Regularly attending school" means enrolled in and attending any of the following:

(A) A school in grade 12 or below, including home schooling approved by the local school district.

(B) GED classes in lieu of high school.

(C) A course of vocational or technical training, including Job Corps, in lieu of high school.

(D) The Oregon School for the Deaf.

(d) The student's full-time status is defined by the school.

(e) Regular attendance continues when a student misses school because of an illness, family emergency, or vacation, as long as the student intends to return to school. Students are considered to be in attendance for the full month in which they complete or discontinue school or training.

(3) To be eligible for payment of child care costs for the ERDC or TANF program, a child must be:

(a) Under 12 years of age for the ERDC program or under 13 years of age for the TANF program; or

(b) Under 18 years of age and:

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the special need rate for child care in OAR 461-155-0150; or

(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

(4) To be eligible for the OSIP-AB, OSIPM-AB, QMB-BAS, QMB-SMB, REFM, or SNAP programs, a client may be any age.

(5) To be eligible for the GA and GAM programs, a client must be:

(a) Eighteen years of age or older and less than 65 years of age; or

(b) Sixty-five years of age or older and must be a non-citizen who meets the requirements of OAR 461-120-0125.

(6) To be eligible for the OSIP-AD (except OSIP-EPD), OSIPM-AD (except OSIPM-EPD), and QMB-DW programs, a client must be under 65 years of age.

(7) To be eligible for the OSIP-EPD and OSIPM-EPD programs, the client must be 18 years of age or older or be legally emancipated.

(8) To be eligible for the OSIP-OAA or OSIPM-OAA programs, a client must be 65 years of age or older.

(9) To be eligible for the REF program, a client must be:

(a) 18 years of age or older;

(b) A legally emancipated minor; or

(c) Part of a TANF filing group (see OAR 461-110-0310) that is ineligible for the TANF program.

(10) To be eligible for the SAC program, an individual must be under 21 years of age.

Stat. Auth: ORS 411.060, 411.070, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 18-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-120-0630

Requirement to Live with a Caretaker or Caretaker Relative

(1) Except as provided otherwise in OAR 461-135-1200, to be eligible for the TANF program, a *dependent child* (see OAR 461-001-0000) must live with a caretaker relative (see OAR 461-001-0000). Documentary evidence is required to show that an individual is the father of a dependent child.

(2) To be eligible for the EA program, a child must either live with a caretaker relative or have lived with a caretaker relative within the last six months.

(3) To be eligible for the ERDC program, a child must live with a caretaker (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.070, 411.404, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 30-1992(Temp), f. & cert. ef. 10-14-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-125-0150

Determining Primary Wage Earner (PWE); TANF

(1) The primary wage earner (PWE) is the parent who earned the most money in the 24 months before requesting assistance.

(2) Once a parent is determined to be the PWE, their status cannot change while the family remains continuously eligible for cash assistance, unless:

(a) The other parent later provides evidence that they should have been the PWE at the time of application; or

(b) The parent who is the PWE is out of the household group for at least one full calendar month. If so, the branch office must redetermine the PWE.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.116, 411.404, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 11-1999, f. & cert. ef. 10-1-99; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-130-0328

Effect of Strikes

(1) For the purposes of this rule, "striker" means anyone participating in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) or any concerted slowdown or other concerted interruption of operations by employees. An individual is not a striker if the individual is:

(a) An employee affected by a lockout;

(b) An individual who goes on strike but who is exempt (see OAR 461-130-0305) from participating in an employment program under this division of rules the day prior to the strike, unless exempt solely on the ground that the individual is employed; or

(c) A client who is not part of a bargaining unit on strike and does not want to cross a picket line due to fear of personal injury or death.

(2) In the EA, REF, and TANF programs, a filing group is ineligible for program benefits during any month in which a parent (see OAR 461-001-0000) in the filing group is a striker. If any other member of the filing group is a striker, only that individual is ineligible.

(3) In the SNAP program:

(a) A household containing a striker is not eligible to participate in the program unless the household was eligible for benefits the day prior to the date the member became a striker.

(b) An eligible household is not entitled to an increased allotment as the result of a decrease in the income of a need group (see OAR 461-110-0630) member on strike.

(c) The eligibility of a filing group (see OAR 461-110-0370) containing a striker is determined by adding to the income of the group's members who are not strikers the greater of the striker's current income or the striker's income immediately before the strike. Deductions used to determine benefits and eligibility for a household subject to the net income eligibility standard are calculated for the month of application as for any other household.

(d) A striker is subject to the registration requirements of this division of rules unless exempt from participating in an employment program on the day of application.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.049
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0070
Specific Requirements; TANF

(1) To be eligible for TANF program benefits, a client must be one of the following:

(a) A dependent child (see OAR 461-001-0000). However, a dependent child for whom foster care payments are made for more than 30 days is not eligible while the payments are being made for the dependent child.

(b) A caretaker relative (see OAR 461-001-0000) of an eligible dependent child. However, a caretaker relative to whom foster care payments are made for more than 30 days is not eligible while the payments are being made to the caretaker relative.

(c) A caretaker relative of a dependent child, when the dependent child is ineligible for TANF program benefits because of one of the following reasons:

(A) The child is receiving SSI.

(B) The child is in foster care, but is expected to return home within 30 days.

(d) An essential person. An essential person is a member of the household group (see OAR 461-110-0210) who:

(A) Is not required to be in the filing group;

(B) Provides a service necessary to the health or protection of a member of the benefit group (see OAR 461-110-0750) who has a mental or physical disability; and

(C) Is less expensive to include in the benefit group than the cost of purchasing this service from another source.

(e) A parent (see OAR 461-001-0000) of an unborn, as follows:

(A) For the TANF program, any parent whose only child is an unborn child once the mother's pregnancy has reached the calendar month before the month in which the due date falls.

(B) For the TANF program, the parent of an unborn child, if there is another dependent child in the filing group (see OAR 461-110-0330).

(2) As used in this rule and OAR 461-125-0170:

(a) Except as provided otherwise in this section, "good cause" means a reasonable person of normal sensitivity, exercising ordinary common sense under similar circumstances, would have:

(A) Left work; or

(B) Participated in behavior leading to the individual's discharge or to the individual quitting work in anticipation of discharge.

(b) For an individual with a physical or mental impairment (as defined at 29 CFR 1630.2(h)), except as provided otherwise in subsection (c) of this section, "good cause" for leaving work means that a reasonable person with the characteristics and qualities of such individual under similar circumstances would have:

(A) Left work;

(B) Participated in behavior leading to the individual's discharge; or

(C) Quit work in anticipation of a discharge.

(c) There is no "good cause" if the reason for separation from employment is a labor dispute.

(3) Except as provided under section (4) of this rule, a need group (see OAR 461-110-0630) is not eligible for TANF program benefits for 120 days from the date a caretaker relative was separated from his or her last employment in which the caretaker relative in the need group was hired to work 100 or more hours per month or worked or was scheduled to work 100 or more hours in the last full calendar month of employment.

(4) A need group (see OAR 461-110-0630) may not be denied TANF program benefits based on section (3) of this rule, or based on not meeting OAR 461-125-0170(1)(c) or (d), if the caretaker relative is one of the following:

(a) A Parents as Scholars (PAS) participant who temporarily becomes ineligible for TANF program benefits for four months or less due to income from a paid work experience (see OAR 461-190-0199).

(b) A teen parent (see OAR 461-001-0000) returning to high school or equivalent.

(c) An individual fleeing from or at risk of domestic violence (see OAR 461-001-0000).

(d) An individual in the ninth month of pregnancy or experiencing a medical complication due to the pregnancy which is documented by a qualified and appropriate professional.

(e) An individual unable to work due to a disability or medical condition documented by a qualified and appropriate professional, and which is expected to last for 30 days or more from the date of request (see OAR 461-115-0030) for TANF program benefits.

(f) An individual who was separated from employment for a reason the Department determines is good cause.

(g) An individual who was separated from employment as a result of a layoff.

(5) A family is ineligible for TANF program benefits if the family meets the requirements of all of the following subsections:

(a) The family lives in Klamath County.

(b) The family meets any of the following conditions:

(A) The family has a single custodial parent who is a member of the Klamath Tribes, or the single custodial parent is not a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members;

(B) The family has two custodial parents (see OAR 461-001-0000) who are members of the Klamath Tribes, or only one of the two custodial parents is a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members; or

(C) The family has a caretaker relative who is not the custodial parent and at least 50 percent of the dependent children are Klamath Tribes members.

(c) The family is eligible for the Klamath Tribes TANF program or would be eligible for the Klamath Tribes TANF program if not for the failure of the family to cooperate with program requirements.

(6) A family is ineligible for TANF program benefits if all of the following subsections apply to the family:

(a) A parent, caretaker relative, or child is a member of the Siletz Tribe (Confederated Tribes of Siletz Indians of Oregon) and lives in one of the eleven service area counties: Benton, Clackamas, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, or Yamhill counties.

(b) The family includes members who are living in the same household and at least one of the following paragraphs applies:

(A) A two-parent family with one enrolled Siletz tribal member with a shared dependent.

(B) A single-parent family with one enrolled Siletz tribal member.

(C) A non-needy caretaker relative or essential person with one enrolled Siletz tribal member who is a minor.

(D) A pregnant enrolled Siletz tribal member in her eighth month of pregnancy.

(c) The family is eligible for the Siletz Tribes TANF program or would be eligible for the Siletz Tribes TANF program if not for the failure of the family to cooperate with Siletz TANF program requirements.

(7) If a parent or caretaker relative covered by section (5) or (6) of this rule fails to follow through with a Department referral to the Klamath or Siletz Tribal TANF program, the entire filing group is ineligible for TANF program benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.400, 411.404, 412.006, 412.016, 412.049 & 412.124
Stats. Implemented: ORS 411.060, 411.070, 411.400, 411.404, 412.006, 412.016, 412.049, 412.064, 412.124 & 2011 OL 604 & 2012 OL 107
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 4-30-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 26-1998(Temp), f. 12-30-98, cert. ef. 1-1-99 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 19-2009(Temp), f. 7-29-09, cert. ef. 8-1-09 thru 10-28-09; SSP 33-2009, f. & cert. ef. 10-29-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0080
TANF Eligibility for Minor Parents

To be eligible for TANF, a minor parent applying for benefits for his or her child must live with the minor's parent, parents or legal guardian unless it is unsafe or impractical for the minor parent to live with those individuals.

Stat. Auth.: ORS 411.060, 412.049
Stats. Implemented: ORS 411.060, 412.049, 412.084
Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0900
Specific Requirements; REF, REFM

(1) In addition to the eligibility requirements in other rules in Chapter 461 of the Oregon Administrative Rules, an individual must meet all of the requirements in this rule to be eligible for the REF and REFM programs.

(2) An individual must meet the alien status requirements of OAR 461-120-0125, except a child (see OAR 461-001-0000) born in the United States to an REF or REFM program client meets the alien status require-

ments for the REF and REFM programs as long as each parent (see OAR 461-001-0000) in the household group (see OAR 461-110-0210) meets the alien status requirements of OAR 461-120-0125.

(3) An individual is not eligible to receive REF and REFM program benefits if the individual is a full-time student of higher education, unless such education is part of a cash assistance case plan. Any education or training allowable under an approved case plan must be less than one year in length. For the purposes of this rule, "higher education" means education that meets the requirements of one of the following subsections:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL, and high school equivalency programs at these institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(4) Eligibility for REF and REFM program benefits is limited to the first eight months in the United States:

(a) For an individual who meets the alien status requirements of OAR 461-120-0125(8)(a), (c), (d), or (e), the month that the individual enters the U.S. counts as the first month.

(b) For an individual who meets the alien status requirements of OAR 461-120-0125(8)(b), (f), or (g), the month that the individual was granted the individual's status counts as the first month.

(c) For an individual who meets the alien status requirements of OAR 461-120-0125(8)(h):

(A) If the individual enters the U.S. with the special immigrant status, the month that the individual enters the U.S. counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the U.S., then the month in which the special immigrant status was granted counts as the first month.

(d) Months in the United States are counted as whole months. There is no prorating of months, except as described in OAR 461-193-0320.

(5) For an individual who meets the requirements of section (4) of this rule:

(a) When the individual resides in Clackamas, Multnomah, or Washington counties:

(A) The individual is not eligible to receive REF, TANF, or TANF-related employment services through the Department. To receive benefits, the individual is required to participate in the Refugee Case Service Project (RCSP) program. This individual is referred to their local resettlement agency to be enrolled in the RCSP program and receives all other Department services through the individual's local Department office.

(B) An individual who no longer meets the requirements of section (4) of this rule is no longer eligible to receive cash or case management services through the RCSP program. If this individual has been in the United States for 12 months or less, the individual is referred to the New Arrival Employment Services (NAES) program contractor for employment services.

(b) When the individual resides in counties other than Clackamas, Multnomah, and Washington, the RCSP program is not available. The individual is served at the individual's local Department office.

(6) Except for QMB, eligibility for all Medicaid and CHIP programs must be determined prior to determining eligibility for the REFM program.

(7) Eligibility for the TANF program must be determined prior to the REF program.

(8) An REF program client may not participate in the Pre-TANF program.

Stat. Auth.: ORS 409.050, 411.060 & 412.049
Stats. Implemented: ORS 409.010, 411.060 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 33-1996(Temp), f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 13-2010(Temp), f. & cert. ef. 5-17-10 thru 11-13-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0930
Medical Coverage for Refugees; REFM

(1) REFM benefits are the same medical coverage as any Medicaid or CHIP program, except the QMB and CAWEM programs.

(2) A client is not required to meet the financial eligibility criteria for REFM if the client meets all the non-financial eligibility criteria for REFM and:

(a) The client loses eligibility for any Medicaid or CHIP program except the QMB and CAWEM programs; or

(b) The client had refugee-related medical assistance established in another state based on refugee status granted by the United States Citizenship and Immigration Services, and moved to Oregon within the client's first eight months in the United States.

(3) A client who is determined eligible for REFM will maintain eligibility for REFM for the remainder of their first eight months in the United States even if the client loses eligibility for REF due to having income equal to or over the REF countable (see OAR 461-001-0000) income and adjusted income (see OAR 461-001-0000) limits (see OAR 461-155-0030).

Stat. Auth.: ORS 409.050, 411.060, 411.404
Stats. Implemented: ORS 409.010, 411.060, 411.404
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-0950
Eligibility for Inmates and Residents of State Hospitals

(1) This rule sets out additional restrictions on the eligibility of inmates and residents of state hospitals for programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) Definition of an "inmate".

(a) An inmate is an individual living in a public institution who is:

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a public institution.

(b) An individual is not considered an inmate when:

(A) The individual is released on parole, probation, or post-prison supervision;

(B) The individual is on home- or work-release, unless the individual is required to report to a public institution for an overnight stay;

(C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or

(D) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.

(3) Definition of a "public institution".

(a) A public institution is any of the following:

(A) A state hospital (see ORS 162.135).

(B) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.

(C) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(D) A youth correction facility (see ORS 162.135):

(i) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(ii) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(b) As used in this rule, the term public institution does not include:

(A) A medical institution as defined in 42 CFR 435.1010 including the Secure Adolescent Inpatient Program (SAIP) and the Secure Children's Inpatient Program (SCIP);

(B) An intermediate care facility as defined in 42 CFR 440.140 and 440.150;

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 CFR 435.1009; or

(D) A child-care institution as defined in 42 CFR 435.1009 with respect to:

(i) Children for whom foster care maintenance payments are made under title IV-E of the Social Security Act; and

(ii) Children receiving TANF-related foster care under title IV-A of the Social Security Act.

(4) Definition of serious mental illness. An individual has a serious mental illness if the individual has been diagnosed by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as having dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is both--

(a) Caused primarily by substance abuse; and

(b) Likely to no longer meet the applicable diagnosis if the substance abuse discontinues or declines.

(5) An individual who resides in a public institution, meets the definition of a serious mental illness (see section (4) of this rule), and applies for medical assistance between 90 and 120 days prior to the expected date of the person's release from the public institution may be found eligible for medical assistance. If the individual is determined to be eligible, the effective date of the individual's medical assistance is the date the individual is released from the institution.

(6) A client who becomes a resident of a state hospital has medical benefits suspended for up to twelve full calendar months if the client is at least 22 years of age and under 65 years of age. When a client with suspended medical benefits is no longer a resident of the state hospital, medical benefits are reinstated effective the first day the client is no longer a resident, if the client continues to meet eligibility for the medical program.

(7) An individual residing in a state psychiatric institution may be eligible for OSIPM or SAC benefits if the individual is:

(a) 65 years of age or older;

(b) Under 22 years of age; or

(c) 21 years of age or older, if the basis of need is disability or blindness; eligibility was determined before the individual reached 21 years of age; and the individual entered the state hospital before reaching 21 years of age.

(8) For all programs covered under chapter 461 of the Oregon Administrative Rules:

(a) Except as provided in OAR 461-135-0750, an inmate of a public institution is not eligible for benefits.

(b) If a pregnant woman receiving medical assistance through the GAM, OSIPM, or SAC program becomes an inmate of a public institution, her medical benefits are suspended. When the Department is informed the woman is no longer an inmate, her medical benefits are reinstated--effective on the first day she is no longer an inmate--if she is still in her protected period of eligibility under OAR 461-135-0010.

(c) If an individual receiving medical assistance through the GAM, OSIPM, QMB, or SAC program becomes an inmate of a correctional facility with an expected stay of no more than 12 months, medical benefits are suspended for up to 12 full calendar months during the incarceration period.

(A) In the GAM or SAC program, when the Department is notified by a client with suspended benefits that the client has been released from incarceration, and the notification takes place within 10 days of the release or there is good cause for the late reporting, medical benefits are reinstated effective the first day the client is no longer an inmate.

(B) In the OSIPM or QMB program, when the Department is notified that an individual with suspended benefits has been released, and the notification takes place within 10 days of the release, medical benefits are reinstated effective the first day the client is no longer an inmate if the client continues to meet eligibility for the medical program.

(9) In the GA and SNAP programs, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the individual.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.439, 411.443, 411.445, 411.816, 412.014, 412.049, 414.426, 2011 OL

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 17-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-135-1070

Specific Requirements; Citizen/Alien-Waived Emergent Medical (CAWEM)

To be eligible for the CAWEM program, a client must be ineligible for OSIPM solely because he or she does not meet citizenship or alien status requirements. Benefits of the CAWEM program are limited to the services described in the administrative rules of the Oregon Health Authority in chapter 410 of the Oregon Administrative Rules.

Stat. Auth.: ORS 409.050, 411.404

Stats. Implemented: ORS 411.060, 411.404

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2004(Temp), f. & cert. ef. 7-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-140-0040

Determining Availability of Income

(1) This rule describes the date income is considered available, what amount of income is considered available, and situations in which income is considered unavailable.

(2) Income is considered available the date it is received or the date a member of the financial group (see OAR 461-110-0530) has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(f) In prospective budgeting, income is available in the month the income is expected to be received (see OAR 461-150-0020).

(3) The following income is considered available even if not received:

(a) Deemed income.

(b) In the ERDC, GA, GAM, OSIP, OSIPM, QMB, REF, REFM, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or social security, withheld to repay an overpayment.

(c) In the SNAP program, the portion of a payment from the TANF program counted as disqualifying income under OAR 461-145-0105.

(4) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.

(5) The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is countable:

(A) In the SNAP program, under OAR 461-145-0105; or

(B) In the ERDC, GA, GAM, OSIP, OSIPM, QMB, REF, REFM, and TANF programs, under subsection (3)(b) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(f) Income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the individual not in the financial group is considered unavailable.

(B) If the portion intended for the care of the individual not in the financial group cannot readily be identified, the income is prorated evenly among the individuals for whom the income is intended. The prorated share intended for the care of the individual not in the financial group is then considered unavailable.

(g) In the ERDC, REF, REFM, SNAP, and TANF programs, income controlled by the client's abuser if the client is a victim of domestic violence (see OAR 461-001-0000), the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

(h) In the OSIP, OSIPM, and QMB programs, unearned income not received because a payment was reduced to cover expenses incurred by a member of the financial group to secure the payment. For example, if a retroactive check is received from a benefit program other than SSI, legal fees connected with the claim are subtracted. Or, if payment is received for damages received as a result of an accident the amount of legal, medical or other expenses incurred by a member of the financial group to secure the payment are subtracted.

(i) In the REFM program, any income used for medical or medical-related purposes.

(6) The availability of lump-sum income is covered in OAR 461-140-0120.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.117, 411.404, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-140-0120
Availability and Treatment of Lump-Sum Income

(1) Lump-sum income (see OAR 461-001-0000) is treated as follows if it is received by a member of a financial group (see OAR 461-110-0530).

(2) In the EA, REF, REFM, SNAP, and TANF programs:

(a) Lump-sum income is a resource.

(b) In the EA, REF, REFM, and TANF programs:

(A) Lump-sum income is considered available to the financial group when a member of the group receives the income and until the income becomes unavailable for a reason beyond the group's control.

(B) Lump-sum income is considered unavailable for a reason beyond the group's control if the member who received the lump-sum income:

(i) Leaves the financial group before spending any of the lump-sum income; or

(ii) Spends the lump-sum income on an immediate basic need or emergency.

(3) In the ERDC program, lump-sum income is excluded.

(4) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, lump-sum income is treated as follows:

(a) Lump-sum income not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource, except that in the OSIP and OSIPM programs retroactive SSB and SSI payments are treated in accordance with OAR 461-145-0490 and 461-145-0510.

(b) The following lump-sum income is excluded:

(A) The first $20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(5) In the OSIP-EPD and OSIPM-EPD programs, lump-sum income is counted as a resource.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-140-0210
Asset Transfer; General Information and Timelines

(1) OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of an asset on a client.

(2) If an asset is transferred during the periods of time listed in section (4) or (5) of this rule and if the transfer is made in whole or in part for the purpose of establishing or maintaining eligibility for benefits:

(a) In the REFM program, the filing group is disqualified if:

(A) A member of the financial group (see OAR 461-110-0530) transferred the asset; and

(B) The client is an inpatient in a nursing facility, or is an inpatient in a medical institution in which payment for the client is based on a level of care provided in a nursing facility.

(b) In the REF, SNAP, and TANF programs, the filing group is disqualified if:

(A) The asset was a resource; and

(B) A member of the financial group transferred the resource.

(c) In the GA, GAM, OSIP, and OSIPM programs, a client in a nonstandard living arrangement (see OAR 461-001-0000) is disqualified if the client or the spouse of the client transferred the asset.

(3) In all programs except the ERDC program, clients in financial groups whose members transfer an asset covered under section (2) of this rule within the time periods listed in section (4) or (5) of this rule must report the transfer as soon as practicable and must provide information requested by the Department concerning the transfer.

(4) In the REF, REFM, SNAP, and TANF programs, a transfer of an asset may be disqualifying if the transfer occurs:

(a) In the REFM program, during the three years preceding the date of request (see OAR 461-115-0030).

(b) In the SNAP program, during the three months preceding the filing date or during a certification period (see OAR 461-001-0000) if the asset was a resource.

(c) In the REF and TANF programs, during the three years preceding the date of request (see OAR 461-115-0030) if the asset was a resource.

(5) In the GA, GAM, OSIP, and OSIPM programs, for a client in a nonstandard living arrangement, a transfer of an asset may be disqualifying if the transfer occurs:

(a) On or before June 30, 2006 and as described in one of the following paragraphs:

(A) On or after the date that is 60 months prior to the date of request — for assets that are transferred without compensation equal to or greater than fair market value from a revocable trust (see OAR 461-145-0540(7)(c)).

(B) On or after the date that is 60 months prior to the date of request — for assets that are transferred without compensation equal to or greater than fair market value to an irrevocable trust (see OAR 461-145-0540(8)(a)).

(C) On or after the date that is 60 months prior to the date of request — when there is a change in circumstances that makes assets in an irrevocable trust unavailable to the client (see OAR 461-145-0540(8)(d)).

(D) On or after the date that is 36 months prior to the date of request — for assets transferred without compensation equal to or greater than fair market value from an irrevocable trust (see OAR 461-145-0540(8)(b) and (c)).

(E) On or after the date that is 36 months prior to the date of request — for other asset transfers made without compensation equal to or greater than fair market value.

(b) On or after:

(A) July 1, 2006; and

(B) The date that is 60 months prior to the date of request.

(6) The duration of the period of disqualification or ineligibility is set out in OAR 461-140-0260 to 461-140-0300.

Stat. Auth.: ORS 411.060, 411.404, 411.710, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.710, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 27-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-140-0270

Disqualification Due to An Asset Transfer; REF, REFM, TANF

In the REF, REFM, and TANF programs:

(1) A financial group (see OAR 461-110-0530) in which a member is disqualified due to the transfer of an asset is disqualified for the number of months equal to the uncompensated value (see OAR 461-140-0250) divided by the TANF payment standard (see OAR 461-155-0030).

(2) The disqualification period starts the date the Department imposes the disqualification by terminating benefits for the period calculated above or, in the case of an applicant, by denying benefits for the same period of time measured from the date of application.

Stat. Auth: ORS 409.050, 411.060, 411.404, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.404, 411.632, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0040

Burial Arrangements and Burial Fund

(1) The following definitions apply to this rule:

(a) A burial arrangement is an agreement with an entity such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary that makes allowance for burial costs. A burial arrangement does not include a burial space, which is covered in OAR 461-145-0050, or a burial fund.

(b) A burial fund is an identifiable fund set aside for a client's burial costs. A burial fund does not include a burial space, which is covered in OAR 461-145-0050, or a burial arrangement.

(2) Except as provided in subsection (e) of this section, a burial arrangement is treated as follows:

(a) In the ERDC, REF, REFM, SNAP, and TANF programs, the equity value (defined in OAR 461-001-0000) of one prepaid burial arrangement for each member of the filing group is excluded.

(b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to $1,000 in combined equity value of each burial arrangement with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and equity value of all life insurance and burial arrangements that is over $1,000 is counted as a resource.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, the amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs is excluded.

(d) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a burial arrangement is treated in the manner as the program treats a burial fund under section (3) of this rule.

(e) Burial insurance that has cash surrender value is considered life insurance and is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section.

(3) A burial fund is treated as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) A burial fund may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds or life insurance policies.

(B) A burial fund is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.

(C) A burial fund may be established if the countable resources of a client exceed allowable limits. A burial fund is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.

(D) The following calculation determines the exclusion for a burial fund:

(i) Up to $1,500 of a burial fund may be excluded from resources for each of the following:

(I) The client.

(II) The client's spouse.

(ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:

(I) The face value of life insurance policies owned by the client that have already been excluded from resources.

(II) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs.

(E) All interest earned on an excluded burial fund or increases in the value of an excluded burial arrangement if left in the fund is excluded from income.

(b) In all programs not listed in subsection (a) of this section, a burial fund is counted as a resource.

(4) There is no overpayment for the time period during which the burial arrangement or burial fund existed if a client:

(a) Cancels an excluded burial arrangement; or

(b) Uses an excluded burial fund for any purpose other than burial costs.

(5) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0050

Burial Space and Merchandise

(1) Burial spaces include conventional grave sites, crypts, mausoleums, urns, and other repositories that are traditionally used for the remains of deceased persons. Burial spaces also include headstones and the opening and closing of the grave.

(a) In the ERDC, REF, SNAP, and TANF programs, the equity value (see OAR 461-001-0000) of one burial space is excluded as a resource for each member of the financial group (see OAR 461-110-0530).

(b) In the GA, GAM, OSIP, OSIPM, and QMB programs, the equity value of a burial space is excluded as a resource if owned by the client and designated for the client, the spouse of the client, minor and adult children, siblings, parents, and the spouse of any of these people.

(2) Burial merchandise includes, but is not limited to, caskets, liners, burial vaults, markers, and foundations. The equity value of burial merchandise is excluded as a resource if owned by the client and designated for:

(a) In the ERDC, REF, SNAP, and TANF programs, a member of the financial group.

(b) In the GA, GAM, OSIP, OSIPM, and QMB programs, the client, the spouse of the client, minor and adult children, siblings, parents, and the spouse of any of these people.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014

Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0080

Child Support and Cash Medical Support

(1) Child support and cash medical support paid by a non-custodial parent for a dependent child (see OAR 461-001-0000) or minor parent (see OAR 461-001-0000) in the financial group (see OAR 461-110-0530) are considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.

(2) For the purposes of this rule:

(a) "Disregard" means child support, up to $50 per dependent child or minor parent per financial group per month and not to exceed $200 per financial group per month, that is not counted as income of the client. "Disregard" includes current child support only.

(b) "Pass-through" means child support, up to $50 per dependent child or minor parent per financial group per month and not to exceed $200 per financial group per month, that is sent to the client before any remaining amount of current child support is withheld by the State. "Pass-through" includes current child support only.

(3) In the ERDC program, child support is considered countable (see OAR 461-001-0000) unearned income if it is received by the financial group or is countable under OAR 461-145-0280. Otherwise it is excluded.

(4) In the SNAP program, child support and cash medical support are treated as follows:

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) Child support payments received by a filing group (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except:

(A) It is considered countable unearned income in the calculation of the wage supplement; and

(B) Any pass-through pursuant to section (2) of this rule is considered countable unearned income.

(c) All other child support, including any pass-through pursuant to section (2) of this rule, is considered countable unearned income.

(d) Cash medical support is considered countable unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.

(e) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(5) Except as provided otherwise in section (8) of this rule for the TANF program, in the REF, REFM, and TANF programs:

(a) In determining initial eligibility, except for disregard pursuant to section (2) of this rule, child support received by the Oregon Department of Justice, Division of Child Support (DCS) is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(b) In determining on-going eligibility, except for clients working under a TANF JOBS Plus agreement and except for child support passed through to the client and disregarded pursuant to section (2) of this rule, child support received by the DCS is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(c) For clients working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

(d) All other child support payments:

(A) Paid directly to the financial group that are turned over to the Department or to the DCS are considered countable unearned income except for any amount of pass-through and disregard pursuant to section (2) of this rule.

(B) Paid directly to the financial group that are not turned over to the Department or to the DCS are considered countable unearned income.

(C) Paid to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.

(e) Cash medical support is excluded in determining countable income.

(6) In the OSIP, OSIPM, and QMB programs, all child support and cash medical support paid to the financial group are considered countable unearned income. Child support and cash medical support paid by the financial group are not deductible from income.

(7) In the SFPSS program, notwithstanding section (5) of this rule, for on-going eligibility and benefit determination:

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third-party for rent, mortgage, utilities, or child care.

(8) For on-going eligibility and benefit determination for TANF clients in a two-parent household:

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.

(d) For a filing group (see OAR 461-110-0330) with at least one member working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 7-2008(Temp), f. & cert. ef. 3-21-08 thru 9-17-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 29-2011(Temp), f. & cert. ef. 10-5-11 thru 4-2-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 24-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 31-2012(Temp), f. 9-28-12, cert. ef. 10-1-12 thru 12-28-12; SSP 36-2012, f. 12-28-12, cert. ef. 12-29-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0086

Contributions

(1) *Contributions* are monies, not considered gifts or winnings under OAR 461-145-0210, given voluntarily to a member of a financial group (see OAR 461-110-0530) by someone who is not in the group.

(2) In the SNAP program, contributions are counted as unearned income, except that contributions from charitable sources are excluded if all the following are true:

(a) The contribution is from a private, nonprofit charitable organization.

(b) The contribution is based on need.

(c) The contribution does not exceed $300 per quarter.

(3) Except as provided in section (2) of this rule, contributions are counted as unearned income.

(4) See OAR 461-145-0280 for the treatment of unearned in-kind income.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.700, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1999, f. & cert. ef. 10-1-99; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; Renumbered from 461-145-0070, SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0090

Disability Benefit

(1) This rule covers public and private disability benefits, except the following:

(a) Agent Orange disability benefits (covered in OAR 461-145-0005).

(b) Radiation Exposure Compensation Act payments (covered in OAR 461-145-0415).

(c) Social security based on disability or SSI (covered in OAR 461-145-0490 and 461-145-0510).

(d) Veterans benefits (covered in OAR 461-145-0580).

(e) Workers compensation (covered in OAR 461-145-0590).

(2) For each disability payment covered under this rule:

(a) If received monthly or more frequently:

(A) In the ERDC, REF, REFM, SNAP, and TANF programs, income from employer-sponsored disability insurance is counted as earned income (see OAR 461-145-0130) if paid to a client who is still employed while recuperating from an illness or injury.

(B) In the OSIP, OSIPM, and QMB programs, income from employer-paid disability insurance is counted as earned income if received within six full calendar months after stopping work.

(C) Except as provided in paragraphs (A) and (B) of this subsection, the payment is counted as unearned income.

(b) All payments other than those in subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.700, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0110

Domestic Volunteer Services Act (VISTA, RSVP, SCORE, ACE)

In all Department programs covered by Chapter 461 of the Oregon Administrative Rules, with respect to federal programs under the Domestic Volunteers Service Act of 1973 (Pub. L. No. 93 113):

(1) Payments under Title I — VISTA, University Year of Action, and Urban Crime Prevention — are treated as follows:

(a) In the ERDC, REF, REFM, and TANF programs, these payments are excluded, except that these payments are counted as earned income if

the total value of all compensation is equal to or greater than compensation at the state minimum wage.

(b) In the GA and GAM programs, payments are counted as unearned income.

(c) In all programs except the ERDC, GA, GAM, REF, REFM, and TANF programs:

(A) The payments are excluded if the client is receiving Department program benefits when they join the Title I program. The exclusion of payments continues until the client has a break in receiving Department benefits of more than one month.

(B) The payments are counted as earned income for clients who joined the Title I program before applying for Department program benefits.

(2) Payments are excluded for programs under Title II (National Older Americans Volunteer Programs), which include:

(a) Retired Senior Volunteer Program (RSVP) Title II, Section 201.

(b) Foster Grandparent Program Title II, Section 211.

(c) Older American Community programs.

(d) Senior Companion Program.

(3) Payments are excluded for programs under Title III (National Volunteer Programs to Assist Small Businesses and Promote Volunteer Service by Persons with Business Experience), which include:

(a) Service Corps of Retired Executives (SCORE) Title III, Section 302.

(b) Active Corps of Executives (ACE) Title III, Section 302.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0120

Earned Income; Defined

Earned income is income received in exchange for an individual's physical or mental labor. Earned income includes all of the following:

(1) Compensation for services performed, including wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of one's blood or plasma.

(2) Income from on-the-job-training, paid job experience, JOBS Plus work experience, or Welfare-to-Work work experience.

(3) In-kind income, when a client is an employee of the person providing the in-kind income and the income is in exchange for work performed by the client.

(4) For self-employment, gross receipts and sales, including mileage reimbursements, before costs.

(5) In:

(a) The SNAP program, cafeteria plan (see OAR 461-001-0000) benefits and funds placed in a flexible spending account.

(b) All programs except the SNAP program, cafeteria plan benefits that an employee takes as cash as well as funds placed in a flexible spending account.

(6) Income from work-study.

(7) Income from profit sharing that the client receives monthly or periodically.

(8) The fee for acting as an individual's representative payee, as long as that individual is not included in the filing group.

(9) In the OSIP, OSIPM, QMB, and SNAP programs, expenditure by a business entity that substantially benefits a principal (see OAR 461-145-0088).

Stat. Auth.: ORS 409.050, 411.060, 411.816, 414.042, 412.049

Stats. Implemented: ORS 411.060, 411.816, 414.042, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0130

Earned Income; Treatment

(1) Earned income (see OAR 461-145-0120) is countable in determining eligibility for programs, subject to sections (2) to (8) of this rule.

(2) JOBS Plus income is earned income and is treated as follows:

(a) In the SNAP program:

(A) JOBS Plus income earned by a TANF-PLS client:

(i) Is counted in determining initial SNAP program eligibility.

(ii) Is excluded in determining ongoing eligibility.

(B) JOBS Plus wages received after the client's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(b) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS (see OAR 461-101-0010(20)(c)) client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(c) In the OSIPM, QMB, and REFM programs:

(A) For JOBS Plus income earned by a TANF-PLS program client who is also in the REFM program, the income is excluded when determining initial and ongoing program eligibility.

(B) JOBS Plus wages received after the client's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(d) In all programs not covered under subsections (a) to (c) of this section, TANF-PLS income is counted as earned income.

(e) In all programs other than the TANF program, NCP-PLS income is counted as earned income.

(f) In all programs, client wages received under the Tribal TANF JOBS programs are counted as earned income.

(3) Welfare-to-Work work experience income is treated as follows:

(a) In the REF, REFM, and TANF programs, the income is earned income, and the first $260 is excluded each month.

(b) In the SNAP program, the income is earned income.

(4) In the ERDC program, earned income of a child is excluded.

(5) In the REF, REFM, and TANF programs:

(a) Earned income of the following children is excluded:

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(c) In-kind earned income is excluded (see OAR 461-145-0280 and 461-145-0470).

(6) In the SNAP program:

(a) If a cafeteria plan (see OAR 461-001-0000) benefit that the employee cannot elect to receive as a cash payment is designated and used to pay for child care, medical care, or health insurance, the benefit is excluded unless it is reimbursed by the Department. If reimbursed, the Department counts it as earned income.

(b) The following types of income are excluded:

(A) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(i) Attending elementary or high school;

(ii) Attending GED classes recognized by the local school district;

(iii) Completing home-school elementary or high school classes recognized by the local school district; or

(iv) Too young to attend elementary school.

(B) In-kind earned income, except as provided in section (7) of this rule.

(C) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(D) Income remaining after the month of receipt is a resource.

(7) In the SNAP program, earned in-kind income (see OAR 461-145-0280) is excluded unless it is an expenditure by a business entity that benefits a principal (see OAR 461-145-0088).

(8) In all programs except in the OSIPM program for a client in non-standard living arrangement (see OAR 461-001-0000), the income of a temporary employee of the U.S. Census Bureau employed to assist in taking the census is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.400, 411.404, 411.706, 411.816, 411.892, 412.014, 412.049, 414.231, 414.712, 414.826

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.400, 411.404, 411.706, 411.816, 411.892, 412.014, 412.049, 414.231, 414.712, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1990, f. & cert. ef. 3-2-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS

22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 14-2010(Temp), f. & cert. ef. 5-19-10 thru 11-15-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0150
Educational Income

(1) Educational income is income designated specifically for educational expenses. To be considered educational income, the income must be received by one of the following:

(a) A student at a recognized institution of post-secondary education. Post-secondary education is education offered primarily to individuals 18 years of age or older. Admission may — but does not necessarily — require a high school diploma or equivalent.

(b) A student at a school for individuals with disabilities.

(c) A student in a vocational education program.

(d) A student in a program that provides for completion of requirements for a secondary school diploma or the equivalent.

(2) To determine the amount of educational income to exclude, education expenses listed in the financial aid award letter are used unless one of the following is true:

(a) The student provides verification of amounts different from those listed in the award letter, in which case the verified amounts from the student are used.

(b) The student receives child care benefits — ERDC or other child care subsidies. The amount the student actually pays for child care (including the ERDC copay) is excluded as educational income instead of the amount shown in the award letter.

(c) The student states that actual transportation costs exceed the amount allowed for the expense in the award letter. In that situation, the number of miles to and from school is multiplied by $0.20. The product or the amount from the award letter, whichever is greater, is excluded.

(3) The following items are excluded:

(a) Educational income authorized by the Carl D. Perkins Vocational and Applied Technology Education Act or Title IV of the Higher Education Act or made available by the Bureau of Indian Affairs (BIA).

(b) All income from educational loans.

(4) Except as provided in section (5) of this rule, the cost of the following items from remaining educational funds (including non Title IV work study, externship (see OAR 461-001-0015), graduate assistantship (see OAR 461-001-0015), graduate fellowship (see OAR 461-001-0015) wages, and internship (see OAR 461-001-0015)) is excluded:

(a) Tuition, mandatory fees, books and supplies, transportation, required rental or purchase of equipment or materials charged to students enrolled in a specific curriculum, other miscellaneous personal expenses (except room and board), and loan originator fees and insurance premiums required to obtain an educational loan.

(b) In all programs except ERDC — dependent care.

(5) For a participant in the Parents as Scholars (PAS) component of the JOBS program who has been approved for PAS pursuant to OAR 461-190-0199, all remaining educational funds, including those funds intended for room and board, are excluded.

(6) In all programs covered by chapter 461 of the Oregon Administrative Rules, after allowing exclusions, the remaining income is treated as follows:

(a) Income received through work study (including work study provided through a VA program or other educational program), fellowships and teaching-assistant positions not excluded by section (3) or (4) of this rule is earned income.

(b) Educational income not covered by subsection (a) of this section is prorated over the period it is intended to cover. If the client has already received the income, the prorated amount is counted monthly beginning with the first month of the period. If the client has not received the income at the time the determination is made, the prorated income is counted starting in the month the client expects to receive it.

Stat. Auth.: ORS 411.060, 411.083, 411.404, 411.816, 412.014 & 412.049
Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.816, 411.825, 412.014 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0230
Housing and Urban Development

(1) Payments from HUD made to a third party in behalf of the client are treated as follows:

(a) In the REF, REFM, and TANF programs, the payment is used to determine shelter-in-kind income.

(b) In the EA, ERDC, GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, the payments are excluded.

(2) HUD payments made directly to a member of the financial group, except Youthbuild Program payments and Family Investment Centers payments, are treated as follows:

(a) In the REF, REFM, and TANF programs, the payment is used to determine shelter-in-kind income. If the payments are made in a lump sum, the lump sum is unearned income.

(b) In the EA program, the payment is unearned income.

(c) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, the payments are excluded.

(d) In the SNAP program, payments for utilities are excluded. Other payments are unearned income.

(3) Youthbuild Program payments are treated as follows:

(a) In the TANF program, if the Youthbuild Program participant is a dependent child in the filing group or a caretaker relative age 19 or younger, the payments are excluded. If the participant is a caretaker relative over age 19, the payments are treated as follows:

(A) Incentive payments that are reimbursements for specific expenses not covered by program benefits, for instance transportation and school supplies, are excluded.

(B) On-the-job training (OJT) and work experience payments are earned income.

(C) The bonus payment (the incentive payment for attendance) is unearned income.

(b) In the ERDC program, Youthbuild payments are earned income.

(c) In the SNAP program, payments to clients under the age of 19 years who are under the control of an adult member of the filing group are excluded. Other Youthbuild payments are earned income.

(4) Escrow accounts established for families participating in the Family Self-Sufficiency (FSS) program sponsored by HUD are excluded.

(5) Payments related to family investment centers issued under the Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, sec. 515, 104 Stat. 4196 (1990), are treated as follows:

(a) Wages are earned income, and stipends are unearned income.

(b) Service payments for items such as child care, basic education, literacy, or computer skills training are excluded.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0300
Workforce Investment Act

Payments to clients made under Title I-B of the Workforce Investment Act (see OAR 589-020-0210) are treated as provided in this rule.

(1) Need-based (stipend) payments are treated as unearned income except as follows:

(a) In the SNAP program, these payments are excluded.

(b) The payments are excluded for REF, REFM, and TANF clients under the age of 19 years, or under the age of 20 years if the client is a caretaker relative (see OAR 461-001-0000).

(2) OJT (On-the-Job Training) and work experience payments are counted as earned income, except as follows:

(a) The payments are excluded for REF, REFM, and TANF clients under the age of 18 years, or under the age of 20 years if the client is a caretaker relative (see OAR 461-001-0000);

(b) The payments are excluded for an SNAP client who is:

(A) Under the age of 19 years and under the control of an adult member of the filing group (see OAR 461-110-0370); or

(B) Receiving OJT payments under the Summer Youth Employment and Training Program.

(3) A support service payment for an item already covered by the benefits of the benefit group (see OAR 461-110-0750) is treated as unearned income. All other support service payments (including lunch payments and clothing allowances) are excluded.

(4) A reimbursement (see OAR 461-001-0000) is treated as provided in OAR 461-145-0440.

[Publication.: Publications referenced are available from the agency.]
Stat. Auth: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0330
Loans and Interest on Loans

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) For purposes of this rule:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) "Bona fide loan agreement" means an agreement that:

(i) Is enforceable under state law;

(ii) Is in effect at the time the cash proceeds are provided to the borrower; and

(iii) Includes an obligation to repay and a feasible repayment plan.

(B) "Negotiable loan agreement" means a loan agreement in which the instrument ownership and the whole amount of money expressed on its face can be transferred from one person to another (i.e., sold) at prevailing market rates.

(b) In all programs:

(A) "Reverse-annuity mortgage" means a contract with a financial institution (see OAR 461-001-0000) under which the financial institution provides payments against the equity in the home that must be repaid when the homeowner dies, sells the home, or moves.

(B) The proceeds of a home equity loan or reverse-annuity mortgage are considered loans.

(3) For payments that a member of the financial group (see OAR 461-110-0530) receives as a borrower to be treated as a loan:

(a) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, there must be an oral or written loan agreement, and this agreement must state when repayment of the loan is due to the lender.

(b) In programs other than the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, there must be a written loan agreement, and this agreement must be signed by the borrower and lender, dated before the borrower receives the proceeds of the loan, and state when repayment of the loan is due to the lender.

(4) Payments for a purported loan that do not meet the requirements of section (3) of this rule are counted as unearned income.

(5) When a member of a financial group receives cash proceeds as a borrower from a loan that meets the requirements of section (3) of this rule:

(a) In all programs, educational loans are treated according to OAR 461-145-0150.

(b) In the ERDC, REF, REFM, SNAP, and TANF programs, the loan is excluded. If retained after the month of receipt, the loan proceeds are treated in accordance with OAR 461-140-0070.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) If the loan is a bona fide loan agreement, the money provided by the lender is not income but is counted as the borrower's resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).

(B) If the loan is not a bona fide loan agreement, the money provided by the lender is counted as income in the month received and is counted as a resource if retained in the month following the month it was received.

(6) In the OSIPM program, if a client or a spouse of a client uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:

(a) In a transaction occurring on or after July 1, 2006:

(A) The balance of the payments owing to the client or spouse of the client is a transfer of assets for less than fair market value, unless all of the following requirements are met:

(i) The total value of the transaction is being repaid to the client or spouse of the client within three months of the client's life expectancy per that person's actuarial life expectancy as established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(ii) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.

(iii) The contract is not cancelled upon the death of the individual receiving the payments under this transaction.

(B) If the loan results in a disqualification and the disqualification period has been served, payments against the principal and interest are treated as unearned income.

(b) In a transaction occurring before July 1, 2006 or for a transaction occurring on or after July 1, 2006 that does not result in a disqualification in subsection (a) of this section, the loan is treated as follows:

(A) Interest income is treated as unearned income.

(B) The loan is counted as a resource if:

(i) The financial group includes a client in a nonstandard living arrangement (see OAR 461-001-0000) and the client's spouse;

(ii) The transaction is on or after the date of the first continuous period of care (see OAR 461-001-0030); and

(iii) The amount of the loan plus other resources transferred exceeds the largest amount in OAR 461-160-0580(2)(f).

(C) For all other loans:

(i) If the loan is both a negotiable loan agreement and a bona fide loan agreement, the loan is counted as a resource valued at the outstanding principal balance.

(ii) If the loan does not qualify under subparagraph (i) of this paragraph, payments against the principal are counted as unearned income.

(7) In the GA, GAM, OSIP, and QMB programs:

(a) Interest income is treated as unearned income.

(b) If the loan is both a negotiable loan agreement and a bona fide loan agreement, the loan is counted as a resource of the lender valued at the outstanding principal balance.

(c) If the loan does not qualify under subsection (b) of this section, the payments against the principal are counted as income to the lender.

(8) In all programs other than the GA, GAM, OSIP, OSIPM, and QMB programs:

(a) The interest payment is counted as unearned income.

(b) The payment of principal is excluded.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; [SSP 20-2009(Temp), f. & cert. ef. 7-29-09 thru 1-25-10; Suspended by SSP 26-2009(Temp), f. & cert. ef. 9-1-09 thru 1-25-10]; Administrative correction 2-19-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0340
Lodger Income

(1) Lodger income is the amount a lodger (see OAR 461-001-0000) pays the filing group for room (rent) and board (meals).

(2) Lodger income is counted as follows:

(a) In the REF, REFM, and TANF programs, lodger income not excluded under OAR 461-155-0350 is treated as self employment income.

(b) In all programs except the REF, REFM, and TANF programs, lodger income is treated as self-employment income.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0360
Motor Vehicle

(1) The value of disability-related apparatus, optional equipment, or low mileage is not considered in determining the fair market value (see OAR 461-001-0000) of an automobile, truck, or van. The fair market value of an automobile, truck, or van is presumed to be the "average trade-in value" established in the National Automobile Dealers Association's (NADA) Used Car Guide. If the vehicle is not listed in the NADA Used Car

Guide, the "average trade-in value" established in the Kelley Blue Book is used. If the vehicle is not listed in the NADA Used Car Guide and Kelley Blue Book, the "average trade-in value" established in a similar publication is used. A client may rebut the presumption with a statement from a car dealer, mechanic, or other reliable source. If the vehicle is not listed in the NADA Used Car Guide, Kelley Blue Book, and a similar publication, the estimate of the value by the client may be accepted unless it appears questionable, in which case additional evidence of the value is required.

(2) Some programs permit an exclusion for a portion of the equity value (see OAR 461-001-0000) for any licensed and unlicensed motor vehicles owned by the financial group:

(a) In the REF, REFM, SNAP, and TANF programs, this exclusion is up to $10,000.

(b) In the GA and GAM programs, this exclusion is up to $4,500.

(c) Any remaining equity in that vehicle and the total equity value of all other vehicles is counted as a resource.

(3) In the EA and ERDC programs, all motor vehicles are excluded.

(4) In the OSIPM and QMB programs:

(a) The total value of a vehicle selected by the financial group is excluded if it is used for transportation of the client or a member of the client's household.

(b) The total equity value of any vehicle not excluded under subsection (a) of this section and all other vehicles is counted as a resource.

(5) In the OSIP-EPD and OSIPM-EPD programs, if a vehicle was purchased as an employment and independence expense (see OAR 461-001-0035) or with moneys from an approved account (see OAR 461-001-0035), the total value of the vehicle is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.700, 411.816, 414.042, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0365
National and Community Services Trust Act (NCSTA), including AmeriCorps (other than AmeriCorps VISTA)

(1) The National and Community Service Trust Act (NCSTA) of 1993 (P.L. 103-82) amended the National and Community Service Act (NCSA) of 1990 (P.L. 101-610) that established a Corporation for National and Community Service. The Corporation administers national service programs providing living allowance, educational award, child care and in-kind benefits.

(2) NCSTA payments, including AmeriCorps (except AmeriCorps VISTA which is covered in OAR 461-145-0110) are treated as follows:

(a) The living allowance (stipend benefits) is excluded.

(b) Educational award and in-kind benefits are treated as follows:

(A) In the GA program, these benefits are treated according to the policy for the specific type of asset.

(B) In all programs except GA, these benefits are excluded.

(c) The child care allowance is treated as follows:

(A) For clients in the ERDC, REF, and TANF programs who are eligible for direct provider payment of child care, the allowance is counted as unearned income. The allowance is excluded only if the client already pays the provider. The provider may be paid for only the costs not covered by the allowance.

(B) For clients in the SNAP program who are receiving a child care deduction, the deduction is allowed only for the costs not covered by the allowance.

(C) In all other programs, the allowance is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0380
Pension and Retirement Plans

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(c) The following retirement plans if purchased by a client with funds from the plans authorized by section 401 of the Internal Revenue Code of 1986:

(A) Traditional Defined-Benefit Plan.

(B) Cash Balance Plan.

(C) Employee Stock Ownership Plan.

(D) Keogh Plan.

(E) Money Purchase Pension Plan.

(F) Profit-Sharing Plan.

(G) Simple 401(k).

(H) 401(k).

(d) Retirement plans purchased by a client with funds from plans authorized by section 403 of the Internal Revenue Code of 1986 at subsections (a) or (b).

(e) The following retirement plans and annuities if purchased by a client with funds from the plans authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p), or (q), or at section 408A:

(A) Individual Retirement Annuity.

(B) Individual Retirement Account (IRA).

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.

(D) Accounts established by employers and certain associations of employees.

(E) Simplified Employee Pension (SEP).

(F) Simple Individual Retirement Account (Simple-IRA).

(G) Roth IRA.

(f) The following retirement plans offered by governments, nonprofit organizations, or unions:

(A) 457(b) Plan.

(B) 501(c)(18) Plan.

(C) Federal Thrift Savings Plan under 5 USC 8439.

(g) In all programs except the OSIP, OSIPM, and QMB programs, an annuity purchased by a client with funds from a plan authorized under subsection (c), (d), or (f) of this section.

(2) An annuity purchased by the spouse (see OAR 461-001-0000) of a client with funds from a retirement plan described in subsection (1)(e) of this rule is not considered a retirement plan and is treated in accordance with OAR 461-145-0020 and 461-145-0022.

(3) Benefits the client receives from pension and retirement plans are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All payments not covered by subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(4) In the OSIP, OSIPM, and QMB programs:

(a) Except for an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule:

(A) The equity value (see OAR 461-001-0000) of a pension or retirement plan is excluded as a resource if the individual is eligible for monthly or periodic payments under the terms of the plan and has applied for those payments. When an individual is permitted to choose or change a payment option, the individual must select the option that:

(i) Provides payments commencing on the earliest possible date; and

(ii) Completes payments within the actuarial life expectancy, as published in the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, of the individual.

(B) The equity value of all pension and retirement plans not covered by paragraph (A) of this subsection that allow clients to withdraw funds, minus any penalty for withdrawal, is counted as a resource.

(b) The equity value of an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule is excluded as a resource if it meets the payout requirements of OAR 461-145-0022(10)(c). Otherwise, the equity value is counted as a resource.

(5) In the SNAP program, the value of retirement accounts identified in sections 401(a), 403(a), 403(b), 408, 408(k), 408(p), 408A, 457(b), or 501(c)(18) of the Internal Revenue Code, or in a Federal Thrift Savings Plan account are excluded resources.

(6) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, the equity value of a pension and retirement plan that allows a client to withdraw funds before retirement, minus any penalty for early withdrawal, is counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-

1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; [SSP 21-2009(Temp), f. & cert. ef. 7-29-09 thru 1-25-10; Suspended by SSP 26-2009(Temp), f. & cert. ef. 9-1-09 thru 1-25-10]; Administrative correction 2-19-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0410
Program Benefits

(1) EA and TA-DVS payments are treated as follows:

(a) In the ERDC and SNAP programs, a payment made directly to the client is counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all programs except the ERDC and SNAP programs, these payments are excluded.

(2) Payments from ERDC and TANF child care are excluded unless the client is the provider.

(3) Payments from the GAM, OCCS medical programs, OSIPM, QMB, and REFM programs are excluded.

(4) Payments from JPI (see OAR 461-135-1260) are issued as a food benefit and are excluded.

(5) SNAP payments are treated as follows:

(a) The value of an SNAP benefit is excluded in all programs except the EA program. In the EA program, the value is counted as a resource when determining the emergency food needs of the filing group (see OAR 461-110-0310).

(b) OFSET service payments are excluded.

(6) Benefits from the GA, OSIP (except OSIP-IC), Post-TANF, REF, SFPSS, TANF, and tribal-TANF programs are treated as follows:

(a) In the EA program, these payments are counted as unearned income, except that these payments are excluded for a benefit group (see OAR 461-110-0750) whose emergent need is the result of domestic violence (see OAR 461-001-0000).

(b) In the ERDC program:

(A) Post-TANF payments are excluded.

(B) All other payments are counted as unearned income.

(c) In the SNAP program:

(A) These payments are treated as unearned income.

(B) An amount received as a late processing payment is treated as lump-sum income.

(C) Payments made to correct an underpayment are treated as lump-sum income.

(D) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, accommodation allowances, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(d) In all programs except the EA, ERDC, and SNAP programs:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(e) In all programs:

(A) JOBS, REF, and TANF JOBS Plus support service payments are excluded.

(B) For the treatment of JOBS Plus income, see OAR 461-145-0130.

(C) REF and TANF client incentive payments are treated as follows:

(i) Except in the TANF program, the cooperation incentive payment (see OAR 461-135-0310) is counted as unearned income.

(ii) Progress and outcome incentive payments other than in-kind payments are counted as lump-sum income (see OAR 461-140-0120). All other incentives are excluded.

(7) Payments from OSIP-IC are treated as follows:

(a) In the SNAP program, these payments are counted as unearned income and assets held in a contingency fund (see OAR 411-030-0020) are counted as a resource.

(b) In all other programs, these payments and funds held in a contingency fund are excluded.

(8) Pre-TANF program payments are treated as follows:

(a) In the SNAP program, a payment for basic living expenses, made directly to the client, is counted as unearned income. All other payments are excluded.

(b) In all programs except the SNAP program, these payments are excluded.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.700, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 36-2011(Temp), f. 12-27-11, cert. ef. 1-1-12 thru 6-29-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0420
Real Property

(1) For purposes of this rule, manufactured and mobile homes and floating homes and houseboats are treated in the same manner as real property.

(2) The applicant has the burden of proof of establishing the fair market value (see OAR 461-001-0000) of real property (see OAR 461-001-0000). Fair market value may be established by any methodology determined to accurately reflect the fair market value of the real property, including the provision of an appraisal or comparative market analysis performed by an impartial individual who is certified or licensed in the applicable jurisdiction.

(3) Real property that is not income-producing or the home of the financial group (see OAR 461-110-0530) is treated as follows:

(a) In the REF, REFM, and TANF programs, the equity value (see OAR 461-001-0000) of all real property that is not excluded under a TANF Interim Assistance agreement is counted as a resource.

(b) In the EA and ERDC programs, real property is excluded.

(c) In the SNAP program, real property is treated as follows:

(A) The equity value of real property is excluded if the financial group is making a good-faith effort to sell the real property at a fair market price.

(B) The equity value of the real property is counted as a resource if the financial group refuses to make a good-faith effort to sell.

(C) The resource is excluded if selling the resource would produce a net gain to the financial group of less than $1,500.

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) The equity value of real property that was the home of the financial group is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price, unless the equity value in the home makes the client ineligible under OAR 461-145-0220(2)(a).

(B) The equity value of all other real property is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price. The equity value is counted after the real property is excluded for nine months unless the failure to sell it is for reasons beyond the reasonable control of the financial group.

(4) The treatment of real property that is income producing is covered in OAR 461-145-0250.

(5) The treatment of the home of the financial group is covered in OAR 461-145-0220.

Stat. Auth.: ORS 411.060, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.816 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0430
Real Property Excluded under an Interim Assistance Agreement; REF, REFM, TANF

(1) This rule applies in the REF, REFM, and TANF programs when the equity value (see OAR 461-001-0000) of real property puts the financial group (see OAR 461-110-0530) over the resource limit.

(2) When section (1) of this rule applies:

(a) The equity value of real property is excluded for a maximum of nine months if the financial group signs and complies with the terms of the program's Interim Assistance Agreement.

(b) After the ninth month, the equity value of the property is counted as a resource.

(3) To comply with the terms of the program's Interim Assistance Agreement, the financial group must agree to do all the following:

(a) Make a good-faith effort to sell the property; and

(b) Use the proceeds from the sale of the property to reimburse the Department for all benefits paid under the terms of the program's Interim Assistance Agreement. The reimbursement will not exceed the net proceeds of the sale of the property.

(4) The amount of benefits paid while the financial group has excess real property is an overpayment if the financial group fails to notify the Department that the group has the property.

(5) The amount of the benefits paid while the financial group has excess real property is an overpayment up to the net proceeds of the sale of the property if the property sells and the financial group does not repay the Department under the terms of the program's Interim Assistance Agreement.

Stat. Auth.: ORS 411.060, 411.700, 412.049
Stats. Implemented: ORS 411.060, 411.700, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0433
Recreational Vehicles

(1) For purposes of this rule, a recreational vehicle includes both of the following subsections:

(a) A vehicle (a means for carrying or transporting something) if:

(A) The vehicle is used primarily for amusement and not for day-to-day transportation; and

(B) The vehicle cannot be licensed as a motor vehicle for use on a public highway (even if the vehicle is registered or licensed as a non-motor vehicle).

(b) An ATV, boat, camper, dune buggy, plane, snowmobile, and trailer, unless the item qualifies as a capital asset (see OAR 461-001-0000) or as work-related equipment (see OAR 461-145-0600).

(2) Except as provided in section (4) of this rule, for all programs except ERDC, the equity value (see OAR 461-001-0000) of a recreational vehicle is counted as a resource.

(3) In the ERDC program, the value of a recreational vehicle is excluded.

(4) In the SNAP program only, the equity value of a recreational vehicle is excluded if selling the vehicle would produce a net gain to the financial group of less than $1,500.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0440
Reimbursement

(1) For the treatment of USDA meal reimbursements, see OAR 461-145-0570.

(2) The reimbursement of a business expense for a self-employed client is treated as self-employment income (see OAR 461-145-0910 and 461-145-0920).

(3) Except as provided in sections (1) and (2) of this rule, a reimbursement (see OAR 461-001-0000) is treated as follows:

(a) In the ERDC program, a reimbursement is excluded, except that a reimbursement for child care from a source outside of the Department is counted as unearned income.

(b) In the SNAP program:

(A) A reimbursement in the form of money for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.

(B) Any other reimbursement is treated as follows:

(i) An in-kind reimbursement is excluded.

(ii) A reimbursement in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.

(iii) A reimbursement is counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120) if not used for the identified expense.

(iv) A reimbursement for an item already covered by the benefits of the benefit group (see OAR 461-110-0750) is counted as periodic or lump sum income.

(c) In the SNAP program, an expenditure by a business entity that benefits a principal is counted as earned income (see OAR 461-145-0130).

(d) In all programs except the ERDC and SNAP programs, a reimbursement is treated as follows:

(A) An in-kind reimbursement is excluded.

(B) A reimbursement in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.

(C) A reimbursement is counted as periodic or lump sum income if not used for the identified expense.

(D) A reimbursement for an item already covered by the benefits of the benefit group is counted as periodic or lump sum income.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.700, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0455
Resettlement and Placement (R&P) Grants

(1) A Reception and Placement (R&P) grant is a payment made by the United States Department of State through a national refugee resettlement agency to a local resettlement agency, refugee sponsor, or refugee. An R&P grant is provided to the resettlement agency to help with the costs of initial resettlement of a refugee in the United States. The resettlement agency provides a part of this grant to the refugee, usually in the refugee's first month after arrival, for the refugee's initial resettlement needs and not for ongoing living expenses.

(2) In the ERDC, REF, REFM, and TANF programs, an R&P grant is excluded from consideration as income or a resource for purposes of determining program eligibility or benefit levels, except as provided in OAR 461-140-0070.

(3) In the SNAP program, any amount paid directly to a SNAP household from an R&P grant is counted as unearned income. For an in-kind payment made directly to a provider by the resettlement agency, see OAR 461-145-0280.

(4) In the GA, OSIP, OSIPM, and QMB programs, an R&P grant determined to be available to the refugee case is considered unearned income.

Stat. Auth.: ORS 411.060, 411.116, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.116, 411.404, 411.816, 412.006, 412.049
Hist.: AFS 1-2001(Temp), f. & cert. ef. 1-30-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0460
Sale of a Resource

(1) In the ERDC program, all proceeds from the sale of a resource are excluded as income and as a resource.

(2) In the REF, REFM, and TANF programs:

(a) Proceeds from the sale of an excluded resource to the extent reinvested in another excluded resource are excluded as income and as a resource.

(b) All proceeds from the sale of the resource are counted as unearned income, unless excluded in subsection (a) of this section.

(3) In all programs except the ERDC, REF, REFM, and TANF programs, proceeds from the sale of a resource are treated as follows:

(a) Proceeds from the sale of a resource (other than a home) received on a monthly or other periodic basis are counted as unearned income. Proceeds received on a lump sum basis are treated as follows:

(A) If the proceeds are from the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.

(B) The proceeds from all other sales are counted as a resource. If the proceeds put the benefit group (see OAR 461-110-0750) over the resource limit, the proceeds are counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120).

(b) Proceeds from the sale of the home of the financial group (see OAR 461-110-0530) are excluded for three months if the financial group intends to use the proceeds (subparagraphs (A)(i) and (A)(ii) of this subsection set out the scope of use of excluded proceeds in the GA, GAM, OSIP, and QMB programs) to buy another home, except as follows:

(A) In the GA, GAM, OSIPM (except for clients eligible under OAR 461-135-0771), and QMB programs for a home sold on or after October 1, 2012:

(i) Principal payments, including lump-sum payments, are excluded for three full calendar months from the date of receipt if the financial group intends to use the proceeds to buy another home or for associated costs including:

(I) Downpayments;

(II) Settlement costs;

(III) Loan processing fees and points;

(IV) Moving expenses;

(V) Necessary repairs to or replacement of the new home's structure or fixtures (including roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy; and

(VI) Mortgage payments.

(ii) For the purposes of subparagraph (i) of this paragraph, funds that are obligated by contract during these three full calendar months are also excluded.

(iii) Interest payments are counted as unearned income.

(B) For clients eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the financial group's home, if the financial group intends to use them to buy another home (subparagraphs (A)(i) and (A)(ii) of this subsection set out the scope of use of excluded proceeds), are treated as follows:

(i) For a home sold prior to October 1, 2012, the proceeds are excluded for 12 full calendar months.

(ii) For a home sold on or after October 1, 2012:

(I) Principal payments, including lump-sum payments, are excluded for 12 full calendar months from the date of receipt.

(II) Interest payments are counted as unearned income.

(c) The proceeds from the sale of a home that are not reinvested in another home are counted as a resource, except as follows:

(A) In the GA and GAM programs, if the proceeds put the benefit group over the resource limit, they are counted as periodic or lump sum income.

(B) In the GA, GAM, OSIPM, and QMB programs for a home sold on or after October 1, 2012:

(i) Principal is counted as a resource, except that in the GA and GAM programs, if the proceeds put the benefit group over the resource limit, they are counted as periodic or lump sum income.

(ii) Interest payments are counted as unearned income.

(C) In the SNAP program, the proceeds are treated as lump-sum income (see OAR 461-001-0000) under OAR 461-140-0120.

(d) In the SNAP program:

(A) Interest received monthly or on another periodic basis from the sale of a home is counted as unearned income.

(B) If a self-employed client sells a work-related asset, including equipment and inventory, the proceeds of the sale are treated as self-employment income (see OAR 461-145-0910).

(4) Costs of the type excluded under OAR 461-145-0920 are subtracted from proceeds counted as income under this rule.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0470
Shelter-in-Kind Income

(1) Except as provided in section (2) of this rule:

(a) In the ERDC, GA, and GAM programs, shelter-in-kind (see OAR 461-001-0000) payments are excluded, except earned shelter-in-kind is not excluded in the ERDC program.

(b) In the REF, REFM, and TANF programs, except for child support (see OAR 461-145-0080 and 461-145-0280), shelter-in-kind payments are excluded.

(c) In the SNAP program, shelter-in-kind housing and utility payments are excluded (see OAR 461-145-0130 about exclusion of earned in-kind income), except an expenditure by a business entity for shelter costs (see OAR 461-001-0000) of a principal (see OAR 461-145-0088) is counted as income.

(d) In the OSIP, OSIPM, and QMB programs:

(A) Except as provided in paragraph (C) of this subsection, unearned shelter-in-kind income is treated as follows:

(i) Shelter-in-kind payments from HUD are excluded.

(ii) If the shelter-in-kind includes all housing and utilities, the Shelter-in-Kind Standard for total shelter (see OAR 461-155-0300) is counted as unearned income.

(iii) If the shelter-in-kind includes all housing (utilities are not included), the Shelter-in-Kind Standard for housing costs (see OAR 461-155-0300) is counted as unearned income.

(B) Except as provided in paragraph (C) of this subsection, earned shelter-in-kind income is treated as follows:

(i) If shelter is provided for services related to the employer's trade or business and acceptance of the shelter is a condition of employment, the shelter-in-kind income is treated in accordance with paragraph (A) of this subsection.

(ii) Except as provided in subparagraph (i) of this paragraph, the fair market value (see OAR 461-001-0000) of the shelter is counted as earned income.

(C) In the OSIP and OSIPM programs, when a prorated standard is used (see OAR 461-155-0020 and OAR 461-155-0250) shelter-in-kind income is excluded.

(2) A payment for which there is a legal obligation to pay to a member of the financial group (see OAR 461-110-0530) that is made to a third party for shelter expenses of a member of the financial group is counted as unearned income.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.700, 411.816, 412.014, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0505
Spousal Support

(1) In the ERDC, OSIP, OSIPM, QMB, and REFM programs, spousal support (see OAR 461-001-0000) is counted as unearned income.

(2) In the SNAP program:

(a) Payments made by the separated or divorced spouse to a third party for the benefit of the financial group are excluded, except that a payment for which there is a legal obligation to pay to a member of the financial group that is made to a third party for shelter expenses of a member of the financial group is counted as unearned income.

(b) Spousal support is counted as unearned income.

(3) In the REF and TANF programs:

(a) For clients not working under a TANF JOBS Plus agreement, if the spousal support is received by the Department or Department of Justice and if continued receipt of the spousal support is reasonably anticipated, the spousal support is --

(A) Counted as unearned income when determining eligibility; and

(B) Excluded when determining the REF and TANF benefit amount.

(b) For clients working under a TANF JOBS Plus agreement:

(A) Spousal support is excluded in determining countable income.

(B) Spousal support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) Spousal support received by the client is counted as unearned income when calculating the wage supplement.

(c) Other spousal support payments (not covered under subsections (a) or (b) of this section) are counted as unearned income.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049
Hist.: AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0510
SSI

(1) In the ERDC, GA, GAM, and SNAP programs, if a client is required by law to receive an SSI benefit through a representative payee, the representative's fee is excluded.

(2) In the ERDC, GA, and GAM programs:

(a) A monthly SSI payment is counted as unearned income.

(b) Lump-sum SSI payments are counted according to OAR 461-140-0120.

(3) In the REF, REFM, and TANF programs:

(a) SSI monthly and lump-sum payments are excluded if the recipient will be removed from the financial group (see OAR 461-110-0530) the month following receipt of the payment.

(b) An SSI lump-sum payment is excluded in the month received and the next month.

(4) In the SNAP program:

(a) A monthly SSI payment is counted as unearned income.

(b) A lump-sum SSI payment is excluded.

(5) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, a retroactive SSI payment is excluded for nine months

after the month of receipt. After the nine-month period, any remaining amount is a countable (see OAR 461-001-0000) resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0540
Trusts

(1) This section applies to all trust funds (see OAR 461-001-0000) in the REF, REFM, SNAP, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(2) In the ERDC program, all trust funds are excluded.

(3) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) to (10) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) to (8) of this rule.

(4) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(5) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(6) Except as provided in section (9) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(7) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(8) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(9) Notwithstanding the provisions in sections (1) and (3) to (8) of this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent.

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client whose income is above 300 percent of the full SSI standard and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all of the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of $50 per month, including the following:

(i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

(iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055.

(F) Contributions to reserves or payments for child support, alimony, and income taxes.

(G) Monthly contributions to reserves or payments for the purchase of an irrevocable burial plan with a maximum value of $5,000.

(H) Contributions to a reserve or payments for home maintenance if the client meets the criteria of OAR 461-155-0660 or OAR 461-160-0630.

(I) Patient liability not to exceed the cost of home and community-based care (see OAR 461-001-0030) or nursing facility services.

(10) This section of the rule applies to a trust signed on or after July 1, 2006.

(a) Notwithstanding the provisions of sections (1) and (3) to (8) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining eligibility for OSIPM and QMB, except that if the client is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.

(b) This section of the rule applies to a trust that meets all of the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who have disabilities.

(D) Upon the death of the beneficiary or termination of the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid. The amount paid to the state may be reduced by administrative costs directly related to administering the sub-trust account of the beneficiary.

(E) The trust contains the resources or income of a client who has a disability that meets the SSI criteria.

(11) In the GA, GAM, OSIP, OSIPM, and QMB programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef, 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0590

Workers Compensation

(1) For workers compensation payments received monthly or more frequently:

(a) Except as provided in subsection (b) of this section, these payments are counted as unearned income.

(b) In the ERDC, REF, REFM, SNAP, and TANF programs, income from workers compensation is counted as earned income (see OAR 461-145-0130) if paid to a client who is still employed while recuperating from an illness or injury.

(2) All workers compensation payments other than those in section (1) are counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120).

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.700, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0600

Work-Related Capital Assets, Equipment, and Inventory

(1) As used in this rule:

(a) "Inventory" means goods that are in stock and available for sale to prospective customers.

(b) "Work-related equipment" means property essential to the employment or self-employment of a financial group member. Examples are a tradesman's tools, a farmer's machinery, and equipment used to maintain an income-producing vehicle.

(2) A capital asset (see OAR 461-001-0000), other than work-related equipment and inventory, is treated as follows:

(a) In all programs except REF, REFM, SNAP, and TANF, the equity value (see OAR 461-001-0000) of a capital asset is treated according to the rules for the asset.

(b) In the SNAP program, a capital asset used in a business is excluded as follows:

(A) Non-farm assets are excluded as long as the financial group (see OAR 461-110-0530) is actively engaged in self-employment activities.

(B) Farm assets are excluded until one year after the date the person quit self-employment as a farmer.

(c) In the REF, REFM, and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the value of a capital asset is excluded.

(B) For all other clients, the value of a capital asset is counted according to the rules in this division of rules.

(3) Work-related equipment is treated as follows:

(a) In the EA, ERDC, and SNAP programs, the equity value of work-related equipment is excluded.

(b) In the GA, OSIP, OSIPM, and QMB programs, the value of equipment needed by a client who has a disability or is blind to complete a plan for self-support (see OAR 461-135-0708) is excluded as long as the plan is in effect. For all other equipment, the equity value of the equipment is counted as a resource, except as provided at OAR 461-145-0250.

(c) In the REF, REFM, and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the equity value of the equipment is excluded.

(B) For all other clients, the equity value of the equipment is treated as a resource.

(4) Inventory is treated as follows:

(a) In the EA, ERDC, and SNAP programs, inventory is excluded as long as the client is engaged in self-employment activities.

(b) In the GA, OSIP, OSIPM, and QMB programs, the value of inventory needed by a client who has a disability or is blind to complete a plan for self-support is excluded, as long as the plan is in effect. For all other inventory, the equity value of the inventory is counted as a resource.

(c) In the REF, REFM, and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the wholesale value of inventory remaining at the end of the semi-annual period covered in each income statement (see OAR 461-190-0197), less encumbrances, is counted as a resource.

(B) For all other clients, the wholesale value of inventory remaining at the end of a month, less encumbrances, is counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.404, 411.700, 411.816, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0820

Deemed Assets; Noncitizen's Sponsor

(1) An individual or organization may sponsor the admission of a noncitizen under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154).

(2) An affidavit of support (USCIS Form I-864) is the agreement between the sponsor and the United States Citizenship and Immigration Services in which the sponsor agrees to provide financial support for the noncitizen so that the noncitizen will not become a public charge.

(3) In all programs except the ERDC, REF, and REFM programs, the countable assets of an individual sponsor and the spouse of the sponsor are considered countable assets of the noncitizen as provided in this section and OAR 461-145-0810 to 461-145-0860. The sponsor's assets are considered available to the noncitizen whether or not the sponsor lives in the same household as the noncitizen. The assets of the sponsor's spouse are considered available only when the spouse lives in the sponsor's household.

(4) OAR 461-145-0830 sets out situations in which the assets of the sponsor and the spouse of the sponsor are not counted, as well as how the income deemed available to the noncitizen is calculated.

(5) The value of the resources deemed available to each noncitizen is determined as follows:

(a) In all programs except the OSIPM and SNAP programs, the total value of the countable resources is deemed to each sponsored noncitizen according to the rules of the program for which the noncitizen applies.

(b) In the OSIPM program, an amount equal to the OSIPM (not OSIPM-EPD) program resource standard is deducted from the total amount of resources deemed to the noncitizen (see OAR 461-160-0015). If the sponsor lives with a spouse, the two-person standard is deducted.

(c) In the SNAP program only, $1,500 is deducted from the value. The remaining value is divided by the number of noncitizens sponsored by the individual or couple. The result is the value of the resources deemed available to the noncitizen.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 26-

2008, f. 12-31-08, cert. ef. 1-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0830
When to Deem the Assets of a Sponsor of a Noncitizen

(1) In the ERDC, REF, and REFM programs, the assets of a sponsor and of a sponsor's spouse are not deemed to the sponsored noncitizen.

(2) In all programs except the ERDC, REF, and REFM programs, the assets of a sponsor and the spouse of the sponsor are considered the assets of the sponsored noncitizen unless at least one of the following subsections applies:

(a) The sponsor has not signed a legally binding affidavit of support, for instance USCIS Form I-864 or I-864A;

(b) The sponsor receives SNAP, SSI, or TANF benefits;

(c) The sponsor is deceased. The estate of a deceased sponsor is not responsible for the noncitizen;

(d) The sponsored noncitizen establishes indigence. A sponsored noncitizen establishes indigence if the total income of the household including in-kind income plus any cash, food, housing, or other assistance provided by other individuals including the sponsor is:

(A) In the TANF program, under the countable (see OAR 461-001-0000) income standard.

(B) In the SNAP program, under 130 percent of the federal poverty level.

(C) In all programs except the SNAP and TANF programs, not enough for the noncitizen to obtain food and shelter without program benefits.

(i) If the noncitizen is living with the sponsor, the indigence exception may not apply and deeming does apply.

(ii) If the noncitizen is living apart from the sponsor, the indigence exception applies if the noncitizen meets all of the following requirements:

(I) The total income (of all kinds and from all sources, even excluded income) the noncitizen receives is less than the OSIPM standard for a one-person need group;

(II) The noncitizen does not receive free room and board; and

(III) The resources (even excluded resources) available to the noncitizen are under the applicable resource limit.

(D) Each indigence determination under this subsection is effective for 12 months and may be renewed for additional 12-month periods.

(e) The sponsored noncitizen is a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent, as long as the battered noncitizen does not live in the same household as the person responsible for the battery;

(f) The sponsored noncitizen does not meet the alien status requirement for the program for which he or she applies;

(g) The sponsored noncitizen becomes a naturalized citizen;

(h) The sponsored noncitizen can be credited with 40 qualifying quarters of work; or

(i) The sponsored noncitizen is under 18 years of age.

(3) In the OSIPM program, the deeming period is three years after the date of admission, which is the date the U.S. Bureau of Citizenship and Immigration Services establishes as the date the noncitizen was admitted for permanent residence. Deeming ends on the last day of the month that is three years after the date of admission.

(4) In all programs except the ERDC, OSIPM, REF, REFM, and SNAP programs, the following process is used to determine the amount of income considered available to the noncitizen from the noncitizen's sponsor and the spouse of the sponsor. The unearned income of the sponsor and the sponsor's spouse is added to their countable earned income (see OAR 461-140-0010) minus earned income deductions.

(5) In the OSIPM program:

(a) The income of the sponsor or the sponsor's spouse is not counted if any one of the following provisions applies:

(A) The individual is a refugee admitted to the United States under section 207 of the Immigration and Nationality Act (INA) (8 USC 1157);

(B) The individual has been granted asylum under section 208 of the INA (8 USC 1158); or

(C) The individual has become blind or disabled after admission to the United States.

(b) An amount equal to the OSIPM (not OSIPM-EPD) program income standard is deducted from the total amount of income deemed to the noncitizen (see OAR 461-160-0015). If the sponsor lives with a spouse, the two-person standard is deducted.

(6) In the SNAP program, each sponsored noncitizen is considered to have the income calculated according to section (4) of this rule divided by the number of the sponsor's --

(a) Current sponsored noncitizens;

(b) Household members who receive support from the sponsor; and

(c) Dependents.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.816, 412.049, 414.025
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.816, 412.049, 414.025
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0860
Deemed Assets, Parent of Minor Parent; TANF

In the TANF program, the assets of the parents of a minor parent are deemed as follows if they are living together and the minor parent is under age 18, has never married, and is not legally emancipated.

(1) The resources of the parents of the minor parent are excluded.

(2) The income of the parents is deemed to the minor parent when the minor parent and the minor's children live with the minor's parents.

(3) The income of the parents of a pregnant minor is deemed to the minor when the minor lives with the parents.

(4) Deemed income is considered available to the minor parent and the parent's dependent child, or to the pregnant minor, even if it is not received.

(5) The amount of the deemed income of the parents is determined as follows:

(a) A $90 earned income deduction is allowed.

(b) The needs of the parents and the parents' dependents, living in the same household and not included in the benefit group, are deducted at the TANF Payment Standard.

(c) Amounts paid to legal dependents not living in the household are deducted.

(d) Payments of alimony or child support are deducted.

(e) Any remaining income is countable deemed income.

Stat. Auth.: ORS 411.060, 412.049
Stats. Implemented: ORS 411.060, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0910
Self-Employment; General

(1) Self-employment income is income resulting from one's own business, trade, or profession, rather than from a salary or wage paid by an employer. A client is considered self-employed if he or she meets the criteria in sections (2) or (3) of this rule. Except as noted in section (3) of this rule, for all programs except SNAP, when a client has established a corporation, determine if the client is self-employed according to section (2) of this rule. If a client has more than one self-employment business, trade, or profession, the income from each is determined separately.

(2) Except as provided in OAR 461-145-0250(1), an individual is self-employed for the purposes of this division of rules if he or she:

(a) Is considered an independent contractor by the business that employs him or her; or

(b) Meets at least four of the following criteria:

(A) Is engaged in an enterprise for the purpose of producing income.

(B) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.

(C) Has principal responsibility for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.

(D) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.

(E) Is not covered under an employer's liability or workers' compensation insurance policy.

(3) Notwithstanding section (2) of this rule:

(a) Homecare Workers (see OAR 411-031-0020) paid by the Department are not self-employed.

(b) Child care providers (see OAR 461-165-0180) paid by the Department, adult foster home providers (see OAR 411-050-0400) paid by the Department, realty agents, and individuals who sell plasma, redeem

beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(4) In the ERDC, REF, SNAP, and TANF programs, self-employment income, including income from a microenterprise, is counted prospectively to determine eligibility as follows:

(a) Self-employment income is annualized when it is:

(A) Received during less than a 12-month period but is intended as a full year's income.

(B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(b) Self-employment income is treated as anticipated income when a financial group begins self-employment and is unable to determine what the income and costs will be during the budget month.

(5) In the GA, OSIP, OSIPM, and QMB programs, self-employment income is considered available upon receipt by a member of the financial group, except it is prorated over the period of work if the duration of the work exceeds one month.

(6) When determining the amount of countable self-employment income, use gross receipts and sales, including mileage reimbursements, before costs.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.006, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.006, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0920
Self-Employment; Costs That Are Excluded To Determine Countable Income

(1) This rule explains how to determine which costs are excluded from gross self-employment income.

(2) Unless prohibited by section (3) of this rule, and subject to the provisions of sections (4) and (5) of this rule and OAR 461-145-0930, the necessary costs of producing self-employment income are excluded from gross sales and receipts, including but not limited to:

(a) Labor (wages paid to an employee or work contracted out).

(b) Materials used to make a product.

(c) In the SNAP program — principal and interest paid to purchase income-producing property, such as real property, equipment or capital assets. In all other programs, interest paid to purchase income-producing property, such as equipment or capital assets.

(d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property.

(e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented.

(f) Advertisement and business supplies.

(g) Licenses, permits, legal, or professional fees.

(h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not part of the business expense.

(i) Charges for telephone service that are a necessary cost for self-employment.

(j) Meals and snacks provided by family day care providers for children in their care (except the provider's own children). The actual cost of the meals is used if the provider can document the cost. If the provider cannot document the actual cost, the USDA meal reimbursement rates are used.

(k) Materials purchased for resale, such as cosmetic products.

(l) For newspaper carriers, the cost of newspapers, bags, and rubber bands.

(3) The following costs are not excluded from gross sales and receipts:

(a) Business losses from previous months.

(b) Except in the SNAP program, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods.

(c) Federal, state and local income taxes, draws or salaries paid to any financial group member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses).

(d) Depreciation. Depreciation is a prorated lessening of value assigned to a capital asset based on its useful life expectancy and initial cost.

(e) Costs related to traveling to another area to seek business when there is no reasonable possibility of deriving income from the trip.

(f) Interest or fees on personal credit cards.

(g) Personal telephone charges.

(h) Shelter or utility costs associated with the client's home, except as authorized by section (4) of this rule.

(4) The exclusions for items used for both business and personal purposes, such as automobiles and a residence (including utilities), are limited by the following subsections:

(a) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, the portion of the expense that is for business use only is excluded.

(b) In the SNAP program, costs are excluded for a separate office or shop located on the property used as a home, if the costs are billed separately from the residence. Costs for other items used for both business and personal use are excluded.

(5) If no member of the financial group has been self-employed for a sufficiently long period to ascertain the costs of self-employment, the costs may be estimated.

(6) For a client participating in the microenterprise component of the JOBS program, costs are excluded according to this rule and general accounting principles, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.006, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.006, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-145-0930
Self-Employment; Determination of Countable Income

(1) The Department initially determines gross sales and receipts minus any returns and allowances (before excluding or deducting any costs). This rule explains how different programs exclude and deduct costs from self-employment gross sales and receipts.

(2) In the ERDC program, if a client claims an excludable cost permitted under OAR 461-145-0920, at least 50 percent of gross self-employment income is excluded. The maximum exclusion is the total excludable cost under OAR 461-145-0920.

(3) In the GA, OSIP, OSIPM, and QMB programs, all costs permitted under OAR 461-145-0920 are excluded.

(4) In the TANF program:

(a) For a client participating in the microenterprise component of the JOBS program, costs are excluded according to OAR 461-145-0920 and general accounting principles, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department.

(b) For all other clients, no costs are subtracted (excluded).

(5) In the REF program, no costs are excluded.

(6) In the SNAP program, if there are any costs permitted under OAR 461-145-0920, there is a deduction of 50 percent of gross self-employment income.

Stat. Auth.: ORS 409.050, 411.060, 411.083, 411.404, 411.706, 411.816, 412.006, 412.009, 412.049, 414.231, 414.826, 414.831
Stats. Implemented: ORS 409.050, 411.060, 411.083, 411.404, 411.706, 411.816, 412.006, 412.009, 412.049, 414.231, 414.826, 414.831
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-150-0020
Prospective Eligibility and Budgeting

For prospective eligibility (see OAR 461-001-0000) and budgeting (see OAR 461-001-0000):

(1) The budget month (see OAR 461-001-0000) and payment month (see OAR 461-001-0000) are the same.

(2) The client's anticipated income, household composition, and other relevant factors are used to determine the client's eligibility and benefit level. The client and Department jointly anticipate the client's income based on the income already received and the income the client expects to receive.

(3) Prospective budgeting is used for annualized income and prorated educational income.

(4) When prospective budgeting is used and the actual income differs from the amount determined under section (2) of this rule:

(a) If the anticipated income exceeds the actual income, a client is not entitled to a benefit supplement.

(b) If the actual income exceeds the anticipated income, there may be a client-error overpayment under OAR 461-195-0521.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 7-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-150-0070

Prospective Budgeting of Stable Income

(1) Stable income (see OAR 461-001-0000) in prospective budgeting (see OAR 461-001-0000) and eligibility (see OAR 461-001-0000) is treated so that the monthly amount is used to anticipate the income of the financial group (see OAR 461-110-0530). The amount of stable income for each month is determined as follows:

(a) If paid once per month, that amount is used.

(b) If paid twice per month or semi-monthly, that amount is converted to a monthly amount by multiplying it by two.

(c) If paid once every other week or biweekly, that amount is converted to a monthly amount by multiplying it by 2.15.

(d) If paid once per week, that amount is converted to a monthly amount by multiplying it by 4.3.

(2) In the SNAP program, stable income the client expects to receive less often than monthly is treated as periodic income (see OAR 461-001-0000) under OAR 461-140-0110.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-89, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-150-0080

Prospective Budgeting of Variable Income; Not OHP; Not MRS

Variable income (see OAR 461-001-0000) is used as follows in prospective budgeting (see OAR 461-001-0000) and eligibility (see OAR 461-001-0000) so that the anticipated amount is the same for each month, except as specified in OAR 461-150-0060 and section (6) of this rule:

(1) For income paid more than once per month, determine an average amount per pay period in accordance with sections (2) to (4) of this rule. The average amount is then converted to a monthly amount as follows, if paid:

(a) Twice per month, multiply by 2;

(b) Every other week, multiply by 2.15; or

(c) Once per week, multiply by 4.3.

(2) For variable earned income based on an hourly wage when the past is representative, monthly income is determined by calculating an average number of hours per pay period, then these hours are multiplied by the hourly wage and converted to a monthly amount under section (1) of this rule.

(3) For variable earned income involving various rates of pay (overtime, shift differential, tips) when the past is representative, monthly income is determined by calculating the average income per pay period, then the average income is converted to a monthly amount under section (1) of this rule.

(4) For variable earned or unearned income when the past is representative and income cannot be calculated under section (2) or (3) of this rule, monthly income is determined by averaging the income over:

(a) A representative period of months by totaling the income for those months and dividing by the number of months used; or

(b) A representative number of pay periods and converting to a monthly amount under section (1) of this rule.

(5) For variable earned and unearned income when the past is not representative of the income the financial group (see OAR 461-110-0530) will receive during the eligibility period, the client and the Department jointly determine the anticipated income.

(6) In the SNAP program, a financial group meeting the definition of "destitute household" in OAR 461-135-0575 is not eligible to use the income averaging option for the initial month (see OAR 461-001-0000) of eligibility or the first month of a new certification period. For a destitute financial group, income for the initial month of eligibility and the first month of a certification period is determined under OAR 461-150-0100, thereafter, the financial group is subject to sections (2) to (5) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-150-0090

Prospective Budgeting: Annualizing and Prorating Contracted or Self-employment Income

In all programs except the REFM program:

(1) Income from self-employment, including contract income while self-employed, is treated in accordance with OAR 461-145-0910 unless the income meets the provisions of section (2) of this rule.

(2) If past contract income is not representative of future income or when a substantial increase or decrease is expected in countable (see OAR 461-001-0000) self-employment income (see OAR 461-145-0910) in the next year, costs as allowed under OAR 461-145-0930 and anticipated income are used to determine the countable income.

(3) In the ERDC, REF, SNAP, and TANF programs, contract income that does not meet the criteria of self-employment income (see OAR 461-145-0910) is treated as follows:

(a) Income received during a less than 12-month period but intended as a full year's income is annualized.

(b) Income received on an hourly or piecework basis or monthly over the term of the contract period is not annualized. It is treated as stable income (see OAR 461-001-0000) under 461-150-0070 or variable income (see OAR 461-001-0000) under OAR 461-150-0080.

(4) Contract income that is not the annual income of the financial group and not paid on an hourly or piecework basis is prorated over the period the income is intended to cover.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 37-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-155-0030

Income and Payment Standards; MAA, MAF, REF, SAC, TANF

In the JOBS, REF, and TANF programs, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For each need group (see OAR 461-110-0630) in the REF and TANF programs containing an adult, the following table is used: [Table not included. See ED. NOTE.]

(b) In the TANF program, a caretaker relative (see OAR 461-001-0000) other than a parent (see OAR 461-001-0000) who chooses not to be included in the need group is subject to the "no-adult countable income limit standard" for the need group under subsection (c) of this section. The "non-needy countable income limit standard" for the filing group (see OAR 461-110-0330) is set at 185 percent of the federal poverty level (see OAR 461-155-0180).

(c) In the REF and TANF programs, when the need group contains no adults, the "no adult countable income limit standard" is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of individuals in the household group (see OAR 461-110-0210).

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group. The result is the standard.

(d) In the JOBS program, for the filing group of a non-custodial parent who resides in Oregon and whose dependent child (see OAR 461-001-0000) is receiving TANF program benefits in Oregon to participate in an activity (see OAR 461-001-0025) of the JOBS program, the countable (see OAR 461-001-0000) income limit is set at 185 percent of the federal poverty level (see OAR 461-155-0180).

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs, except as provided otherwise in subsection (b) of this section, the following table is used: [Table not included. See ED. NOTE.]

(b) To calculate cash benefits for a need group with an adult in the REF and TANF programs, the following table is used: [Table not included. See ED. NOTE.]

(c) In the REF and TANF programs, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of individuals in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group.

(D) Add $12 to the figure calculated in paragraph (C) of this subsection.

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

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, 412.124

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 412.006, 412.049, 412.124

Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 6-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 9-30-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 3-2012(Temp), f. & cert. ef. 1-26-12 thru 3-31-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-155-0350

Minimum Contribution Standard

The Minimum Contribution Standard is used to determine which portion of a lodger's income is excluded for REF, REFM, and TANF. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.081, 411.083, 411.085, 411.404, 412.006, 412.049

Stats. Implemented: ORS 411.070, 411.081, 411.083, 411.085, 411.404, 412.006, 412.049

Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-155-0670

Special Need; Special Diet Allowance

(1) In the GA, GAM, OSIP, OSIPM, REF, REFM, SFPSS, and TANF programs, a client is not eligible for a special diet allowance if receiving any of the following:

(a) Room and board.

(b) Residential care facility services or assisted living facility services.

(c) Nursing facility services.

(d) Adult foster care services.

(e) An allowance for restaurant meals.

(f) A commercial food preparation diet.

(2) A GA, GAM, REF, REFM, SFPSS, or TANF client, or an OSIP or OSIPM client receiving SSI, having an adjusted income less than the OSIPM program income standard under OAR 461-155-0250, or receiving in-home services is eligible for a special diet allowance if the client meets the following requirements:

(a) The client would be in an imminent life-threatening situation without the diet, as verified by medical documentation from a Department-approved medical authority (see OAR 461-125-0830); and

(b) A nutritionist verifies that the special diet needed exceeds the cost of a regular diet.

(3) The amount of a special diet allowance is calculated as follows:

(a) In the REF, REFM, SFPSS, and TANF programs, the difference between the actual cost of the special diet and a prorated share of the SNAP program benefit for the appropriate number of clients in the benefit group (see OAR 461-110-0750).

(b) In the GA, GAM, OSIP, and OSIPM programs, the lesser of the following:

(A) The difference between the actual cost of the special diet and the amount provided in the basic standard for food (see OAR 461-155-0250).

(B) A maximum of $300 per month, or an exceptional amount, authorized by the SPD Program Assistance Section, which will not exceed the cost of home IV therapy.

(4) Local management staff must approve the request for a special diet allowance.

(5) Each special diet allowance must be reviewed at six-month intervals.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-160-0040

Dependent Care Costs; Deduction and Coverage

(1) In the SNAP program, dependent care is deductible (see OAR 461-160-0430) when all of the following are true:

(a) The dependent is a member of the filing group and is in the care, control, and custody of an individual in the group.

(b) The dependent care provider:

(A) Is not in the filing group; and

(B) Is not the parent of the dependent.

(c) The dependent care is necessary because the client is working, commuting, on a meal break, in training, participating in pre-employment education, or participating in an OFSET case plan (see OAR 461-001-0020).

(2) In the ERDC, REF, and TANF programs, the cost of dependent child care may be paid for by the Department (is covered) only if dependent child care is necessary for the working client to perform his or her job duties. For a client working under a JOBS Plus agreement, child care is covered during the time the client is engaged in work or in job search if the employer pays the client during that time.

(3) In the ERDC, JOBS, REF, and TANF programs, the cost of dependent child care is not covered by the Department when free care is available, such as during school hours for school-age children.

(4) Child care is not covered in the ERDC, REF, and TANF programs if the nature of the work of the caretaker does not make it necessary for a person other than the caretaker (see OAR 461-001-0000) to provide the care. Child care is not covered during a period of time when the caretaker:

(a) Works at home and the nature of the work allows the caretaker to provide the care without significantly affecting the work;

(b) Provides child care in a residence; or

(c) Works for a provider of child care in a residence that is not certified under OAR 414-350-0000 to 414-350-0400.

(5) In the ERDC program:

(a) Child care is not covered during a period of time when the caretaker is self-employed (see OAR 461-145-0910).

(b) The cost of dependent child care may continue to be paid for, at the same benefit level, by the Department (is covered) for job search, through the end of the month following the month in which a loss of all employment for an adult in the filing group occurred if both of the following paragraphs apply.

(A) The loss of employment is reported in a timely manner.

(B) None of the following sub-paragraphs apply:

(i) The loss of employment included self-employment.

(ii) The adult was discharged or fired without good cause (see OAR 461-135-0070(3)) for misconduct, felony, or theft. "Misconduct" means willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, including an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest.

(iii) The adult voluntarily quit in anticipation of discharge or without good cause (see OAR 461-135-0070(3)).

(6) In the JOBS and REF programs, the cost of child care may be covered while the care is necessary to enable the client to participate in a case plan (see OAR 461-190-0211).

(7) In the ERDC, JOBS, JOBS Plus, REF, and TANF programs, the cost of dependent child care may be paid for (is covered) by the Department, only if all the following are true:

(a) The dependent child:

(A) In the ERDC program, is a member of the benefit group (see OAR 461-110-0750) and is in the care, control, and custody of an individual in the group.

(B) In the JOBS, JOBS Plus, REF, and TANF programs, lives with the filing group.

(b) The provider of child care is not in the filing group.

(c) The provider of child care is not the parent of the dependent.

(8) Coverage of the cost of dependent care is subject to the requirements in Chapter 461 of the Oregon Administrative Rules, including OAR 461-120-0510(3), 461-135-0400, 461-155-0150, 461-160-0193, 461-165-0180, and 461-190-0211.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-160-0060

Use of Rounding in Calculating Benefit Amount

(1) In the REF and TANF programs, a benefit amount not a whole number of dollars is rounded down to the next lower whole dollar.

(2) In the ERDC program, total countable income is rounded down to the next lower whole dollar. The benefit figures are not rounded.

(3) In the GA, GAM, OSIP, OSIPM, and QMB programs, rounding is not used.

(4) In the SNAP program:

(a) Except as provided in subsection (b) of this section, when income and deductions are calculated, a figure ending with less than 50 cents is rounded to the next lower dollar and a figure ending with 50 cents or more is rounded to the next higher dollar.

(b) After multiplying the adjusted income by 30 percent, any amount from 1 to 99 cents is rounded up to the next higher dollar.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: 411.060, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-160-0100

How Income Affects Eligibility and Benefits; REF, SFPSS, TANF

(1) Countable income (see OAR 461-001-0000) and adjusted income (see OAR 461-001-0000) are used to determine eligibility for the REF, SFPSS, and TANF programs using the countable and adjusted income standards in OAR 461-155-0030 as explained in this section:

(a) The financial group's countable income is compared to the countable income limit standard for the need group. If countable income equals or exceeds the standard, the benefit group is not eligible.

(b) If countable income is less than the countable income standard, the adjusted income is compared to the payment standard. If the adjusted income equals or exceeds the payment standard for the need group (see OAR 461-110-0630), the benefit group (see OAR 461-110-0750) is not eligible. If the adjusted income is less than the payment standard for the need group, the benefit group meets the income eligibility standard.

(2) Adjusted income is used to determine the monthly benefit in the REF, SFPSS, and TANF (except for a client who receives JOBS Plus income — see OAR 461-145-0130) programs as explained in this section:

(a) The monthly benefit is calculated by subtracting adjusted income from the applicable payment standard for the need group. The remainder is the benefit amount except for a need group that includes an ineligible non-citizen.

(b) If the need group contains an ineligible non-citizen, the benefit is the lesser of the remainder calculated in subsection (a) of this section and the payment standard for the benefit group.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.009, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.009, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-160-0160

Earned Income Deduction; REF, TANF

(1) In the REF program, the earned income deduction authorized in this division of rules is allowed for each person in the financial group who has earned income. The earned income deduction is 50 percent of the client's gross earned income including self-employment income.

(2) In the TANF program:

(a) For a self-employed client participating in the microenterprise component of the JOBS program, the earned income deduction for income earned in the microenterprise is 50 percent of the client's countable income calculated pursuant to OAR 461-145-0920 and 461-145-0930.

(b) For all other income, the earned income deduction is 50 percent of the client's gross earned income, including self-employment income.

Stat. Auth.: ORS 411.060, 412.049
Stats. Implemented: ORS 411.060, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 15-1991(Temp), f. & cert. ef. 8-16-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 16-1993, f. & cert. ef. 9-1-93l; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-160-0630

Deduction for Maintaining a Home; Long-Term Care Client

In the OSIP and OSIPM programs, a single client in long term care is eligible for a home maintenance deduction for up to six months if:

(1) A physician has documented that the client is likely to return home within six months;

(2) The amount of the deduction is reasonable in relation to the applicable OSIP shelter standard; and

(3) The Department determines that maintaining the home is an essential part of a plan for the client's relocation to a less restrictive living situation.

Stat. Auth.: ORS 411.060, 411.404
Stats. Implemented: ORS 411.060, 411.404
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-165-0030

Concurrent and Duplicate Program Benefits

(1) An individual may not receive benefits from the Department of the same type (that is, cash, medical, or SNAP benefits) for the same period as a member of two or more different benefit groups (see OAR 461-110-0750) or from two or more separate programs, except as noted in this rule. This provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) A client may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(b) If a GA client becomes eligible for the TANF program, the client's benefits are supplemented during the first month of eligibility for TANF to the TANF payment standards.

(c) An REF or TANF recipient may receive ERDC for a child (see OAR 461-001-0000) in the household group (see OAR 461-110-0210), but who may not be included in the REF or TANF filing group.

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) An OSIP-AB benefit group.

(B) A TANF benefit group when living with a nonneedy caretaker relative (see OAR 461-001-0000), if the caretaker relative is not the child's parent.

(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) A client in the SNAP program who leaves a filing group (see OAR 461-110-0370) that includes an individual who abused them and enters a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000) for victims of domestic violence (see OAR 461-001-0000) may receive SNAP benefits twice during the month the client enters the domestic violence shelter or safe home.

(f) A QMB client may also receive medical benefits from OSIPM, REFM, or an OCCS medical program with the exception of OHP-OPC, OHP-OPU, OHP-OP6, OHP-CHIP, MAGI Adult, and MAGI CHIP.

(2) An individual may not receive benefits of the same type (that is, cash, medical, or SNAP benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible client if the client's provider refuses to submit a bill to the Medicaid agency of another state and the client would not otherwise receive medical care.

(b) Cash benefits may be authorized for a client in the Pre-TANF program if benefits from another state will end by the last day of the month in which the client applied for TANF.

(3) In the SNAP program, each individual who has been included as a member of the filing group in Oregon or another state is subject to all of the restrictions in section (2) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 412.124, 414.025, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049, 412.124, 414.025, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-165-0120

Benefits for a Client in an Acute Care Hospital

(1) In the REF, REFM, and TANF programs, regular monthly benefits continue when a client enters an acute care hospital. The monthly benefits remain unchanged until the client returns home or enters some other living arrangement. An authorized representative designated by the client or the branch may be used if necessary.

(2) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, regular monthly benefits continue if a client will be in the acute care hospital for less than 30 days. If the client will be in the acute care hospital for 30 days or more or until death, the client's needs are determined as if the client were in a nursing facility.

(3) In the SNAP program, regular monthly benefits continue if the client will be in his or her own home 50 percent of the time or more. If the client will be in an institution for more than 50 percent of a calendar month, the client is not eligible for SNAP benefits.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14

461-170-0011

Changes That Must Be Reported

(1) A change in employment status is considered to occur as follows:

(a) For a new job, the change occurs the first day of the new job.

(b) For a job separation, the change occurs on the last day of employment.

(2) A change in source of income is considered to occur as follows:

(a) For earned income, the change occurs upon the receipt by the client of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.

(b) For unearned income, the change occurs the day the client receives the new or changed payment.

(3) A client must report, orally or in writing, the following changes:

(a) In the ERDC program:

(A) A client not participating in SRS in the SNAP program must report the following changes within 10 days of occurrence:

(i) A change in child care provider.

(ii) A change in employment status.

(iii) A change in mailing address or residence.

(iv) A change in membership of the filing group (see OAR 461-110-0350).

(v) A change in source of income expected to continue.

(B) A client participating in SRS in the SNAP program must report the following changes by the tenth day of the month following the month of occurrence:

(i) A change in child care provider.

(ii) Loss of employment.

(iii) Monthly income exceeding the SNAP countable income limit.

(iv) A parent (see OAR 461-001-0000) of a child or unborn or the spouse of the caretaker moves into the residence.

(C) The ERDC case may continue to follow the reporting requirements in paragraph (3)(a)(B) of this rule without a companion SNAP case in SRS when:

(i) The ERDC case was certified in the fifth or sixth month of the SNAP certification period (see OAR 461-001-0000); and

(ii) The SNAP companion case automatically closes because the Interim Change Report (see OAR 461-170-0010) was not received.

(b) In the SNAP program:

(A) A client assigned to CRS must report any of the following changes within 10 days of occurrence:

(i) A change in earned income of more than $100.

(ii) A change in unearned income of more than $50.

(iii) A change in source of income.

(iv) A change in membership of the filing group (see OAR 461-110-0370) and any resulting change in income.

(v) A change in residence and the shelter costs in the new residence.

(vi) A change in the legal obligation to pay child support.

(vii) When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.

(viii) Acquisition or change in ownership of a non-excluded vehicle.

(B) A client assigned to SRS must report when the filing group's monthly income exceeds the SNAP countable income limit by the tenth day of the month following the month of occurrence.

(C) A client assigned to TBA is not required to report any changes.

(c) For JPI (see OAR 461-135-1260), a client must follow the same reporting requirements as a SNAP client assigned to SRS or TBA reporting systems (see OAR 461-170-0010).

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs a client must report all changes that may affect eligibility within 10 days of occurrence, including any of the following changes:

(A) A change in employment status.

(B) A change in health care coverage.

(C) A change in membership of the household group (see OAR 461-110-0210).

(D) A change in marital status.

(E) A change in residence.

(F) A change in resources.

(G) A change in source or amount of income.

(e) In the REF, SFPSS, and TANF programs, clients assigned to CRS must report any of the following changes within 10 days of occurrence:

(A) Acquisition or change in ownership of a non-excluded vehicle.

(B) A change in earned income more than $100.

(C) A change in employment status.

(D) A change in membership of the household group (see OAR 461-110-0210).

(E) A change in marital status or other changes in membership of the filing group.

(F) A change in mailing address or residence.

(G) A change in pregnancy status of any member of the filing group.

(H) A change in source of income.

(I) A change in unearned income more than $50.

(J) A change in who pays the shelter costs if the costs will be paid by a non-custodial parent.

(K) Sale or receipt of a resource that causes total resources to exceed program resource limits.

(f) In the REFM program, clients must report the following changes within 10 days of occurrence:

(A) A change in membership of the household group (see OAR 461-110-0210).

(B) A change in residence.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049 & 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826 & 414.831

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-

95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SPP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 10-2012, f. 3-29-12, cert. ef. 3-30-12; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-170-0130

Acting on Reported Changes; OSIPM, QMB

(1) When an OSIPM or QMB client, who is required by this division of rules to report a change in circumstances, makes a timely report of a change that could reduce or end medical benefits, prior to reducing or ending medical benefits:

(a) The Department must review each individual in the filing group for eligibility for the other medical programs listed in this rule; and

(b) The Oregon Health Authority, Cover Oregon, or the Department must review the individual for Medicaid eligibility under MAGI rules (OAR 410-200).

(2) If the Department needs additional information to act on the timely reported change, members of the benefit group (see OAR 461-110-0750) remain eligible from the date the change was reported until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060, 411.404

Stats. Implemented: ORS 409.010, 411.060, 411.404

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-170-0200

State and Federal Government-Initiated Changes

A client is not required to report any of the following changes:

(1) Periodic cost-of-living adjustments to the federal Black Lung Program, SSB (Social Security Benefits), SSDI, SSI, and veterans assistance under Title 38 of the United States Code.

(2) Periodic cost-of-living adjustments to ERDC, GA, OSIP, REF, SFPSS, and TANF standards.

(3) Other changes in eligibility criteria based on legislative or regulatory actions.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.009, 412.014, 412.049, 412.089

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-175-0200

Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the SNAP program, a basic decision notice is sent for all actions on applications for assistance.

(3) In the JOBS program:

(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the TANF program, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In the TA-DVS program, a basic decision notice (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.

(7) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(c) A decision notice is sent whenever the Department adjusts previously underissued cash assistance or SNAP benefits.

(8) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) A decision notice that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.

(d) When the Department amends a decision notice with another decision notice under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231

Stats. Implemented: ORS 183.415, 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 3-2010(Temp), f. & cert. ef. 2-23-10 thru 8-22-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-175-0270

Notice Situation; SRS or TBA

(1) When the Department takes action on information reported on the Interim Change Report form, the Department sends a continuing benefit decision notice (see OAR 461-001-0000) for clients in the ERDC, OSIP, OSIPM, QMB, REF, REFM, SNAP, and TANF programs. The notice

includes the amount of income used to determine the benefits or ineligibility.

(2) For all changes not reported on the Interim Change Report form, which result in a closure or reduction in benefits, the Department sends a timely continuing benefit decision notice.

(3) When the Department changes the reporting system from one reporting system to another reporting system, the Department provides a continuing benefit decision notice if the change occurs at a time other than at the start of a certification period (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.070, 411.095, 411.111, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.095, 411.111, 411.404, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-175-0305

Notice Situation; Removing an Individual From a Benefit Group (REF, REFM, SNAP, TANF) or Need Group (ERDC)

(1) To remove an individual from a benefit group (see OAR 461-110-0750), the following notices are used:

(a) A continuing benefit decision notice (see OAR 461-001-0000) is used when the removal is based on information reported on the Interim Change Report form.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is used when the removal is not based on the Interim Change Report form.

(2) In the ERDC program, the Department sends a timely continuing benefit decision notice to remove an individual from the need group (see OAR 461-110-0630).

(3) In the REF, REFM, and TANF programs, if a child is removed from the benefit group as a result of a court order or a voluntary placement in foster care by the child's caretaker relative (see OAR 461-001-0000), a basic decision notice (see OAR 461-001-0000) is used.

Stat. Auth.: ORS 411.060, 411.095, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.095, 411.404, 411.816, 412.049
Hist.: AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-180-0020

Effective Dates; Changes in Income or Income Deductions That Cause Increases

For all programs in Chapter 461, except the ERDC program, this rule is used to determine the effective date when a change in income or income deductions causes an increase in benefits. For all changes, the effective date is one of the following:

(1) In the GA, SFPSS, and TANF programs, the effective date for an anticipated change reported before the payment month is the first of the payment month in which it will occur. If the change is not reported until the month it occurs or later, the effective date is the first of the month following the month in which the change was reported.

(2) In the SNAP program:

(a) The effective date when verification is not requested is the first of the month following the date the change was reported.

(b) The effective date if verification is requested is:

(A) The first of the month following the date the change was reported if verification is received no later than the due date for the verification.

(B) The first of the month following the date the verification is received by the Department, if received after the verification due date.

(3) In the OSIP program, the effective date for an anticipated change is:

(a) The first of the month in which the change occurs if the change is reported by the 10th day of the month following the month the change occurred; or

(b) 10 days before the change is reported, if it is reported after the 10th day of the month following the month the change occurred.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-180-0050

Effective Dates; Suspending or Closing Benefits and JOBS Support Service Payments

(1) This rule explains the effective date for closing or suspending benefits for the entire benefit group (see OAR 461-110-0750) and the effective date for ending JOBS support service payments.

(2) In all programs except the ERDC program, when the only individual in a benefit group dies, the effective date of the closure is:

(a) In the REF, SNAP, and TANF programs, the last day of the month in which the death occurred.

(b) In all other programs, the date of the death.

(3) For all closures and suspensions not covered by section (2) of this rule, the effective date is determined as follows:

(a) When prospective eligibility is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

(b) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.

(c) When an absent parent enters an ongoing TANF program household, or another change occurs that ends eligibility based on the incapacity or unemployment of a parent, the effective date for closing benefits is the last day of the month in which the 45-day period described in OAR 461-125-0255 ends.

(d) For a pregnant female receiving benefits of the OSIPM program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.

(e) For a client who is receiving medical assistance and becomes incarcerated with an expected stay of a year or less, the effective date for suspending medical benefits is the effective date on the decision notice (see OAR 461-001-0000).

(f) The effective date for ending support service payments authorized under OAR 461-190-0211 is the earlier of the following:

(A) The date the related JOBS activity is scheduled to end.

(B) The date the client no longer meets the requirements of OAR 461-190-0211.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 18-2004, f. & cert. ef 7-12-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-180-0065

Effective Dates; Ending Disqualifications

(1) The effective date for ending a JOBS disqualification or a disqualification related to diagnosis, counseling, or treatment for substance abuse or mental health is:

(a) The date the client meets the requirements for ending the JOBS disqualification (see OAR 461-130-0335); or

(b) The date the client meets the requirements for ending the disqualification for failure to comply with OAR 461-135-0085(1) (see OAR 461-135-0089).

(2) In the GAM and OSIPM programs, the effective date for ending the disqualification for failing to enroll in cost-effective, employer-sponsored health insurance is the date the client provides verification of enrollment during the open enrollment period.

(3) In the SNAP program, the effective date for ending an employment program disqualification is the date the client fulfills the requirements to end the disqualification or the first of the month following the minimum disqualification period, whichever occurs later (see OAR 461-180-0010 regarding the effective date for adding a person to an open case).

(4) For an IPV disqualification, the disqualification ends the day after the minimum disqualification period ends, if there is no additional IPV disqualification to be served and all eligibility requirements are met.

(5) For all other disqualifications in the TANF program, the disqualification ends whenever the client agrees to cooperate.

(6) For other disqualifications in the SNAP program, the disqualification ends at the end of the disqualification period.

Stat. Auth.: ORS 411.060, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.816 & 412.049
Hist.: AFS 22-1990(Temp), f. 9-28-90, cert. ef. 10-1-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-180-0085

Effective Dates; Redeterminations of OSIPM and QMB

In the OSIPM and QMB programs, when the Department initiates a redetermination of eligibility:

(1) Prior to reducing or ending medical benefits:

(a) The Department must review each individual in the filing group (see OAR 461-110-0410) for eligibility for the other medical programs listed in this rule; and

(b) The Oregon Health Authority, Cover Oregon, or the Department must review the individual for Medicaid eligibility under MAGI rules (OAR 410-200).

(2) If additional information is needed to redetermine eligibility, members of the benefit group (see OAR 461-110-0750) who may be eligible for the other programs listed in this rule remain eligible from the date the review is initiated until the Department, Cover Oregon, or the Oregon Health Authority determines their eligibility in accordance with the application processing time frames in OAR 410-200-0110.

Stat. Auth.: ORS 409.050, 411.060, 411.404
Stats. Implemented: ORS 409.010, 411.060, 411.404
Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-180-0100

Effective Dates; Eligibility Following Closure

The new effective date of eligibility following closure of benefits or following the end of a certification period is determined as follows:

(1) For the SNAP program, see OAR 461 115 0450.

(2) In the ERDC program, eligibility starts the first day of the month of the date of request.

(3) In the TANF program:

(a) Eligibility starts on the date provided by OAR 461-180-0070 for TANF unless the client meets the requirements of subsection (b) of this section.

(b) Eligibility starts the first day of the month following closure if:

(A) The client contacts the Department during the month of closure; and

(B) Submits to the Department a complete application not later than the end of the month following closure.

(4) In all programs other than the ERDC, SNAP, and TANF programs:

(a) If the client completes the application process within the applicable time period described in chapter 461 of the Oregon Administrative Rules, eligibility starts on the first day of the month following closure if the filing group meets all eligibility requirements on that date and if:

(A) The filing group established a date of request (see OAR 461-115-0030 for the meaning of date of request) prior to closure; or

(B) The Department initiated a redetermination of eligibility prior to closure.

(b) If the client does not complete the application process within the time period described in chapter 461 of the Oregon Administrative Rules, the determination of an effective date requires a new date of request (see OAR 461-115-0030 for the meaning of date of request).

Stat. Auth.: ORS 411.060, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.816 & 412.049
Hist.: AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-180-0105

Effective Dates; Reductions Delayed Pending a Hearing Decision

(1) If a proposed reduction or closure of benefits or a proposed disqualification arising out of an employment program is delayed because the client requested a hearing, the proposed action takes effect in accordance with sections (2) and (3) of this rule.

(2) A disqualification is effective in the following programs on the first day of the month following issuance of a final order upholding the disqualification:

(a) In the JOBS and JOBS Plus programs.

(b) In the SNAP program, if the disqualification is a result of any of the following:

(A) A job quit.

(B) Failure to comply with a requirement in OAR 461-130-0320.

(C) Failure to comply with a requirement of the JOBS or UC employment program.

(3) All other reductions or closures are effective in accordance with the notice that precipitated the appeal.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 31-2003(Temp), f. & cert. ef. 12-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

461-180-0120

Effective Dates; Removing an Individual

The effective date for removing an individual from a benefit group (see OAR 461-110-0750) is one of the following:

(1) If the individual has left the benefit group in the current budget month because he or she is ineligible, is disqualified, or has left the household, the effective date is:

(a) The first of the month after the notice period (see OAR 461-175-0050) ends, if the change will reduce benefits.

(b) The last day of the month in which the notice period ends, if the change will end benefits.

(2) If the individual is reasonably expected to leave the household next month, the effective date is the later of the following:

(a) The first of the month following the month in which the individual leaves the household group (see OAR 461-110-0210), if the change will reduce benefits.

(b) The end of the month in which the individual is expected to leave the household group, if the change will end benefits.

(3) When an individual in a benefit group of more than one individual dies, the effective date of the closure or reduction in benefits is one of the following:

(a) In the ERDC, REF, SNAP, and TANF programs, the last day of the month in which the 10-day notice period ends.

(b) For all programs not covered by subsection (a) of this section, the date of the individual's death.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-
1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-1

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Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients
Adm. Order No.: SSP 39-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Amended: 461-001-0000, 461-115-0016, 461-135-0505, 461-145-0280
Subject: OAR 461-001-0000 about definitions used in various DHS program rules is being amended to revise the definitions of "legally married", "marriage", "parent", and "spouse" so that the Department recognizes as being legally married those same-sex couples who have been united in marriage according to the law of the state or country in which the marriage occurred. The definitions of "legally married" and "spouse" are also being updated and clarified for the ERDC and SNAP programs to prevent unnecessary training in the context of this change.

OAR 461-115-0016 about the application process and reservation list for the Employment Related Day Care (ERDC) program is being

amended to add additional exemptions under which families would not be placed on the reservation list. Under this amendment; new ERDC applicants who have an open Child Welfare case or open CPS assessment will meet an exception to the ERDC reservation list, if the child care subsidy is part of a safety plan needed to prevent child removal, allow a child to return home, or allow for placement of the child with a relative or with an adult whom the child or the family of the child has an established relationship. The amendment to this rule will align with Oregon's differential response and the federal guidelines for at risk children.

OAR 461-135-0505 about categorical eligibility for the Supplemental Nutrition Assistance Program (SNAP) is being amended to implement a $25,000 liquid asset test for some households to be determined categorically eligible. Liquid assets are assets that are easily accessible like a bank account or cash on hand. The asset test does not include currently excluded resources for the SNAP program such as a person's home, retirement accounts, or earned income tax refunds. The intent of the policy change is to identify individuals with large windfalls such as a lottery winning that exceeds $25,000 in order to exclude them from receiving SNAP benefits and focus benefits on individuals who need them.

OAR 461-145-0280 about the treatment of in-kind income in determining eligibility for several DHS programs is being amended to remove its coverage of the EXT, MAA, MAF, OHP, and SAC programs. The policies about financial eligibility for medical assistance have been moved from OAR 461 (DHS) into the OAR 410-200 (under OHA), and as part of the implementation efforts for the federal Affordable Care Act (ACA). For applications for medical assistance starting on October 1, 2013, financial eligibility policies are set out in OAR 410-200.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0000

Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except:

(a) The rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(b) OCCS medical program eligibility rules are set out in the 410-200 division of Oregon Administrative Rules.

(2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(3) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(5) "Assets" mean income and resources.

(6) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(7) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to $50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of $100 or more.

(12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) "Caretaker relative" means:

(a) In the Pre-TANF, REF, SFPSS, and TANF programs, a dependent child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece who lives in a residence maintained by one or more of the relatives as the child's or the relative's own home.

(b) In all programs not covered under subsection (a) of this section, a caretaker who meets the requirements of one of the following paragraphs:

(A) Is one of the following relatives of the dependent child:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(ii) Stepfather, stepmother, stepbrother, and stepsister.

(iii) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(B) Is or was a spouse of an individual listed in paragraph (A) of this subsection.

(C) Met the definition of caretaker relative under paragraph (A) or (B) of this subsection before the child was adopted (notwithstanding the child's subsequent adoption).

(14) "Certification period" means the period for which a client is certified eligible for a program.

(15) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical dis-

ability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).

(17) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(19) "Cover Oregon" means Oregon Health Insurance Exchange Corporation.

(20) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(21) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(22) "Department" means the Department of Human Services (DHS).

(23) "Dependent child", in the REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(24) "Disability" means:

(a) In the SNAP program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(25) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(e) As used in this section, "family members" and "household members" mean any of the following:

(A) Spouse;

(B) Former spouse;

(C) Individuals related by blood, marriage, or adoption;

(D) Individuals who are cohabitating or have cohabited with each other;

(E) Individuals who have been involved in a sexually intimate or dating relationship; or

(F) Unmarried parents of a child.

(26) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(27) "Electronic application" is an application electronically signed and submitted through the internet.

(28) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(29) "Equity value" means fair market value minus encumbrances.

(30) "Fair market value" means the amount an item is worth on the open market.

(31) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(32) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(33) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(34) "Income producing property" means any real or personal property that generates income for the financial group. Examples of income producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(35) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the SNAP program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the SNAP program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) For a new applicant to the GA, GAM, OSIP, or OSIPM program living in a nonstandard living arrangement, for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(36) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(37) "Legally married" means a marriage uniting two individuals according to:

(a) The statutes of the state where the marriage occurred;

(b) Except in the SNAP program, the common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.

(38) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of his or her life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(39) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(40) "Long term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(41) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings, and personal injury claims.

(42) "Marriage" means the union of two individuals who are legally married.

(43) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than $35,000.

(44) "Minor parent", in the ERDC, REF, REFM, and TANF programs, means a parent under the age of 18.

(45) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility in which the client receives long-term care services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community based care (see section (16) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a nonstandard living arrangement.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care facility.

(C) Drug or alcohol residential treatment facility.

(D) Homeless or domestic violence shelter.

(E) Lodging house if paying for room and board.

(F) Correctional facility.

(G) Medical institution.

(46) "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program eligibility policy, community outreach, OCCS Medical Program eligibility determinations, and the OHA Customer Service Call Center.

(47) "OCCS Medical Programs" refers to programs for which eligibility policy can be found in division 410-200 of Oregon Administrative Rule, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:

(a) MAGI Child;

(b) MAGI Parent or Other Caretaker Relative;

(c) MAGI Pregnant Woman; and

(d) MAGI CHIP.

(48) "Ongoing month" means one of the following:

(a) For all programs except the SNAP program, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the SNAP program, any month in the certification period following the initial month of eligibility.

(49) "Parent" for all programs except the SNAP program, means the biological or legal mother or father of an individual or unborn child. For the SNAP program, a parent means the biological or legal mother or father of an individual.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce, or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent has given up care, control, and supervision of the child.

(50) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(51) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(52) "Periodic income" means income received on a regular basis less often than monthly.

(53) "Primary person" for all programs except the SNAP program, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For the TANF program, the parent or caretaker relative.

(b) For the ERDC program, the caretaker.

(c) For SNAP, see OAR 461-001-0015.

(d) For the GA, GAM, OSIP, OSIPM, and QMB programs: the client or client's spouse.

(e) For the REF and REFM programs: the applicant, caretaker, caretaker relative, or parent.

(54) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(55) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(56) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(57) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(58) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.

(59) "Shelter in kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs of the financial group. Shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.

(60) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(61) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group (see OAR 461-110-0530).

(62) "Spouse" means an individual who is legally married to another individual.

(63) "Stable income" means income that is the same amount each time it is received.

(64) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(65) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(66) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(67) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(68) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(69) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.001, 412.006, 412.014 & 412.049

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; Administrative correction 4-21-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 29-2013(Temp), f. & cert. ef. 10-1-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 39-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

461-115-0016
Application Process; Reservation List for ERDC

Notwithstanding any other rule in Chapter 461 of the Oregon Administrative Rules, in the ERDC program:

(1) Eligibility is subject to the availability of funds. The Department may implement a Child Care Reservation List whenever the Department determines that sufficient funding is not available to sustain benefits for all of the applicants requesting assistance.

(2) Except as provided in section (3) of this rule, the following applicants are subject to placement on the Child Care Reservation List when the Child Care Reservation List is in effect:

(a) New applicants for ERDC when no member of the ERDC filing group (see OAR 461-110-0350) meets the requirements of one or more of the following paragraphs:

(A) Received a partial or full month of REF, SFPSS, or TANF program cash benefits from the State of Oregon in at least one of the preceding three months; and no member of the ERDC program filing group may be concurrently receiving TANF program benefits except as allowed under OAR 461-165-0030.

(B) Is eligible for and being placed in a current opening in an Oregon Program of Quality contracted slot under OAR 461-135-0407 or Head Start program contracted slot under OAR 461-135-0405.

(C) The caretaker (see OAR 461-001-0000) is currently working with Child Welfare as part of a CPS assessment or open case, an ongoing safety plan is in place, and Child Welfare has determined the use of child care as part of an ongoing safety plan will:

(i) Prevent removal of the child (see OAR 461-001-0000) from their home;

(ii) Allow a child to be returned home; or

(iii) Allow for placement of the child with a relative or with an adult whom the child or the family of the child has an established relationship.

(b) Individuals who are reapplying for ERDC after a break in ERDC benefits of two consecutive, calendar months or more.

(3) Except as allowed under OAR 461-165-0030, no member of an ERDC program filing group may be concurrently receiving TANF program benefits. When concurrent benefits are not allowed, the Department sends a decision notice (see OAR 461-001-0000) of ineligibility for the ERDC program and the filing group is not placed on the Child Care Reservation List.

(4) When the Child Care Reservation List is in effect, the Department must place all applicants who are subject to the Child Care Reservation List under section (2) of this rule on the Child Care Reservation List for future selection. The Department sends these applicants a decision notice of ineligibility for the ERDC program.

(5) Each month, on the basis of an estimate of available funds, an appropriate number of individuals from the Child Care Reservation List are randomly selected and invited to apply for ERDC.

(6) After an individual is selected from the Child Care Reservation List, the individual must contact the Department to establish a date of request (see OAR 461-115-0030) no later than 30 days after the date on the selection letter. The individual may request child care benefits from the Department:

(a) Without completing a new application, when the previous application is within 45 days of its date of request; or

(b) By submitting a new application for child care benefits to the Department.

(7) The processing time frame for the ERDC application is the same as that specified in OAR 461-115-0190, except that:

(a) An individual who requests benefits after the 30 day deadline to apply (see section (6) of this rule) will be returned to the Child Care Reservation List.

(b) If the Department does not receive a request for benefits within the deadline to apply, the individual is dropped from the Child Care Reservation List.

Stat. Auth: ORS 409.050, 411.060, 411.116
Stats. Implemented: ORS 409.010, 409.610, 411.060, 411.116, 411.121, 411.122, 411.135
Hist.: SSP 23-2011(Temp), f. & cert. ef. 8-1-11 thru 1-27-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 29-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 39-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

461-135-0505
Categorical Eligibility for SNAP

(1) An individual is categorically eligible for SNAP benefits if the individual:

(a) Receives or is authorized to receive GA or SSI benefits;

(b) Receives or is authorized to receive cash, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;

(c) Is deemed to be receiving SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)); or

(d) Is a member of a financial group (see OAR 461-110-0530) with countable (see OAR 461-001-0000) income less than 185 percent of the federal poverty level as described in OAR 461-155-0180(6), does not have liquid assets in excess of $25,000, and has received a pamphlet about Information and Referral Services. Liquid assets are assets that are easily accessible and do not need to be sold to access their value.

(2) For an entire filing group to be categorically eligible for SNAP benefits, it must contain only clients who are categorically eligible for SNAP benefits. For the purpose of determining who is categorically eligible for SNAP benefits, in the ERDC and TA-DVS programs all members of the filing group are considered receiving the benefits of the program even if not all members receive the benefit.

(3) A filing group that is eligible for transition services or the TA-DVS program is considered receiving benefits for the entire period of eligibility even if benefits are not received during each month of that period.

(4) An individual categorically eligible for the SNAP program is presumed to meet the eligibility requirements for resources and countable and adjusted income limits. The individual is also presumed to meet the requirements for a social security number, sponsored alien information, and residency, if verified in a public assistance or medical assistance program.

(5) When a filing group contains both members who are categorically eligible for SNAP benefits and those who are not, a resource owned in whole or in part by a categorically eligible member is excluded.

(6) An individual may not be categorically eligible for SNAP benefits in either of the following circumstances:

(a) The individual is disqualified from receiving SNAP benefits because of an intentional program violation.

(b) The individual is a primary person (see OAR 461-001-0015) disqualified from receiving SNAP benefits for failure to comply with an OFSET activity or component contained in an OFSET case plan (see OAR 461-001-0020).

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 29-2000(Temp), f. & cert. ef. 12-1-00 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 2-2003(Temp); f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 39-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

461-145-0280
In-Kind Income

(1) This rule does not apply to shelter-in-kind income (see OAR 461-145-0470).

(2) In all programs except the REF, REFM, and TANF programs, in-kind income (see OAR 461-001-0000) that is earned is treated according to the administrative rules on earned income (such as OAR 461-145-0130).

(3) In all programs except the REF, REFM, and TANF programs, in-kind income that is unearned (except third-party payments) is treated as follows:

(a) Income from court-ordered community service work or bartering is excluded. Bartering is the exchange of goods of equal value.

(b) Items such as cars and furniture are treated according to the administrative rule for the specific type of asset.

(4) In the REF, REFM, and TANF programs, in-kind income (except unearned third-party payments) is excluded.

(5) In the SNAP program, except for child support (see OAR 461-145-0080) and an expenditure by a business entity that benefits a principal (see OAR 461-145-0088), in-kind income is excluded.

(6) Unearned third-party payments are treated as follows:

(a) Payments made to a third party that should legally be paid directly to a member of the financial group (see OAR 461-110-0530) are counted as unearned income.

(b) Payments made to a third party that the payee is not legally obligated to pay directly to a member of the financial group and that the financial group does not have the option of taking as cash, and payments made by the noncustodial parent to a third party that are court-ordered are treated as follows:

(A) In the SNAP program, these third-party payments are excluded unless they are transitional housing payments for the homeless.

(B) In the REF, REFM, and TANF programs, except for payments designated as child support (see OAR 461-145-0080), these third-party payments are excluded.

(C) In all programs except the REF, REFM, SNAP, and TANF programs, these third-party payments are excluded.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-9; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 39-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

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Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients
Adm. Order No.: SSP 1-2014(Temp)
Filed with Sec. of State: 1-8-2014
Certified to be Effective: 1-8-14 thru 7-7-14
Notice Publication Date:
Rules Amended: 461-110-0350
Subject: OAR 461-110-0350 about the filing group for the Employment Related Day Care (ERDC) program is being amended to align with the January 1, 2014 amendment to OAR 461-001-0000 that changed the definition of "spouse". The prior definition of "spouse" included exceptions for the ERDC program that were removed in order to align with other program rules and to clarify who must be considered as a "spouse".
Rules Coordinator: Annette Tesch—(503) 945-6067

461-110-0350
Filing Group; ERDC

In the ERDC program:

(1) The filing group consists of each of the following applicants and *household group* (see OAR 461-110-0210) members, even if the individual does not meet nonfinancial eligibility requirements:

(a) The *caretaker* (see OAR 461-001-0000) of the child for whom ERDC benefits are requested, except this does not apply to a child care provider caring for the child of an individual:

(A) Who is a member of a National Guard or U.S. Armed Forces Reserve unit; and

(B) Who has been called to active duty away from the child's home for more than 30 days.

(b) An unmarried child and any *sibling* (see OAR 461-001-0000), less than 18 years of age or 18 years of age and attending secondary school or vocational training at least half time, in the care and custody of the *caretaker*. A foster child is included if the *caretaker* wants to include the child in the *need group* (see 461-001-0000).

(c) Any *parent* (see OAR 461-001-0000) of a child required to be in the filing group.

(d) Any *parent* of an unborn child, if the *sibling* of the unborn child is required to be in the filing group.

(e) The *spouse* (see OAR 461-001-0000) of the *caretaker*.

(2) A *minor parent* (see OAR 461-001-0000) may form a separate filing group with his or her dependent child or children when the *minor parent* applies as the *caretaker*.

Stat. Auth.: ORS 409.050 & 411.060
Stats. Implemented: ORS 409.010 & 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 32-2003(Temp), f. & cert. ef. 12-17-03 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 1-2014(Temp), f. & cert. ef. 1-8-14 thru 7-7-14

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Department of Justice
Chapter 137

Rule Caption: Use of lay representatives; periodic review and modification
Adm. Order No.: DOJ 1-2014(Temp)
Filed with Sec. of State: 1-13-2014
Certified to be Effective: 1-13-14 thru 7-12-14
Notice Publication Date:
Rules Amended: 137-055-2170, 137-055-3420
Subject: OAR 137-055-2170 is amended to include every potential type of hearing at which a case manager might appear and defines roles and responsibilities of lay representatives.

OAR 137-055-3420 is amended to clarify that a child support order is not in substantial compliance with the guidelines if it has been more than 35 months since the order took effect
Rules Coordinator: Carol Riches—(503) 947-4700

137-055-2170
Use of Lay Representatives at Administrative Hearings

(1) As used in this rule "lay representative" means a representative of the Child Support Program (CSP) who is not employed as an attorney.

(2) Subject to the approval of the Attorney General, lay representatives of the Child Support Program are authorized to appear on behalf of the CSP in the following types of hearings:

(a) Administrative child support adjudications pursuant to ORS 25.287, 416.415, 416.416, 416.417, 416.425, and 416.427;

(b) Hearings regarding state income tax intercepts pursuant to ORS 25.610 and 293.250;

(c) Hearings regarding the suspension of occupational and driver licenses, certificates, permits and registrations pursuant to ORS 25.765;

(d) Hearings regarding credit for direct payments pursuant to ORS 25.020;

(e) Hearings regarding overpayments pursuant to ORS 25.125.

(f) Hearings regarding the state's satisfaction of a support award pursuant to OAR 137-055-5220;

(g) Hearings regarding suspension of support pursuant to ORS 25.245;

(h) Hearings regarding the establishment of arrears pursuant to ORS 416.429;

(i) Hearings regarding physical custody determinations for purposes of joining a party pursuant to ORS 416.407 & OAR 137-055-3500;

(j) Hearings regarding credit for lump sum Social Security/Veterans payments pursuant to ORS 25.275 & OAR 137-055-5520.

(k) Hearings regarding the amount of assigned arrears pursuant to OAR 137-055-6040.

(3) The lay representative may not make legal argument on behalf of the CSP.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the CSP to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the CSP; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) As used in this rule, "legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the CSP in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence;

(E) The correctness of procedures being followed in the contested case.

(4) Lay representatives must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at http://www.doj.state.or.us.

Stat. Auth.: ORS 180.345 & 416.455
Stats. Implemented: ORS 25.080 & 183.452
Hist.: JD 6-1987, f. & ef. 10-16-87; JD 4-1995, f. 2-27-95, cert. ef. 3-1-95; Renumbered from 137-055-0300, DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 1-2014(Temp), f. & cert. ef. 1-13-14 thru 7-12-14

137-055-3420
Periodic Review and Modification of Child Support Order Amounts

(1) "Periodic Review" means a proceeding initiated under ORS 25.287(1) to modify an existing order to comply with the child support guidelines.

(2) The administrator will initiate a periodic review if a written request is received from any party or the family is currently receiving TANF, and 35 months have passed since the date:

(a) The most recent support order took effect, or

(b) The most recent order determining that the support order should not be adjusted was signed. For purposes of calculating the 35-month time period, a suspension and temporary modification order entered pursuant to ORS 416.425(13) will not be considered.

(3) For purposes of a periodic review, a child support order is not in substantial compliance with the guidelines if it has been more than 35 months since the order took effect.

(4) The administrator must complete the modification of the existing order within 180 days of receiving a written request for a periodic review, initiating the mandatory review, or locating the non-requesting party(ies), whichever occurs later.

(5) The administrator is responsible for conducting a periodic review in this state or for requesting that another jurisdiction conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the jurisdiction reviewing the order applies in determining if a basis for modification exists.

(6) On receipt of a written request for a periodic review or when a mandatory periodic review is required, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information that may affect the support calculation.

(7) If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

(8) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program (CSP) will annually notify the parties:

(a) Of their right to request a periodic review of the amount of support ordered; and

(b) That the CSP will perform a mandatory periodic review and adjustment if the family is currently receiving TANF.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 25.080, 25.287, 25.321–25.343, 107.135 & 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 11-2008(Temp), f. & cert. ef. 7-15-08 thru 9-30-08; DOJ 12-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DOJ 14-2008(Temp), f. & cert. ef. 10-7-08 thru 3-29-09; DOJ 1-2009, f. & cert. ef. 1-2-09; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 5-2013, f. & cert. ef. 7-8-13; DOJ 1-2014(Temp), f. & cert. ef. 1-13-14 thru 7-12-14

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Department of Oregon State Police, Office of State Fire Marshal
Chapter 837

Rule Caption: Rule being amended to align with changes to U.S. EPA 40 CFR Part 370.
Adm. Order No.: OSFM 1-2014
Filed with Sec. of State: 1-9-2014
Certified to be Effective: 1-9-14
Notice Publication Date: 12-1-2013
Rules Amended: 837-085-0040, 837-085-0090, 837-085-0280
Subject: This rule is being amended to align with changes to U.S. Environmental Protection Agency 40 CFR Part 370.
Rules Coordinator: Valerie Abrahamson—(503) 934-8211

837-085-0040
Definitions

(1) "Act" means the Community Right-to-Know and Protection Act, ORS 453.307 to 453.414.

(2) "Appeal" means the written request for a contested case in order to contest the required submission of Hazardous Substance Information Survey information or to contest a "Notice of Noncompliance and Proposed/Final Penalty Assessment" order, or a response to a request for exemption.

(3) "Approved Form" means a form provided by or authorized by the Office of State Fire Marshal.

(4) "Audit" means the evaluation of covered employers, owners or operators to determine their level of compliance with the Oregon Community Right-to-Know and Protection Act.

(5) "Average Daily Amount" means the average amount of a hazardous substance present at a facility during the twelve-month survey period.

(6) "Chemical" means any element, chemical compound, or mixture of elements or compounds.

(7) "Chemical Name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service's (CAS) rules of nomenclature.

(8) "Compliance Auditor" means a designated employee of the Office of State Fire Marshal whose responsibility is to conduct audits, identify noncompliance issues, propose penalties, establish correction dates and assist employers, owners, and operators in voluntarily complying with ORS 453.307 to 453.414.

(9) "Compliance or Due Date" means the date set for submitting a Hazardous Substance Information Survey, substantive change or other information requested by the Office of State Fire Marshal.

(10) "Compressed Gas" means:

(a) A gas or mixture of gases, in a container, having an absolute pressure exceeding 40 psi at 70° F (21.1° C); or

(b) A gas or mixture of gases, in a container, having an absolute pressure exceeding 104 psi at 130° F (54.4° C) regardless of the pressure at 70° F (21.1° C); or

(c) A liquid having a vapor pressure exceeding 40 psi at 100° F (37.8°C) as determined by ASTM D-323-72, Test Method of Vapor Pressure of Petroleum Products (Reid Method).

(11) "Confidential" means information submitted to a public body in confidence (ORS 192.502(3)).

(12) "Confidentiality Agreement" means a written agreement between a covered employer, owner or operator and an entity authorized under ORS 453.337 and OAR chapter 837, division 85 to request and receive trade secret information.

(13) "Correction Order" means a written order that directs an employer, owner or operator to submit Hazardous Substance Information Survey information.

(14) "Covered Employer, Owner or Operator" means:

(a) Any person operating a facility possessing reportable quantities of hazardous substances as defined by the Office of State Fire Marshal in OAR 837-085-0070.

(b) Any person operating a facility that the Office of State Fire Marshal believes has the potential to store, generate, use, or otherwise possess hazardous substances in reportable quantities.

(15) "Division" means OAR chapter 837, division 85 of the Office of State Fire Marshal.

(16) "Emergency" means any human caused or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss which includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills of oil or other substances, contamination, utility or transportation accidents, disease, blight, infestation, civil disturbance, riot, sabotage/war.

(17) "Emergency Services" means those activities provided by state or local government agencies with emergency operational responsibilities to prepare for or carry out any activity to prevent, minimize, respond to or recover from an emergency. Without limitation, these activities include coordination, preplanning, training, interagency liaison, firefighting, hazardous substance management, law enforcement, medical, health or sanitation services, engineering or public works, search and rescue activities, public information, damage assessment, administration and fiscal management.

(18) "Emergency Service Agency" means an organization, which performs essential services for the public's benefit prior to, during, or following an emergency. This includes, but is not limited to, organizational units within local governments, such as emergency medical technicians, health, medical or sanitation services, public works or engineering, public information or communications.

(19) "Entity" means any individual trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, or the federal government or any agency thereof.

(20) "Exempted Substance" means a substance that is not required to be reported.

(21) "Exemption" means the written authority given to a person by the Office of State Fire Marshal, granting an exemption from the requirements of a rule or law.

(22) "Explosive" means a hazardous substance classified as an explosive by the U.S. Department of Transportation.

(23) "Extension" means the written authorization of the Office of State Fire Marshal to extend a compliance or due date.

(24) "Facility" means all buildings, equipment structures or other stationary items that are located on a single site or on contiguous or adjacent sites that are owned or operated by a covered employer, owner or operator.

(25) "Facility Representative" means any individual designated by an employer, owner or operator to serve as spokesperson or, in the absence of a designated spokesperson, the person in charge of a facility being audited.

(26) "Filed" means the receipt of a document by the Office of State Fire Marshal, except that an appeal will be considered filed upon receipt at any regional office of the Office of State Fire Marshal.

(27) "Fire District" means any agency having responsibility for providing fire protection services.

(28) "Fixed Facility" means a facility having permanent or non-mobile operations.

(29) "Hazard Classification" means the U.S. Department of Transportation hazard classes and divisions as defined in 49 CFR 173.2. However, when the definitions in 49 CFR 173.2 refer to transportation or hazards associated with transportation, they shall be deemed to refer to storage or other regulated activities under OAR chapter 837, division 085.

(30) "Hazardous Substance" means:

(a) Any substance designated as hazardous by the Director of the Department of Consumer and Business Services or by the Office of State Fire Marshal; or

(b) Any substance required to have a Material Safety Data Sheet (MSDS) pursuant to Oregon Occupational Safety and Health Division's OAR 437, division 2 (29 CFR 1910.1200), subdivision Z, and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienist (ACGIH); or

(c) Any substance required to have an MSDS pursuant to Oregon Occupational Safety and Health Division's OAR 437, division 2 (29 CFR 1910.1200), subdivision Z, except:

(A) Substances exempted by designation of the Office of State Fire Marshal; or

(B) Substances which are solids and do not react or dissolve and are stored in unprotected areas; or

(C) Substances exempted by the rules of OAR chapter 837, division 085; or

(D) Gases intended and used for human or animal ingestion or inhalation either directly or added to a product, if the gas is present at the site where ingestion or inhalation occurs; and the gas is not being used in a manufacturing process; and the gas is not a cryogenic; and the gas is not being stored at the site in a quantity that exceeds 1,000 cubic feet.

(d) Any substance for which a manufacturer is required to develop an MSDS, that presents a physical or health hazard to emergency response personnel or the public under normal conditions of use or during an emergency situation; or

(e) Any waste substance that presents a physical or health hazard to emergency response personnel or the public under normal conditions of use or during an emergency situation; or

(f) Any radioactive waste or radioactive material as defined in ORS 469.300(19) and radioactive substance as defined in 453.005.

(31) "Hazardous Substance Information Survey" means a hazardous substance report that covered employers, owners or operators are required to submit, on an approved form, to the Office of State Fire Marshal.

(32)"Health Professional" means a physician as defined in ORS 677.010, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical technician.

(33) "Highly Toxic Material" means a material which produces a lethal dose or lethal concentration which falls within any of the following categories:

(a) A chemical that has a median lethal dose (LD50) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each;

(b) A chemical that has a median lethal dose (LD50) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each;

(c) A chemical that has a median lethal concentration (LC50) in air of 200 parts per million by volume or less of gas or vapor, or two milligrams per liter or less of mist, fume or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each;

(d) Mixture of these materials with ordinary materials, such as water, may not warrant a classification of highly toxic. While this system is basically simple in application, any hazard evaluation which is required for the precise categorization of this type of material shall be performed by experienced, technically competent persons.

(34) "Identity" means any chemical or common name that is indicated:

(a) On a Material Safety Data Sheet (MSDS) as required under OAR 437, division 2 (CFR 1910.1200), subdivision Z; or

(b) On shipping documents as required under 49 CFR 171-177 under the Transportation Safety Act of 1974 (49 U.S.C. 1801 et seq.); or

(c) On hazardous waste manifests as required by OAR chapter 340, division 102 as adopted by the Department of Environmental Quality; or

(d) On packaging or container labels as required under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and labeling regulations issued under the Act by the Environmental Protection Agency; or

(e) On a radioactive material license as issued under OAR chapter 333, divisions 100 through 113 as adopted by the Radiation Control Section of the Health Division of the Oregon Department of Human Resources.

(35) "Incident" means the threatened or actual injury or damage to a human, wildlife, domestic animal or the environment, or any property loss resulting from a hazardous substance release.

(36) "Law Enforcement Agency" means county sheriffs, municipal police departments, state police, other police officers of this or other states or law enforcement agencies of the federal government.

(37) "Liquefied Gas" means a gas that is received and stored as a liquid through the use of pressure or temperature.

(38) "Material Safety Data Sheet (MSDS)" means written, printed or electronic material concerning a hazardous chemical which is prepared in accordance with OAR 437, division 2 (29 CFR 1910.1200), subdivision Z, Hazard Communication rules of the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(39) "Maximum Amount" means the largest amount of a hazardous substance located at a facility at any one time during the 12-month survey period.

(40) "North American Industry Classification System" means a system developed by the Office of Management and Budget for the purpose of classifying establishments by the type of activity they engage in. The number assigned to each group classified is called the NAICS code.

(41) "No Longer Reportable" means a previously reported substance was not on site in a reportable quantity during the current survey period.

(42) "Noncompliance" means failure of a covered employer, owner or operator to comply with the Community Right-to-Know and Protection Act or its administrative rules.

(43) "Noncompliance Classification" means the category assigned to issues of noncompliance for the purposes of assessing a penalty.

(44) "Notice of Noncompliance and Proposed/Final Penalty Assessment Order" means a written document issued to covered employers, owners or operators that states they were not complying with the Community Right-to-Know and Protection Act, establishes correction dates and notifies them of penalty assessments.

(45) "Person" means any entity including, but not limited to, an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state or any agency or commission thereof, or the federal government or any agency thereof.

(46) "Product Name" means any designation or identification such as code name, code number, trade name, brand name, or generic name as provided on the Material Safety Data Sheet used to identify a substance.

(47) "Record" means any recorded information.

(48) "Repeat Noncompliance" means a covered employer, owner and or operator has failed to comply with the same rule of OAR 837-085 two or more times within a five year period of time.

(49) "Reportable Hazardous Substance" is a hazardous substance that is manufactured, generated, used, stored, possessed, or disposed of at a fixed site location by covered employers, owners, or operators at or above the reportable quantities at any time during the survey period.

(50) "Reportable Quantity" means the amount of hazardous substance that must be present at a facility before reporting is required.

(51) "Reporting Range" means a range of quantities assigned by the Office of State Fire Marshal for reporting hazardous substances.

(52) "Retail Gasoline Station" means a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.

(53) "Single Combined Survey" means a survey that has multiple substations reported on it.

(54) "Source Generation Sites" means facilities generating that which is relayed, pumped or stored by substations.

(55) "State Fire Marshal" means the State Fire Marshal or designee.

(56) "Substantive Change" means a change in hazardous substance reporting information that requires notification to the Office of State Fire Marshal.

(57) "Substation" means facilities that function only as electrical transmission relays, telephone transmission relays, pager transmission relays, cable TV transmission relays, cellular phone transmission relays, radar transmission relays, water storage reservoir, water pump or chlorinating stations, sewerage/storm water pump stations, natural gas pump stations or road sand storage.

(58) "Survey Period" means the 12 months preceding the date the Hazardous Substance Information Survey is mailed to, or completed by, the covered employer, owner or operator.

(59) "Temporary Worksite" means a single site location where activities, such as construction or logging, will occur for less than 24 months.

(60) "Trade Name" means the brand name or trademark given to a hazardous substance by a manufacturer or distributor.

(61) "Trade Secret" means, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented; which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances having commercial value; and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(62) "Total Amount Transported from the facility" means the total amount of a hazardous substance that has been transported from the facility site during the 12-month survey period.

(63) "Total Amount Transported to the facility" means the total amount of a hazardous substance that has been transported on to the facility site during the 12-month survey period.

(64) "Waste Hazardous Substance" means any substance, which meets the Department of Environmental Quality's definition of "hazardous waste".

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99 & cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 1-2013, f. 1-24-13, cert. ef. 2-1-13; OSFM 5-2013, f. & cert. ef. 6-26-13; OSFM 1-2014, f. & cert. ef. 1-9-14

837-085-0090

Hazardous Substance Information Survey — Reporting Requirements

(1) Covered employers, owners, and operators must report hazardous substance information as required by these rules on the survey form provided or approved by the Office of State Fire Marshal.

(2) Covered employers, owners, and operators who receive the Hazardous Substance Information Survey must complete and return it to the Office of State Fire Marshal by the due date indicated on the survey in accordance with OAR 837-085-0050(3) through (8) of these rules.

(3) Covered employers, owners, and operators receiving a survey for one or more of their facilities must submit a separate survey for each of their facilities that are subject to the reporting requirements.

(4) Covered employers, owners, and operators who operate substations that are of the same type may report all their substations on a single combined survey instead of reporting each location separately.

(a) Source generation sites must be reported separately.

(b) Substations that have no hazardous substances are exempt from reporting.

(c) Each substation reported on a single combined survey must have identification posted at it that identifies the site by a company unique number or name and the Facility ID number issued by the Office of State Fire Marshal.

(A) The identification must be readable from a distance of 50 feet.

(B) Substations that are completely underground and can only be accessed through a manhole or excavation are exempt from this posting requirement.

(5) Within 30 days of receiving a survey, covered employers, owners, and operators must request a survey from the Office of State Fire Marshal for each of their subject facilities not receiving a survey.

(6) Covered employers, owners, and operators receiving the survey must provide the following information:

(a) The facility's reporting status, including:

(A) Whether or not hazardous substances were present at the site in reportable quantities;

(B) Whether or not Extremely Hazardous Substances were present that met or exceeded the threshold planning quantity of 40 CFR 355, Appendix A and B. If the facility has Extremely Hazardous Substances present that exceed the threshold planning quantity, provide the name, email address, phone number, and 24-hour phone number of the facility emergency coordinator as required under EPCRA section 303(d)(1);

(C) Whether or not the facility is subject to the reporting requirements of Section 112(r) of the Clean Air Act. If the facility is subject to the chemical accident prevention provisions codified in 40 CFR part 68, also known as the Risk Management Program (RMP), provide the RMP facility identification number assigned by EPA;

(D) If your facility is subject to the Toxic Release Inventory (TRI) program under section 313 of EPCRA, provide the identification number assigned by EPA;

(E) Whether or not the facility is subject to the Process Safety Management (PSM) requirements of the Occupational Safety and Health Administration (OSHA);

(b) Demographic information including:

(A) The primary and, if applicable, secondary North American Industry Classification System code for the facility;

(B) A description of the type of business conducted at the site;

(C) The Dun and Bradstreet Number, if applicable;

(D) The owner's or operator's full name and email address;

(E) The business name which the entity operates under;

(F) The department or division, if applicable;

(G) The physical site address including the street, city, county, and zip code; or a grid location acceptable to the responding fire department if no address exists;

(H) The latitude and longitude of the facility;

(I) The facility phone number for the site;

(J) The email address of the business or contact person, if available;

(K) The mailing address, if different from the site address;

(L) The number of occupants at the site;

(M) The name, day and night phone number and email address of the person that can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility;

(N) The name of the responding fire department by local jurisdiction;

(O) A brief summary of any procedures established by the covered employer, owner or operator for the control of hazardous substances in the event of an emergency; and

(P) Whether the hazardous substance storage location for each reportable hazardous substance is placarded according to National Fire Protection Association (NFPA) Standard 704.

(Q) Whether the facility is occupied or unoccupied.

(c) The name and signature of the person completing the survey and the date the survey was completed.

(d) Information about each reportable hazardous substance meeting the reportable quantity thresholds including, but not limited to:

(A) The chemical, mixture, or product name;

(B) The chemical name of the hazardous ingredient present in the highest concentration;

(C) Whether or not the substance reported contains an extremely hazardous substance as listed in 40 CFR 355;

(D) Whether or not the substance meets the threshold planning quantity as defined by 40 CFR 355;

(E) If the chemical contains an Extremely Hazardous Substances, enter the name and CAS number of the Extremely Hazardous Substances in the mixture;

(F) Whether or not the substance reported contains a Clean Air Act, Section 112(r) listed chemical;

(G) Whether or not the substance reported contains a Process Safety Management listed chemical;

(H) Information regarding whether the substance is pure or a mixture;

(I) The physical state of the hazardous substance as it is released into the environment at Standard Temperature and Pressure (STP) relating whether it is a solid, liquid or a gas;

(J) The unit of measure used to report the quantity range of the hazardous substance, relating whether it is reported in pounds, gallons, cubic feet or millicuries;

(K) The average amount;

(L) The maximum amount;

(M) The maximum amount of each reported hazardous substance for each location reported;

(N) The total amount transported to the facility;

(O) The total amount transported from the facility;

(P) The total estimated number of days the hazardous substance was on-site;

(Q) The type of container the substance is stored in;

(R) The pressure and temperature at which the substance is stored;

(S) The primary and secondary hazard classification for each reportable hazardous substance;

(T) The Chemical Abstract Service (CAS) number, if known;

(U) The four-digit United Nations (UN) or North American (NA) number, if known;

(V) The EPA Pesticide Registration number if applicable; and

(W) The storage location;

(e) Upon request of the Office of State Fire Marshal, covered employers, owners, and operators must provide Material Safety Data Sheets (MSDS);

(f) Other information that may be requested by the Office of State Fire Marshal in order to meet the intent of The Community Right-to-Know and Protection Act.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(1) & 453.317(2)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 1-2014, f. & cert. ef. 1-9-14

837-085-0280

Noncompliance Classes

For the purpose of determining the penalties that may be assessed for noncompliance, the following Noncompliance Classes are established:

(1) Class I Noncompliance. Covered employers, owners, and operators who fail to notify the Office of State Fire Marshal they have reportable quantities of hazardous substances, or fail to submit their Hazardous Substance Information Survey or substantive changes when required, shall be considered in Class I Noncompliance.

(2) Class II Noncompliance. Covered employers, owners, and operators who fail to maintain records in accordance with OAR 837-085-0110; or when requested by the Office of State Fire Marshal, fail to provide an MSDS or other hazardous substance information not elsewhere classified, shall be considered in Class II Noncompliance.

(3) Class III Noncompliance. Covered employers, owners, and operators who report all their hazardous substances but fail to submit the information required by OAR 837-085-0090 or who report the information incorrectly shall be considered in Class III Noncompliance. Exceptions: Failing to submit or submitting incorrect information on the following will not be considered Class III Noncompliance or any other class of noncompliance:

(a) North American Industry Classification System;

(b) Dun and Bradstreet Number;

(c) Send to Attention of;

(d) Department or Division;

(e) Special Fire Department Information including, but not limited to:

(A) Written Emergency Plan and, if so, the location;

(B) Automatic Fire Suppression System;

(C) NFPA 704 Placarding;

(D) Other Types of Placarding.

(f) UN or NA Numbers

(4) Class IV Noncompliance. Covered employers, owners, and operators who, when submitting their Hazardous Substance Information Survey, substantive changes or survey corrections, fail to report all reportable hazardous substances or fail to report the correct maximum daily quantity shall be considered in Class IV Noncompliance.

(5) Class V Noncompliance. Covered employers, owners, and operators who intentionally misreport on their Hazardous Substance Information Survey, substantive changes, survey corrections or records of hazardous substances or fail to provide health professionals with any pertinent hazardous substance information, in accordance with OAR 837-085-0170, shall be considered in Class V Noncompliance.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05; OSFM 1-2010, f. 1-27-10, cert. ef. 2-1-10; OSFM 1-2014, f. & cert. ef. 1-9-14

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Department of Public Safety Standards and Training
Chapter 259

Rule Caption: Clarifies instructor certification requirements; Housekeeping.
Adm. Order No.: DPSST 1-2014
Filed with Sec. of State: 1-2-2014
Certified to be Effective: 1-2-14
Notice Publication Date: 12-1-2013
Rules Amended: 259-008-0005, 259-008-0010, 259-008-0020, 259-008-0025, 259-008-0060, 259-008-0069, 259-008-0070, 259-008-0075, 259-008-0080, 259-008-0090, 259-008-0100, 259-013-0000, 259-013-0220, 259-013-0230
Subject: Current ORS and OAR requires that anyone instructing a mandated Basic Course be certified by DPSST. There are three types of instructor certification; Certified Instructor, Allied Professions Instructor, and Subject Matter Expert Instructor. This proposed rule change ensures certified instructors are held to the same standard as other certifications, including criminal records checks, notification of conviction, moral fitness, education, experience, training requirements and renewal cycle timelines. This rule change adds the definitions of "Instructor", "Allied Professions Instructor", and "Subject Matter Expert Instructor" to OAR 259-008-0005. Further, it makes "Public Safety Professional" a stand-alone definition, which includes corrections officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, telecommunicators, liquor enforcement inspectors, and instructors. OAR 259-008-0080 is updated to add fingerprint requirements, criminal records checks, notice of conviction requirements, moral fitness standards, training requirements, experience requirements, and document submission requirements. Further, OAR's in Divisions 8 and 13 are updated to reflect definition changes. Finally, minor housekeeping changes are made for clarity.
Rules Coordinator: Linsay Hale—(503) 378-2431

259-008-0005

Definitions

(1) "Assistant Department Head" means an officer occupying the first position subordinate to a Department Head who is primarily responsible for supervision of middle managers and supervisors.

(2) "Allied Professions Instructor" means an instructor who is a graduate of an accredited law school, medical school, or other institution that confers degrees in formally recognized professions acceptable to the Department.

(3) "Board" means the Board on Public Safety Standards and Training.

(4) "Casual employment" means employment that is occasional, irregular, or incidental for which the employee does not receive seniority rights or fringe benefits.

(5) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(6) "Commissioned" means being authorized to perform various acts or duties of a police officer or reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(7) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including, but not limited to, vocational or technical education programs or lower division collegiate programs.

(8) "Corrections Officer" means an officer or member employed full-time by a law enforcement unit who:

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal

offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles;

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers as described in paragraph (a) of this subsections; or

(c) Is any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(9) "Department" and "DPSST" means the Department of Public Safety Standards and Training.

(10) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(11) "Director" means the Director of the Department of Public Safety Standards and Training.

(12) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under OAR 259-008-0045.

(13) "Emergency Medical Dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(14) "First-Level Supervisor" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between the operational level and the middle manager position who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(15) "Full-time employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.

(16) "High School" is a school accredited as a high school by the Oregon Department of Education, a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

(17) "Instructor" means an individual who has completed the requisite training and certification requirements prescribed by statute, rule, and policy and has been certified by the Department, including Allied Professions Instructors and Subject Matter Expert Instructors.

(18) "Law Enforcement Officers" means police, corrections, and parole and probation officers as described in the Public Safety Standards and Training Act.

(19) "Law Enforcement Unit" means:

(a) A police force or organization of the state, a city, university that has established a police department under ORS 352.383, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under 451.010, tribal governments as defined in section 1, chapter 644, Oregon Laws 2011, that employs authorized tribal police officers as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, the Security and Emergency Preparedness Office of the Judicial Department or common carrier railroad the primary duty of which, as prescribed by law, ordinance, or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;

(c) A district attorney's office;

(d) The Oregon Liquor Control Commission with regard to liquor enforcement inspectors; or

(e) A humane investigation agency as defined in section 1, chapter 67, Oregon Laws 2012.

(20) "Leave" means a leave granted to a public safety professional by their employing public or private safety agency.

(21) "Middle Manager" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between first-level supervisor and department head position and is primarily responsible for management and command duties. A middle manager position does not include a position with limited, or acting middle management duties.

(22) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for 80 hours or less per month for a period of more than 90 consecutive calendar days.

(23) "Parole and Probation Officer" means:

(a) An officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) Any officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(c) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(24) "Police Officer" means:

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under 352.383, the Governor or the Department of State Police; and

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;

(c) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011;

(d) A special agent commissioned under section 1, chapter 67, Oregon Laws 2012;

(e) An individual member of the judicial security personnel identified pursuant to ORS 1.177 who is trained pursuant to section 3, chapter 88, Oregon Laws 2012; or

(f) Any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.665.

(25) "Public or private safety agency" means:

(a) A law enforcement unit; or

(b) A unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, police, ambulance or emergency medical services.

(26) "Public Safety Personnel" and "Public Safety Officer" include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, telecommunicators and liquor enforcement inspectors.

(27) "Public Safety Professional" includes public safety personnel, public safety officers, and instructors.

(28) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.

(29) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181.690, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses

incurred while officers attend approved training courses certified by the Department.

(30) "Reserve Officer" means an officer or member of a law enforcement unit who is:

(a) A volunteer or employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, the Governor, or the Department of State Police;

(b) Armed with a firearm; and

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(31) "Seasonal Employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.

(32) "Staff" means those employees occupying full-time, part-time, or temporary positions with the Department.

(33) "Subject Matter Expert Instructor" means an instructor who possesses special knowledge and expertise within a specific subject area, such as firearms or defensive tactics, which is supported by valid training and credentials that are generally recognized nationally with public safety.

(34) "Suspension" means the administrative inactivation of a certificate issued by the Department until maintenance requirements or other administrative requirements for certification are met and certification is restored.

(35) "Telecommunicator" means:

(a) A person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in 403.105; or

(b) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(36) "Temporary employment" means employment that lasts no more than 90 consecutive calendar days and is not permanent.

(37) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.715).

(38) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0010, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 3-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-2000, f. & cert. ef. 9-29-00; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 6-2012, f. & cert. ef. 3-27-12; DPSST 24-2012, f. & cert. ef. 10-26-12; DPSST 31-2012, f. & cert. ef. 12-27-12; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state may employ any person under the age of 21 years as a police officer, corrections officer or parole and probation officer.

(3) Fingerprints. On or within 90 days prior to the date of employment, each police, corrections, or parole and probation officer must be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and must forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(c) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department must comply with the most current requirements.

(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department must be completed and returned to the Department by the applicant pending fingerprint clearance.

(4) Criminal Records. No police, corrections, or parole and probation officer may have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five (5) business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(a) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(b) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma;

(B) Successful completion of the General Educational Development (GED) Test; or

(C) A four-year, post-secondary degree issued by an accredited, degree-granting college or university recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above must consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Academic Proficiency Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant must provide evidence to DPSST that the applicant possesses the academic tools necessary to successfully complete basic police training.

(A) The hiring agency is responsible for ensuring a law enforcement proficiency test or validated written test designed to evaluate predictors of job-related skills and behaviors has been administered. The hiring agency must verify the completion of the test and report the date of completion to the Department on a Form F-5 (Application for Training) prior to the applicant being admitted to basic police training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by the Department under the provisions of OAR 259-008-0045 are exempt from this testing requirement.

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and must conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 1210.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable

position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) Except as provided in (e) below, the Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination; and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Notwithstanding subsection (c), any law enforcement officer who is separated from employment for a reason related to a physical inability to perform an essential task of a law enforcement officer must successfully complete a physical examination prior to obtaining re-employment in a certifiable position.

(f) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames must meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) must have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) must be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception must be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(g) Applicants for the position of police or corrections officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(h) Applicants for the position of parole and probation officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(i) If amplification device(s) is (are) necessary to meet the criteria in (g) or (h) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers must achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination will be at the expense of the applicant or the applicant's employing agency. The equipment utilized for all of these evaluations must be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(j) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(k) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease will necessitate further medical evaluation.

(A) Resting blood pressure must be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants must not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (k), (A) and (B) will require further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (k), it will be at the expense of the applicant or hiring authority.

(l) All law enforcement applicants must submit a current-version DPSST Medical Examination Report (DPSST Form F2), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(m) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(n) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(o) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of coworkers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(p) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

(9) Contested Case Hearing Process for Denial of Waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: All contested case notice will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(c) Response Time: A party who has been served with a "Contested Case Notice of Intent to Deny a Waiver" has 60 days from the date of mail-

ing or personal service of the notice in which to file a written request for a hearing with the Department.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver pursuant to OAR 137-003-00672.

(e) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(f) Proposed and Final Orders: In cases in which a hearing was requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

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

Stat. Auth.: ORS 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 183.341

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 3-2006, f. & cert. ef. 2-28-06; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 13-2007(Temp), f. & cert. ef. 11-1-07 thru 4-18-08; DPSST 1-2008(Temp), f. & cert. ef. 1-15-08 thru 4-18-08; DPSST 4-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 10-2009, f. & cert. ef. 9-21-09; DPSST 9-2011, f. & cert. ef. 6-28-11; DPSST 14-2011, f. 9-26-11, cert. ef. 10-1-11; DPSST 18-2012, f. & cert. ef. 8-27-12; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 18-2013, f. & cert. ef. 7-23-13; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0020

Personnel Action Reports

(1) All law enforcement units and public or private safety agencies must submit the name and other pertinent information concerning any newly appointed public safety officer to the Department on a Personnel Action Report (DPSST Form F-4) within 10 business days after employment.

(a) A Department (DPSST) number will be established for each newly appointed employee identified on a Personnel Action Report (DPSST Form F-4) if:

(A) The individual is employed in a certifiable position as a police officer, corrections officer, parole and probation officer, telecommunicator or emergency medical dispatcher;

(B) The individual is employed as a reserve police officer; or

(C) An individual's employer has submitted a written request identifying a demonstrated law enforcement need for an employee to obtain a DPSST number and the Department has approved the request. These positions may include, but are not limited to:

(i) A federal officer authorized by the Department to make arrests under ORS 133.245;

(ii) An individual who operates an Intoxilyzer or other law enforcement device for which a DPSST number is necessary; or

(iii) An individual who is required to file a police or other criminal justice report for which a DPSST number is necessary.

(b) No DPSST number will be assigned to an individual who has not been identified as a newly appointed public safety professional unless approved by the Department.

(2) Whenever public safety personnel resign, retire, or terminate employment, are promoted, demoted, discharged, deceased, are on a leave of 91 days or more, or transfer within a law enforcement unit, or private or public safety agency, the department head must report this information to the Department on a Personnel Action Report (DPSST Form F-4) within ten (10) business days of the action.

(3) All applicable sections of the Personnel Action Report (DPSST Form F-4) must be completed and signed by the department head or an authorized representative.

(4) All applicants shall furnish to the Department on a Personnel Action Report (DPSST Form F-4) their social security number. The social security number is used to accurately identify the applicant during computerized criminal history (CCH) and Department record checks and to verify information provided by public safety officers under the Act in connection with revocation proceedings.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; Renumbered from 259-010-0050, PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0026, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 2-2001, f. & cert. ef. 2-8-01; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 6-2009, f. & cert. ef. 7-13-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0025

Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in OAR 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers must satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion must be completed within twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual must be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(d) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181.610 and OAR 259-008-0005 during the last five (5) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(e) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610 and OAR 259-008-0005 for two and one-half (2-1/2) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(f) Previously employed telecommunicators may challenge the Basic Telecommunications Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant must provide proof of successful completion of prior equivalent training.

(C) The applicant must provide documentation of the course content with hour and subject breakdown.

(D) The applicant must obtain a minimum passing score on all written examinations for the course.

(E) The applicant must demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant will only be given one opportunity to challenge a course.

(g) Previously employed police officers, corrections officers and parole and probation officers who are required to attend the Basic Course may not challenge the Basic Course.

(h) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181.610 and OAR 259-008-0005 over two and one-half (2-1/2) years but less than five (5) years must complete a Career Officer Development Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(i) Corrections and police officers who have not completed the Basic Course must begin training within 90 days of their initial date of employment.

(A) A police officer must begin training at an academy operated by the Department.

(B) A corrections officer who is employed by Oregon Department of Corrections (DOC) during the period July 1, 2009 through January 1, 2014 must begin DOC Basic Corrections Course (DOC BCC) training provided by DOC as described in section (6) of this rule.

(C) A corrections officer who is not employed by DOC must begin training at an academy operated by the Department.

(D) A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181.665 and 181.652).

(j) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(k) The basic course for police officers must include:

(A) Training on the law, theory, policies and practices related to vehicle pursuit driving;

(B) Vehicle pursuit training exercises, subject to the availability of funding; and

(C) A minimum of 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model. A minimum of one hour of this training must be on the appropriate use of the medical health database maintained by the Department of State Police within the Law Enforcement Data System.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2-1/2) years and five (5) years, must satisfactorily complete a Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course must also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary [refer to OAR 259-008-0025(1)(b)].

(A) A law enforcement officer who fails to achieve a minimum passing test score after completing a Career Officer Development Course will be given one opportunity to remediate through self-study and re-test within 60 days of the initial date of failure.

(B) A law enforcement officer who fails to achieve a minimum passing test score after re-testing will have been determined to have failed academically and will be required to attend the next available Basic Course.

(C) A law enforcement officer who is scheduled to complete a distance learning COD Course must achieve a minimum passing test score within the timeframe set by the Department. Failure to successfully complete a distance COD Course within the timeframe set by the Department will require an officer to attend the next available COD Course.

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position must satisfactorily complete Supervision training that complies with the requirements outlined in DPSST Form F-21. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a supervisory position within a department, or is appointed from an outside department, without having completed the required Supervision training within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete Middle Management training that complies with the requirements outlined in DPSST Form F-22. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a middle management position within a department, or is appointed to the position from an outside department without having completed the required Middle Management training within the preceding five (5) years.

(5) Specialized Courses.

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. Department staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, must be trained on how to investigate and report cases of missing children and adults.

(A) The above mandated training is subject to the availability of funds.

(B) Federal training programs must be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) The DOC Basic Corrections Course. Course Requirements:

(a) Except as provided in OAR 259-008-0035, all corrections officers hired by the Oregon Department of Corrections (DOC) on or after July 1, 2009, but prior to January 1, 2014, must satisfactorily complete the DOC Basic Corrections Course (DOC BCC), including the field training portion. All corrections officers must complete the DOC BCC and field training portion must be completed within twelve months from the date of employment.

(b) Prior to attending a DOC BCC, a corrections officer hired by DOC on or after July 1, 2009, but prior to January 1, 2014, must:

(A) Meet the minimum standards for employment as a law enforcement officer contained in OAR 259-008-0010;

(B) Meet the background investigation requirements for a law enforcement officer contained in OAR 259-008-0015; and

(C) Meet the minimum standards for training contained in this section.

(c) The DOC BCC must conform to the content and standard approved by the Board. The DOC BCC must include, but is not limited to:

(A) Minimum training standards for the basic certification of corrections officer employed by DOC. The minimum training developed by DOC must be adopted by the Board and must meet or exceed the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than DOC.

(B) Minimum Course Hours. The minimum course hours are 240. DOC BCC Course hours refer to hours of training related to DPSST Instructional Goals and may include classroom, scenarios, skills sheets or other related training methodology

(i) The DOC BCC must include hours addressing all Instructional Goals within each of the following sections:

(I) Section A — 20 hours in Legal Considerations;

(II) Section B — 37 hours in Security Procedures;

(III) Section C — 43 hours in Inmate Supervision;

(IV) Section D — 16 hours in Inmate Health Care;

(V) Section E — 16 hours in Professional Skills;

(VI) Section F — 27 hours in Personal Fitness;

(VII) Section G — 41 hours in Defensive Tactics; and

(VIII) Section H — 26 hours in Skills — Firearms.

(ii) Administrative time is not included within the hours identified in subsection (i). Administrative time may be up to 6% of the overall course hours, or a maximum of 14 hours.

(iii) A minimum of 80% of the classes in the DOC BCC must include:

(I) Participatory learning activities which include, but are not limited to, scenario training, hands-on training and problem-based learning; and

(II) Sufficient hours to address the Instructional Goals in subsection (i).

(C) Attendance Standards. Attendance rosters must be kept and copies of these rosters must be submitted to the Department at the conclusion of a student's training, or when requested by the Department. To successfully complete the DOC BCC, a student may not miss more than 10% of the DOC BCC.

(D) Notwithstanding (C) above, successful completion of the DOC BCC requires 100% attendance during classes in which the following Instructional Goals are covered:

(i) B1.2 Instruction and practice applying safe and efficient tactics for inmate monitoring, inmate counts and facility perimeter checks;

(ii) B2.2 Instruction and practice conducting appropriate, safe and systematic searches of inmates and correctional facilities;

(iii) B5.2 Instruction and practice restraining individuals in an appropriate, safe and systematic manner;

(iv) B8 Reality based scenarios that enhance a new corrections professional's understanding and application of security procedures in a correctional facility;

(v) C3.2 Instruction and practice using interpersonal skills to effectively communicate with inmates and other persons in a correctional setting;

(vi) C10 Reality-based scenarios that enhance a new corrections professional's understanding and application of inmate supervision strategies within a correctional facility;

(vii) D3.2 Instruction and practice applying appropriate intervention strategies for dealing with inmates with major mental illnesses;

(viii) G1 Decision-making skills related to the use of reasonable force to effectively overcome and control resistive and/or hostile behavior;

(ix) G2 Instruction and practice using reasonable force tactics to effectively overcome and control resistive and/or hostile behavior;

(x) G3 Reality-based scenarios that enhance a new corrections professional's understanding and application of reasonable force decision-making and tactics within a correctional facility.;

(xi) H1 Basic gun-handling skills; and

(xii) H2 Basic understanding of the use, limitations and techniques of a service handgun, and proficiency in safety, proper gun-handling, marksmanship and firearms tactics.

(E) Conduct. An individual attending a DOC BCC is expected to uphold the minimum moral fitness standards for Oregon public safety officers during their training. DOC will document the date, type, and disposition of any student misconduct relating to the minimum standards for correctional officers. These include, but are not limited to, the following Zero Tolerance Offenses:

(i) Any unlawful act;

(ii) Dishonesty, lying or attempting to conceal violations;

(iii) Cheating;

(iv) Harassment; or

(v) Alcohol possession or use at the training venue.

(F) Course Curriculum.

(i) The DOC BCC will be based on the critical and essential job tasks identified in the most current Job Task Analysis for corrections officers provided to DOC by the Department.

(ii) The DOC BCC will incorporate the most current Instructional Goals provided to DOC by the Department.

(iii) The DOC BCC will incorporate curriculum updates provided to DOC by the Department, when those updates address the critical and essential job tasks or Instructional Goals referenced above.

(G) Testing Requirements: Academic Testing. Academic testing will consist of written test questions that are valid, create reasonable academic rigor, and require students to demonstrate knowledge and application of the essential tasks identified within the DOC BCC curriculum. DOC must administer examinations and maintain a file of examinations conducted.

(i) Academic Testing Passing Score. Except as provided below, to successfully complete the DOC BCC, students must achieve a minimum score of 75% on each academic test. If a student does not attain a 75% score, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. After remediation, a student will be allowed one opportunity to re-test and achieve a minimum score of 75%.

(ii) Students must attain a score of 100% on all academic test questions on Use of Force topics. If a student fails to attain a 100% score on Use of Force topics, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. Remediation must include the student completing the DPSST Use of Force Remediation form to demonstrate understanding of each topic missed.

(H) Skills Testing. Skills testing will consist of evaluations documented by use of Skills Sheets during which students must demonstrate competence and achieve a "pass" score in each skill tested.

(I) Test Security and Integrity.

(i) DOC must develop and strictly enforce measures to ensure the security of test questions and integrity of all testing processes.

(ii) DOC must randomize the order of test questions and must develop a sufficient bank of test questions to ensure that students who fail to achieve a passing score and are remediated are given a randomized test that includes some questions that are different than those in the test the student originally failed.

(J) Instructor Requirements: Instructor Qualifications. All instructors for the DOC BCC must meet the minimum standards for instructors listed in OAR 259-008-0080.

(K) The equivalency of the DOC BCC is subject to approval by the Board and verified by ongoing audits.

(L) DOC BCC documentation must include, but is not limited to:

(i) Training schedules, to include all training related to DOC BCC hours, such as classroom, skills sheets, online training and scenarios;

(ii) Classes with associated Instructional Goals and related hours;

(iii) Participatory learning activities within each class;

(iv) Testing Measures for each class; and

(v) Attendance rosters.

(M) DOC BCC Class Training Schedule documentation for each DOC BCC must include, but is not limited to:

(i) Notification of all anticipated DOC BCC training dates to include DOC BCC remediation training;

(ii) Times of DOC BCC training;

(iii) Locations of DOC BCC training; and

(iv) Instructors scheduled to provide training.

(N) Ongoing DOC BCC student documentation during each DOC BCC must include, but is not limited to:

(i) A list of students scheduled to attend training;

(ii) Student names, DPSST numbers, dates of employment and employing institutions;

(iii) Identification of any class or skill failure requiring remediation to including, but not limited to, the date and location of failure, date and location of remediation, the instructor who had oversight over remediation, and the result of remediation.

(O) Certification Requirements: Officer Certification. The applicant must meet the minimum standards for certification as a corrections officer contained in OAR 259-008-0060. DOC must submit the following documents at the time Basic certification is requested:

(i) F-7 (Application for Certification);

(ii) F-6 (Course Roster) for DOC BCC including the number of hours and the final cumulative score;

(iii) F-6 (Course Roster) for DOC Advanced Corrections Course with attached itemized list of classes attended;

(iv) Proof of current First Aid/CPR;

(v) F-11 (Criminal Justice Code of Ethics); and

(vi) FTO Manual Completion Report.

(P) Course Certification. Each DOC BCC class must be certified before officers who complete that BCC may be certified. The following Class Notebook requirements are needed prior to course certification:

(i) F-6 DPSST Class Roster, listing all students who began the course, passed or failed the course, and those who did not complete the course.

(ii) Curriculum for all components of the BCC, to include classroom, skills, online, and scenario training. The curriculum components must include lesson outlines, PowerPoint, handouts and other related documents to support each class.

(iii) Schedule of classes within the course, to include roster for each class, weekly schedule outlining the dates of training, the location of training, the phases of training, the number of hours for each class, the name of the class, the instructors who provided instruction.

(iv) Documentation of all training failures and remediation, to include class, date and location of training failure, the type of failure, the date, location and instructor who had oversight over the remediation of the failure and the result of the remediation.

(v) Testing measures, to include test questions and answers, individual student tests, student scores by student name, DPSST number and date of examination, and the overall class percentage.

(vi) Individual student records, to include evaluation forms, PQC qualification card, training records, and absence reports.

(vii) All skill sheets for every student completing some or all of the required skill sheets.

(7) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

(8) Notwithstanding this rule, the Department may prescribe additional training for Basic certification, up to and including completion of the full Basic course, in situations in which previous periods of employment have been limited.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 14-2008, f. & cert. ef. 10-15-08; DPSST 3-2009, f. & cert. ef. 4-8-09; DPSST 8-2009(Temp), f. & cert. ef. 9-15-09 thru 3-1-10; DPSST 15-2009, f. & cert. ef. 12-15-09; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10; DPSST 2-2011, f. 3-23-11, cert. ef. 5-1-11; DPSST 13-2012(Temp), f. & cert. ef. 5-8-12 thru 10-1-12; DPSST 17-2012, f. & cert. ef. 8-24-12; DPSST 6-2013, f. & cert. ef. 3-8-13; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0060
Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, and Executive Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and must be acquired by all police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers must be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers must subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers must subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T).

(7) Application for certification must be submitted on Form F7 (Application for Certification), with all applicable sections of the form completed. The form must be signed by the applicant. In order to ensure that the applicant meets the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative must sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision must be specified in writing and must accompany the Form F7.

(8) When a department head is the applicant, the above recommendation must be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant must have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule will equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule will equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training:

(a) Basic courses certified by the Department shall be approved by the Board.

(b) The Department may record training hours for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records must include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented, may be accepted, subject to staff evaluation and approval. These records must include the subject, date, and classroom hours, and must be certified true copies of the original.

(d) College credits earned may be counted for either training hours or education credits, whichever is to the advantage of the applicant.

(e) College credit awarded based on training completed may be applied toward either training hours or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level.

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(f) No credit can be applied toward both education credits and training hours when originating from the same training event.

(11) Experience/Employment:

(a) Experience gained as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on leave. A public safety officer may submit a written request for credit for military time served upon return from his or her military duty. The Department will evaluate each written request to determine whether an individual is eligible for any credit for time served;

(C) From the date a public safety officer's certification is suspended until it is reinstated by the Department; or

(D) When a public safety officer fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety officer.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator or emergency medical dispatcher as defined in OAR 259-008-0005, or part time parole and probation officer as defined under 259-008-0005 and 259-008-0066, will count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants must have completed a period of service of not less than nine (9) months with one or more law enforcement units or public or private safety agencies in a certifiable position in the field in which certification is being requested;

(b) Applicants must have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department; and

(c) Applicants must have valid first aid and cardiopulmonary resuscitation (CPR) cards.

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants must possess a Basic Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the combinations of education hours and training hours combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the

college degree designated combined with the prescribed years of experience as identified on the chart effective through October 31, 2012: [Table not included. See ED. NOTE.]

(14) Effective November 1, 2012:

(a) Applicants for an Intermediate Certificate in police, corrections or parole and probation must have acquired the combinations of education hours and training hours combined with the prescribed years of experience, or college degree designated combined with the prescribed years of experience as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(b) Applicants for an Intermediate Certificate in telecommunications must have acquired the following combinations of education hours, training hours, prescribed years of telecommunications experience, and competency as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(c) The years experience must be full-time employment within the discipline for which Intermediate certification is being applied.

(d) The training hours originating from a single training event that are used to meet the training hour requirement for Intermediate certification cannot be applied towards future levels of certification.

(e) The required years of experience are for the purpose of developing and demonstrating competency at the Intermediate level. The signature of the agency head or designee on an F-7 Application for Certification at the Intermediate level represents the agency's attestation that the applicant is performing at a level of competence expected at that certification level.

(15) Applicants for Intermediate certification may apply by satisfying the requirements described in subsection (13) or the requirements described in subsection (14) through October 31, 2014.

(16) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants must possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the combinations of education and training hours combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective through October 31, 2012: [Table not included. See ED. NOTE.]

(17) Effective November 1, 2012:

(a) Applicants for an Advanced Certificate in police, corrections or parole and probation must have acquired the following combinations of education and training hours combined with the prescribed years of experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(b) Applicants for an Advanced Certificate in telecommunications must have acquired the following combinations of education hours, training hours, prescribed years of telecommunications experience, and competency as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(c) The years of experience must be full-time employment within the discipline for which Advanced certification is being applied.

(d) The training hours originating from a single training event that are used to meet the training hour requirement for Advanced certification cannot be applied towards future levels of certification.

(e) The required years of experience are for the purpose of developing and demonstrating competency at the Advanced level. The signature of the agency head or designee on an F-7 Application for Certification at the Advanced level represents the agency's attestation that the applicant is performing at a level of competence expected at that certification level.

(18) Applicants for Advanced certification may apply by satisfying the requirements described in subsection (16) or the requirements described in subsection (17) through October 31, 2014.

(19) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants must possess or be eligible to possess the Advanced Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Supervision training within five (5) years prior to application for the Supervisory Certificate; and

(d) Applicants must be presently employed in, or have satisfactorily performed the duties associated with, the position of a first-level supervisor as defined in OAR 259-008-0005 and as attested to by the applicant's department head during the time such duties were performed for a period of one (1) year. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(20) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants must possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Middle Management training within five (5) years prior to application for the Management Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as a Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(21) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants must possess or be eligible to possess the Management Certificate in the field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed 100 hours of Department-approved executive level training within five (5) years prior to application for the Executive Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(22) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification. A law enforcement officer who is certified in one discipline may apply for multi-discipline certification if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification. Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the emergency medical dispatcher discipline since it only exists at the basic certification level.

(c) Retention of multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the

holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds emergency medical dispatcher certification, a minimum of four (4) hours of training specific to the emergency medical dispatcher discipline must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds telecommunicator certification, a minimum of twelve (12) hours of training specific to the telecommunicator discipline must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (20) hours of training specific to each law enforcement discipline in which certification is held must be reported annually as required under subsections (h) through (l) of this section.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on a Form F-6 (Course Attendance Roster), required maintenance training must be submitted to the Department by June 30th of each year. Training reported on a Form F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by a Form F-6 Course Attendance Roster.

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records. A Contested Case Notice of Intent to Suspend will be prepared and served on the law enforcement officer pursuant to ORS 181.662(c) and these rules. A copy of the Notice will be sent to the officer's employing agency.

(A) All Contested Case Notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) A law enforcement officer who has been served with a Contested Case Notice of Intent to Suspend has 30 days from the date of mailing or personal service of the notice to notify the Department of the training status identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one (1) year reporting period. or to file a written request for hearing with the Department.

(C) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(j) A law enforcement officer with a suspended certification is prohibited from being employed in any position for which the certification has been suspended.

(k) Recertification following a suspension may be obtained, subject to Department approval, by submitting the following:

(A) A written request from the employing agency head requesting recertification, along with a justification of why the maintenance training was not completed; and

(B) Verification that the missing training was completed.

(l) Failure to complete the required maintenance training may not result in a suspension of certification if the law enforcement officer is on leave from a public or private safety agency.

(23) Certificates and awards are the property of the Department. The Department has the power to revoke or suspend any certificate or award as provided in the Act.

[ED. NOTE: Forms & Tables referenced are available from the agency.]
Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665
Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08; DPSST 4-2009, f. & cert. ef. 4-8-09; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 4-2010, f. & cert. ef. 6-2-10; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 8-2010, f. & cert. ef 8-13-10; DPSST 8-2011, f. & cert. ef. 6-24-11; DPSST 17-2011, f. & cert. ef. 12-23-11; DPSST 23-2012, f. 10-25-12, cert. ef. 11-1-12; DPSST 31-2012, f. & cert. ef. 12-27-12; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0069
Tribal Law Enforcement

(1) In order for individuals employed as public safety officers by a tribal government to be eligible for certification as a public safety officer:

(a) The tribal government must comply with all requirements found in ORS 181.610 to 181.712 and OAR 259, Section 8, applicable to law enforcement units.

(b) Tribal law enforcement units must submit an Applicant Disclosure of Convictions in Tribal Jurisdiction (Form F-8) when:

(A) Reporting individuals hired into certified positions as prescribed in OAR 259-008-0020 (Personnel Action Report Form F-4); and

(B) Upon application for certification (Application for Certification Form F-7).

(c) Tribal law enforcement units must annually complete an Annual Affidavit for Tribal Law Enforcement Units (Form F-8a).

(d) A certified public safety officer employed by a tribal government must comply with all requirements found in ORS 181.610 to 181.712 and OAR 259, Section 8, applicable to public safety officers.

(2) Failure of a tribal government to comply with any requirements of section (1) of this rule will result in the lapse of certification of all certified public safety officers employed with the affected tribal government. Upon reemployment as a public safety officer or upon compliance with requirements by a tribal government, a person whose certification has lapsed may apply for recertification in the manner provided in 2011 OR SB 412 and this rule.

(3) Tribal governments choosing to comply with the provisions of OR Laws 2011 Chapter 644 regarding authorized tribal police officers must submit a resolution to the Department that includes the following:

(a) A declaration of compliance with all requirements of OR Laws 2011 Chapter 644;

(b) Proof of insurance. Acceptable proof of insurance consists of:

(A) A full copy of the public liability and property damage insurance for vehicles operated by the tribal government's authorized tribal police officers and a full copy of the police professional liability insurance policy from a company licensed to sell insurance in the state of Oregon; or

(B) A description of the tribal government's self-insurance program which is in compliance with OR Laws 2011 Chapter 644.

(c) Tribal governments must file a written description of all material changes to insurance policies or the tribal government's self-insurance program with the Department within 30 days of the change.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: 2011 OL Ch. 644
Stats. Implemented: 2011 OL Ch. 644
Hist.: DPSST 15-2011(Temp), f. & cert. ef. 10-27-11 thru 3-28-12; DPSST 16-2011(Temp), f. & cert. ef. 11-28-11 thru 3-28-12; DPSST 3-2012, f. & cert. ef. 2-29-12; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0070
Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public nor respect of the profession is compromised.

Definitions

(2) For purposes of this rule, the following definitions apply:

(a) "Denial" or "Deny" means the refusal to grant a certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-008-0070(4).

(c) "Revocation" or "Revoke" means to withdraw the certification of a public safety professional for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (9) of this rule. Grounds for Mandatory Denial or Revocation of Certification

(3) Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional:

(a) The Department must deny or revoke the certification of any public safety professional after written notice and hearing, based upon a finding that:

(A) The public safety professional has been discharged for cause from employment as a public safety professional. For purposes of this rule, "discharged for cause," means an employer-initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action, pending a final determination.

(i) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(iii) Gross Misconduct: means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in a similar circumstance;

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety professional that remedial measures have been unable to correct; or

(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.

(B) The public safety professional has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(C) The public safety professional has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

(D) The public safety professional has been convicted in this state of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:

162.075 (False swearing);
162.085 (Unsworn falsification);
162.145 (Escape in the third degree);
162.175 (Unauthorized departure);
162.195 (Failure to appear in the second degree);
162.235 (Obstructing governmental or judicial administration);
162.247 (Interfering with a peace officer);
162.257 (Interfering with a firefighter or emergency medical technician);
162.295 (Tampering with physical evidence);
162.305 (Tampering with public records);
162.315 (Resisting arrest);
162.335 (Compounding);
162.365 (Criminal impersonation);
162.369 (Possession of false law enforcement identification);
162.375 (Initiating a false report);
162.385 (Giving false information to a peace officer for a citation or arrest warrant);
162.415 (Official misconduct in the first degree);
163.200 (Criminal mistreatment in the second degree);
163.454 (Custodial sexual misconduct in the second degree);
163.687 (Encouraging child sexual abuse in the third degree);
163.732 (Stalking);
164.045 (Theft in the second degree);
164.085 (Theft by deception);
164.095 (Theft by receiving);
164.125 (Theft of services);
164.235 (Possession of a burglary tool or theft device);
164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment);
165.007 (Forgery in the second degree);
165.017 (Criminal possession of a forged instrument in the second degree);
165.037 (Criminal simulation);
165.042 (Fraudulently obtaining a signature);
165.047 (Unlawfully using slugs);
165.055 (Fraudulent use of a credit card);
165.065 (Negotiating a bad check);
165.080 (Falsifying business records);
165.095 (Misapplication of entrusted property);
165.100 (Issuing a false financial statement);
165.102 (Obtain execution of documents by deception);
165.825 (Sale of drugged horse);
166.065(1)(b) (Harassment);
166.155 (Intimidation in the second degree);
166.270 (Possession of weapons by certain felons);
166.350 (Unlawful possession of armor-piercing ammunition);
166.416 (Providing false information in connection with a transfer of a firearm);
166.418 (Improperly transferring a firearm);
166.470 (Limitations and conditions for sales of firearms);
167.007 (Prostitution);
167.075 (Exhibiting an obscene performance to a minor);
167.080 (Displaying obscene materials to minors);
167.132 (Possession of gambling records in the second degree);
167.147 (Possession of a gambling device);
167.222 (Frequenting a place where controlled substances are used);
167.262 (Adult using minor in commission of controlled substance offense);
167.320 (Animal abuse in the first degree);
167.330 (Animal neglect in the first degree);
167.332 (Prohibition against possession of domestic animal);
167.333 (Sexual assault of animal);
167.337 (Interfering with law enforcement animal);
167.355 (Involvement in animal fighting);
167.370 (Participation in dogfighting);
167.431 (Participation in cockfighting);
167.820 (Concealing the birth of an infant);
475.525 (Sale of drug paraphernalia);
475.840 (Manufacture or deliver a controlled substance);
475.860 (Unlawful delivery of marijuana);
475.864 (Unlawful possession of marijuana);
475.906 (Distribution of controlled substance to minors);
475.910 (Application of controlled substance to the body of another person);
475.912 (Unlawful delivery of imitation controlled substance);
475.914 (Unlawful acts, registrant delivering or dispensing controlled substance);
475.916 (Prohibited acts involving records and fraud);
475.918 (Falsifying drug test results);
475.920 (Providing drug test falsification equipment);
475.950 (Failure to report precursor substances transaction);
475.955 (Failure to report missing precursor substances);
475.960 (Illegally selling drug equipment);
475.965 (Providing false information on precursor substances report or record);
475.969 (Unlawful possession of phosphorus);
475.971 (Unlawful possession of anhydrous ammonia);
475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine; unlawful distribution);
475.975 (Unlawful possession of iodine in its elemental form);
475.976 (Unlawful possession of iodine matrix);
807.520 (False swearing to receive license);
807.620 (Giving false information to police officer);
Any offense involving any acts of domestic violence as defined in ORS 135.230.

(b) The Department must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless the Department, or the Board, has previously reviewed the conviction and approved the public safety professional for certification under a prior set of standards.

Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional:

(a) The Department may deny or revoke the certification of any public safety professional after written notice, and a hearing, if requested, based upon a finding that:

(A) The public safety professional falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional has engaged in conduct that fails to meet the applicable minimum standards as described in subsection (b), minimum training or the terms and conditions established under ORS 181.640;

(C) The public safety professional has engaged in conduct that resulted in the conviction of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; or

(D) A public safety officer failed to attend at least one session with a mental health professional within six months after the public safety officer was involved in using deadly physical force, as required by ORS 181.789.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of

care that a reasonable public safety professional would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime:

97.931 (Registration of Salesperson for Endowment Care Cemeteries, Pre-construction Sales and Prearrangement Sales) — Category V;
97.933 (Certification of Provider of Prearrangement or Preconstruction) — Category V;
97.937 (Deposit of Trust Funds made by Endowment Care Cemeteries) — Category V;
97.941 (Prearrangement or Preconstruction Trust Fund Deposits) — Category V;
97.990(4) (Maintaining a Nuisance) — Category V;
162.405 (Official Misconduct in the Second Degree) — Category III;
162.425 (Misuse of Confidential Information) — Category III;
162.455 (Interfering with Legislative Operations) — Category V;
162.465 (Unlawful Legislative Lobbying) — Category I;
163.160 (Assault in the Fourth Degree) — Category II;
163.187 (Strangulation) — Category II;
163.190 (Menacing) — Category II;
163.195 (Recklessly Endangering Another Person) — Category IV;
163.212 (Unlawful Use of Stun Gun, Tear Gas or Mace in the Second Degree) — Category IV;
163.415 (Sexual Abuse in the Third Degree) — Category II;
163.435 (Contributing to the Sexual Delinquency of a Minor) — Category II;
163.445 (Sexual Misconduct) — Category II;
163.465 (Public Indecency) — Category II;
163.467 (Private Indecency) — Category II;
163.545 (Child Neglect in the Second Degree) — Category IV;
163.693 (Failure to Report Child Pornography) — Category IV;
163.575 (Endangering the Welfare of a Minor) — Category III;
163.700 (Invasion of Personal Privacy) — Category II;
163.709 (Unlawful Directing of Light from a Laser Pointer) — Category IV;
164.043 (Theft in the Third Degree) — Category V;
164.132 (Unlawful Distribution of Cable Equipment) — Category V;
164.140 (Criminal Possession of Rented or Leased Personal Property) — Category V;
164.162 (Mail Theft or Receipt of Stolen Mail) — Category I;
164.243 (Criminal Trespass in the Second Degree by a Guest) — Category V;
164.245 (Criminal Trespass in the Second Degree) — Category V;
164.255 (Criminal Trespass in the First Degree) — Category V;
164.265 (Criminal Trespass While in Possession of a Firearm) — Category IV;
164.272 (Unlawful Entry into a Motor Vehicle) — Category V;
164.278 (Criminal Trespass at Sports Event) — Category V;
164.335 (Reckless Burning) — Category IV,
164.345 (Criminal Mischief in the Third Degree) — Category V;
164.354 (Criminal Mischief in the Second Degree) — Category V;
164.373 (Tampering with Cable Television Equipment) — Category V;
164.377 (Computer Crime) — Category V;
164.775 (Deposit of Trash Within 100 Yards of Water) — Category V;
164.785 (Placing Offensive Substances in waters/on highways or property) — Category IV;
164.805 (Offensive Littering) — Category V;
164.813 (Unlawful Cutting and Transporting of Special Forest Products) — Category V;
164.815 (Unlawful Transport of Hay) — Category V;
164.825 (Cutting and Transport of Coniferous Trees without Permit/Bill of Sale) — Category V;
164.845 (FTA on Summons for ORS 164.813 or 164.825) — Category V;
164.863 (Unlawful Transport of Meat Animal Carcasses) — Category V;
164.865 (Unlawful Sound Recording) — Category V;
164.875 (Unlawful Video Tape Recording) — Category V;
164.887 (Interference with Agricultural Operations) — Category II;
165.107 (Failing to Maintain a Metal Purchase Record) — Category V;
165.109 (Failing to Maintain a Cedar Purchase Record) — Category V;
165.540 (Obtaining Contents of Communications) — Category V;
165.555 (Unlawful Telephone Solicitation) — Category V;
165.570 (Improper Use of Emergency Reporting System) — Category IV;
165.572 (Interference with Making a Report) — Category II;
165.577 (Cellular Counterfeiting in the Third Degree) — Category I;
165.805 (Misrepresentation of Age by a Minor) — Category I;
166.025 (Disorderly Conduct in the Second Degree) — Category IV;
166.027 (Disorderly Conduct in the First Degree) — Category IV;
166.075 (Abuse of Venerated Objects) — Category II;
166.076 (Abuse of a Memorial to the Dead) — Category II;
166.090 (Telephonic Harassment) — Category II;
166.095 (Misconduct with Emergency Telephone Calls) — Category IV;
166.155 (Intimidation in the Second Degree) — Category II,
166.180 (Negligently Wounding Another) — Category IV;
166.190 (Pointing a Firearm at Another) — Category IV;
166.240 (Carrying a Concealed Weapon) — Category V;
166.250 (Unlawful Possession of a Firearm) — Category V;
166.320 (Setting of a Springgun or Setgun) — Category IV;
166.385 (Possession of Hoax Destructive Device) — Category IV;
166.425 (Unlawful Purchase of Firearm) — Category I;
166.427 (Register of Transfers of Used Firearms) — Category V;
166.480 (Sale or Gift of Explosives to Children) — Category IV;
166.635 (Discharging Weapon or Throwing Object at Trains) — Category IV;
166.638 (Discharging Weapon Across Airport Operational Surfaces) — Category IV;
166.645 (Hunting in Cemeteries) — Category V;
166.649 (Throwing Object off Overpass in the Second Degree) — Category IV;
167.122 (Unlawful Gambling in the Second Degree) — Category V;
167.312 (Research and Animal Interference) — Category II;
167.315 (Animal Abuse in the Second Degree) — Category IV;
167.325 (Animal Neglect in the Second Degree) — Category IV;
167.340 (Animal Abandonment) –— Category IV;
167.351 (Trading in Nonambulatory Livestock) — Category V;
167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) — Category IV;
167.385 (Unauthorized Use of Livestock Animal) — Category II;
167.388 (Interference with Livestock Production) — Category II;
167.390 (Commerce in Fur of Domestic Cats and Dogs) — Category V;
167.502 (Sale of Certain Items at Unused Property Market) — Category V;
167.506 (Record Keeping Requirements) — Category V;
167.808 (Unlawful Possession of Inhalants) — Category IV;
167.810 (Creating a Hazard) — Category IV;
167.822 (Improper Repair Vehicle Inflatable Restraint System) — Category IV;
411.320 (Disclosure and Use of Public Assistance Records) — Category II;
468.922 (Unlawful disposal, storage or treatment of hazardous waste in the second degree) — Category V;
468.929 (Unlawful transport of hazardous waste in the second degree) — Category V;
468.936 (Unlawful Air Pollution in the Second Degree) — Category V;
468.943 (Unlawful Water Pollution in the Second Degree) — Category V;
468.956 (Refusal to Produce Material Subpoenaed by the Commission) — Category V;
471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) — Category IV;
Chapter 496 – 498 (When treated as a misdemeanor crime) — Category based on the elements of the specific crime;
609.341 (Permit Requirement for Keeping of Exotic Animals; Breeding of Animals) — Category V;
609.405 (Requirement for Destroying Dog or Cat) — Category V;
609.505 (Unlawfully Obtaining Dog or Cat) — Category V;
609.520(c) (Animal Dealer Failing to Turn Over Dog or Cat) — Category V;
609.805 (Misrepresentation of Pedigree; Mutilation of Certificate or Proof of Pedigree) — Category I;
609.990(3)(a) (Violation of ORS 609.098 — Maintaining a Dangerous Dog) — Category IV;
717.200 to 717.320 (Any violation) — Category V;
803.225 (Failure to Designate Replica..Vehicle in Title or Registration Application) — Category I;
807.430 (Misuse of Identification Card) — Category I;
807.510 (Transfer of documents for the purpose of misrepresentation) — Category I;
807.530 (False Application for License) — Category I;
807.570 (Failure to Carry or Present License) — Category V;
807.580 (Using Invalid License) — Category I;
807.590 (Permitting Misuse of License) — Category I;
807.600 (Using Another's License) — Category I;
811.060 (Vehicular Assault of Bicyclist or Pedestrian) — Category V;
811.140 (Reckless Driving) — Category IV;
811.172 (Improperly Disposing of Human Waste) — Category V;
811.182 (Criminal Driving While Suspended or Revoked) — Category V;
811.231 (Reckless Endangerment of Highway Workers) — Category IV;
811.540 (Fleeing or Attempt to Elude a Police Officer) — Category IV;
811.700 (Failure to Perform Duties of Driver when Property is Damaged) — Category V;
811.740 (False Accident Report) — Category I; and
813.010 (Driving Under the Influence of Intoxicants) — Category IV.
830.035(2) (Fleeing; Attempts to Elude) — Category IV;
830.053 (False or Fraudulent Report of Theft of Boat) — Category I;
830.315(1) (Reckless Operation) — Category IV;
830.325 (Operation a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) — Category IV;
830.383 (Person Required to Remedy Especially Hazardous Condition) — Category V;
830.460(2) (Prohibited Activities — Operating a Vessel that Fails to Comply with Equipment Requirements) — Category V;
830.460(3) (Prohibited Activities — Operating a Vessel without Liability Protection) — Category V;
830.475(1) (Failure to Perform the Duties of an Operator at Accident) — Category V;
830.730 (False Information) — Category I;
830.909 (Abandoning Boat, Floating Home, or Boathouse) — Category V;
830.955(1) (Prohibition of Installation of Submersible Polystyrene Device) — Category V;
830.992 (Purchase of a Boat or Equipment from which Hull or Component Identification Number Removed) — Category V;
830.994 (Operates a Boat in Violation of a Court Order) — Category;

Initial Periods of Ineligibility

(d) Upon determination to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct identified in subsection (a), an initial minimum period of ineligibility to apply for certification will be determined based upon the category of misconduct (i.e., Dishonesty, Disregard for Rights of Others, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

(e) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility for dis-

cretionary disqualifying misconduct identified in subsection (a) from the time frame identified below for each category of discretionary disqualifying misconduct:

(A) Category I: Dishonesty (5 years to Lifetime).

(B) Category II: Disregard for Rights of Others (5 years to 15 years).

(C) Category III: Misuse of Authority (5 years to 10 years).

(D) Category IV: Gross Misconduct (5 years to 10 years).

(E) Category V: Misconduct (3 years to 7 years).

(F) Category VI: Insubordination (3 years to 7 years).

Eligibility to Reapply; Ineligibility Periods

(5) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for:

(a) Mandatory grounds identified in section (3) of this rule; or

(b) Discretionary Disqualifying Misconduct identified in section (4) of this rule that is determined to be a Category I lifetime disqualifier.

(6) Eligibility to reapply for certification:

(a) In determining the initial minimum period of ineligibility within any category for discretionary disqualifying misconduct listed in section (4) of this rule, the Board will take into consideration any mitigating or aggravating factors, subject to the provisions of section (9) of this rule.

(b) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(c) Any subsequent eligibility to apply for certification will be determined by the Board, after Policy Committee review, subject to the provisions of section (11) of this rule.

Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct:

(7) In determining whether to take action on a conviction, the Department must use the following guidelines:

(a) In making a decision on a discretionary denial or revocation, the Department will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety officers adopted in 2001.

(b) The Department will not take action on a conviction constituting discretionary disqualifying misconduct that occurred prior to January 1, 2001. However, the Department may consider such conviction as evidence that a public safety professional does not meet the established moral fitness guidelines.

(c) The Department may take action on any conviction constituting discretionary disqualifying misconduct that occurred after January 1, 2001.

(d) The Board may reconsider any mandatory conviction which subsequently becomes a conviction constituting discretionary disqualifying misconduct, upon the request of the public safety professional.

(e) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.

(f) The Department will not take action against a public safety professional or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.

(g) The Department may take action against a public safety professional or agency for failing to report, after January 1, 2003, any conviction that constitutes discretionary disqualifying misconduct.

Procedure for Denial or Revocation of a Certificate:

(8) Scope of Revocation. Whenever the Department revokes the certification of any public safety professional under the provisions of OAR 259-008-0070, the revocation will encompass all public safety certificates, except fire certification(s), the Department has issued to that person.

(9) Denial and Revocation Procedure.

(a) Agency Initiated Review: When the entity utilizing a public safety professional requests that a public safety professional's certification be denied or revoked, it must submit in writing to the Department the reason for the requested denial or revocation and all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the public safety professional's certification be denied or revoked.

(c) Department Staff Review: When the Department receives information, from any source, that a public safety professional may not meet the established standards for Oregon public safety professionals, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.

(C) If the Department determines that a public safety professional may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through a Policy Committee.

(D) The Department will seek input from the affected public safety professional, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(E) In misconduct cases where there has been an arbitrator's opinion related to the public safety professional's employment, the Department will proceed as follows:

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the department will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Policy Committees and Board will consider mitigating and aggravating circumstances, including, but not limited to, the following:

(A) When the misconduct occurred in relation to the public safety professional's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional was a minor at the time and tried as an adult;

(iv) Whether the public safety professional served time in prison or jail and the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional met all obligations;

(vi) Whether the public safety professional has ever been on parole or probation. If so, the date the parole or probation period expired or will expire; and

(vii) Whether the public safety professional has more than one conviction and over what period of time;

(C) Whether the public safety professional engaged in the same misconduct more than once and over what period of time;

(D) Whether the actions of the public safety professional reflect adversely on the profession or would cause a reasonable person to have substantial doubts about the public safety professional's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;

(E) Whether the misconduct involved domestic violence;

(F) Whether the public safety professional self-reported the misconduct;

(G) Whether the conduct adversely reflects on the fitness of the public safety professional to perform as a public safety professional;

(H) Whether the conduct renders the public safety professional otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional; and

(I) What the public safety professional's physical or emotional condition was at the time of the conduct.

(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the public safety professional.

(f) Contested Case Notice:

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules or Procedures adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the public safety professional prior to Board

review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

(g) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(B) A party who has been served with the "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file a written request for hearing with the Department.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672.

(i) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j) Proposed and Final Orders:

(A) In cases in which a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.

(B) Department-proposed amendments to a proposed order issued by an Administrative Law Judge in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order can be issued.

(k) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a public safety professional upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification, under the terms and conditions outlined in the stipulated order.

Appeals, Reapplication, and Eligibility Determinations

(10) Appeal Procedure. A public safety professional, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

(11) Reapplication Process.

(a) Any public safety professional whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final. The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.

(b) Any public safety professional whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until after the maximum initial period of ineligibility identified in (4) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and a Policy Committee has recommended that a public safety professional's eligibility to apply for public safety or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section 9(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The public safety professional is employed or utilized by a public safety agency or the Department; and

(D) All requirements for certification have been met.

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

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

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 6-2000, f. & cert. ef. 9-29-00; BPSST 14-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp) f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-02; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 7-2003, f. & cert. ef. 4-11-03; DPSST 7-2004, f. & cert. ef. 4-23-04; DPSST 10-2006, f. & cert. ef. 7-6-06; DPSST 16-2008, f. & cert. ef. 10-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 11-2011, f. & cert. ef. 7-1-11; DPSST 11-2012, f. & cert. ef. 4-24-12; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 22-2012, f. & cert. ef. 10-23-12; DPSST 26-2012(Temp), f. & cert. ef. 12-14-12 thru 6-12-13; DPSST 3-2013, f. & cert. ef. 1-22-13; DPSST 21-2013, f. & cert. ef. 9-23-13; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0075

Eligibility for Candidacy for Office of Sheriff

(1) A person is not eligible to be a candidate for election or appointment to the office of sheriff unless at the time in which an eligibility determination is being requested the person:

(a) Is 21 years of age or older;

(b) Has at least four years experience as a full-time law enforcement officer or at least two years experience as a full-time law enforcement officer with at least two years post-high school education; and

(c) Has not been convicted of a felony or any other crime that would prevent the person from being certified as a police officer under ORS 181.610 to 181.670.

(2) As used in section (1) of this rule, "two years post-high school education" means four semesters or six quarters of classroom education in a formal course of study undertaken after graduation from high school in any accredited college or university. The term does not include apprenticeship or on-the-job training.

(3) The procedure for determining whether an individual is eligible to be a candidate for election to the office of sheriff is:

(a) After filing a nominating petition or declaration of candidacy with the county clerk or county official in charge of elections, a potential candidate for sheriff must submit an Application for Determination of Eligibility to Be Sheriff (DPSST Form F-25) and Criminal History Affidavit (DPSST Form F-26) to the Department;

(b) The Department will make an eligibility determination file a copy of its determination on an individual's eligibility to be a candidate for election to the office of sheriff with the county clerk or county official in charge of elections not later than the 61st day before the date of an election;

(c) The Department will notify the applicant in writing of the determination and decision concerning the eligibility of the applicant by certified mail, mailed to the applicant and postmarked at not later than the 61st day before the date of an election.

(4) If the person is not certified as a police officer by the Department at the time of accepting appointment or filing as a candidate, a person elected or appointed to the office of sheriff must:

(a) Obtain certification not later than one year after taking office;

(b) File a copy of the certification with the County Clerk or the county official in charge of elections within one year after taking office.

(5) Prior to attending any Department-approved training course, a person elected or appointed to the office of Sheriff must comply with the minimum standards for employment and training specified in OAR 259-008-0010 and 259-008-0025. This includes, but is not limited to the following categories:

(a) Citizenship;

(b) Age;

(c) Fingerprints;

(d) Criminal Records;

(e) Notification of Conviction;

(f) Moral Fitness (Professional Fitness);

(g) Education;

(h) Physical Examination:

(A) Any written request for a waiver of any physical requirement must be submitted to the Department as described in OAR 259-008-0010(8)(o);

(B) Any request for a waiver of any physical requirement must be approved by a Policy Committee and Board; and

(C) Any expense associated with providing documentation or testimony shall be borne by the person requesting the waiver.

(i) Submitting an Application for Training (DPSST Form F-5) to the Department providing evidence that a law enforcement proficiency test or validated written test designed to evaluate predictors of job-related skills and behaviors has been completed as required in OAR 259-008-0010;

(j) Submitting a current Medical Examination Report (DPSST Form F-2) completed by a licensed physician; and

(k) Completion of a Basic Course and Field Training Manual, unless a written request for a waiver of this requirement is received and approved by the Department.

(6) Prior to obtaining certification as a police officer, a person elected or appointed to the office of Sheriff must comply with the minimum standards for certification specified in OAR 259-008-0060 which include, but are not limited to:

(a) Full-time employment;

(b) Submission of a Criminal Justice Code of Ethics (DPSST Form F 11);

(c) Submission of an Application for Certification (DPSST Form F-7) with all applicable sections of the form completed; and

(d) Valid First Aid and cardiopulmonary resuscitation (CPR) cards.

(7) Any newly elected or appointed public safety officer must submit a Personnel Action Report (DPSST Form F-4) to the Department within 10 business days after taking office or appointment, as provided in OAR 259-008-0020.

(8) For complete information relating to employment, training and certification requirements, refer to the full text of the statutes and rules referenced in subsections (1) through (6) above.

(9) The Department may deny approval, revoke or rescind any approval previously given if any falsification is made on the application or documents submitted in support of the application.

(10) The Department will provide a copy of this rule to all persons requesting an evaluation of their eligibility to be a candidate for sheriff, upon request.

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

Stat. Auth.: ORS 206.015

Stats. Implemented: ORS 206.015

Hist.: PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1982, f. & ef. 7-2-82; PS 2-1982, f. & ef. 9-7-82; PS 1-1983, f. & ef. 12-15-83; PS 2-1987, f. & ef. 10-26-87; Renumbered from 259-010-0057, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 9-2007, f. & cert. ef. 8-15-07; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10; DPSST 11-2013, f. & cert. ef. 6-24-13; DPSST 18-2013, f. & cert. ef. 7-23-13; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0080

Certification of Instructors

(1) The Standards and Certification Section of the Department will certify instructors deemed qualified to teach all mandated training courses.

(2) Minimum Standards for Instructor Certification:

(a) Fingerprints.

(A) Prior to the date of employment, instructors must be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and must forward a card to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(B) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department must comply with the most current requirements.

(b) Criminal Records. No instructor may have been convicted:

(A) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(B) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(C) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(c) Notification of Conviction:

(A) An instructor who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency or the Department must notify the agency head within 72 hours of the conviction.

(B) When an agency receives notification of a conviction from its employee or another source, they must notify the DPSST Standards and Certification Section within five business days. The notification must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(d) Moral Fitness (Professional Fitness). All instructors must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(A) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(B) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

(e) Training Requirements. All instructors must complete the requisite training and certification requirements prescribed by statute, rule, and policy. Requirements include:

(A) Except as identified in (e)(C), all instructors must complete a Department-approved Basic Instructor Development Course or equivalent Department-approved training. An approved Instructor Development course must include instruction on the theory and application of adult learning principles.

(B) Instructors applying for certification in the skills categories involving firearms, defensive tactics, or emergency vehicle operations must complete a Department-approved Instructor Development Course or equivalent Department-approved training applicable to their relevant skills category.

(C) Instructors applying for certification under the definition of an Allied Professions Instructor do not need to complete an Instructor Development Course if they document equivalent relevant experience or education qualifying them to instruct in the identified category.

(D) Instructors applying for certification under the definition of Subject Matter Expert Instructor must complete an Instructor Development Course or equivalent in the specific topical area in which they will be utilized. If eligible, certification will be granted at the topical level, not by category.

(f) Professional experience. Instructors must possess a minimum of three years' professional experience, as outlined below:

(A) Except as identified in (f)(C), the three years' experience must be in a certifiable public safety position. To qualify, the public safety experience must be in a discipline applicable to the categories of instruction in which the Instructor will be utilized.

(B) The DPSST Standards and Certification Section may, at its sole discretion, waive the requirement for the experience to be in a certifiable public safety position. Such a waiver must be based on documentation that certification would have no bearing on the relevance of the experience or the qualifications or credibility of the Instructor to provide instruction in the category in which the Instructor will be utilized

(C) Instructors applying for certification under the definition of an Allied Professions Instructor must document three years' experience relevant to the category or categories they will be utilized.

(D) Instructors applying for certification under the definition of a Subject Matter Expert Instructor must document three years' experience relevant to the specific topical area in which they will be utilized.

(g) It is the continuing responsibility of the employing agency to see that instructors are assigned only topics which they are qualified to teach and the instruction is evaluated on a regular basis to ensure that excellence is maintained.

(h) All applicants for initial certification must submit a DPSST Form F-9 (Instructor Certification Application) or F-9 DOC (BCC Instructor Certification) with all required documentation to the DPSST Standards and Certification Section.

(3) If certification is denied, the requesting agency will be notified in writing and advised of the reasons for denial.

(4) Instructor certification is not required for teaching assignments in non-Department certified courses.

(5) Review of instructor certification may be initiated upon the request of a department head, staff, or other reliable source.

(6) Instructor certification is valid for a maximum of two years.

[ED. NOTE: Form referenced is available from the agency.]

Stat. Auth.: ORS 181.640 & 181.650

Stats. Implemented: ORS 181.640 & 181.650

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0060, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98, BPSST 22-2002, f. & cert. ef. 11-18-02, DPSST 17-2013, f. & cert. ef. 7-23-13; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0090
Training Records

(1) Upon receipt by the Department of a Personnel Action Report (DPSST Form F-4), properly identifying a public safety professional, the Department will initiate a file for that individual and record completion of approved training, as well as other personnel information, if properly documented.

(2) Upon receipt of the appropriate form, the Department will enter training hours for training attended by a public safety officer.

(a) Beginning April 1, 2007, F-6 (Attendance Rosters) will only be accepted to report training that occurred in the current calendar year and the two previous years.

(b) Any training occurring three or more years prior to the current year, or any training received while a public safety officer was employed in a jurisdiction outside of Oregon, must be reported on an F-15 (Continuing Log of Training). Approved training will appear on a public safety officer's training record as a lump sum number of hours of "approved training" for each year reported.

(3) Beginning January 1, 2007, all training submitted to the Department must be submitted on the current version F-6 (Attendance Roster) or F-15 (Continuing Log of Training) available upon request, or from the Department's internet website.

(4) Any Form F-6 (Attendance Roster) or F-15 (Continuing Log of Training) received by the Department that is insufficient, or not in compliance with this rule, will be returned to the originating agency. The Department will identify any deficiencies needing completion or correction.

(5) Upon display of proper identification, a department head, or authorized representative, may review their employee's file as maintained by the Department. Proper identification will also be required of individuals interested in reviewing their own file.

(6) Review or release of non-public information under Oregon law to other than the individual whose file is the subject of the information request or to the employing law enforcement agency, or public or private safety agency will only be permitted by the Department upon advisement by the Attorney General, by court order, or with a signed consent from the individual whose file is the subject of the information request.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0070, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 1-2014, f. & cert. ef. 1-2-14

259-008-0100
Miscellaneous Activities of the Board or Department

(1) The Board or Department may make or encourage studies of any aspect of corrections, parole and probation, telecommunications, emergency medical dispatch, fire, or police administration, including the stimulation of research by public and private agencies which shall be designed to improve the Criminal Justice System.

(2) The Board or Department may cooperate and consult with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, community colleges, and other institutions concerning the development of criminal justice training schools and programs or courses of instruction.

(3) The Board or Department may cooperate and consult with official bodies or individuals charged by law with the responsibility for corrections, parole and probation, telecommunications, emergency medical dispatch, fire or police selection and training standards in other states.

(4) The Board or Department may periodically publish or recommend that other governmental agencies publish curricula, manuals, lesson plans, brochures, newsletters, and other materials to aid departments in achieving the objectives of the Act.

(5) The Department may direct, operate, or sponsor training schools and set reasonable rules and regulations for the operation and use by trainees.

(6) The Department may, on request, issue retirement cards to Department-certified public safety officers who have honorably served the citizens of Oregon and who have honorably retired from their agency.

(a) For the purposes of this rule, "honorably retired" means reaching the State of Oregon's recognized retirement age and retiring in good standing from a certified position as a public safety officer with a minimum of five years of full-time public safety experience in Oregon.

(b) A public safety officer who has sustained a permanent disability that prevents them from returning to their certifiable position may qualify for a retirement card if the public safety officer has served a minimum of five years as a full-time public safety officer in Oregon.

(c) The request for a retirement card must be made by the agency where the public safety officer was last employed prior to retirement. The request must be made using a Form F-30 Retirement Card Request Form.

(d) The Department will issue only one retirement card per qualifying public safety officer.

(e) If a retirement card is lost or damaged, the Department may issue a replacement card if requested by the applicable public safety officer. Additional verification of original eligibility may be required.

(7) In accordance with the Oregon Revised Statutes the Board, in consultation with the Department, designates the following classifications of public safety personnel killed in the line of duty who may be honored at the Law Enforcement Memorial Wall.

(a) Eligibility: For the purpose of placing names, law enforcement officer includes, as defined in ORS 181.610, police officer, reserve officer, corrections officer, and parole and probation officer. Also included are federal law enforcement officers assigned to or performing law enforcement duties in Oregon.

(b) Criteria for placement on the Law Enforcement Memorial Wall: Officers who suffered an "in-the-line-of-duty" death.

(A) "In the line of duty death" means a fatal injury which is the direct or proximate result of any enforcement action or emergency response resulting in death or death directly resulting from law enforcement training for enforcement action or emergency response that the law enforcement officer is authorized or obligated to perform by law, rule, regulation, or condition of employment or service while on or off duty.

(B) A fatal injury may include a medical condition which arises out of law enforcement actions or training for enforcement action or emergency response causing an officer's death immediately or within 24 hours or causing her/his death during a continuous period of hospitalization resulting from a law enforcement action.

(C) Not included under this definition are deaths attributed to natural causes (except when a medical condition arises out of law enforcement action or law enforcement training for enforcement action or emergency response causing an officer's death immediately or within 24 hours or causing his/her death during a continuous period of hospitalization immediately following the taking of law enforcement action). Deaths attributed to voluntary alcohol or controlled substance abuse, deaths caused by the intentional misconduct of the officer, deaths caused by the officer's intention to bring about his or her own death, and deaths attributed to an officer performing his or her duty in a grossly negligent manner at time of death are not included under this definition.

(D) When there is doubt arising from circumstances of the officer's death or with respect to individual status as a law enforcement officer, the matter shall be resolved by a majority vote of the Board on Public Safety Standards and Training Executive Committee.

(c) Exclusions from the Law Enforcement Memorial Wall:

(A) Officers whose deaths are attributed to natural causes are not eligible for inclusion in the wall; or

(B) A death that is attributed to the officer's voluntary alcohol or substance abuse use; or

(C) Death caused by intentional misconduct of the officer; or

(D) Death caused by the officer's intention to bring about his or her own death; and

(E) Death attributed to an officer performing his or her duty in a grossly negligent manner at the time of death.

(d) When there is doubt arising from the circumstances of the officer's death or with respect to the individual status as a law enforcement officer, the matter shall be resolved by a majority vote of the Executive Committee.

(e) The costs of maintenance and relocation of the Law Enforcement Memorial Wall and the costs of an annual memorial service honoring persons killed in the line of duty shall be paid out of the Police Memorial Trust Fund.

(8) It is the responsibility of the Governor's Commission on the Law Enforcement Medal of Honor to establish qualification criteria for nomination for the Law Enforcement Medal of Honor and the Law Enforcement Medal of Ultimate Sacrifice.

(a) Eligibility. For the purposes of nomination, law enforcement officer includes, but is not limited to, a police officer, reserve officer, corrections officer, or parole and probation officer. Also included are any state, county, municipal, federal or tribal individual who is:

(A) Commissioned; and

(B) Responsible for enforcing criminal laws in the state of Oregon.

(b) Officers nominated for the Law Enforcement Medal of Honor must have distinguished themselves by exceptionally honorable and meritorious conduct while in the performance of duty.

(A) "Exceptionally honorable and meritorious conduct" means an officer has distinguished themselves conspicuously by gallantry and fortitude at the risk of their life "above and beyond" the call of duty while performing or fulfilling their responsibilities as a law enforcement officer. It involves risk of life and is an act of bravery, self-sacrifice so conspicuous as to clearly distinguish the individual above their comrades.

(B) "While in the performance of duty" requires acting in an official capacity and performing a law enforcement function.

(C) The exceptionally honorable and meritorious conduct must have occurred on or after January 1, 2006.

(c) Officers nominated for the Law Enforcement Medal of Ultimate Sacrifice must have died while performing duties as a law enforcement officer or have been killed because of employment as a law enforcement officer. The death must have occurred on or after January 1, 2011.

(d) Process for Nominations.

(A) All nominations must be submitted on an official nomination form to the Department of Public Safety Standards and Training.

(B) All nominations must be postmarked no later than one year after the date an officer has performed exceptionally honorable and meritorious conduct or the death of an officer.

(C) All nominations must be approved by the Department head or designee of the nominee.

(D) Commission members are prohibited from voting on any nomination submitted from their employing agency.

(E) Notwithstanding subsection (D), Commission members must unanimously approve nominations for the Law Enforcement Medal of Honor.

(F) Any supporting documentation including, but not limited to, police reports, media reports, pictures, testimonials or affidavits, must accompany the nomination form. If necessary, the Commission may request additional information. The request will be in writing and addressed to the individual identified as the contributor on an official nomination form.

(e) Award of the Law Enforcement Medal of Honor and Law Enforcement Medal of Ultimate Sacrifice.

(A) All awards will be presented by the Governor or the Governor's designee at an appropriate time determined by the Commission and approved by the Governor.

(B) An individual or family member receiving the Law Enforcement Medal of Honor or Law Enforcement Medal of Ultimate Sacrifice will retain the option for a public or private ceremony.

(C) The Commission will determine the protocol for all award ceremonies.

Stat. Auth.: ORS 176.260 & 181.640
Stats. Implemented: ORS 176.260 & 181.640
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0080, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 16-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; Administrative correction 5-7-02; BPSST 17-2002, f. & cert. ef. 7-5-02; DPSST 12-2007, f. & cert. ef. 10-15-07; DPSST 10-2012, f.& cert. ef. 4-9-12; DPSST 13-2013, f. & cert. ef. 6-24-13; DPSST 1-2014, f. & cert. ef. 1-2-14

259-013-0000
Statement of Purpose and Statutory Authority

(1) Purpose. The purpose of these rules is to establish the reasonable screening procedures for:

(a) All public safety professionals;

(b) Any individual who occupies a position requiring a license or certification or is under investigation by the Department; or

(c) Reissuance of a license or certificate that is issued by the Department.

(2) Authority. These rules are authorized under ORS 181.534 and 181.612.

(3) When Rules Apply. These rules are to be applied when evaluating the criminal history of a subject individual identified in (1) of this rule. The fact that a subject individual is approved does not guarantee licensure or certification.

Stat. Auth.: ORS 181.534 & 181.612
Stats. Implemented: ORS 181.612
Hist.: DPSST 17-2008, f. & cert. ef. 10-15-08; DPSST 1-2014, f. & cert. ef. 1-2-14

259-013-0220
Individuals Subject to Criminal Records Checks

The Department may require the fingerprints of:

(1) A fire service professional;

(2) A public safety professional;

(3) A private security professional;

(4) A private investigator;

(5) A polygraph intern or general license applicant;

(6) A candidate for election to the office of Sheriff.

Stat. Auth.: ORS 181. 534, 181.612 & 206.015
Stats. Implemented: ORS 181.612
Hist.: DPSST 17-2008, f. & cert. ef. 10-15-08; DPSST 18-2012, f. & cert. ef. 8-27-12; DPSST 1-2014, f. & cert. ef. 1-2-14

259-013-0230
Criminal Records Check Required

(1) Who Conducts Check.

(a) The Department may request that the Department of State Police conduct a criminal records check on an individual. If a nationwide criminal records check of an individual is necessary, the Department may request that the Department of State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

(b) The Department may conduct criminal records checks on individuals through the Law Enforcement Data System maintained by the Department of State Police in accordance with the adopted rules, and established procedures, of the Department of State Police.

(2) When Check is Required (New Checks and Re-checks). An individual is required to have a check in the following circumstances:

(a) When a public safety officer applies for, or is employed by, a law enforcement agency, the public safety officer or applicant must submit to a criminal records check as required by OAR 259-008-0010.

(b) When a certified instructor applies for, or is employed by, a law enforcement agency, or the Department, the certified instructor must submit to a criminal records check as required by OAR 259-008-0080.

(c) When a person applies for a license to conduct polygraphs, the polygrapher, or applicant, must submit to a criminal records check as required by the provisions of OAR 259-0020-0010 or 259-0020-0015.

(d) When a person is elected or appointed to the Office of Sheriff, the applicant must submit to a criminal records check as required by the provisions of OAR 259-008-0075.

(e) When a person applies for a private security certificate or license, the applicant must submit to a criminal records check as required by the provisions of OAR 259-060-0025.

(f) When a person applies for a private investigator license, the applicant must submit to a criminal records check as required by the provisions of OAR 259-061-0070.

(g) When a check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract or written agreement with the Department.

Stat. Auth.: ORS 181.534 & 181.612
Stats. Implemented: ORS 181.612
Hist.: DPSST 17-2008, f. & cert. ef. 10-15-08; DPSST 18-2012, f. & cert. ef. 8-27-12; DPSST 1-2014, f. & cert. ef. 1-2-14

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Rule Caption: Eliminate eligibility dates (HB 2235); Housekeeping changes.
Adm. Order No.: DPSST 2-2014
Filed with Sec. of State: 1-2-2014
Certified to be Effective: 1-2-14
Notice Publication Date: 12-1-2013
Rules Amended: 259-008-0025
Subject: 2013 HB 2235 extended the sunset clause of the DOC Basic Corrections Course. As a result, the eligibility dates found in rule were outdated. Because these dates are found in statute, eligibility dates are removed from rule to eliminate to need to again update the dates in the future. Additionally, there are several housekeeping changes for clarity and consistency.
Rules Coordinator: Linsay Hale—(503) 378-2431

259-008-0025
Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in OAR 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers must satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion must be com-

pleted within twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual must be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(d) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181.610 and OAR 259-008-0005 during the last five (5) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(e) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610 and OAR 259-008-0005 for two and one-half (2-1/2) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(f) Previously employed telecommunicators may challenge the Basic Telecommunications Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant must provide proof of successful completion of prior equivalent training.

(C) The applicant must provide documentation of the course content with hour and subject breakdown.

(D) The applicant must obtain a minimum passing score on all written examinations for the course.

(E) The applicant must demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant will only be given one opportunity to challenge a course.

(g) Previously employed police officers, corrections officers and parole and probation officers who are required to attend the Basic Course may not challenge the Basic Course.

(h) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181.610 and OAR 259-008-0005 over two and one-half (2-1/2) years but less than five (5) years must complete a Career Officer Development Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(i) Corrections and police officers who have not completed the Basic Course must begin training within 90 days of their initial date of employment.

(A) A police officer must begin training at an academy operated by the Department.

(B) A corrections officer who is employed by Oregon Department of Corrections (DOC) must begin DOC Basic Corrections Course (DOC BCC) training provided by DOC as described in section (6) of this rule.

(C) A corrections officer who is not employed by DOC must begin training at an academy operated by the Department.

(D) A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181.665 and 181.652).

(j) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(k) The basic course for police officers must include:

(A) Training on the law, theory, policies and practices related to vehicle pursuit driving;

(B) Vehicle pursuit training exercises, subject to the availability of funding; and

(C) A minimum of 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model. A minimum of one hour of this training must be on the appropriate use of the medical health database maintained by the Department of State Police within the Law Enforcement Data System.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2-1/2) years and five (5) years, must satisfactorily complete a Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course must also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary (refer to OAR 259-008-0025(1)(b)).

(A) A law enforcement officer who fails to achieve a minimum passing test score after completing a Career Officer Development Course will be given one opportunity to remediate through self-study and re-test within 60 days of the initial date of failure.

(B) A law enforcement officer who fails to achieve a minimum passing test score after re-testing will have been determined to have failed academically and will be required to attend the next available Basic Course.

(C) A law enforcement officer who is scheduled to complete a distance learning COD Course must achieve a minimum passing test score within the timeframe set by the Department. Failure to successfully complete a distance COD Course within the timeframe set by the Department will require an officer to attend the next available COD Course.

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position must satisfactorily complete Supervision training that complies with the requirements outlined in DPSST Form F-21. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a supervisory position within a department, or is appointed from an outside department, without having completed the required Supervision training within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete Middle Management training that complies with the requirements outlined in DPSST Form F-22. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a middle management position within a department, or is appointed to the position from an outside department without having completed the required Middle Management training within the preceding five (5) years.

(5) Specialized Courses.

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. Department staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, must be trained on how to investigate and report cases of missing children and adults.

(A) The above mandated training is subject to the availability of funds.

(B) Federal training programs must be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) The DOC Basic Corrections Course.

Course Requirements:

(a) Except as provided in OAR 259-008-0035, all corrections officers hired by the Oregon Department of Corrections (DOC) must satisfactorily complete the DOC Basic Corrections Course (DOC BCC), including the field training portion. All corrections officers must complete the DOC BCC and field training portion within twelve months from the date of employment.

(b) Prior to attending a DOC BCC, a corrections officer hired by DOC must:

(A) Meet the minimum standards for employment as a law enforcement officer contained in OAR 259-008-0010;

(B) Meet the background investigation requirements for a law enforcement officer contained in OAR 259-008-0015; and

(C) Meet the minimum standards for training contained in this section.

(c) The DOC BCC must conform to the content and standard approved by the Board. The DOC BCC must include, but is not limited to:

(A) Minimum training standards for the basic certification of corrections officers employed by DOC. The minimum training developed by DOC must be adopted by the Board and must meet or exceed the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than DOC.

(B) Minimum Course Hours. The minimum course hours are 240. DOC BCC Course hours refer to hours of training related to DPSST Instructional Goals and may include classroom, scenarios, skills sheets or other related training methodology

(i) The DOC BCC must include hours addressing all Instructional Goals within each of the following sections:

(I) Section A — 20 hours in Legal Considerations;

(II) Section B — 37 hours in Security Procedures;

(III) Section C — 43 hours in Inmate Supervision;

(IV) Section D — 16 hours in Inmate Health Care;

(V) Section E — 16 hours in Professional Skills;

(VI) Section F — 27 hours in Personal Fitness;

(VII) Section G — 41 hours in Defensive Tactics; and

(VIII) Section H — 26 hours in Skills — Firearms.

(ii) Administrative time is not included within the hours identified in subsection (i). Administrative time may be up to 6% of the overall course hours, or a maximum of 14 hours.

(iii) A minimum of 80% of the classes in the DOC BCC must include:

(I) Participatory learning activities which include, but are not limited to, scenario training, hands-on training and problem-based learning; and

(II) Sufficient hours to address the Instructional Goals in subsection (i).

(C) Attendance Standards. Attendance rosters must be kept and copies of these rosters must be submitted to the Department at the conclusion of a student's training, or when requested by the Department. To successfully complete the DOC BCC, a student may not miss more than 10% of the DOC BCC.

(D) Notwithstanding (C) above, successful completion of the DOC BCC requires 100% attendance during classes in which the following Instructional Goals are covered:

(i) B1.2 Instruction and practice applying safe and efficient tactics for inmate monitoring, inmate counts and facility perimeter checks;

(ii) B2.2 Instruction and practice conducting appropriate, safe and systematic searches of inmates and correctional facilities;

(iii) B5.2 Instruction and practice restraining individuals in an appropriate, safe and systematic manner;

(iv) B8 Reality based scenarios that enhance a new corrections professional's understanding and application of security procedures in a correctional facility;

(v) C3.2 Instruction and practice using interpersonal skills to effectively communicate with inmates and other persons in a correctional setting;

(vi) C10 Reality-based scenarios that enhance a new corrections professional's understanding and application of inmate supervision strategies within a correctional facility;

(vii) D3.2 Instruction and practice applying appropriate intervention strategies for dealing with inmates with major mental illnesses;

(viii) G1 Decision-making skills related to the use of reasonable force to effectively overcome and control resistive and/or hostile behavior;

(ix) G2 Instruction and practice using reasonable force tactics to effectively overcome and control resistive and/or hostile behavior;

(x) G3 Reality-based scenarios that enhance a new corrections professional's understanding and application of reasonable force decision-making and tactics within a correctional facility;

(xi) H1 Basic gun-handling skills; and

(xii) H2 Basic understanding of the use, limitations and techniques of a service handgun, and proficiency in safety, proper gun-handling, marksmanship and firearms tactics.

(E) Conduct. An individual attending a DOC BCC is expected to uphold the minimum moral fitness standards for Oregon public safety officers during their training. DOC will document the date, type, and disposition of any student misconduct relating to the minimum standards for correctional officers. These include, but are not limited to, the following Zero Tolerance Offenses:

(i) Any unlawful act;

(ii) Dishonesty, lying or attempting to conceal violations;

(iii) Cheating;

(iv) Harassment; or

(v) Alcohol possession or use at the training venue.

(F) Course Curriculum.

(i) The DOC BCC will be based on the critical and essential job tasks identified in the most current Job Task Analysis for corrections officers provided to DOC by the Department.

(ii) The DOC BCC will incorporate the most current Instructional Goals provided to DOC by the Department.

(iii) The DOC BCC will incorporate curriculum updates provided to DOC by the Department, when those updates address the critical and essential job tasks or Instructional Goals referenced above.

Testing Requirements

(G) Academic Testing. Academic testing will consist of written test questions that are valid, create reasonable academic rigor, and require students to demonstrate knowledge and application of the essential tasks identified within the DOC BCC curriculum. DOC must administer examinations and maintain a file of examinations conducted.

(i) Academic Testing Passing Score. Except as provided below, to successfully complete the DOC BCC, students must achieve a minimum score of 75% on each academic test. If a student does not attain a 75% score, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. After remediation, a student will be allowed one opportunity to re-test and achieve a minimum score of 75%.

(ii) Students must attain a score of 100% on all academic test questions on Use of Force topics. If a student fails to attain a 100% score on Use of Force topics, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. Remediation must include the student completing the DPSST Use of Force Remediation form to demonstrate understanding of each topic missed.

(H) Skills Testing. Skills testing will consist of evaluations documented by use of Skills Sheets during which students must demonstrate competence and achieve a "pass" score in each skill tested.

(I) Test Security and Integrity.

(i) DOC must develop and strictly enforce measures to ensure the security of test questions and integrity of all testing processes.

(ii) DOC must randomize the order of test questions and must develop a sufficient bank of test questions to ensure that students who fail to achieve a passing score and are remediated are given a randomized test that includes some questions that are different than those in the test the student originally failed.

(J) Instructor Requirements: Instructor Qualifications.

(i) All instructors for the DOC BCC must meet or exceed the Instructor Certification standards for instructors at DPSST Basic courses and must be currently certified by the Department in the categories instructed.

(ii) DOC must verify that an instructor providing instruction within a category has the requisite subject matter knowledge, skills and abilities.

(K) The equivalency of the DOC BCC is subject to approval by the Board and verified by ongoing audits.

(L) DOC BCC documentation must include, but is not limited to:

(i) Training schedules, to include all training related to DOC BCC hours, such as classroom, skills sheets, online training and scenarios;

(ii) Classes with associated Instructional Goals and related hours;

(iii) Participatory learning activities within each class;

(iv) Testing Measures for each class; and

(v) Attendance rosters.

(M) DOC BCC Class Training Schedule documentation for each DOC BCC must include, but is not limited to:

(i) Notification of all anticipated DOC BCC training dates to include DOC BCC remediation training;

(ii) Times of DOC BCC training;

(iii) Locations of DOC BCC training; and

(iv) Instructors scheduled to provide training.

(N) Ongoing DOC BCC student documentation during each DOC BCC must include, but is not limited to:

(i) A list of students scheduled to attend training;

(ii) Student names, DPSST numbers, dates of employment and employing institutions;

(iii) Identification of any class or skill failure requiring remediation to including, but not limited to, the date and location of failure, date and location of remediation, the instructor who had oversight over remediation, and the result of remediation.

Certification Requirements

(O) Officer Certification. The applicant must meet the minimum standards for certification as a corrections officer contained in OAR 259-008-0060. DOC must submit the following documents at the time Basic certification is requested:

(i) F-7 (Application for Certification);

(ii) F-6 (Course Roster) for DOC BCC including the number of hours and the final cumulative score;

(iii) F-6 (Course Roster) for DOC Advanced Corrections Course with attached itemized list of classes attended;

(iv) Proof of current First Aid/CPR;

(v) F-11 (Criminal Justice Code of Ethics); and

(vi) FTO Manual Completion Report.

(P) Course Certification. Each DOC BCC class must be certified before officers who complete that BCC may be certified. The following Class Notebook requirements are needed prior to course certification:

(i) F-6 DPSST Class Roster, listing all students who began the course, passed or failed the course, and those who did not complete the course.

(ii) Curriculum for all components of the BCC, to include classroom, skills, online, and scenario training. The curriculum components must include lesson outlines, PowerPoint, handouts and other related documents to support each class.

(iii) Schedule of classes within the course, to include roster for each class, weekly schedule outlining the dates of training, the location of training, the phases of training, the number of hours for each class, the name of the class, the instructors who provided instruction.

(iv) Documentation of all training failures and remediation, to include class, date and location of training failure, the type of failure, the date, location and instructor who had oversight over the remediation of the failure and the result of the remediation.

(v) Testing measures, to include test questions and answers, individual student tests, student scores by student name, DPSST number and date of examination, and the overall class percentage.

(vi) Individual student records, to include evaluation forms, PQC qualification card, training records, and absence reports.

(vii) All skill sheets for every student completing some or all of the required skill sheets.

(7) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 14-2008, f. & cert. ef. 10-15-08; DPSST 3-2009, f. & cert. ef. 4-8-09; DPSST 8-2009(Temp), f. & cert. ef. 9-15-09 thru 3-1-10; DPSST 15-2009, f. & cert. ef. 12-15-09; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10; DPSST 2-2011, f. 3-23-11, cert. ef. 5-1-11; DPSST 13-2012(Temp), f. & cert. ef. 5-8-12 thru 10-1-12; DPSST 17-2012, f. & cert. ef. 8-24-12; DPSST 6-2013, f. & cert. ef. 3-8-13; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 2-2014, f. & cert. ef. 1-2-14

Rule Caption: Clarifies staff ability to summarily dispose of/administratively close cases involving discretionary disqualifying misconduct.

Adm. Order No.: DPSST 3-2014

Filed with Sec. of State: 1-2-2014

Certified to be Effective: 1-2-14

Notice Publication Date: 12-1-2013

Rules Amended: 259-060-0300

Subject: This rule allows DPSST staff to consult and reach a consensus to summarily dispose of or administratively close cases involving discretionary disqualifying misconduct of private security providers. Additionally, it corrects an ORS citation for the crime of Interfering with Public Transportation and minor housekeeping.

Rules Coordinator: Linsay Hale—(503) 378-2431

259-060-0300

Denial/Suspension/Revocation

(1) It is the responsibility of the Board, through the Private Security and Investigator Policy Committee, to set the standards, and of the Department to uphold them, to ensure the highest level of professionalism and discipline. The Board will uphold these standards at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

Mandatory Grounds for Denying, Suspending or Revoking Private Security Certification or Licensure

(2) The Department must deny or revoke a certification or license of any applicant or private security provider after written notice and hearing, if requested, upon a finding that the applicant or private security provider:

(a) Has been convicted of a person felony as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on April 27, 2012 or any crime with similar elements in any other jurisdiction;

(b) Is required to register as a sex offender under ORS 181.595, 181.596, 181.597 or 181.609; or

(c) Has, within a period of ten years prior to application or during certification or licensure, been convicted of the following:

(A) Any felony other than those described in subsection (a) above or any crime with similar elements in any other jurisdiction;

(B) A person class A misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on April 27, 2012 or any crime with similar elements in any other jurisdiction;

(C) Any crime involving any act of domestic violence as defined in ORS 135.230 or any crime with similar elements in any other jurisdiction;

(D) Any misdemeanor or felony conviction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic, or dangerous drug in this or any other jurisdiction;

(E) Any misdemeanor arising from conduct while on duty as a private security provider; or

(F) Any of the following misdemeanors:

161.405(2)(d) (Attempt to Commit a Class C Felony or Unclassified Felony)
161.435(2)(d) (Solicitation of a Class C Felony)
161.450(2)(d) (Conspiracy to Commit a Class A misdemeanor)
162.075 (False Swearing)
162.085 (Unsworn Falsification)
162.145 (Escape III)
162.235 (Obstructing Governmental or Judicial Administration)
162.247 (Interfering with a Peace Officer)
162.295 (Tampering with Physical Evidence)
162.335 (Compounding a Felony)
162.365 (Criminal Impersonation)
162.369 (Possession of a False Law Enforcement Identification Card)
162.375 (Initiating a False Report)
162.385 (Giving False Information to Police Officer for a Citation or Arrest on a Warrant)
162.415 (Official Misconduct I)
163.435 (Contributing to the Sexual Delinquency of a Minor)
164.043 (Theft III)
164.045 (Theft II)
164.125 (Theft of Services)
164.140 (Criminal Possession of Rented or Leased Personal Property)
164.235 (Possession of Burglar's Tools)
164.255 (Criminal Trespass I)
164.265 (Criminal Trespass while in Possession of a Firearm)
164.335 (Reckless Burning)
164.354 (Criminal Mischief II)
164.369 (Interfering with Police Animal)
164.377(4) (Computer Crime)
165.007 (Forgery II)
165.055(4)(a) (Fraudulent Use of a Credit Card)
165.065 (Negotiating a Bad Check)
165.570 (Improper Use of Emergency Reporting System)
166.116 (Interfering with Public Transportation)
166.240 (Carrying of Concealed Weapons)

166.250 (Unlawful Possession of Firearms)
166.350 (Unlawful Possession of Armor Piercing Ammunition)
166.425 (Unlawful Purchase of Firearm)
167.007 (Prostitution)
167.062 (Sadomasochistic Abuse or Sexual Conduct in a Live Show)
167.075 (Exhibiting an Obscene Performance to a Minor)
167.080 (Displaying Obscene Material to Minors)
167.262 (Adult Using Minor in Commission of Controlled Substance Offense)
167.320 (Animal Abuse I)
167.330 (Animal Neglect I)
471.410 (Providing Liquor to a Person Under 21 or Intoxicated Person)
807.620 (Giving False Information to a Police Officer/Traffic)
811.540(3)(b) (Fleeing or Attempting to Elude Police Officer)
Any crime with similar elements in any other jurisdiction.

(3) Emergency Suspension Order: The Department may issue an emergency suspension order pursuant to OAR 137-003-0560 immediately suspending a private security provider's certification or licensure upon finding that a person has been charged with any of the mandatory disqualifying crimes listed in section (2) of this rule. The report may be in any form and from any source.

(a) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the license or certificate.

(b) The sole purpose of the emergency suspension hearing will be to determine whether the individual was charged with a mandatory disqualifying crime. Upon showing that an individual was not charged with a mandatory disqualifying crime, the suspension of the individual's certification or licensure will be rescinded, otherwise the suspension will remain in effect until final disposition of the charges.

Discretionary Grounds for Denying, Suspending or Revoking Private Security Certification or Licensure

(4) The Department may deny or revoke the certification or licensure of any applicant or private security provider after written notice and hearing, if requested, upon finding that an applicant or private security provider:

(a) Fails to meet the minimum standards for certification or licensure as a private security provider as defined in OAR 259-060-0020;

(b) Has falsified any information submitted on the application for certification or licensure or any documents submitted to the Department pertaining to private security certification or licensure;

(c) Has violated any of the temporary assignment provisions of OAR 259-060-0120(1);

(d) Has failed to submit properly completed forms or documentation in a time frame as designated by the Department;

(e) Has failed to pay a civil penalty or fee imposed by the Department when due;

(f) Has failed to comply with any provisions found in the Act or these rules; or

(g) Lacks moral fitness. For the purposes of this standard, the Department, through the Policy Committee and Board, has defined lack of moral fitness as:

(A) Dishonesty. Lack of honesty includes, but is not limited to, untruthfulness, dishonesty by admission or omission, deception, misrepresentation or falsification;

(B) Lack of Good Character. Lack of good character includes, but is not limited to, failure to be faithful and loyal to the employer's charge and failure to use discretion and compassion;

(C) Mistreatment of Others. Mistreatment of others includes, but is not limited to, violating another person's rights and failure to respect others;

(D) Lack of Public Trust. Failure to maintain public trust and confidence includes, but is not limited to, acting in an unlawful manner or not adhering to recognized industry standards; or

(E) Lack of Respect for the Laws of this State or Nation. Lack of respect for the laws of this state and nation includes a pattern of behavior which leads to three or more arrests or convictions within a ten-year period prior to application or during certification or licensure.

Procedure for Denial or Revocation of Certification or Licensure

(5) Scope of Revocation. Whenever the Department revokes the certification or licensure of a private security provider under the provisions of this rule, the revocation will encompass all private security certificates and licenses the Department has issued to that person.

(6) Denial and Revocation Procedure.

(a) Employer Request: When the employer of the private security provider requests that certification or licensure be denied or revoked, the employer must submit in writing to the Department the reason for the requested action and include all factual information supporting the request.

(b) Department Initiated Request: Upon receipt of factual written information from any source other than an employer, and pursuant to ORS 181.878, the Department may request that the Board deny, revoke or suspend the private security provider's certification or licensure.

(c) Department Staff Review: When the Department receives information from any source that a private security provider may not meet the established standards for Oregon private security providers, the Department will review the request and the supporting factual information to determine if a sufficient factual basis exists to support the request for denial, suspension, or revocation of a private security license or certification under the Act or these administrative rules.

(A) If the Department determines that a private security provider may have engaged in discretionary disqualifying misconduct.

(B) The Department will seek input from the affected private security provider by allowing the individual to provide, in writing, information for review.

(C) The Department may take action upon discovery of discretionary disqualifying misconduct when consensus is reached that the nature of the discretionary disqualifying misconduct is appropriate for summary staff disposition or administrative closure.

(D) If the Department determines that a private security provider may have engaged in discretionary disqualifying misconduct, but is unable to reach a consensus to summarily dispose of or administratively close the case, the case will be presented to the Board, through the Policy Committee.

(d) In making a decision to authorize initiation of proceedings under subsection (e) of this rule based on discretionary disqualifying misconduct, Department staff, the Policy Committee and Board will consider mitigating and aggravating circumstances.

(e) Initiation of Proceedings: Upon determination that a sufficient factual basis exists to support the request for denial, suspension, or revocation of a private security license or certification under the Act or these administrative rules, the Department will prepare and serve a contested case notice on the private security provider.

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the private security provider prior to Board review. If the Board disapproves the Policy Committee's recommendation, the Department will withdraw the contested case notice.

(C) Applicants who choose to withdraw their application forfeit their application fees.

(f) Response Time:

(A) A party who has been served with an Emergency Suspension Order has 90 days from the date of mailing or personal service of the Order in which to file a written request for hearing with the Department.

(B) A party who has been served with a Contested Case Notice of Intent to Deny Certification or Licensure has 60 days from the date of mailing or personal service of the notice in which to file a written request for hearing or a written request withdrawing their application from consideration with the Department.

(C) A party who has been served with a Contested Case Notice of Intent to Revoke Certification or Licensure has 20 days from the date of the mailing or personal service of the notice in which to file a written request for hearing with the Department.

(g) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672.

(h) Final Order:

(A) A final order will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015 if a private security provider fails to file exceptions and arguments within 20 days of issuance of the proposed order.

(B) Department-proposed amendments to the proposed order in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order is issued.

(i) Stipulated Order Revoking Certification or Licensure: The Department may enter a stipulated order revoking certification or licensure of a private security provider upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification or license, or to surrender a certification or license, under the terms and conditions provided in the stipulated order.

Appeals, Ineligibility Period, and Reconsideration

(7) Appeal Procedure. Private security applicants and providers aggrieved by the findings and Order of the Department may file an appeal

with the Court of Appeals from the Final Order of the Department, as provided in ORS 183.480.

(8) Notwithstanding section (9) of this rule, any private security applicant or provider whose certification or licensure is denied or revoked will be ineligible to hold any private security certification or licensure for a period of ten years from the date of the final order issued by the Department.

(9) Reconsideration Process. Any individual whose certification or license has been denied or revoked for discretionary grounds may apply for reconsideration of the denial or revocation after a minimum four-year ineligibility period from the date of the final order.

(a) All applicants for reconsideration are required to submit a new application packet along with a Form PS-30 Application for Reconsideration. The applicant may provide any mitigating information for the consideration of DPSST, Policy Committee, and Board.

(b) In reconsidering the application of an applicant whose certification or licensure was previously denied or revoked for discretionary grounds, DPSST, the Policy Committee and the Board may consider mitigating and aggravating circumstances.

(c) The Board's decision to deny an application for reconsideration will be subject to the contested case procedure described under subsection (6) of this rule.

(d) If an application for reconsideration is denied, the original ineligibility date remains in effect as described in subsection (8) of this rule.

Stat. Auth.: ORS 181.878, 181.882 & 181.885
Stats. Implemented: ORS 181.878 & 181.885
Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 10-2003(Temp), f. & cert. ef. 6-16-03 thru 12-1-03; DPSST 12-2003, f. & cert. ef. 7-24-03; DPSST 6-2004, f. & cert. ef. 4-23-04; DPSST 5-2005(Temp), f. & cert. ef. 8-3-05 thru 1-1-06; DPSST 10-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 12-2013, f. & cert. ef. 6-24-13; DPSST 3-2014, f. & cert. ef. 1-2-14

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Department of Revenue
Chapter 150

Rule Caption: Verifying returns, alternative filing methods, separate refunds, credit auctions, eFile mandate, Oregon NOL
Adm. Order No.: REV 6-2013
Filed with Sec. of State: 12-26-2013
Certified to be Effective: 12-26-13
Notice Publication Date: 6-1-2012
Rules Amended: 150-305.810, 150-314.385(4), 150-314.415(7), 150-315.514
Rules Renumbered: 150-314.HB2071(B) to 150-314.364(B)
Rules Ren. & Amend: 150-316.014 to 150-316.028
Subject: 150-305.810 explains the different methods the department will accept for a taxpayer to verify their return is true and accurate. The update specifies that submitting a direct efile income tax return is the act of verifying as well as clarifying for other tax programs. This change informs taxpayers how efiled returns may be verified.

150-314.385(4) specifies that the department may allow alternative methods for filing a tax return. This gives the department the ability to specify and allow alternative methods as new processes or methods are developed, including direct filing with DOR.

150-314.415(7) clarifies when a separate refund will be issued when a joint return has been filed. The update is to correct a code cite and include examples.

150-315.514 allows the Office of Film and Television to sell their tax credits through an auction. The rule spells out the parameters of the auction.

150-314.HB2071(B) implemented mandatory efile in 2012. This change is to renumber to match codification of House Bill.

150-316.014 discusses an Oregon Net Operating Loss. This change is to renumber to match statute number.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-305.810
Verification of Returns, Statements, or Documents Filed Under Tax Law

(1) The declaration under ORS 314.385(2) that a return, statement, or document is made under penalties for false swearing and is true, complete, and correct must be verified by the taxpayer or by an authorized agent, and in the case of a joint personal income tax return, by each taxpayer or authorized agent for such taxpayer.

(2) Personal income tax returns for individuals are verified by:

(a) Signing the return.

(b) A signed statement, such as Oregon Form EF, submitted to the department if requested.

(c) Any verification method allowed by the IRS when electronically filing the federal return with the Oregon return, such as a federal personal identification number.

(d) Submission of an electronically filed return submitted without the use of a federal signature method (unlinked) by the taxpayer, tax preparer, or an authorized representative of the taxpayer.

(3) Corporate income and excise tax returns are verified by:

(a) Signing the return.

(b) For tax year 2011 and earlier forms:

(A) Any verification method allowed by the IRS when electronically filing the federal return with the Oregon return, such as a federal personal identification number.

(B) A signed and scanned Corporation E-file Signature Form included with the electronic return when electronically filing without the use of a federal signature method or when the Oregon filer is different than the federal filer.

(c) For tax year 2012 and later forms, submission of an electronically filed return by the taxpayer, tax preparer, or an authorized representative of the taxpayer.

(4) For Oregon Quarterly Payroll Tax reports, the declaration under ORS 314.385(2), must be verified by the taxpayer or an authorized agent by:

(a) Signing the return or similar statement.

(b) Transmitting a payroll tax return using the state's online payroll reporting method. The return is considered signed when the return is transmitted to the state by an authorized person. An "authorized person" is any person certified by the employer and the Oregon Employment Department as allowed to file the return using the state's reporting system.

(5) All other returns are verified by:

(a) Signing the return.

(b) Any verification method allowed by the IRS when electronically filing the federal return with the Oregon return, if applicable; otherwise only a signed return is accepted.

Stat. Auth.: ORS 305.100 & 305.810
Stats. Implemented: ORS 305.810
Hist.: REV 1-2005, f. 6-27-05, cert. ef. 6-30-05; REV 1-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-29-12; REV 6-2013, f. & cert. ef. 12-26-13

150-314.364(B)
Requirement to File Returns Electronically

(1) All paid tax preparers filing Oregon personal income tax returns in this state are required to file them by electronic means if the paid tax preparer is required to do so by federal law. See 26 USC § 6011 and Treasury Regulation §301.6011-7 for the federal mandate and relevant definitions.

(2) Waivers.

(a) A waiver granted by the Internal Revenue Service (IRS) pursuant to Treasury Regulation §301.6011-7(c)(1) or (2) will be accepted by the department as a waiver to the mandate under section (1). The paid preparer must notify the department in writing when such a waiver is granted in accordance with the department's instructions.

(b) In addition to a waiver allowed under subsection (a), the department may grant a waiver of the mandate in section (1) if the following conditions are met:

(A) The paid preparer requests a waiver in advance of the preparation of personal income tax returns subject to the mandate in accordance with the department's instructions; and

(B) The paid preparer's facts and circumstances are such that complying with the mandate would cause the paid preparer an undue financial hardship. The paid preparer's refusal to purchase or use the requisite software or computer equipment does not, in and of itself, satisfy the conditions for a waiver under this subsection.

(c) When circumstances warrant, the department may issue an administrative waiver of the mandate in section (1) to a paid preparer or group of

paid preparers when the department determines it is necessary to promote the effective and efficient administration of the tax system.

(3) This rule is effective January 1, 2012 and applies to tax returns filed on or after that date.

NOTE: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and 183.355(1)(b).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.364

Hist.: REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; Renumbered from 150-314.HB2071(B) by REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13

150-314.385(4)

Alternative Filing Methods

(1) As used in this rule:

(a) "Alternatively filed return" means an Oregon return submitted using a department-approved alternative filing method under section (2) of this rule.

(b) "IRS date of receipt" means the electronic time stamp indicating the date and time of receipt of the Oregon return by the Internal Revenue Service (IRS).

(2) The department may provide for filing of returns using electronic or other methods as an alternative to paper returns.

(3) Alternatively filed returns are deemed filed and received on:

(a) The date the return is received by the department as indicated by the department's date stamp; or

(b) In the case of an electronically filed return, the earlier of:

(A) The IRS date of receipt, or

(B) The date of successful transmission.

(4) Alternatively filed returns must be verified pursuant to the rules of the department adopted under ORS 305.810.(5) If an alternatively filed return cannot be processed, a paper return must be filed with the department. If the paper return is filed within 30 days of the date of the successful transmission of the alternatively filed return, the date of the successful transmission of the alternatively filed return is considered the filing date of the paper return.

[Publications: Publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100, 314.385

Stats. Implemented: ORS 314.385

Hist.: REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13

150-314.415(7)

Separate Refunds When a Joint Return Has Been Filed

(1) The department may, as a convenience to taxpayers, issue separate refunds when either spouse submits a signed request. To issue separate refunds when a joint refund check has already been issued, the check must be returned uncashed. If either spouse has an amount owing to the state of Oregon, any refund due that person will be applied to the liability and the balance, if any, issued in a separate refund check.

(2) For purposes of this rule, the separate adjusted gross income (AGI) of each spouse is equal to each spouse's share of Oregon adjusted gross income.

Example 1: Ann and her husband Ian, both Idaho residents, filed a joint Oregon return claiming a $600. He owes a $500 debt to an Oregon city for unpaid parking tickets so the department withheld part of the joint $600 refund to pay the $500 debt and issued a $100 refund for the difference. Before they cashed the $100 refund, Ann sent it back requesting her share of the amount paid to the city in Oregon because she did not owe the debt. Ian reported $25,000 of wages of which he earned $10,000 in Oregon. Ann reported $15,000 of wages of which $5,000 she earned in Oregon. They had no other income to report. The department will apportion her refund based on her share of Oregon AGI as follows:

	Federal column	Oregon Column
Ian's wages	$25,000	$10,000
Ann's wages	$15,000	$5,000
Federal AGI	$40,000	$15,000 (Oregon AGI)

$5,000 ÷ $15,000 = 1/3

$600 x 1/3 = $200

The department will apportion the $600 refund and issue a $200 refund to Ann. Ian's portion of the refund was $400 thus he still owes the City of Portland $100.

(3) For purposes of this rule, items of income and deduction, separate adjusted gross income, and any refund claimed are determined without regard to community property law.

Example 2: Ethan and his wife Ava, both Washington residents, filed a joint Oregon return claiming a $1,500 refund. She owes a $1,200 debt to an Oregon university so the department withheld part of the joint refund and sent a $300 check for the difference. Before they cashed the $300 refund, Ethan sent it back requesting his share of the joint refund because he did not owe the debt and he claimed he owned half of the refund because he lives in a community property state. Ethan reported $50,000 of wages all of which he earned in Washington. Ava reported $25,000 of wages all of which she earned in Oregon. They had no other income to report. The department will apportion his refund based on his share of Oregon AGI without regard to community property law as follows:

	Federal column	Oregon Column
Ethan's wages	$50,000	$0
Ava's wages	$25,000	$25,000
Federal AGI	$75,000	$25,000 (Oregon AGI)

Because Ethan does not have any share of the Oregon AGI and community property law is disregarded for this purpose, the entire refund belongs to Ava and the department will not apportion any of it to Ethan.

(4) If the refund is being held for application against an amount owed to an agency of the state of Oregon, the request for separate refunds must be mailed to the Department of Revenue within 30 days of the date of the Notice of Proposed Adjustment and/or Distribution. Separate refunds will not be made if the request is not received timely.

(5) Pursuant to ORS 18.665(2), the department cannot issue separate refunds when a garnishment or levy has been served on the department for one or both spouses.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 1-69; 11-71; 12-19-75; 1-1-77, Renumbered from 150-316.192(2)-(A); 12-31-85; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-314.415(6), REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13

150-315.514

Oregon Production Investment Fund Tax Credit Auctions

(1) Definitions.

(a) "Tax Credit" means the credit authorized by ORS 315.514.

(b) "Qualified Bid" means a bid that is eligible for consideration in the tax credit auction because:

(A) It is submitted in a manner and time prescribed by the department's instructions and this rule;

(B) It is submitted for no less than 95 percent of the tax credit value;

(C) An associated payment is received by the department in the time and manner prescribed in section (4).

(c) "Non-qualified Bid" means a bid that is not eligible to participate in the auction because it does not meet the requirements of subsection (b).

(d) "Invalid or Insufficient Payments" are payments that are:

(A) Not received by the department by 5:00 p.m. (PT) on the date for payment set by the department;

(B) In a form other than one listed in section (4) of this rule;

(C) Fraudulent or otherwise not able to be immediately banked by the department;

(D) Less than the full amount of the corresponding bid received by the department; or

(E) Not submitted in a manner consistent with department's instructions (including attaching the required completed forms).

(e) "PT" means Pacific Time (Daylight or Standard as dictated by the time of year).

(2) Auction Bidding Period. The tax credits auction bidding period is no less than seven days, not to exceed 14 days; with specific dates as announced by the department.

(3) Tax Credit Certificates. The Oregon Film and Video Office will issue tax credit certificates for the prevailing qualified bids. A taxpayer to whom a certificate is issued may claim a credit in the amount shown on the certificate against Oregon personal income or corporate income or excise tax otherwise due for that tax year. The tax credit may not exceed the liability of the taxpayer in any one year. Any credit amount unused by the taxpayer may be carried forward to offset tax liabilities in the next three succeeding tax years. No transfer of the certificate (or the credit that it represents) is allowed.

(4) Determination of Qualifying Bids and Payments.

(a) Bids must be submitted on-line in a manner consistent with the department's instructions and within the bidding period as outlined in section (2). Bids received before or after the bidding period will be considered a non-qualified bid. The department will determine the order of bids received by the electronic date and time stamp.

(b) A bidder may submit multiple separate bids.

(c) After a bid is submitted, a bidder must send, and the department must receive, a payment for the total amount bid. Invalid or insufficient payments will be returned to the bidder and the associated bid considered non-qualified. All bid payments must be received by the department no later than 5:00 p.m. (PT) on the payment date. The department will date stamp payments when they are received. The department will not consider postmarks when determining if the payment has been timely received. It is the bidder's responsibility to ensure that the department receives the payment by the deadline. The method of payment is limited to the following:

(A) Bank-issued certified check;

(B) Bank-issued cashier's check; or

(C) Money Order.

(d) All payments will be held until the outcome of the auction is determined. As soon as practicable, the department will return payments received to bidders that do not prevail at the auction. No interest will be paid on payments.

(e) A bid, once submitted, is not revocable and may not be changed. A payment will only be returned if a bid does not result in the issuance of a tax credit certificate.

(5) Determination of the Prevailing Bid(s). After the payment deadline has passed, the department will determine the prevailing bids by placing the qualifying bids in order from highest bid amount to lowest bid amount. The department will allot tax credit certificates to the highest qualifying bids. In the event that two or more qualifying bids have identical bid amounts for the last tax credit increment (or increments) available, the prevailing qualifying bid will be the one the department received first as determined under section (4).

Example: Four bidders (A, B, C and D) make qualifying bids on $10,000 worth of tax credits (sold in twenty increments of $500). Bidder A bids $475 for each of eight increments on October 24. Bidder B bids $480 for each of eight increments on October 26. Bidder C bids $485 for each of six increments and $480 for each of four increments on November 1. Bidder D bids $495 for each of ten increments on November 4.

The results of the auction are as follows:

10 of the 20 increments go to D.

6 of the 20 increments go to C (for the $490 bid).

4 of the 20 increments go to B (for the $480 bid).

NOTE 1: B only received four of the eight increments he bid on because no more increments were available. The department will return the payment to B for the amount of the four non-prevailing bids.

NOTE 2: The bid C placed at $480 did not prevail because it tied with the bid B submitted. B's bid will prevail over C's bid in the event of a tie because it was received before C's bid. C's payment for the $480 bid will be returned.

NOTE 3: A's bid was not high enough to prevail. A's bid payment will be returned.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.514

Hist.: REV 3-2006, f. & cert .ef. 7-31-06; REV 3-2012(Temp), f. 5-17-12, cert. ef. 6-1-12 thru 7-31-12; REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13

150-316.028

Oregon Net Operating Losses — Treatment After 1984

(1) Applicability of this Rule.

(a) This rule applies to the computation of net operating losses occurring in loss years beginning after December 31, 1984; and net operating loss deductions allowed or allowable in tax years beginning after December 31, 1984.

(b) For the computation and application of Oregon net operating losses for loss years beginning before January 1, 1985; net operating loss deductions with regard to loss years beginning before January 1, 1985; and net operating loss carrybacks and net operating loss carryovers applied in tax years beginning before January 1, 1985 that also originated in tax years beginning before January 1, 1985, see OAR 150-316.007.

(2) Definitions for Purposes of this rule.

(a) Prohibited amounts. "Prohibited amounts" means those amounts that the state of Oregon is prohibited from taxing, such as all stocks, bonds, Treasury notes, and other obligations of the United States as provided in 31 United States Code Section 3124. Prohibited amounts do not include such items as federally taxable social security benefits since Oregon is not prohibited from indirectly taxing such types of income.

(b) Oregon Adjusted Gross Income (Oregon AGI). For a full-year resident, Oregon AGI is generally the same as federal AGI. For a nonresident, "Oregon AGI" means the items included in federal adjusted gross income as defined in IRC Section 62 that relate to Oregon sources without modifications.

(c) Modified Oregon Taxable Income. "Modified Oregon taxable income" means Oregon AGI reduced by the sum of the following:

(A) Oregon itemized deductions. For a resident, Oregon itemized deductions are generally the same amount as federal. For part-year and nonresident taxpayers, Oregon itemized deductions are the Oregon percentage of federal itemized deductions; or

(B) Oregon standard deduction. For part-year and nonresident taxpayers, only the Oregon percentage of the standard deductions can be used;

(C) Federal personal exemption(s); and

(D) Prohibited amounts included in Oregon AGI.

(3) Computation of an NOL for a Resident.

(a) For Oregon purposes, a resident's net operating loss is computed in the same manner as for federal purposes without Oregon modifications. Generally, the Oregon NOL is the same as the federal NOL. The only modification necessary is to subtract prohibited amounts.

(b) The computation of the Oregon NOL begins with the Oregon adjusted gross income (AGI) to arrive at modified Oregon taxable income. Then the modified Oregon taxable income is adjusted as required by IRC Section 172(d).

Example 1. Susan and Joe filed joint 2009 federal and Oregon tax returns. On their federal return, they reported wages of $26,000, a business loss of $50,000, a gain on the sale of stock of $400, and interest income of $800 from a bank. They also reported total itemized deductions of $12,800 which were all nonbusiness and claimed personal exemptions of $7,300. On their Oregon return, Susan and Joe also reported $500 municipal bond interest from California that was exempt from federal income tax. Their allowable Oregon NOL is computed as follows: [Formula not included. See ED. NOTE.]

Note: Except for prohibited amounts, the Oregon NOL is computed based on the federal NOL method and definitions without Oregon modifications.

Example 2. The facts are the same as in Example 1, except that the interest of $800 is from U.S. government securities (prohibited amounts). The Oregon NOL for Susan and Joe is ($24,800) computed as follows: [Formula not included. See ED. NOTE.]

Note: The U.S. government interest (prohibited amounts) is not used in computing Oregon NOL.

(4) Computation of an NOL for a Part-year Resident and a Nonresident

(a) A nonresident is allowed an Oregon NOL for any loss year when the NOL is attributable to Oregon sources. A taxpayer is not allowed an NOL or carryover on the Oregon return if the loss was incurred while the taxpayer was a nonresident and the loss was not attributable to Oregon. The computation of the allowable net operating loss for Oregon purposes begins with Oregon adjusted gross income as defined in this rule. Any modifications provided in IRC Section 172(d) apply to all items of income and deduction as they apply to modified Oregon taxable income with the exception of prohibited amounts.

(b) The IRC Section 172(d) modifications attributable to Oregon sources are the following:

(A) Oregon NOL deduction from prior years included in Oregon income after adjustments.

(B) Net Oregon capital loss deduction.

(C) Federal personal exemption amount.

(D) Excess of nonbusiness deductions over nonbusiness income included in modified Oregon taxable income.

Example 3. Herb and Sallie are married nonresidents and file a joint 2009 return. On their federal return, they have itemized deductions of $14,000 (all nonbusiness) and claimed exemptions of $10,950. They also had a business loss of $25,000 from Oregon sources and $1,000 non-Oregon source corporate bond interest. On their Oregon nonresident return, the Oregon percentage is zero (0). They compute their Oregon NOL as follows: [Formula not included. See ED. NOTE.]

Note: The Schedule A itemized deductions are -0- for Oregon purposes because their Oregon percentage is zero.

(5) Application of an NOL.

(a) General rule. An Oregon net operating loss for any loss years is applied in the same manner as the federal net operating loss as provided in IRC Section 172(b). If the loss was not attributable to Oregon sources and was incurred while the taxpayer was a nonresident, there is no Oregon NOL to carry over even if the taxpayer later becomes an Oregon resident. In such cases, the amount of the NOL carryover that is not attributable to Oregon sources is added back on the Oregon resident tax return. If a taxpayer carries back a federal NOL, the taxpayer is treated as carrying the loss back for Oregon purposes as well. If a taxpayer makes an election to carry over the federal NOL, the taxpayer is treated as making the same irrevocable election for Oregon purposes as well.

(b) Exceptions.

(A) If a taxpayer has an Oregon NOL but does not have a federal NOL, the taxpayer may elect to carry the Oregon NOL over to the next succeeding year, if the taxpayer makes an irrevocable election on the timely filed Oregon loss year return (including extensions). If no such election is made, then the taxpayer may only carry the Oregon loss back in the same manner as provided in IRC Section 172(b).

(B) If a taxpayer is not required to file an Oregon return for all years to which the federal NOL deduction (NOLD) is applied, the Oregon NOL is carried back to the year in which the loss may be first applied.

(C) The total number of years to which an NOL may be carried back or forward is the same for Oregon and federal, and is generally determined as follows:

(i) For net operating losses incurred in tax years beginning on or after January 1, 2003, the carry back period is two years with a twenty year carryover period. Oregon follows any exceptions allowed under federal law for these tax years.

(ii) For net operating losses incurred in tax years beginning on or after January 1, 2001 and before January 1, 2003, the carryback period is five years with a twenty year carryover period.

(iii) For net operating losses incurred in tax years beginning on or after August 5, 1997 and before January 1, 2001, the carryback period is two years with a twenty year carry over period.

(iv) For net operating losses incurred in tax years beginning prior to August 6, 1997, the carryback period is three years with a fifteen year car-

ryover period. See IRC 172 and the related regulations for exceptions to the general carryback periods for net operating losses attributable to certain casualty losses, disaster areas and farming losses.

Example 4. Joe has a net operating loss for federal and Oregon for tax year 2009. For federal purposes, Joe carried his federal NOL back to 2007. Since he carried back his loss for federal purposes, he must carry back the loss for Oregon purposes to his 2007 Oregon tax return. If he is not required to file an Oregon tax return for 2007, he may carry his Oregon NOL to his 2008 Oregon tax return.

Example 5. Assume the same facts as in Example 4. However, Joe was not required to file an Oregon tax return prior to tax year 2009. Joe may carry his Oregon NOL over to his 2010 Oregon tax return even if the loss was carried back for federal purposes.

Example 6. As the result of a stimulus bill passed by Congress in 2009, Kerry, an Oregon resident and small business owner, is eligible to carry back her loss up to five years (instead of the normal two years). Kerry chose to carry her loss back five years on her federal return, so she must use the same five year carry back for purposes of her Oregon return.

Example 7. Devin, a Washington resident, incurs a $25,000 NOL in 2009 from his Washington area business and elects to carry the loss forward. Devin moves to Oregon on January 1, 2010. Since the loss was incurred while Devin was a nonresident of Oregon and the loss is not from an Oregon source, there is no Oregon NOL and Devin must make an addition on his 2010 Oregon return to add back the $25,000 NOL included in federal adjusted gross income.

(6) A Net Operating Loss Deduction, Carryback and Carryover Amount.

(a) A taxpayer's net operating loss deduction (NOLD), carryback and carryover amount is computed in the same manner as for federal purposes. The method to compute the carryback and carryover amount is not modified for Oregon purposes.

(b) For a full-year resident, generally an NOLD, carryback and carryover amount is the same as for federal purposes except that prohibited amounts as defined in section (2)(a) of this rule are not taken into consideration.

Example 8. John and Joyce incurred losses in 2009 from partnerships and S corporations. They compute an NOL of $12,000 and elect to carry the loss back. The 2007 return shows negative taxable income, so the 2009 NOL is first applied to 2008 where the loss is completely absorbed. John and Joyce have a federal AGI in 2008 of $50,000. The fully absorbed 2009 NOL is applied as follows: [Formula not included. See ED. NOTE.]

Example 9. Assume the same facts in Example 8, except that John and Joyce elect to carry forward the 2009 NOL for federal and Oregon purposes. In 2010, John and Joyce have federal AGI of $15,000 and have reported additions of $8,000 and subtractions of $3,000. John and Joyce will apply the NOL to 2010 and compute the amount carried over to 2011 as follows: [Formula not included. See ED. NOTE.]

(c) A part-year resident and a nonresident use the federal method without modifications, except that prohibited amounts are not taken into consideration, and the NOLD, carryback and carryover are based only upon amounts attributable to Oregon sources.

Example 10. In 2008, while residents of California, Ron and Valerie incurred losses from an Oregon partnership creating an Oregon only NOL in the amount of $85,000. Prior to 2008, neither Ron nor Valerie needed to file Oregon returns. In 2009, Ron and Valerie moved to Oregon and filed a part-year Oregon return. They reported federal income after adjustments of $385,000, Oregon income after adjustments of $235,000, and itemized deductions of $10,000. Ron and Valerie calculate their 2009 Oregon taxable income as follows: [Formula not included. See ED. NOTE.]

Example 11. Scott and Jill live in Vancouver, Washington and Scott operates a business in Oregon. In 2008, Scott and Jill filed a nonresident Oregon return reporting an Oregon only NOL of $6,000. Scott and Jill elected to carry the NOL forward. In 2009, Scott and Jill reported Oregon income after adjustments of $1,600, federal income after adjustments of $32,000, and federal itemized deductions of $9,200. Their Oregon itemized deductions are $460 [($1,600/$32,000) x $9,200]. Scott and Jill calculate their net operating loss deduction for 2009 and the carryover to 2010 as follows: [Formula not included. See ED. NOTE.]

(7) Net Operating Loss Carrybacks to Amnesty Years A net operating loss deduction (NOLD) carried back to an amnesty return (as that term is defined in OAR 150-305.100-(C)) may not result in a refund of any tax reported and paid pursuant to the amnesty program. However, if a NOLD is carried back to a year in which a taxpayer participated in amnesty, a refund that is otherwise allowed may be granted to the extent that the taxpayer has adequate income reported outside the amnesty program to absorb the loss (or portion thereof). A NOLD resulting in a denied refund due to participation in the amnesty program does not change the net operating loss deduction calculation or the amount that can be carried to another tax year.

Example 12. Ed, an Oregon resident, qualified for amnesty in November 2009 and received penalty and interest relief for tax year 2005 under the program. Ed's original 2005 return (which was filed timely on April 17, 2006) showed a tax liability of $20,000, which Ed paid when he filed his original 2005 return. The amended return for 2005 filed under amnesty increased his tax by an additional $15,000 for a total of $35,000 in Oregon tax liability. In tax year 2009 his business experienced a loss that created a net operating loss for tax year 2009. Ed elects to carry the loss back to tax year 2005 and amends his 2005 federal return. On June 1, 2010, he amends his 2005 Oregon return to claim the net operating loss deduction (NOLD). After applying the NOLD, Ed claims an Oregon refund of $30,000 for 2005. (Ed's 2005 net tax liability has been decreased to $5,000.) The department agrees with Ed's calculations but only allows a refund of $20,000 because that is the amount of tax Ed paid for 2005 before the amnesty program. The refund is limited because the law prohibits refunds of tax paid under amnesty. Ed's carryover of the NOLD is not changed because of the amnesty refund denial. Even though the refund was partially denied, the NOLD has been absorbed and there is no carryforward to tax year 2006.

[ED. NOTE: Formulas referenced are not included in rule text.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.028

Hist.: RD 4-1986(Temp), f. & cert. ef. 7-29-86; RD 7-1986, f. & cert. ef. 12-31-86; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; Renumbered from 150-316.014 by REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13

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Rule Caption: Clarification of distributions from the Criminal Fine Account

Adm. Order No.: REV 7-2013

Filed with Sec. of State: 12-26-2013

Certified to be Effective: 12-26-13

Notice Publication Date: 6-1-2012

Rules Ren. & Amend: 150-137.300(3) to 150-137.300

Subject: Clarifies the distributions from the Criminal Fine Account are done monthly.

Rules Coordinator: Deanna Mack—(503) 947-2082

150-137.300

Criminal Fine Account Distribution

(1) Monthly, the department will distribute moneys available in the Criminal Fine Account after final deposits into the account for the calendar month have been made by the Oregon Department of Revenue and Oregon Judicial Department.

(2) The department will distribute to the General Fund all moneys remaining in the Criminal Fine Account after distributing the monthly allocations to funds and programs referenced in Oregon Laws 2011, Chapter 597, Section 53.

Stat. Auth.: ORS 305.100; 137.300

Stats. Implemented: ORS 137.300

Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; Renumbered from 150-137.300(3), REV 5-2012, f. 7-20-12, cert. ef. 8-1-12; REV 7-2013, f. & cert. ef. 12-26-13

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Rule Caption: Amending and renumbering Estate Tax rules due to change in law.

Adm. Order No.: REV 8-2013

Filed with Sec. of State: 12-26-2013

Certified to be Effective: 12-26-13

Notice Publication Date: 6-1-2012

Rules Adopted: 150-118.005, 150-118.010, 150-118.010(8), 150-118.100(6), 150-118.160, 150-118.260, 150-118.265

Rules Amended: 150-118.010(1), 150-118.010(2), 150-118.010(3), 150-118.010(4)(b), 150-118.010(7), 150-118.100(1), 150-118.140, 150-118.160-(B), 150-118.171, 150-118.225, 150-118.260(6), 150-118.300

Rules Ren. & Amend: 150-118.250(1) to 150-118.250

Subject: HB 2541 (2011) replaced the inheritance tax with an estate tax as of 1-1-2012 and revised ORS Chapter 118 to disconnect from the outdated 2000 Internal Revenue Code. These policy areas need clarification by rule:

The taxability of qualified terminal interest property (QTIP) and Oregon special marital property (OSMP) for the estates of surviving spouse that are nonresident decedents.

Extensions of time to file estate tax returns.

The department's position on whether appraisals are required when determining the date of death fair market value of an estate's property.

Definitions related to the estate tax credit for natural resource property.

The general tie provided by ORS 118.171 to the administrative provisions of chapter 305, including penalty waivers.

Extensions of time to pay estate tax and timeline for submitting collateral.

Estate tax penalty waivers (clarify only one 5 percent penalty will be imposed and that the one-time waiver does not apply to the estate tax).

Rules Coordinator: Deanna Mack—(503) 947-2082

150-118.005
Definitions

The term "intangible personal property" includes but is not limited to stocks, bonds, notes, currency, bank deposits, accounts receivable, patents, trademarks, copyrights, royalties, goodwill, partnership interests, limited liability interests, life insurance policies, annuity contracts, brokerage accounts, and other choices in action.

Stat. Auth: ORS 305.100
Stats. Implemented: ORS 118.010–118.300 & 314.364
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010
Deductions Allowed in Determining Estate Tax or Fiduciary Income Tax

This rule applies to estates of decedents who die on or after January 1, 2012.

(1) An estate may claim deductions allowable under sections 2053 or 2054 of the Internal Revenue Code (IRC) for either estate tax purposes or fiduciary income tax purposes, but not both. The executor of an estate may make different elections for federal and Oregon purposes.

(2) If deductions are claimed against fiduciary income, the executor must include with the return a statement that the deductions are not being claimed for estate tax purposes.

Example 1: The executor of Estate A elects to deduct $19,500 of expenses in determining the estate's federal income tax. For Oregon, the executor elects to claim the deduction in determining estate tax. The amount deducted for federal purposes is not allowed for Oregon fiduciary income tax purposes.

Example 2: The executor of Estate B elects to deduct $10,000 of expenses in determining the estate's federal income tax. The executor elects to claim these deductions in determining Oregon's fiduciary income tax. No modification to income is required for Oregon. A deduction may not be made on the Oregon estate tax return.

Example 3: The executor of Estate C elects to claim a deduction of $15,000 for federal estate tax purposes. For Oregon, the executor elects to claim the deduction for fiduciary income tax purposes. The deduction may not also be made on the Oregon estate tax return if the election is made by deducting the $15,000 on the Oregon fiduciary income tax return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010 – 118.300 & 314.364
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(1)
Imposition of Tax

This rule applies to estates of decedents who die before January 1, 2012.A tax equal to the state death tax credit allowable for federal estate tax purposes is imposed. The tax is due in every case even though the credit may not be claimed on the federal estate tax return, Form 706.

(1) Property within the jurisdiction of the state includes the following:

(a) Resident Decedent.

(A) Real property situated in Oregon.

(B) Tangible personal property situated in Oregon.

(C) Intangible personal property wheresoever situated.

(b) Nonresident Decedent.

(A) Real property situated in Oregon.

(B) Tangible personal property situated in Oregon.

(C) Intangible personal property situated in Oregon.

NOTE: See ORS 118.010(4)(b) which provides an exemption as to intangible personal property of nonresident decedents.

(2) The phrase "within the jurisdiction of the state" connotes extent of power and has a broader meaning than the phrase "within the state" which denotes locality. Property may be within the jurisdiction of the state but not physically situated in the state, for example:

(a) Stock of an Oregon corporation is within the jurisdiction of this state although the certificate may not be within this state.

(b) A savings account, checking account, and certificate of deposit in an Oregon bank are within the jurisdiction of this state although the passbook or certificate may not be within this state.

(c) A promissory note given by a resident of Oregon is within the jurisdiction of this state although the note may not be within this state.

(3) The term "intangible personal property" includes stocks, bonds, notes, currency, bank deposits, accounts receivable, patents, trademarks, copyrights, royalties, goodwill, partnership interests, life insurance policies, and other choices in action.

(4) The doctrine of equitable conversion is recognized in the administration of the Oregon inheritance tax law.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010
Hist.: 9-71; 11-73; 9-74; 12-31-77; RD 4-1997, f. 9-12-97 cert. ef. 12-31-97, REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(2)
Deductions Allowed on Either the Inheritance Tax Return or the Fiduciary Income Tax Return

This rule applies to estates of decedents who die before January 1, 2012. Deductions allowed under sections 2053 or 2054 of the Internal Revenue Code (IRC) may be claimed on either the Oregon inheritance tax return (Form IT-1) or the Oregon fiduciary income tax return (Form 41), but not both. The personal representative of an estate may make different elections for federal and Oregon returns. If the deductions are claimed on the Oregon Form 41, attach a statement that the deductions are not being claimed on the Oregon Form IT-1. For federal purposes, those deductions may be taken on either the federal estate tax return (Form 706) or the federal estate income tax return (Form 1041) under IRC 642(g).

Example 1: Peter dies in 2004 with a gross estate of $900,000. The personal representative of the estate elects to deduct $19,500 of expenses on the federal Form 1041. For Oregon, the personal representative elects to take the deduction on the Oregon Form IT-1. The amount deducted on the federal Form 1041 must be added back to income on the Oregon Form 41.

Example 2: Sally dies in 2004 with a gross estate of $950,000. The personal representative of the estate elects to deduct $10,000 of expenses on the federal Form 1041. The personal representative does not claim these deductions on the Oregon Form IT-1. The deductions claimed on the federal Form 1041 flow through to the Oregon Form 41. No modification to income is required.

Example 3: Mildred dies in 2004 with a gross estate of $2,000,000. The personal representative of the estate elects to claim a deduction of $15,000 on the federal Form 706. For Oregon, the personal representative elects to claim the deduction on the Oregon Form 41. The election is made by subtracting the deduction from the Oregon return. The deduction is not allowed on the Oregon Form IT-1 if it was claimed on the Oregon Form 41. The personal representative must reduce the deductions by $15,000 on the Oregon Form IT-1.

[ED. NOTE: Forms referenced are available from the Agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010
Hist.: REV 2-2004(Temp), f. 4-30-04 cert. ef. 5-1-04 thru 9-30-04; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(3)
Apportionment of Tax

This rule applies to estates of decedents who die before January 1, 2012.

(1) Where property is left in two or more states by a decedent, the maximum state tax credit allowed against the federal estate tax is apportioned. The numerator of the apportionment formula is the value for federal estate tax purposes of the property within the jurisdiction of this state notwithstanding that some of such property for Oregon inheritance tax purposes may be exempt, deductible, appraised at different values or considered in computing a credit. The denominator of the apportionment formula is the value of the gross estate for federal estate tax purposes.

(2) The executor shall, upon demand, file a copy of the federal estate tax return and such other information deemed necessary by the department in the computation of the additional tax. In case of failure to file such returns as these rules provide, the department shall compute the tax upon the basis of the best information available.

(3) If the amount of federal estate tax is increased or decreased subsequently, the pick-up tax imposed upon such estate shall be changed accordingly. In such case it is the duty of the executor to notify the department of the changes.

(4) Example of apportionment of federal credit where decedent leaves property in three states that impose death taxes: [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010
Hist.: 9-71; 12-19-75, Renumbered; 1-1-77, 12-31-77, Renumbered; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; Repealed by RD 4-1997, f. 9-12-97 cert. ef. 12-31-97, Renumbered from 150-118.100(2); REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(4)(b)
Reciprocal Exemption of Intangible Personal Property of Nonresident Decedent

This rule applies to estates of decedents who die before January 1, 2012. Intangible personal property within the jurisdiction of the state of Oregon and owned by a nonresident of this state is exempt from inheritance tax if a like exemption is made by the laws of the state or country of decedent's residence in favor of residents of this state. There is no such exemption allowed as to property owned by a deceased resident of a state which does not impose a death tax. However, if a state has a death tax law which does not impose a tax on intangible personal property owned by a nonresident of that state, the "like exemption" requirement of ORS 118.010(4)(b) is satisfied, and Oregon would exempt intangible personal property owned

by a deceased resident of that state. A nonresident is one who at the time of death had a permanent dwelling place and an official or legal residence outside the State of Oregon. To have a change of domicile there must be:

(1) Residence in a new place;

(2) Intent to abandon the old domicile; and

(3) Intent to acquire a new domicile (196 Or 256).

NOTE: For definition of the term "intangible personal property," see OAR 150-118.010(1).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.010

Hist.: 9-74; 12-19-75; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97, Renumbered from 150-118.060; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(7)

Separate Oregon Elections

This rule applies to estates of decedents who die before January 1, 2012.

(1) For deaths after December 31, 2001, and before January 1, 2012, the Oregon inheritance tax is computed using the Internal Revenue Code (IRC) in effect on December 31, 2000. Federal changes enacted after this date, including the "Economic Growth and Tax Relief Reconciliation Act of 2001", do not affect the computation of Oregon tax. Oregon allows separate elections, including but not limited to elections provided by IRC Sections 2031(c), 2032, 2032A, 2033A, 2056 and 2056A that would have been allowed under federal law in effect as of December 31, 2000, whether or not a federal estate tax return is filed. The Oregon elections are irrevocable. If a federal estate tax return is not required with respect to the decedent's death, the Oregon elections must be made in the same manner as required under the IRC on a return filed with the Oregon Department of Revenue.

Example 1: The personal representative may not make a qualified terminal interest property (QTIP) election on the 2004 Oregon Inheritance Tax Return under the following circumstances. Harold dies in 2004 with an estate valued at $950,000. He is survived by his wife, Wanda. They had provided for a credit shelter trust funded by an amount equal to the unused federal exclusion amount. The trust is set up to distribute or accumulate income to someone other than the spouse and allows for discretionary distribution of income to the surviving spouse. The trust does not qualify for a QTIP election under IRC 2056(b)(7), as in effect as of December 31, 2000.

Example 2: The personal representative may make a QTIP election on the 2004 Oregon Inheritance Tax Return under the following circumstances. Winifred dies in 2004 with an estate valued at $1,500,000. She is survived by her husband, Harvey. They had provided for a credit shelter trust funded by an amount equal to the unused federal exclusion amount. The trust provides for all income to be distributed to the surviving spouse and otherwise qualifies for the federal QTIP election. The personal representative files a 2004 federal estate tax return without claiming a QTIP election. The personal representative may file the 2004 Oregon return claiming a QTIP election because that election would have been allowed under federal law effective on December 31, 2000.

(2) If a QTIP election is taken when the first spouse dies, the estate of the surviving spouse must include the value of any property included in the QTIP election provided in IRC 2044. The Oregon and federal gross estate amount will be different for the surviving spouse's estate when a separate election is taken for Oregon only.

Example 3: Same situation as example 2. The personal representative claimed an Oregon only QTIP election on Winifred's Oregon IT-1 return. Harvey dies in 2005. Harvey's estate for Oregon will include the value of the Oregon only QTIP taken for Winifred per IRC 2044 "Certain property for which a marital deduction was previously allowed". Harvey's gross estate for Oregon and for federal will be different because of the Oregon only QTIP election taken on Winifred's Oregon IT-1 return.

(3) For purposes of the Oregon tax, the obligations of electing parties, agreements required of persons benefiting from elections, and the inclusion of property in the gross estate of a surviving beneficiary are the same as under the IRC.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.010

Hist.: REV 2-2004(Temp), f. 4-30-04 cert. ef. 5-1-04 thru 9-30-04; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(8)

Elections

This rule applies to estates of decedents who die on or after January 1, 2012.

(1) An estate may elect a larger or smaller amount, percentage or fraction of the qualified terminal interest property (QTIP) for Oregon tax purposes than was elected for federal estate tax purposes in order to reduce the Oregon estate tax liability while making full use of the federal unified credit. In addition to or in lieu of a QTIP the estate may elect to claim Oregon Special Marital Property (OSMP) to reduce the estate tax liability.

(2) The Oregon and federal taxable estate amount will be different for the surviving spouse's estate when a separate QTIP or OSMP election was taken for Oregon. In addition to the value of property for which a federal QTIP election was made, the value of property for which an Oregon QTIP or OSMP election was made is includible as part of the Oregon taxable estate to the extent that the property is subject to Oregon estate tax.

(3) The executor must identify the assets by schedule, item number, and the fixed amount, percentage or fractional interest that are included as part of the Oregon QTIP or OSMP election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are definitively identified.

Example 1: W dies in 2012 with a gross estate of $7,000,000. The decedent established a federal QTIP trust for the benefit of W's surviving spouse H, an Oregon resident, in an amount to result in no federal estate tax. For Oregon, the executor may elect a larger fixed amount, percentage or fractional interest QTIP or an OSMP. To achieve zero Oregon estate tax, the Oregon QTIP or OSMP election will be the difference between the federal exemption amount and the Oregon exemption amount. H was an Oregon resident at the time of H's death. Upon H's death, the assets remaining in the Oregon QTIP or OSMP trust must be included in H's gross estate.

(4) The amount to be included in the estate on the death of a surviving spouse is limited to trust property that is subject to Oregon estate tax. If a QTIP or OSMP election was taken when the first spouse dies, the property that is required to be included in the estate of the surviving spouse is dependent upon the residency status of the surviving spouse. If a resident decedent, the gross estate of a surviving spouse must include the value of any property included in the QTIP or OSMP election. If a nonresident decedent, the gross estate of a surviving spouse must include the value of any property included in the QTIP or OSMP election to the extent that the property consists of real property located in Oregon or tangible personal property located in Oregon.

Example 2: Same facts as Example 1, except H was not an Oregon resident at the time of H's death. The Oregon estate must include the value of any real property located in Oregon and any tangible personal property located in Oregon remaining in the trust; intangible property is excluded from the estate.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.010–118.300 & 314.364

Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.100(1)

Due Dates and Extensions of Time to File

This rule applies to estates of decedents who die on or after January 1, 2012.

(1) An estate return shall be filed and the tax shall be paid to the Department of Revenue on the date the federal estate tax is payable or, if no federal estate tax return is required, no later than nine months following the date of death of the decedent. An estate tax return is due the day of the ninth calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred, except that, if there is no numerically corresponding day in such ninth month, the last day of the ninth month is the due date. For example, if the decedent dies on July 31, the estate tax return and tax payment must be made on or before April 30 of the next year.

(2) When the due date falls on a Saturday, Sunday, or a legal holiday, the due date for filing the return is the next succeeding day that is not Saturday, Sunday or a legal holiday. For this purpose, "legal holiday" means a holiday recognized statewide in Oregon or a holiday recognized in the District of Columbia.

(3) The department may grant an extension of time to file an estate tax return, generally not to exceed six months. If an estate has been granted an extension of time to file a federal estate tax return, the department will accept that as an approved extension to file the Oregon estate tax return. The executor must submit a copy of the federal extension request with the Oregon return when filed. If the estate does not need a federal extension, the executor may request an extension for Oregon only by submitting a federal extension form to the department on or before the due date of the Oregon estate tax return and writing "Oregon Only" on the top of the federal form.

(4) If the Internal Revenue Service denies the extension request, but grants a period of time from the date of denial in which to file the federal return without imposition of delinquency charges, the department will not impose penalties for late filing if the Oregon return is received by the department within one month from the Internal Revenue Service's date by which the federal return must be filed with no imposition of delinquency charges. The executor must submit a copy of the federal extension request denial with the Oregon return when filed.

(5) An extension of time to file, without an approved extension of time to pay, does not relieve the estate from the five percent penalty for failure to pay the tax on or before the original due date and interest accrues during the extension period. See OAR 150-118.260 for information regarding interest and penalty. [Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.100
Hist.: 12-19-75; 12-31-77, Renumbered; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; RD 4-1997, f. 9-12-97 cert. ef. 12-31-97, Renumbered from 150-118.110(3); REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.100(6)
Property Values and Appraisals

This rule applies to estates of decedents who die on or after January 1, 2012.

(1) The fair market value of an estate's property must be determined as of the date of death or six months following the date of death if the alternate valuation method is elected. The property value reported on the estate tax return must be substantiated. The executor is required to explain how the value was determined and must attach copies of any appraisals used to value property included on the return. If there was no appraisal, the executor must attach a statement to the return explaining how the value was determined. If the determination of value is based on a county property tax statement, the determination of value must be supported by other evidence of value.

(2) A fee appraisal represents both common and best practice for determination of the value for most real and personal property but may not always be necessary. For example, where an Oregon Special Marital Property election has been made, the value of the asset(s) included within the election may not have an impact upon the estate tax.

Stat. Auth.: ORS 305.100 & 118.140
Stats. Implemented: ORS 118.140
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.140
Estate Tax Credit for Natural Resource Property

Part I of this rule applies to estates of decedents who die on or after January 1, 2012. For the user's convenience, Part II of the rule contains provisions applicable to estates of decedents who die before January 1, 2012.

Part I (applies to estates of decedents who die on or after January 1, 2012)

(1) Definitions. The following definitions apply for purposes of ORS 118.140 and Part I of this rule:

(a) "Active Management" is defined by Internal Revenue Code (IRC) Section 2032A(e)(12) to mean the making of the management decisions of a business (other than the daily operating decisions).

(b) "Ancestor" means a person from whom the decedent is directly descended, such as a parent, grandparent, or great-grandparent. The term does not include aunts, uncles, or cousins.

(c) "Cash equivalents" means accounts receivable, inventory, marketable securities, capital or sinking funds, prepaid expenses and other assets that are spent, maintained, used or available for use, in the operation of a farm business, forestry business, or fishing business.

(d) "Disposition" means to sell, exchange, transfer, convey, or otherwise dispose of natural resource property that was used to compute the natural resource property credit, if such disposition results in the property no longer qualifying for the credit.

(e) "Domestic partner" means an individual who has entered into a domestic partnership as defined in ORS 106.310. Per the general applicability provision of ORS 106.340 "spouse" as used in these rules includes domestic partner.

(f) "Family member" means a member of the family as defined in IRC section 2032A, and for purposes of ORS 118.140 includes:

(A) An ancestor of the decedent;

(B) The spouse of the decedent;

(C) A lineal descendant of the decedent or of the decedent's spouse;

(D) A lineal descendant of a parent of the decedent; or

(E) The spouse of any lineal descendant described in paragraph (C) or (D). For purposes of the preceding sentence, a legally adopted child of an individual is a lineal descendant of the adoptive parent(s).

(g) "Lineal descendant" means a person in a direct line of descent from the decedent, such as a child, grandchild or great-grandchild.

(h) "Lineal descendant of a parent of the decedent" means a decedent's siblings, children and grandchildren of those siblings, and any other person in a direct line of descent from the decedent's siblings.

(2) Material participation by a Family Member. In order to qualify under ORS 118.140(8), at least one family member must materially participate in the business after the transfer.

(a) Material participation is a factual determination, and the types of activities which will support such a finding will vary. No single factor is determinative.

(b) Actual employment of the family member on a substantially full-time basis (35 hours a week or more) or to any lesser extent necessary personally to manage fully the farm or business in which the real property to be valued under section 2032A is used constitutes material participation.

(c) Payment of self-employment tax for employment with respect to the farm business, forestry business or fishing business is not conclusive as to the presence of material participation, and the requirement can be met even though no self-employment tax is payable by the family member with respect to income derived from the business.

(d) As provided by section 2032A of the Internal Revenue Code, active management shall be treated as material participation.

(e) The rules for determining material participation are illustrated by the examples found in CFR 20.2032A-3(g).

(f) Examples of active management decisions that can be used to demonstrate material participation include the following: inspecting growing crops, animals, forests, or equipment; reviewing and approving annual crop plans in advance of planting; making a substantial number of the management decisions of the business operation; approving expenditures for other than nominal operating expenses in advance of the time the amounts are expended; deciding what crops to plant or how many cattle to raise; determining what fields to leave fallow; determining where and when to market crops and other business products; determining how to finance business operations; and determining what capital expenditures the trade or business should make.

(3) If a transferee disposes of property resulting in additional tax as described in ORS 118.140(9)(a), the transferee must file a report with the department and pay the additional tax. The report may be made by filing a copy of the form described in ORS 118.140(10), identifying the asset or assets that no longer qualify for the credit, and including a calculation of the additional tax as described in ORS 118.140(9)(e). The report and payment of the tax are due within six months of the disposition. Interest and penalties under ORS 118.260 apply if the report is not filed and tax is not paid on or before the due date prescribed in ORS 118.140(9)(e).

Part II (applies to estates of decedents who die before January 1, 2012)
Inheritance Tax Credit for Natural Resource or Commercial Fishing Property

(4) Definitions. The following definitions apply for purposes of ORS 118.140 and this rule:

(a) "Active Management" is defined by Internal Revenue Code (IRC) Section 2032A(e)(12) and means the making of the management decisions of a business (other than the daily operating decisions). Treasury Regulations 20.2032A-3(e) through (g) provide additional examples of active management.

(b) "Adjusted gross estate" means the value of the gross estate reduced by the sum of the amounts allowable as a deduction under either IRC sections 2053 or 2054, or both. The amount is determined on the basis of the facts and circumstances in existence on the date (including extensions) for filing the return of tax imposed by chapter 118 (or, if earlier, the date on which the return is filed).

(c) "Cessation of qualified use" means the natural resource property or fishing business property use has changed and the property no longer qualifies as natural resource property or fishing business property.

(d) "Current assets" means the sum of cash and cash equivalents, accounts receivable, inventory, marketable securities, prepaid expenses and other assets of the qualified natural resource business that can be converted to cash within one year. Current assets do not include assets not used in the qualified natural resource business, long-term assets such as capital or sinking funds, or personal assets.

(e) "Current liabilities" means the sum of all money owed to the qualified natural resource business that is required to be paid within one year.

(f) "Disposition of property" means to sell, exchange, or otherwise dispose of natural resource property or fishing business property that was used to compute the natural resource credit, if such disposition results in the property no longer qualifying for the credit.

(g) "Domestic partner" means an individual who has entered into a domestic partnership as defined in the Oregon Family Fairness Act, ORS 106.300 to 106.340.

(h) "Member of family" means, with respect to a decedent:

(A) An ancestor of the decedent;

(B) The spouse or domestic partner of the decedent;

(C) A lineal descendant of the decedent, of the decedent's spouse or domestic partner, or of a parent of the decedent, or

(D) The spouse or domestic partner of any lineal descendant described in paragraph (C). For purposes of the preceding sentence, a legally adopted child of an individual is treated as the child of such individual by blood.

(i) "Working capital" means current assets less current liabilities.

(j) "Working capital of a farm, natural resource-based business or fishing business" means working capital in an amount that represents the funds needed to operate the business annually.

(5) Federal Elections Binding for Oregon. Because ORS 118.007 ties Oregon inheritance tax law to the Internal Revenue Code (IRC) as it existed on December 31, 2000, elections that were available on December 31, 2000, and that are made for federal estate tax purposes are binding for Oregon inheritance tax purposes unless specifically provided otherwise by statute or rule. Property that is excluded from the estate due to claiming a marital deduction under IRC ?2056 cannot be included in the Oregon estate in order to claim a tax credit under this section.

Example 1: Edwina passed away on July 1, 2007; her husband survives her. The value of her gross estate is $8,000,000, made up entirely of natural resource property. For federal estate tax purposes, the estate elects a marital deduction of $6,000,000. The unified credit offsets tax otherwise due on the balance of the estate, $2,000,000, and there is no federal tax due. For Oregon purposes, the $6,000,000 marital deduction election applies. In addition, the estate may elect to establish a Special Oregon Marital property trust as provided in ORS 118.016 to shelter $1,000,000 of the value of the estate (the difference between the $1,000,000 Oregon taxable estate and the $2,000,000 federal taxable estate). Alternatively, the estate may use any portion of the $2,000,000 in value to claim a natural resource credit against tax imposed on the estate.

(6) Active Management by a Member of Family. If natural resource property or a commercial fishing business is owned indirectly by the decedent or a member of the family, the following requirements must be met to qualify for a credit under ORS 118.140:

(a) At least one member of the family must engage in active management of the natural resource property or commercial fishing business after the transfer.

(A) The determination of whether active management occurs is factual, and the requirement can be met even though no self-employment tax is payable by the member of the family with respect to income derived from the farm or other trade or business operation.

(B) Among the farming activities, various combinations of which constitute active management, are inspecting growing crops, reviewing and approving annual crop plans in advance of planting, making a substantial number of the management decisions of the business operation, and approving expenditures for other than nominal operating expenses in advance of the time the amounts are expended.

(C) Examples of active management decisions are what crops to plant or how many cattle to raise, what fields to leave fallow, where and when to market crops and other business products, how to finance business operations, and what capital expenditures the trade or business should make.

(b) An otherwise qualifying natural resource property or commercial fishing business qualifies for the credit without active management if it is the subject of a net cash lease or percentage lease from the decedent or a member of the decedent's family.

(c) The property also qualifies for the credit if it is held in trust for a member of the family or if the property is transferred directly to a member of the family.

(d) If an indirect interest is held in trust for a member of the family, it qualifies as long as a member of the family is engaged in the active management of the business.

(e) The trustee does not have to be engaged in active management if these requirements are met.

(7) Prior Use Requirement.

(a) An estate that otherwise qualifies for the commercial fishing business property credit is not required to meet the aggregate use period of five out of eight years ending on the date of the decedent's death.

(b) Active management of the natural resource property is not a requirement prior to death.

Example 2: Kelly died on April 3, 2007. Kelly owned and operated Kelly's Fishing Boat business starting in February 2005. The estate files the tax return with the department on June 17, 2008, claiming the commercial fishing business credit, and pays the inheritance tax due. The estate may claim the commercial fishing business credit providing all other requirements to qualify for the credit are met.

(8) Future Use Requirement. In order for the estate to meet the requirements of ORS 118.140(7)(a) the following apply.

(a) Cash and like cash assets that are included in the credit calculation as working capital must be spent on the operation of the business either during the year of death or any of the eight calendar years following the decedent's death. Current assets remaining unspent on January 1 of the ninth calendar year following the decedent's death are subject to recapture of tax under ORS 118.140(7)(a).

(b) Payment of federal estate taxes or state inheritance taxes is not considered to be an expense incurred in operation of the natural resource business. Thus, use of cash or other assets to pay those taxes results in recapture of the credit to the extent the cash or asset was used as the basis for the credit.

Example 3: The Smith estate claimed a credit in 2007 based on farming assets worth $1,000,000. In 2009, the estate sold a combine for $100,000 to pay additional federal estate tax resulting from an audit. Sale of the combine results in recapture of the tax credit because the combine was not used in the farming business for 5 of the 8 years following the decedent's death.

(9) Claiming a Partial Credit. In determining whether the value of the credit property is at least 50 percent of the total estate, all of the eligible property must be considered, regardless of an election to claim only a partial credit under ORS 118.140(2)(b)(C).

(10) Working Capital. The determination of whether an amount qualifies as "working capital of a farm, natural resource-based business or fishing business" is based on the facts and circumstances existing at the decedent's death. However, the department will presume that working capital that does not exceed the highest amount of working capital present at any time during the five years prior to the year of the date of death qualifies as "working capital of a farm, natural resource-based business or fishing business." This presumption may be overcome by the facts in a particular case, including, but not limited to, the growth rate of the business, the length of the business cycle or the proximity of the date of death to the harvest date.

(11) Interest and Penalty. The department will not charge penalty or interest if an estate claims a natural resource property or commercial fishing business property credit or if the estate is directly affected by the changes made to ORS 118.140 by chapter 28, Oregon Laws 2008 and the return is filed and tax is paid before September 1, 2008. This provision applies to estates of decedents dying on or after January 1, 2007, and before December 1, 2007.

Example 4: John died on June 23, 2007. The regular due date of the inheritance tax return is March 23, 2008. The estate files the return with the department on August 29, 2008, claiming the natural resource credit, and pays the inheritance tax due. Because the return is filed and the tax is paid before September 1, 2008, the interest and penalty which would otherwise result from late filing and late payment is cancelled.

(12) Disposition or Disqualified Property. Upon the disposition or cessation of use of natural resource property or fishing business property for which the estate claimed a natural resource credit, additional inheritance tax becomes due. The additional inheritance tax is due and payable within six months after the date of the disposition or cessation of use occurs and must be reported on a form prescribed by the department.

(13) Interest and penalties under ORS 118.260 apply for a failure to file the return or failure to pay the tax on or before the due date prescribed in section (9).

Stat. Auth.: ORS 305.100 & 118.140
Stats. Implemented: ORS 118.140
Hist.: REV 4-2008(Temp), f. & cert. ef. 5-23-08 thru 11-17-08; REV 13-2008, f. & cert. ef. 11-3-08; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.160
Filing Requirements for Estate Tax Returns

(1) If the estate is required to file a federal estate tax return, the executor must include a complete copy of the federal return, schedules, and supporting documents with the Oregon estate tax return.

(2) If the estate is not required to file a federal estate tax return, the executor must prepare and include with the Oregon estate tax return the federal schedules and supporting documents that would have been required to be filed if the estate had been required to file a federal estate tax return.

Stat. Auth.: ORS 305.100 & 118.140
Stats. Implemented: ORS 118.140
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.160-(B)
Inheritance Tax Return; Extension of Time to File

(1) This rule applies to estates of decedents who die on or after January 1, 2003 and before January 1, 2012.

(2) The executor shall, not more than nine months after the date of the decedent's death, file with the department an inheritance tax return, Form IT-1. A complete copy of the federal estate tax return and schedules must be filed with the Oregon Form IT-1. If the estate is not required to file a federal estate tax return, the executor must prepare a federal estate tax return and schedules reflecting federal estate tax law in effect December 31, 2000 and file that return and schedules with the Oregon inheritance tax return.

(3) If the executor cannot file a return within nine months, the department may allow additional time, usually not to exceed six months, to file the return. A copy of the federal extension request must be attached to the front of the Oregon return when filed and will serve as evidence of a granted extension by the department.

(4) If the Internal Revenue Service denies the extension request, but grants a period of time from the date of denial in which to file the federal return without imposition of delinquency charges, the department will not impose delinquency charges if the Oregon return is received by the department within one month from the last date on which the Internal Revenue Service would accept the federal return without imposition of delinquency

charges. A copy of the denied extension request must be attached to the front of the Oregon return at the time of filing.

(5) An extension of time to file does not relieve the estate from the five percent penalty for failure to pay the tax on or before the original due date. Interest accrues during the extension period.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.160
Hist.: TC 9-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-188.160(2); RD 15-1987, f. 12-10-87 cert. ef. 12-31-87; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 1-2010(Temp), f. & cert. ef. 2-19-10 thru 7-31-10; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.171
Procedure for Determination

(1) The following sections of ORS Chapter 305 relate to determination of taxes and appeals under Chapter 118, except where the context requires otherwise.

(a) Penalty and interest waivers, 305.145
(b) Audit of returns, 305.265;
(c) Determination of deficiencies, 305.265;
(d) Assessments, 305.265;
(e) Claims for refund, 305.270;
(f) Conferences, 305.265 and 305.270;
(g) Appeals to Director, 305.275 and 305.280;
(h) Appeals to Tax Court, 305.515 and 305.560.

(2) A claim for refund shall be by letter or an amended return; however, the department may require an amended return. A tax paid before the due date is considered as having been paid on the due date for purposes of determining whether the claim for refund was filed within three years from the payment of the tax.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.171
Hist.: 12-31-77; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.225
Extension of Time to Pay Tax

(1) An executor may request an extension of time to pay the estate tax. The extension request must be in writing and submitted to the department by the date the estate return is due, including extensions of time to file, or 30 days from the date shown on a notice of deficiency. Collateral determined acceptable by the department must be secured for payment of the estate tax. An extension to pay tax does not eliminate penalties for late filing of a return, and interest continues to accrue on unpaid tax at the rate provided in OAR 150-305.220(1). See OAR 150-118.260.

(a) If a federal extension of time to pay has been obtained and acceptable collateral is secured for payment of the Oregon estate tax, the department will grant an extension to pay the Oregon estate tax for the same period of time as an approved federal extension. The executor must submit the Oregon extension request in writing and the estate must secure acceptable collateral for payment of the Oregon estate tax. A copy of the accepted federal extension must be submitted with the Oregon return.

(b) If reasonable cause exists and acceptable collateral is provided to the department, the department may grant an extension of time for payment of estate tax for up to 14 years, or, in the case of an estate tax deficiency, for a period of up to four years. If a federal extension of time to pay federal estate tax has been granted, the department may extend additional time for the payment of Oregon estate tax for up to 14 years if reasonable cause exists and collateral acceptable to the department is provided.

(2) In general, reasonable cause exists if:

(a) The estate can pay the tax only by disposing of property for less than market value or by borrowing money at a rate in excess of the mortgage money market (on terms that would inflict loss on the estate), or

(b) The gross taxable estate includes a beneficial interest in one or more closely held businesses whose value exceeds either 35 percent of the gross taxable estate or 50 percent of the net taxable estate. For purposes of this rule:

(A) "Interest in a closely held business" means, as determined immediately before the decedent's death, an interest that was:

(i) An interest as a proprietor in a trade or business carried on as a proprietorship;

(ii) An interest as a partner in a partnership carrying on a trade or business, if the gross taxable estate includes 20 percent or more of the total capital interest in that partnership, or the partnership had 15 or fewer partners;

(iii) Stock in a corporation carrying on a trade or business, if 20 percent or more of the voting stock of such corporation is included in the gross taxable estate, or such corporation had 15 or fewer shareholders. Stock, or a partnership interest, that is held by a husband and wife as community property or as joint tenants, tenants by the entirety, or tenants in common, is treated as owned by one shareholder or one partner, whichever is applicable.

(B) "Trade or business" does not include an investment or holding company;

(C) An extension only applies to the portion of tax attributable to the closely held business. To determine the portion of tax attributable to the closely held business, divide the value of the interest in the closely held business by the taxable estate amount, and multiply that ratio by the computed net tax.

Example 1: A's estate assets included a retail store valued at $900,000 that had been operated by the decedent. Listed securities, cash, a family residence and miscellaneous personal effects made up the balance. The taxable estate was $1,300,000. The department may grant an extension for the payment of tax on the portion attributable to the value of the store; i.e. $900,000 divided by $1,300,000 multiplied by tax owed.
Example 2: B's taxable estate of $1,400,000 included $950,000 of stock in a closely held corporation. The balance of the property was listed securities and personal effects. The corporation was a holding company with the majority of corporate assets invested in real estate. The estate could not show that money could only be borrowed on terms that would inflict loss upon the estate. The department will not grant an extension of time to pay the tax.
Example 3: C's taxable estate of $2,100,000 included farm land valued at $1,050,000. The balance of the estate was real property, listed securities, cash and personal effects. The estate leased the farm land for cash rent, which is considered an investment in real property and not a trade or business; the department will not grant an extension for payment of tax.
Example 4: D's taxable estate of $1,200,000 included a tree farm valued at $800,000. The farm consisted of all pre-merchantable timber. The estate demonstrated that the farm could only be sold at a sacrifice price in a depressed market and that money could only be borrowed on terms that would inflict loss upon the estate. The department may grant an extension for payment of the tax that is attributable to the tree farm's value of $800,000.

(3) The department generally will accept the following as collateral for purposes of extending the date for payment of tax:

(a) A first mortgage or trust deed on real property with a value at least double the amount of the tax paid on extension;

(b) A surety bond executed by a corporation licensed to do business in the State of Oregon. The bond must be at least double the amount of the tax paid on extension and must be renewed every five years.

(4) Collateral must be received within 60 days from the date the estate return is due, including extensions of time to file, or within 60 days from the date the estate return is filed, whichever is earlier.

(5) The executor must make payments in at least equal annual installments for the tax paid on extension, plus accrued interest. The department may cancel an extension of time to pay and collect the tax plus interest if any installment is not paid on or before its due date.

(6) The department may cancel an extension of time to pay and collect the tax plus interest if the value of the interest in a closely held business is reduced by one-third or more through sale, exchange or other disposition, or through aggregate withdrawals of money or other property.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.225
Hist.: 12-31-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.250
Estate Tax Receipt

A receipt issued by the department as required by ORS 118.250 to an executor, trustee or other payor is not a final determination of the estate tax liability; the department may determine that an estate owes additional tax under ORS 118.010.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.250
Hist.: 9-74; 12-31-77; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; Renumbered from 150-118.250(1) by REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.260
Penalties and Interest

(1) Penalties

(a) For purposes of determining the five percent penalty under ORS 118.260(1) or the 20 percent penalty under ORS 118.260(2), the tax required to be shown on the return is reduced by the amount of any tax that is paid on or before the due date of the return, excluding extensions.

(b) If an estate fails to file a return by the due date, including extensions, and also fails to pay the tax by the due date, only one five percent delinquency penalty will be added.

(c) ORS 305.145 and the rules implementing that statute apply to penalties imposed under ORS 118.260 and requests for waiver of penalty. The one-time penalty waiver provision provided by OAR 150-305.145(4) does not apply to penalties imposed under chapter 118.

(2) Interest on Refunds and Deficiencies

(a) A refund of an overpayment of estate tax accrues interest at the rates provided in OAR 150-305.220(2).

(b) A deficiency in tax accrues interest at the rates provided in OAR 150-305.220(1).

(c) For the estates of decedents who die on or after January 1, 2012, if an estate has been granted an extension to pay tax under ORS 118.225, or if a beneficiary has elected to defer payment of tax under ORS 118.300, interest accrues at the rates provided in OAR 150-305.220(1).

(d) Except as provided in (2)(c), if the estate tax is not paid within 60 days of assessment, the annual interest rates provided in OAR 150-305.220(1) are increased by four percentage points pursuant to ORS 305.222.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.250
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.260(6)
Refund of Excess Payment

This rule applies to estates of decedents who die before January 1, 2012. Where payment exceeds the amount of tax shown by the return or as determined by audit of the return, the excess shall be refunded without application from the taxpayer. The department does not have authority to pay interest on the refund for interest periods beginning prior to May 31, 1982.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.260(6)
Hist.: TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.265
Application for Determination of Estate Tax and Discharge from Personal Liability

(1) The executor may apply to the department for a determination of tax due and discharge from personal liability of estate tax.

(2) The written application must include the following information:

(a) The name and date of death of the decedent;

(b) The decedent's Social Security Number;

(c) If the executor applies before filing the estate tax return, a copy of the decedent's will, the decedent's trust, or other document indicating the person is authorized to act on behalf of the estate.

(3) The discharge does not apply to tax liability resulting from assets of the decedent's estate that are still in the possession or control of the executor.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.260(6)
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.300
Bond for Deferment of Tax

(1) A beneficiary electing to defer payment of the tax under ORS 118.300 must, within nine months of the decedent's death, file with the Director a signed statement indicating that the person has not come into actual possession or enjoyment of the property.

(a) A beneficiary of real property, as defined in ORS 111.005(28), is not required to provide a bond.

(b) A beneficiary of personal property, as defined in ORS 111.005(25), must give a bond to the State of Oregon in double the amount of the tax, with such sureties as the Director may approve, conditioned for the payment of the tax and accrued interest at such time and period as the beneficiary comes into actual possession or enjoyment of the property.

(2) The department will accept a bond:

(a) In a form approved by the Director and executed by a company licensed to issue surety insurance by the Oregon Department of Consumer and Business Services, Insurance Division;

(b) Executed by a corporate surety, other than a surety company, provided such corporate surety establishes that it is within its corporate powers to act as surety for another individual, partnership, association, or corporation; or

(c) Executed by two or more individual sureties meeting the requirements of subsection (2)(d) that is secured by a:

(A) A mortgage on real or personal property;

(B) A certified, cashier's or treasurer's check drawn on any bank authorized by the State Division of Finance and Corporate Securities to do business in the State of Oregon;

(C) A United States postal, bank, or express money order;

(D) Corporate bonds or stocks, or by bonds issued by the State of Oregon, or by a political subdivision of this state; or

(E) Any other collateral acceptable to the Director.

(d) Each surety that executes a bond under subsection (2)(c) must:

(A) Have property, including Oregon real property, that is subject to execution and with a current market value net of all encumbrances that is at least equal to the penalty of the bond;

(B) Agree to not encumber the secured property while the bond continues in effect;

(C) Annually file an affidavit with the department as to the adequacy of the security.

(3) A beneficiary must file a return with the Director within six months of the date the person comes into actual possession or enjoyment of the property in question.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.300
Hist.: Eff. 9/71, Amended 12/19/75, 12/31/77; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

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Rule Caption: Property tax: roll correction, BOPTA orders/ petitions, ORMAP/OLIS advisory committee, urban renewal, appraiser continuing education, deferral
Adm. Order No.: REV 9-2013
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Rules Amended: 150-305.285, 150-306.135, 150-308.010, 150-309.100(3)-(B), 150-309.110(1)-(A), 150-311.223(4), 150-457.440(9)
Rules Repealed: 150-308A.724, 150-311.674, 150-311.689
Subject: 150-306.135 ORMAP/OLIS Advisory committees
150-308.010 Appraiser continuing education
150-309.100(3)-(B) BOPTA defective and amended petitions
150-309.110(1)-(A) BOPTA orders
150-311.223(4) Roll correction
150-457.440(9) Urban renewal
150-308A.724 repeals a special assessment program that is no longer in effect
150-311.674 and 150-311.689 relate to the Senior Property Tax Deferral program changes from 2013 HB 2489 and HB 2510.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-305.285
Relief for Subsequent Tax Years

(1) ORS 305.285 provides an additional procedural remedy for a taxpayer. It precludes the need for filing a protective petition during the pendency of petition for a previous year. While ORS 305.285 extends the period for filing petition it does not automatically entitle the taxpayer to the substantive relief requested.

(2) The taxpayer shall make his or her request for relief in a subsequent year to the department on or before December 15 of the year in which the final determination was made, or within six months of the mailing date of the final determination, whichever is later. Subsequent year is defined as any tax year following the tax year that is the subject of the final determination.

(3) The request shall state the name of the taxpayer, the property's account number and the county in which it is located, the year or years for which relief is requested, and the mailing date of the final determination. For purposes of this section, a final determination includes only those cases where there has been a decision on the merits (including stipulations). A copy of this final determination shall be attached to the request.

Stat. Auth.: 305.100
Stat. Implemented: 305.285
Hist.: RD 9-1985, f. 12-26-85, cert. ef. 12-31-85; RD 5-1986, f. & cert. ef. 12-31-86; RD 10-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-305.285; REV 1-2003, f. & cert. ef. 7-31-03, Renumbered from 150-306.115-(B); REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-306.135
Statewide Base Map System and the Oregon Land Information System Advisory Committee Role, Membership and Meetings

(1) The department is responsible to establish and deliver the Oregon Map (ORMAP) project pursuant to ORS 306.132 and 306.135. The ORMAP project creates an accessible statewide base map system to assist with and improve the administration of Oregon's property tax system.

(2) The role of the Oregon Land Information System (OLIS) Advisory Committee is to provide advice and support to the department in the development and implementation of ORMAP's administrative and technical needs. The committee has the authority to submit recommendations to the department concerning ORMAP and related project proposals. The advice and support that the committee provides to the department includes, but is not limited to:

(a) Assisting the department in developing the statewide goals and priorities for ORMAP.

(b) Assisting and providing advice to the department in setting statewide mapping and Geographical Information System (GIS) standards for ORMAP.

(c) Providing review of the Oregon Land Information System Fund and giving assistance in the development of fair and equitable fund distribution processes and policies for ORMAP projects.

(d) Support by communicating ORMAP information and goals to citizens and interested groups within the state and local communities.

(3) The Advisory Committee is composed of not more than 15 individuals appointed by the department's director. Members of the committee include ORMAP stakeholders from private industry, and federal, state, or local government leaders with an interest in the success of the project.

(a) Committee members serve at the pleasure of the director. Each Advisory Committee member serves a two-year term with an opportunity to continue for multiple terms. Committee member terms are staggered to allow for sufficient committee membership coverage; terms begin July 1 and end June 30.

(b) In the event of a vacancy, the director appoints another member to serve the duration of the term.

(c) Upon expiration of a term, a committee member may serve until the appointment of a successor. Members reaching the end of their two-year term may remain on the committee, if they request and receive approval from the director.

(d) Advisory Committee members serve without compensation for travel or per diem.

(4) The Advisory Committee meetings must adhere to the Oregon Public Meetings Laws, ORS 192.610–192.690.

(a) The Advisory Committee meets at the request of the department to review ORMAP policies, proposals, funding, and practices.

(b) A department employee designated by the director, presides as the Advisory Committee chair at all meetings.

(c) Advisory Committee members and any other organization or person who expresses interest in Advisory Committee meetings will receive agendas and study notes prepared by the department's ORMAP staff before the meeting date.

(d) Advisory Committee members or other interested parties with additional agenda items must request an agenda revision from the ORMAP staff to add the item and receive meeting time in which to present the item.

(e) Decisions are made by a consensus of the committee members.

(5) After each funding cycle, the department will post project update information to the publicly-accessible ORMAP website.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.135
Hist.: REV 7-2005, f. 12-30-05, cert. ef. 1-1-06; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-308.010
Continuing Education Requirements for Registered Appraisers, Waiver of those Requirements, and Revocation of Registrations

(1) Registered appraisers in Oregon must participate in a continuing education program related to technical competency. To maintain their registration, appraisers must meet the continuing education requirements outlined in this rule. The requirements of this rule apply to any person who wishes to maintain registration, without regard to the person's place of employment.

(2) Definitions:

(a) For the purposes of this rule, a "registered appraiser" is a person who has satisfied the requirements of ORS 308.010 relating to employment or has successfully completed an appraiser skills examination.

(b) "Continuing education credits" are units of training that are approved by the department in subjects related to assessment and taxation. Credits are equal to the number of hours in a course or presentation the department approves for continuing education.

(A) Technical credits are awarded for training in assessment and taxation subjects. Topics eligible for technical credit include, but are not limited to: mass appraisal, tax rate calculation, ratio studies, personal property, farm or forest uses, board of property tax appeals, property tax exemptions and special assessments and computer applications.

(B) Instructor credits are awarded for course development and presentation. The course instructor will receive instructor credits for the first training session equal to the number of hours the department approved for continuing education for that training session. For each subsequent training session on the same subject, the course trainer will receive one-half hour of instructor credit for each hour of department approved continuing education credit.

(3) Required Credit Hours

(a) Registered appraisers must accumulate 30 credit hours of continuing education every two calendar years following registration. Registered appraisers with less than three years appraisal experience with either the Department of Revenue or an Oregon county assessor's office or a combination of the two must accumulate 60 credit hours of continuing education credits within the first two calendar years following their registration.

(b) In the case of registered appraisers employed by the county, the assessor annually will certify on forms provided by the Department of Revenue a list of those registered appraisers who have met the continuing education requirements. In the case of registered appraisers employed by the State of Oregon, the direct supervisor of those employees annually will certify on forms provided by the Department of Revenue a list of those registered appraisers who have met the continuing education requirements. In the case of registered appraisers not employed by the county assessor or the State of Oregon, individuals annually will self-certify on a form provided by the Department of Revenue as to the satisfactory completion of continuing education requirements.

(c) The Department of Revenue will maintain a database of training it provides to registered appraisers. That database may be supplemented by records provided by the registered appraiser as to qualifying appraisal training received from sources other than the Department of Revenue.

(d) The department will provide sufficient training programs to allow registered appraisers to meet continuing education credit requirements. Credit hours are approved for appraisal-related courses offered by the following organizations:

(A) Department of Revenue;

(B) International Association of Assessing Officials (IAAO);

(C) American Society of Appraisers (ASA);

(D) The Appraisal Institute.

(e) The department will approve credit hours provided through training given by other entities, individuals or by the county if it determines that the content of the training meets the definition for technical credits provided in this rule.

(4) Waiver of Requirement for Continuing Education Credits

(a) Prior to March 31 of the first year of any registered appraiser's current certification period, either the registered appraiser or the appraiser's employer on behalf of the appraiser may submit a request to the Department of Revenue for waiver of the continuing education requirements to be certified for the current two-year certification period. A request for waiver must be in writing and signed by the requestor. If it is a waiver for a registered appraiser employed by the county, the assessor must approve it. For registered appraisers employed by the Department of Revenue, the appraiser's immediate supervisor must approve the request for waiver.

(b) The following are conditions for which the department may grant a waiver:

(A) Military service that prevents the completion of continuing education requirements.

(B) Disability or illness that prevents the completion of continuing education requirements.

(C) Accident or other uncontrollable events that prevent the completion of continuing education requirements.

(D) Limited duration assignments within the Department of Revenue but outside the Property Tax Division for Department of Revenue appraisers.

(E) Formal retirement from regular employment, whether or not the appraiser is working on a temporary or part-time basis in an appraisal capacity.

(F) Absence from the state that prevents completion of continuing education requirements.

(c) Waivers under this subsection for the conditions in subparagraphs (A) through (C) of paragraph (b) above may be allowed indefinitely as long as the condition continues. However waivers under subparagraphs (A) through (C) above will not be granted for more than a single two-year certification period if the appraiser is also practicing in an appraisal capacity, either independently or under the employ of an individual, entity, or public employer.

(d) Waivers under this subsection may be granted for no more than a single two-year certification period for the conditions in subparagraphs (D) through (F) above.

(5) Validation of Accumulated Credits

(a) Prior to January 1 each year registered appraisers must provide the department with a statement that they have met their education requirement. The statement must be made on a form provided by the department.

(b) Prior to February 1 of each year the department will notify the Human Resource Services Division of the Department of Administrative Services of:

(A) Those individuals who have met the continuing education requirements of ORS 308.010 and this rule or

(B) Have been granted a waiver of the requirements.

(6) Revocation of Appraiser Registration The Human Resource Services Division of the Department of Administrative Services:

(a) May revoke appraiser registration under ORS 308.010(1) for fraud or deceit in appraising or in the securing of a certificate or for incompetence.

(b) Will revoke appraiser registration under ORS 308.010(4)(d) for failing to submit satisfactory evidence to the department that the registered appraiser has met the continuing education requirement.

Stat. Auth.: ORS 305.100 & 308.010
Stats. Implemented: ORS 308.010
Hist.: RD 3-1989, f. 12-18-89, cert.ef. 12-31-89, Renumbered from 150-308.010; 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94
150-308.010; Renumbered from 150-308.010-(A), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-309.100(3)-(B)
Board of Property Tax Appeals (BOPTA) Defective and Amended Petition Process

For purposes of this rule, "petitioner" is used as defined in OAR 150-309.100(3)-(C).

(1) The clerk of BOPTA will review the filed petitions for compliance with OAR 150-309.100(3)-(A).

(2) If the petition is defective, the clerk will provide written notice to the petitioner unless a representative is named on the petition. If a representative is named on the petition, the clerk will provide written notice to the petitioner's representative. The notice may be personally delivered or mailed to the mailing address on the petition. If the petitioner's representative has not provided a mailing address and the notice cannot be personally delivered, the clerk will provide notice of the defective petition to the petitioner.

(3) The notice must include the following information:

(a) The nature of the defect,

(b) The time allowed by section (4) or section (6) of this rule to correct the defect, and

(c) A statement that failure to correct the defect within the time allowed will result in dismissal of the appeal without further notice.

(4) If the board clerk provides notice of a defective petition by mailing or personal delivery more than 20 days before the last day of the board session described in ORS 309.026, the petitioner or petitioner's representative has 20 days from the date the notice of defective petition was mailed or personally delivered, or until the last day for filing a petition with BOPTA, whichever is later, to correct the defect. Time is computed from the first day following the date the written notice was mailed or personally delivered and includes the last day unless the last day falls on a legal holiday, Saturday, or Sunday. The time is then extended to the next working day. Corrected petitions may be faxed to the county clerk and will be considered timely filed under the guidelines listed in Section (4) of OAR 150-309.100(2)-(A).

(5) If the board clerk provides notice of a defective petition by mailing or personal delivery within 20 days of the last day of the board session described in ORS 309.026, the board clerk may give the notice described in section (3) of this rule by any practical means such as telephone, fax, or letter. In this circumstance, the petitioner or petitioner's representative has until 3:00 p.m. of the last day of the board session to file an amended petition correcting the defect. However, if the petitioner or petitioner's representative appears at the hearing, all corrections must be made at that time.

(6) The board must dismiss the petition as defective if the petitioner or petitioner's representative does not correct the petition within the time periods prescribed in Sections (4) and (6) of this rule.

(7) In addition to amending a petition to comply with OAR 150-309.100(3)-(A) under (4) above, any petition may be amended up to and including the time of the hearing for the following reasons:

(a) To add or delete land or improvements that are components of the account originally appealed.

(b) To add a separate account that together with the original account appealed creates a "parcel" within the meaning of OAR 150-308A.256(1)(a). A petition may not be amended to include a separate account that is not part of an identified parcel.

(c) To add a manufactured structure account that is sited on the original account under appeal.

(d) To designate or change an authorized representative.

(e) To change the value requested.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.100
Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(1)-(A), REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-309.110(1)-(A)
Mailing of Board Orders

(1) The clerk of the board will keep the order containing the original or facsimile signatures as the official record of the action of the board.

(2) The clerk of the board must mail a copy of the original order to the mailing address shown on the petition unless the order is personally delivered at the hearing.

(3) If a person listed under ORS 309.100(4)(a) is authorized to represent a petitioner at a board of property tax appeals hearing, the clerk of the board must mail or deliver a copy of the original order of the board to the representative. In such a case, the clerk of the board is not required to mail or deliver a copy of the order to the petitioner. If the representative has not provided a mailing address and the order cannot be personally delivered, the clerk will mail the order to the petitioner.

(4) Copies of orders mailed to petitioners or petitioners' representatives must be mailed within five days of the date issued and no later than five days after the board has adjourned.

(5) Copies of orders must be delivered to the officer in charge of the roll and the assessor on the same day they are mailed or delivered to the petitioner or the petitioner's representative.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.110
Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1997, f. & cert. ef. 12-31-97; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-311.223(4)
Date Roll Corrected

For purposes of ORS 311.223(4) and 311.229 the "roll is corrected" on the date the assessor sends the notice to the taxpayer's last known address by first class mail as required in 311.223(2).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.223
Hist.: REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-457.440(9)
Urban Renewal Certification, Calculation and Distribution

(1) Definitions: For purposes of this rule:

(a) "Consolidated billing tax rate" means:

(A) For reduced rate plans, the total of all taxing district billing tax rates used to extend taxes, after any adjustments to reflect tax offsets, but does not include:

(i) Any urban renewal special levy rate;

(ii) Any local option tax rate if the tax was approved by the voters after October 6, 2001;

(iii) Any exempt bonded indebtedness tax rate (except for Portland Police and Fire Pension and Disability bonds, if so issued) approved by the voters after October 6, 2001; or

(iv) The portion of Portland Public School District's permanent rate levy described in OAR 150-457.440(2) section (13) that the district notifies the assessor to exempt from division of tax.

(B)(i) For standard rate plans, the total of all taxing district billing tax rates used to extend taxes, after any adjustments to reflect tax offsets, but does not include any urban renewal special levy rate or rates of new local option taxes.

(ii) Notwithstanding paragraph (1)(a)(B)(i), if an urban renewal agency filed an impairment certificate under ORS 457.445 with respect to a standard rate plan, the rates of new local option taxes that were identified in the impairment certificate must be included in the total.

(b) "Division of tax" means:

(A) For purposes of determining the amount of division of tax to use in tax calculation, the amount calculated by multiplying the tax rate for each taxing district levy in a code area by the increment value used in that code area and summing the product for all code areas in the plan area. Only those taxing district tax rates that are part of the consolidated billing tax rate for that plan are used for this calculation.

(B) For purposes of computing the estimate of the division of tax portion of the maximum authority for existing plans, the amount calculated by multiplying the consolidated billing tax rate for the code area by the increment value used in the code area and summing the product for all code areas in the plan. Only those taxing district tax rates that are part of the consolidated billing tax rate are used for this calculation.

(c) "Division of tax rate" means the rate determined for each taxing district levy within the consolidated billing tax rate for an urban renewal plan. This rate is calculated by dividing the division of tax amount by the taxable assessed value of any shared property for that district. This is the rate that is multiplied by the taxable assessed value of any shared property of the district to determine the amount of division of tax extended before compression on that property from that levy for that plan.

(d) "Existing plan" means an urban renewal plan that provides for a division of ad valorem property taxes as described under ORS 457.420 to 457.460, adopted by ordinance before December 6, 1996, that meets the conditions of 457.010(4).

(e) "Frozen value" means:

(A) The assessed value of the property in an urban renewal plan area at the plan's inception, as certified by the assessor under ORS 457.430 and OAR 150-457.430; or

(B) The value stated by the agency in the notice to the assessor pursuant to ORS 457.455(2).

(f) "Increment value" means the positive value obtained by subtracting the frozen value in a plan area from the total assessed value in a plan area, calculated code area by code area. Negative results are disregarded, resulting in the code area having zero increment value.

(g) "Increment value used" means:

(A) For an Option Three existing plan, that portion of the increment value in the plan area necessary to raise the amount of division of tax stated in the ordinance selecting Option Three that was adopted by the urban renewal agency under ORS 457.435, or a lesser amount of increment value specified by the agency under paragraph (B) of this subsection.

(B) For plans for which the urban renewal agency specifies, pursuant to ORS 457.455(1) or 457.470, an amount of assessed value less than the full increment amount that is available, the amount of increment value specified. The assessor must apportion to the code areas in the plan area the amount of increment specified by the agency.

(C) For all other plans "increment value used" means "increment value."

(h) "Maximum authority" means the limitation on the amount of revenue to be raised for the year for an existing plan area, as described in ORS 457.435(3). Only plans that are existing plans have a maximum authority amount. The maximum authority is adjusted each year to reflect growth in assessed value within the plan area as provided in ORS 457.435(3)(b).

(i) "New local option tax" means a local option tax described in ORS 457.445(5) that is approved by taxing district electors after January 1, 2013.

(j) "Rate computation value" means the total assessed value in an ad valorem taxing district, plus the value of Fish and Wildlife properties and of Non-Profit Housing properties, minus urban renewal increment value used.

(k) "Reduced rate plan" means any urban renewal plan that is:

(A) Adopted before December 6, 1996, designated as an existing plan, and also designated as an Option One plan;

(B) Adopted before December 6, 1996, was an existing plan designated as an Option One plan on October 6, 2001, and was substantially amended as described in ORS 457.085(2)(i)(A) or (B) on or after October 6, 2001;

(C) Adopted on or after October 6, 2001; or

(D) Adopted before December 5, 1996, and the governing body of the city or county that adopted the plan irrevocably elects to change the plan from being a standard rate plan to a reduced rate plan, pursuant to ORS 457.445(4), and provides the assessor by July 15 of the first tax year it is effective, a copy of the resolution or ordinance making the election.

(l) "Shared property" is property that is both within a taxing district that overlaps an urban renewal plan area, and within the boundaries of a municipality that activated an urban renewal agency. It also includes any area of a plan that extends beyond the boundaries of the activating municipality for that plan.

(m) "Standard rate plan" means an urban renewal plan that is not a reduced rate plan.

(2) Urban renewal agencies making use of tax increment financing must certify their tax increment financing request to the county assessor under ORS 310.060 and pursuant to OAR 150-457.440(2) by July 15 using Department of Revenue Form UR-50 Notice to Assessor for the current tax year. The assessor may, for cause, grant an extension of this date up to October 1.

(3) The assessor must separately calculate the estimated revenue to be raised from each plan area within the territory of a taxing district. To make this calculation the assessor must:

(a) Determine whether the plan is a standard rate plan or a reduced rate plan. Calculate the consolidated billing tax rate accordingly;

(b) Determine the maximum authority of an existing plan by multiplying last year's maximum authority by the percentage growth in plan increment value this year as provided in ORS 457.435(3);

(c) Determine the estimated amount to be raised by the division of tax for the plan. For each code area within the plan area, multiply the consolidated billing tax rate by the increment value used in the code area. Add the amounts of all code areas within a plan; and

(d) Determine the maximum amount of the special levy, if any, for each existing urban renewal plan by subtracting the estimated amount to be raised by the division of tax from the maximum authority of the plan. The maximum special levy cannot be less than zero.

(4) If the plan is an Option One plan:

(a) The assessor must calculate the maximum amount of urban renewal taxes to be raised through the division of tax as provided in section (3) of this rule, or a lesser amount of division of tax using the increment value used that is specified by the agency, according to the agency's certification on Form UR-50.

(b) If the agency requests one hundred percent of the division of tax and a special levy amount on Form UR-50, the assessor must calculate and extend a special levy for the amount certified, provided the total amount of the special levy plus the estimated division of tax amount is equal to or less than the maximum authority of the plan as determined under subsection (3)(b) of this rule.

(c) If the total of the special levy certified for the plan area plus the estimated division of tax amount computed for the plan by the assessor exceeds the maximum authority of the plan, the assessor must reduce the amount of the special levy until the total of the special levy and the estimated division of tax amount equals the maximum authority for the plan.

(d) If, instead of requesting one hundred percent of division of tax, an agency certifies on Form UR-50 an amount of increment value used, the assessor must not calculate a special levy for that plan.

(5) If the plan is an Option Three plan:

(a) The agency must certify on Form UR-50 the amount stated in the ordinance selecting Option Three as the amount to be collected through the division of taxes, or the amount of increment value that the agency estimates will raise some lesser amount of division of tax.

(b) If the agency certifies the amount of division of tax stated in the ordinance selecting Option Three, the assessor must calculate the amount of increment value necessary to raise the division of tax amount stated in the ordinance. The amount calculated by the assessor is the increment value used.

(c) If the agency certifies the amount of increment value that the agency estimates will raise some lesser amount of division of tax, the amount specified is the increment value used.

(d) If the agency certifies a special levy and certifies the amount of division of tax stated in the ordinance selecting Option Three, and the total special levy plus the estimated division of tax amount computed for the plan by the assessor exceeds the maximum authority of the plan, the assessor must reduce the special levy until the total of the two equals the maximum authority.

(e) If the agency certifies a special levy and certifies an amount of increment value used that the agency estimates will raise an amount of division of tax that is less than the amount stated in the ordinance selecting Option Three, and the total of the special levy plus the estimated division of tax amount computed by the assessor using that amount of increment value exceeds the total that would have been available under the plan's maximum authority had the agency certified the amount of division of tax stated in the ordinance selecting Option Three, the assessor must reduce the special levy amount so that the total of the special levy and the estimated division of tax equals the total that would have been available under the plan's maximum authority, had the agency certified the amount of division of tax stated in the ordinance selecting Option Three.

(6) If the plan is not an existing plan, the agency must certify on Form UR-50:

(a) One hundred percent of the amount of division of tax; or

(b) The amount of increment value used that the agency estimates will raise some lesser amount of division of tax, pursuant to ORS 457.455(1) or 457.470.

(7) The assessor must:

(a) Apportion the increment value used to the code areas in the plan area in the same proportions as the increment value is distributed among those code areas.

(b) If the full increment value in a code area is less than the amount of increment value used that is apportioned to the code area under subsection (7)(a) of this rule, the assessor must calculate the division of tax using the full increment value. No increment value is then used in calculating the taxes of the ad valorem taxing districts for the year.

(c) If the full increment value exceeds the amount of the increment value used, the assessor must use the remaining increment value in calculating the taxes of the ad valorem taxing districts for the current year.

(8) The assessor must:

(a) Use the rate computation value in calculating taxes for a taxing district that has an urban renewal plan area within its boundaries and whose rate is part of the consolidated billing tax rate for the plan.

(b) Calculate the urban renewal special levy tax rate for each plan area using the current year taxable value of all taxable property in the municipality that adopted the plan and any portion of the urban renewal plan area outside of the municipality. Current year taxable value includes the value of Non-profit Housing properties, Fish and Wildlife properties and urban renewal increment value.

(c) Calculate urban renewal special levy tax rates on a plan area by plan area basis. If one plan area of an agency extends beyond the boundary limits of the activating municipality, only the special levy rate for that plan area is extended beyond the boundaries of the municipality.

(d) Unless otherwise specifically provided by law, no tax offset applies to the special levy rate.

(9) The assessor must determine the tax rate for each code area for each tax levy that an ad valorem district certifies as follows:

(a) Determine the rate certified by the district for tax rate levies or calculate a tax rate for dollar amount levies;

(b) Subtract any offsets as applicable; and

(c) Subtract any division of tax rate for that district applicable to that code area from the result of subsection (9)(b) of this rule.

(10) The assessor must calculate a total division of tax rate for each code area. This is the total of the division of tax rates from all of the levies from all taxing districts with shared property in that code area, if such rates are in the consolidated billing tax rate.

(11) The division of tax rate may have two components. One is the total of rates derived from any local option tax levies. The other component is the total of rates derived from any other levies. The assessor must treat the amount of taxes derived from each of the two total rates separately for purposes of determining compliance with the limitations of section 11(b) Article XI of the Oregon Constitution.

(12) The assessor must calculate the amount of tax on each account that is distributed to each urban renewal agency as follows:

(a) For each property within a shared property area the assessor must calculate the division of tax amount extended by multiplying the taxable assessed value of the account by the division of tax rate for each plan area.

(b) For each property within a shared property area that has an urban renewal special levy, the assessor must calculate the amount extended for the special levy by multiplying the taxable assessed value of the account by the rate calculated for each urban renewal special levy.

(c) If taxes exceed the limitations in either category of section 11(b) Article XI of the Oregon Constitution, the assessor must reduce the taxes to the category limit. The division of tax portion derived from local option levies must be reduced proportionately with all other similarly categorized local option levies before any other taxes in the category are reduced.

(13) The special levy and the division of tax must be imposed on all taxable property in the municipality that activated the urban renewal agency and any portion of the urban renewal plan area outside of the municipality that is shared property for that plan.

(14) The tax statement must display at a minimum for each agency, under the applicable limitation category, the total combined dollar amount imposed for the urban renewal special levy and the division of tax for that account.

(15) In preparing the percentage distribution schedule under ORS 311.390, the tax collector must use the dollar amount generated for urban renewal division of tax and the dollar amount imposed for urban renewal special levy for each urban renewal agency.

[ED. NOTE: Forms and Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100 & 457.470

Stats. Implemented: ORS 457.440, 457.445 & 457.470

Hist.: REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 1-2002, f. & cert. ef. 5-23-02; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08; REV 11-2010, f. 7-23-10, cert. ef. 7-31-10; REV 5-2013(Temp), f. 7-1-13, cert. ef. 7-15-13 thru 1-1-14; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

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Rule Caption: PIT: various credits and subtractions; adjustments; appeals; waivers; representation; composite returns; waterway workers, military, seniors

Adm. Order No.: REV 10-2013

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Rules Adopted: 150-316.693, 150-316.792

Rules Amended: 150-305.145(3), 150-305.230, 150-314.380(2)-(B), 150-314.775, 150-314.778, 150-315.068, 150-315.204-(A), 150-316.102, 150-316.127(10), 150-316.368

Rules Repealed: 150-316.680(1)(c)-(A), 150-316.680(1)(c)-(B), 150-316.789, 150-316.791

Subject: 150-316.792 provides for instructions for all military pay subtractions in conformance with 2013 HB 2230.

150-316.693 provides guidance for calculating the senior medical subtraction based on 2013 HB 3601.

150-315.204-(A) updates name of agency and removes applicability language for dependent care credits for employers.

150-316.102 updates process with Secretary of State Elections Division for PAC filings for the political contribution credit.

150-316.368 clarifies that a taxpayer who requests a joint liability be split can appeal to the Magistrate Division of the Oregon Tax Court within normal 90-day time frame rather than 60-day listed in rules.

150-305.145(3) clarifies when interest will and will not be waived.

150-305.230 provides guidance for S-corporation shareholders who can represent the S-corporation.

150-314.380(2)-(B) clarifies procedures when another taxing authority makes a change to a tax return.

150-314.775 updates definitions for Composite Tax Returns and Pass-through Entity Withholding.

150-314.778 clarifies procedures for filing composite tax returns.

150-316.127(10) conforms rule to federal law related to nonresident waterway workers.

150-315.068 provides guidance for use of the claim of right tax credit.

150-316.680(1)(c)-(A); 150-316.680(1)(c)-(B); 150-316.789; and 150-316.791 are all repealed due to 2013 HB 2230 and consolidated into new rule 150-316.792

Rules Coordinator: Deanna Mack—(503) 947-2082

150-305.145(3)

Discretionary Waiver of Interest

(1) General Policy. The department does not generally waive interest because interest represents a charge for the use of money.

(2) Interest may be waived for good and sufficient cause upon request of the taxpayer as required in OAR 150-305.145(4) section (4).

(a) The department will waive interest charges if the department determines the taxpayer did not have the use of the money on which the interest is charged.

Example 1: Sue mailed her Oregon tax payment to the Internal Revenue Service (IRS) by mistake. The IRS cashed the check and six months later sent the money back to Sue as an overpayment. Two months later, Sue mailed payment to the department. The department will waive interest for the six-month period that Sue did not have use of the money.

(b) The department will waive interest imposed for failure to pay state tax on or before the due date if the taxpayer:

(A) Files an Oregon tax return on or before the due date of the return, excluding extensions;

(B) Submits the Oregon tax return in the same transmission as a federal tax return, using a department-approved alternative to filing a paper return;

(C) Pays any federal tax shown as due on the transmitted federal return on or before the due date using an electronic form of payment such as a credit card, debit card, or electronic funds transfer (ACH Debit);

(D) Pays any tax shown as due on the Oregon return within 30 days of the date shown on the Notice of Assessment sent to the taxpayer;

(E) Establishes to the department's satisfaction that failure to pay Oregon tax was due to a good faith, mistaken belief of the taxpayer that the state tax had been paid; and

(F) Has not received relief under this subsection before.

(c) The waiver of interest provided by subsection (2)(b) of this rule applies only to interest otherwise imposed on unpaid tax and does not include interest imposed on the underpayment of estimated tax.

(3) When interest will not be waived.

(a) The department will not waive interest on a deficiency resulting from changes made to Oregon tax based on any adjustments reported by the Internal Revenue Service (IRS) or another state's taxing authority, regardless of the time lapse between completion of the IRS or another state's taxing authority adjustment and the completion of the Oregon audit report. ORS 314.380 and 314.410 require a taxpayer to report to the department a change in the taxpayer's net income as defined under OAR 150-314.380(2)-(B) resulting from an adjustment by the IRS or another taxing authority.

(b) The department will not waive interest to the extent the taxpayer earned interest on the money from another taxing authority.

Example 2: Don mailed his Oregon tax payment with his Idaho return by mistake. Idaho cashed the check and three months later refunded the $1,000 plus $25 of interest. One month later, Don mailed his payment to Oregon and requested a waiver of Oregon's interest charge of $35. The department will waive $10, which is the excess of interest charged over what Don received from Idaho.

(c) The department will not waive interest on underpayment of tax when the taxpayer requests that a refund shown on a delinquent return be applied to a later tax year. ORS 316.583 requires that a refund from a delinquent return that is applied to the next tax year is credited as an estimated payment as of the date the delinquent return was filed.

Example 3: Scott files his 2010 return on February 19, 2012 and requests that his tax year 2010 refund be applied to his tax year 2011 tentative tax. His 2010 tax return was due April 18, 2011. Because he filed his return late, the refund is credited as an estimated payment on February 19, 2012. The interest charged on the underpayment of 2011 estimated tax will not be waived because ORS 316.583 requires that the payment be credited as of the date the delinquent return is filed.

Stat. Auth.: ORS 305.100, 305.145

Stats. Implemented: ORS 305.145, 316.583

Hist.: REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-305.230

Representation of Taxpayers before the Department of Revenue

(1) Application of ORS 305.230. The provisions of ORS 305.230 apply to all administrative proceedings before the Department of Revenue. Only those individuals who qualify under ORS 305.230 and this rule may represent the taxpayer.

(2) Individuals Authorized to Represent by Department Rule. The following individuals may represent the taxpayer before the department unless the individual is prohibited from representing the taxpayer by other Oregon law:

(a) An adult immediate family member of the taxpayer may represent the taxpayer.

(b) The taxpayer's registered domestic partner may represent the taxpayer.

(c) A regular full-time employee of an individual employer may represent the employer.

(d) A general partner or a regular full-time employee of a partnership may represent the partnership. For general representation rules for partnerships see OAR 150-305.242(2) and 150-305.242(5).

(e) An officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(f) Any shareholder in an S corporation may be designated to represent that S corporation as the tax matters shareholder.

(g) Any tax matters shareholder or any shareholder of an S corporation may represent another shareholder or group of shareholders of that S corporation in matters related to adjustments of items that flow through from the S corporation to the shareholder's return.

(h) Limited Liability Company (LLC) classified as a corporation. A member-manager, a non-member manager, or a regular full-time employee of the LLC may represent the LLC.

(i) Limited Liability Company classified as a partnership. Any member with management authority may represent the LLC (including a member in a member-managed LLC). Any regular, full-time employee of the LLC may represent the LLC. If the LLC has no members with management authority, then any member may represent the LLC (see ORS 63.130 and Treas. Reg. § 301.6231(a)(7)-2).

(j) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(k) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(l) An individual may represent any individual or entity that is outside the United States before department personnel when such representation takes place outside the United States.

(m) An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or by rule) to sign the tax return, may represent the taxpayer during an examination of the tax year or period covered by that tax return. This provision does not permit such individuals to represent taxpayers, regardless of the circumstances, before conference officers, revenue agents, legal counsel or similar department employees.

(n) A taxpayer's authorized agent may represent the taxpayer in proceedings relating to the property tax assessment of designated utilities and companies by the Oregon Department of Revenue under ORS 308.505 through 308.665 and 308.805 through 308.820. For purposes of this rule, an "authorized agent" means a person who is authorized by a company assessed under ORS 308.505 to 308.665 and 308.805 to 308.820 to transact all business related to the filing or processing of an annual statement filed as required by ORS 308.525 or all business related to the filing of a request for a director's conference under ORS 308.595.

(o) Persons authorized to represent in an ad valorem property tax conference or proceeding under ORS 305.230(1)(d), any person licensed by the Oregon State Board of Tax Practitioners, and consulting foresters may represent a taxpayer in any proceeding with respect to taxes imposed under ORS Chapter 321. For purposes of this rule, "consulting forester" means a person who is engaged by the taxpayer to render expert or professional advice in forest management related matters.

(p) The director may, subject to restrictions imposed under other Oregon law, authorize an individual who is not otherwise eligible under this rule to represent a taxpayer before the department. The sole fact that an individual does not qualify under another section of this rule is not an adequate reason to request special permission to represent a taxpayer.

(3) Revocation of Authorization. The department, in its discretion, may revoke the authority to represent a taxpayer granted under section (2) of this rule.

(4) Representation by a Tax Matters Shareholder.

(a) A tax matters shareholder may be designated to represent an S corporation before the Department of Revenue in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(b) An S corporation that elects to designate a tax matters shareholder as its authorized representative in proceedings before the department for issues relating to the S corporation adjustments on a Notice of Deficiency must make the designation as provided in this rule.

(c) The tax matters shareholder designated for Oregon purposes may be the federal tax matters shareholder or may be another shareholder, and must be a shareholder who is:

(A) A shareholder in the S corporation at some time during the taxable year to which the Notice of Deficiency pertains; or

(B) A shareholder in the S corporation at the time the designation is made.

(d) In order to designate a tax matters shareholder, an S corporation must file a signed statement with the department. The statement must:

(A) Identify the shareholders making the designation by name, address, and social security number;

(B) Identify the S corporation and the designated shareholder by name, address, and taxpayer identification number;

(C) Declare that the statement is a designation of a tax matters shareholder for the taxable year to which the Notice of Deficiency relates; and

(D) Authorize the tax matters shareholder as a qualified representative under ORS 305.230 and identify the taxable year(s) of authorization.

(e) Only one tax matters shareholder may be designated and authorized to represent the corporation for each examination at the S corporation level which results in a Notice of Deficiency to the corporation.

(f) If a notice explaining the S corporation adjustments is mailed by the department to the tax matters shareholder with respect to any S corporation taxable year, the tax matters shareholder must supply the department

with the name, address, ownership percentage and taxpayer identification number of each person who was a shareholder in the S corporation at any time during the taxable year, unless that information was provided in the S corporation return for that year.

(g) The tax matters shareholder for Oregon will bind the S corporation with respect to the proceedings between the department and the S corporation whose tax liability is in dispute. When appealing on behalf of the S corporation, the tax matters shareholder may exercise any administrative remedy before the department allowed by Oregon law.

(h) Other actions of the tax matters shareholder that are binding on the S corporation include, but are not limited to:

(A) Consent to the extension of the statute of limitations regarding an S corporation return.

(B) Making a settlement offer to the department.

(C) Acceptance of a closing agreement with the department.

(D) Consent to time and place of any appeals proceedings.

(5) S corporation Shareholder Representation.

(a) When the treatment of S corporation items on a shareholder's return is consistent with the treatment of that item on the S corporation return and results in a deficiency, a tax matters shareholder or any shareholder of that S corporation may be designated to represent a shareholder or group of shareholders of that S corporation before the Department of Revenue in any conference or proceeding with respect to the administration of any tax on or measured by net income. All shareholders or groups of shareholders are not required to designate the same representative.

(b) A shareholder or group of shareholders that elect to designate an authorized representative in proceedings before the department for issues relating to the S corporation adjustments on a Notice of Deficiency must make the designation as provided in this rule.

(c) If the representative designated for Oregon purposes is a shareholder, the representative may be the tax matters shareholder or another shareholder, and must be a shareholder who is:

(A) A shareholder in the S corporation at some time during the taxable year to which the Notice of Deficiency pertains; or

(B) A shareholder in the S corporation at the time the designation is made.

(d) In order to designate a representative, a shareholder or group of shareholders of an S corporation must file a signed statement with the department. The statement must be signed by each shareholder electing that representative and:

(A) Identify the name, address, and social security number of each shareholder electing the representative;

(B) Identify the S corporation and the representative by name, address, and taxpayer identification number;

(C) Declare that the statement is a designation for the taxable year to which the Notice of Deficiency relates; and

(D) Authorize the representative as a qualified representative under ORS 305.230 and identify the taxable year(s) of authorization. The shareholder or group of shareholders may authorize the representative to represent the shareholders for issues other than S corporation issues that are heard during the same appeal with any S corporation adjustments.

(e) A shareholder or group of shareholders may not designate more than one representative for an appeal. While different shareholders can designate different representatives, each cannot not have more than one representative.

(f) If a group of shareholders has the same representative and has filed an appeal requesting a conference for the same S corporation adjustment the appeal will be resolved in a single conference.

(g) Shareholders who do not designate a representative as provided in this rule may appeal their Notice of Deficiency by following the administrative remedies under ORS 305.265 and the related rules.

(h) The representative will bind all shareholders who have made the designation under this section to all actions with respect to the proceedings between the department and the shareholder whose tax liability is in dispute. Any shareholder who has designated a representative may participate in any level of the administrative proceedings.

Example: Assume an S corporation with 10 shareholders has been examined and each shareholder receives a Notice of Deficiency. If 8 shareholders designate the same representative, their appeal will be heard collectively. If the representative requests a conference, the conference decision will apply to all 8 shareholders (all 8 shareholders may participate). The other 2 shareholders may appeal their cases individually because they did not make the election to be represented by the same representative.

(i) Other actions of the representative that are binding on the shareholders who have made the designation include, but are not limited to:

(A) Consent to the extension of the statute of limitations regarding S corporation items with respect to all electing shareholders.

(B) Making a settlement offer to the department.

(C) Acceptance of a closing agreement with the department.

(D) Consent to time and place of any appeals proceedings.

(6) Limited Liability Companies. When a limited liability company (LLC) has elected to be classified as a corporation and has made an S corporation election, section (4) applies to the LLC. When applying section (4) to an LLC, LLC members are treated as shareholders.

Stat. Auth.: ORS 305.100, 305.230
Stats. Implemented: ORS 305.230; ORS 63.810
Hist.: 12-31-88; RD 8-1983, f. 12-20-83, cert. ef. 12-31-83; RD 5-1986, f. & cert. ef. 12-31-86; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07; REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.380(2)-(B)
Report of Changes in Federal Taxable Income

(1) Report Requirements. The report of change or correction required by ORS 314.380(2) must be:

(a) Filed in writing with the department;

(b) Signed by the taxpayer or the taxpayer's authorized representative; and,

(c) Filed separately from any statement or attachment forming a part of the taxpayer's original tax return.

(2) The report may be in the form of an amended return or a schedule showing the adjustments and the recomputation of the tax. Regardless of what form is used, the report must include either a copy of the report of the Internal Revenue Service (IRS) adjustment, federal revenue agent's report or the audit report of the other state's taxing authority, whichever is applicable, or other information sufficient to inform the department of each item on the tax return that has been changed or corrected.

(3) If the taxpayer does not concede the accuracy of any change or correction made by the IRS or other state's taxing authority, the report filed with the department must include a full explanation of the reason why the taxpayer believes such change or correction to be erroneous. If the report is not filed in the manner stated in this rule, the department will not be considered to have been notified by the taxpayer.

(4) A report of a change or correction is treated as a timely claim for refund, pursuant to ORS 314.415, if filed with the department within two years after the date of the IRS adjustment or the audit report of the other state's taxing authority.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.380
Hist.: 6-68; 12-70, Renumbered from 150-314.380(2); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.775
Definitions for Composite Tax Returns and Pass-through Entity Withholding

The following definitions apply for purposes of ORS 314.775 to 314.784, this rule, and OAR 150-314.778 to 150-314.784:

(1) "Disregarded entity" is an entity that is not recognized for income tax purposes and all items related to the entity are reported on the owner's income tax return. Examples of disregarded entities are:

(a) Single member limited liability company (LLC), and

(b) Grantor trusts.

(2) "Distributive income" means the net amount of income, gain, deduction, or loss of a pass-through entity for the tax year of the entity and includes those items directly related to the entity that are considered in determining the federal taxable income of the owner or, in the case of an owner that is a corporation, would be included in its federal taxable income if the corporation were an individual.

(3) "Electing owner" means a nonresident owner that elects to participate in an Oregon composite tax return filed by a pass-through entity. An electing owner also includes the nonresident owner of a disregarded entity.

(4) "Modified distributive income" means the distributive income as defined in section (1) of this rule, of a pass-through entity, with the modifications provided in ORS Chapter 316 and other Oregon law that directly relate to those items taken into consideration by the pass-through entity in arriving at its distributive income. Such modifications include, but are not limited to, any Oregon modification necessary for depreciation, depletion, gain or loss difference on the sale of depreciable property, and any modification for federal tax credits, and do not include the federal tax subtraction, itemized deductions, and the Oregon standard deduction. Guaranteed payments are treated as a business income component of the entity's distributive income and attributed directly to the owner receiving the payment.

(5) "Nonelecting owner" means a nonresident owner of a pass-through entity that is eligible, but does not elect to participate in a composite return and who is required to file an Oregon tax return.

(6) "Oregon-source distributive income" means the portion of the entity's modified distributive income that is derived from or connected with Oregon sources. For entities operating in Oregon and one or more other states, Oregon-source distributive income is determined by attributing to Oregon sources that portion of the modified distributive income of the entity, as defined in section (3) of this rule, determined in accordance with the allocation and apportionment provisions of ORS 314.280 or 314.625 to 314.675.

(7) "Pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes. Examples include:

(a) A partnership;

(b) An S corporation;

(c) A limited liability company that is treated as one of the above for tax purposes; and

(d) A trust that has been established or maintained primarily for tax avoidance purposes, including: an abusive tax shelter as defined in ORS 314.402, an entity subject to a penalty for promoting an abusive tax shelter under Internal Revenue Code (IRC) section 6700, and a tax shelter as defined under IRC section 6662 and related Treasury regulations.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.775

Hist.: REV 3-2005, f. 12-30-05, cert. ef 1-1-06; REV 2-2006, f. & cert. ef. 7-31-06, Renumbered from 150-2005 OL, Ch. 387; REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.778

Oregon Composite Tax Return

(1) General provisions. A pass-through entity (PTE) doing business in or deriving income from sources within this state is required to file an Oregon composite tax return if requested by one or more electing owners. Estimated tax payments are required for the composite return if the total Oregon tax due for any electing owner is expected to be $1,000 or more for an individual; or $500 or more for a corporation.

(a) Computation of tax. Each PTE filing a composite return on behalf of electing owners must calculate the tax for each electing owner. The tax liability for each electing owner on the composite return, determined without regard to the tax credits allowed under subsection (1)(b) of this rule, is calculated by applying the Oregon tax rates based on the owner's filing status to the difference between the owner's share of the entity's Oregon-source distributive income for the taxable year and the owner's self-employment tax deduction, as provided for in subsection (1)(b) of this rule. If distributive income is apportioned, the deduction must also be apportioned by multiplying the owner's federal deduction for one-half self-employment tax (attributable to the owner's share of the entity's net earnings from self-employment) by the apportionment percentage provided in ORS 314.650 through 314.675. The PTE will report on the Oregon composite return the tax computed for each electing owner and total amounts for all electing owners.

(b) Credits and deductions. Below is a list of items that may or may not be allowed for electing owners. [Table not included. See ED. NOTE.]

(c) Losses.

(A) Net operating losses for Oregon nonresidents are computed under ORS 316.028. A PTE that has filed an Oregon composite tax return on behalf of nonresident individual owners may file amended returns to carry back the Oregon net operating losses incurred by the PTE. A schedule must be attached to any return filed under these provisions indicating the taxpayers affected and calculations of the loss amounts. These losses may also be carried forward. The allowed carryback and carryforward periods (including elections to forego the carryback period) are the same as provided under Internal Revenue Code section 172. The election to forego the carryback period must be made by attaching a statement to the Oregon composite return filed on or before the due date (including extensions) of the return for the loss year. Corporations are not allowed to carry back a net operating loss (ORS 317.476).

(B) Any refund of tax made pursuant to an original or amended composite return filed under these provisions will be paid to the PTE, regardless of changes in ownership or changes in the identity of nonresidents participating in an Oregon composite filing.

(2) Election to participate in an Oregon composite tax return. The following provisions apply:

(a) The owner must make a separate election for each tax year;

(b) The owner must not have been a resident of Oregon at any time during the owner's tax year;

(c) The owner is considered to have made the election on the date the PTE files the composite return that includes the electing owner;

(d) By making the election, the owner elects to have the owner's Oregon tax liability paid and reported by the PTE; and

(e) An electing owner is ultimately liable for tax, penalty and interest if the PTE fails to file a composite tax return or pay the tax on behalf of the owner.

(f) An electing owner may be a disregarded entity. The PTE must look to the owner of the disregarded entity to determine whether the owner of the disregarded entity will choose to join in the composite filing.

Example 1: Hermiston Partners is owned by four individuals, one grantor trust, and one single-member LLC. Both of these owners are disregarded entities. Therefore, Hermiston Partners will look to the nonresident owner of each disregarded entity to determine if that nonresident owner elects to join in the filing of a composite return. The grantor trust is owned by a nonresident individual. Hermiston Partners looks to the individual who owns the grantor trust. Hermiston Partners must allow the individual to join in the filing of the composite return. Hermiston Partners will use the individual's name and Social Security number on the composite, not the name or tax identification number of the disregarded trust. If the individual doesn't join in the composite filing or file an affidavit, Hermiston Partners must send in estimated payments on the individual's behalf as required in OAR 150-314.781.

The single-member LLC is solely owned by another partnership, Ontario LP. A partnership can't join in the filing of a composite return. Thus, Hermiston Partners cannot include Ontario LP in the composite return and is not required to send in estimated payments on behalf of the LP. Ontario LP is the entity responsible for filing a composite return or sending estimated payments for its owners.

(3) Filing and payment requirements.

(a) Due date. The Oregon composite tax return is due the 15th day of the fourth month after the close of the tax year of the majority of the electing owners, in accordance with ORS 314.385.

Example 2: Around-the-Bend LLC (ATB) has a tax year ending June 30. The electing owners consist of four individuals and three corporations. Because the individuals are all calendar year taxpayers, the majority of the electing owners have a calendar tax year which ends December 31. Therefore the composite return and any estimated payments are due using a calendar tax year. For tax year 2010, the composite return will include the income reported by ATB for its 2009 tax year ending June 30, 2010. The 2010 composite return that ATB will file on behalf of its owners is due April 15, 2011.

Example 3: Coast Around Oregon Incorporated (CAO) is an S Corporation with a tax year ending October 31. The electing owners consist of 15 individuals, so they are all calendar year taxpayers. For tax year 2010, the composite return will include the income reported by CAO for its 2009 tax year ending October 31, 2010. The 2010 composite return that CAO will file on behalf of its owners is due April 15, 2011.

(b) Payment of amounts due. Payment of the amount due is made by the PTE on the owner's behalf and must accompany the filing of the Oregon composite tax return in accordance with ORS 314.395. The payment must include the tax due plus any penalty or interest provided by Oregon law.

(c) Extensions of time to file. If the entity is granted a federal or Oregon extension of time to file the entity's return (partnership return or S corporation return), an extension for filing the Oregon composite return is allowed. This is true even if the composite return reports the income in a different tax year than the entity's partnership or S corporation return. The entity must keep a copy of the federal extension with its tax records. The extension to file the composite return is 6 months from the composite return due date regardless of the length of extension the entity received for its partnership or S corporation tax return.

Example 4: Pendleton LLC filed for extension for its 2012 fiscal tax year ending June 30, 2013 (2012 partnership return). The partnership return had a due date of October 15, 2013. Partnerships receive a 5-month extension so the due date with extension is March 15, 2014 for the partnership return. The owners of Pendleton LLC are calendar year filers. Therefore, they report the income in tax year 2013. The nonresident owners that elect to participate in the 2013 composite return filed by Pendleton have an extension to file because the partnership has an extension to file for the partnership return. The 2013 composite return reporting this income is due April 15, 2014; however, with the extension, it is due October 15, 2014. The 6-month extension applies, even though the income is reported in a different tax year for the owners and Pendleton LLC received a 5-month extension for filing its partnership return.

(d) An electing owner may file a separate tax return without revoking the election to join in the filing of a composite return. The income reported on the composite return is subtracted on the electing owner's separate return and tax is paid only on the Oregon source income not reported on the composite return.

(4) Ineligibility or revoking an election to participate in a composite return.

(a) One or more owners may revoke the election to join in the Oregon composite tax return after the Oregon composite tax return has been filed. The revocation of the election must be made within three years from the date the Oregon composite tax return was filed. To revoke a previous election:

(A) The PTE must file an amended Oregon composite return removing the owner and request a transfer of any payment made on the owner's behalf to the now nonelecting owner's account, and

(B) The owner must file a separate return with the department showing all items of income and deduction from the PTE. This separate return will be treated as an original return and, if filed after the due date, any tax liability shown on the return is subject to interest and penalties in the same manner as any other delinquently filed original return. The decision to revoke a previous election by one or more owners has no effect on the election of the remaining owners.

(b) If any of the owners becomes ineligible, revokes an election, or declines to participate in filing an Oregon composite tax return, and the PTE made tax payments on the owner's behalf, the PTE must submit a written transfer request to the department. The department will transfer the tax payment to the account of the nonresident owner only if the entity submits such a written request to the department. The request must contain:

(A) The name and federal employer identification number of the entity that made the tax payment(s);

(B) The name and social security number of the nonresident owner; and

(C) The specific dollar amount to transfer to the account of the owner.

(c) An owner who does not or cannot elect to participate, or who revokes a prior election, is subject to withholding on the owner's share of the Oregon source distributive income under ORS 314.781 and OAR 150-314.781.

(5) Payment of tax on behalf of electing owners. An entity may be required to make quarterly tax payments to the department on behalf of all electing owners. The tax liability required to be paid is the sum of each electing owner's estimated tax liability for that quarter that is attributable to each owner's interest in the entity. In determining the electing owner's tax liability, the provisions of ORS 314.505 to 314.525 or 316.579 to 316.589 regarding calculation of estimated tax apply. The entity must remit the tax payments to the department using forms and instructions provided by the department.

[Publications: Publications referenced are available from the agency.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.778
Hist.: REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-315.068
Claim of Right Credit

(1) Credit qualifications. If you repaid income that was taxed in a prior year, you may be eligible for a credit on your Oregon return. This rule applies to repayments made on or after January 1, 2013 that are claimed on returns filed after the effective date of this rule. To claim the credit, you must:

(a) Claim a federal credit or deduction under Internal Revenue Code (IRC) section 1341; and

(b) Have paid Oregon tax in a prior year on the income that you repaid.

(2) Credit calculation. Your Oregon claim of right credit is the difference between the Oregon tax you paid in the prior year and the Oregon tax you would have paid without including the repaid income. Calculate your credit as follows:

(a) Refigure the Oregon tax before credits in the year the income was originally taxed by determining the tax for the year in which the income was originally taxed without the repaid income. Do not change the federal tax subtraction or any other items on the Oregon return.

(b) Subtract the refigured tax before credits from the Oregon tax before credits as filed (or amended or adjusted, if applicable). This is your claim of right credit.

Example 1: In 2012, Jerry was required to repay $10,000 of the unemployment compensation he had received in 2011. He claimed the claim of right credit on his federal return, so he can also claim the credit for Oregon. For 2011, Jerry had federal adjusted gross income (AGI) of $50,000 and Oregon tax before credits of $3,568. Jerry refigures his 2011 Oregon tax before credits without the repaid income. He reduces his federal AGI compared to what was included in his original 2011 federal return by the amount repaid, $10,000. All other Oregon items stay the same (including the federal tax subtraction). The recalculated Oregon tax before credits is $2,668. The difference between the refigured and original tax before credits is $900 ($3,568 minus $2,668). Jerry's claim of right credit is $900.

(3) Federal deduction. If you claim a deduction under IRC § 1341 on your federal return, you can allow the deduction to flow through or you can claim a credit on your Oregon return. Determine by comparing the following amounts:

(a) Calculate Oregon tax before credits for the year of repayment with the deduction.

(b) Add back the federal deduction and figure your Oregon tax before credits. Then subtract the Oregon claim of right credit.

(c) If the tax in (a) is less, allow the deduction for Oregon also. If the tax in (b) is less, add back any deduction as required under ORS 316.680(2)(i) and claim the Oregon credit.

Example 2: In 2012, Shannon had to repay wages of $3,800 from tax year 2010. She qualifies to claim itemized deductions and chooses to claim the deduction on her federal return. Oregon allows this deduction to flow through or allows her to claim the credit instead. Her itemized deductions are mostly Oregon taxes, so her Oregon itemized deductions are less than the standard deduction. Therefore, she will not claim itemized deductions for Oregon and will claim the credit instead.
In 2010, she had federal AGI of $45,000 and her 2010 tax was $2,988. If Shannon had not received the $3,800 she had to repay, her 2010 tax would have been $2,679. Her 2012 credit is the difference of $342, which she will claim on her 2012 Oregon return as a claim of right credit. There's no addition required because she claimed the standard deduction for Oregon, so the federal deduction did not flow through.
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.104
Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2000, f. & cert. ef. 8-3-00; REV 8-2001, f. & cert. ef. 12-31-01; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07; REV 4-2013(Temp), f. & cert. ef. 6-5-13 thru 12-2-13; Administrative correction, 12-19-13; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-315.204-(A)
Dependent Care Credits: General Information

(1) Taxpayers must apply to the Department of Education, Early Learning Division, Office of Child Care and receive certification before being eligible for the Dependent Care Assistance or Dependent Care Information and Referral Services credits. Contact the Office of Child Care of the Department of Education for more information.

(2) For taxable years beginning on or after January 1, 1988, the following credits are available to employers that provide dependent care assistance or information and referral services to their employees:

(a) Dependent Care Assistance Credit. This credit is available to employers for the expenses paid or incurred by the employer for the care of employees' dependents.

(b) Dependent Care Information and Referral Services Credit. This credit is available to employers that provide information and referral services to assist their employees in obtaining dependent care.

(3) Any tax credit otherwise allowable that is not used by the taxpayer in a tax year may be carried forward and offset against the taxpayer's tax liability for up to five tax years. The amount of credit carried forward to a succeeding tax year is the sum of credits that exceed the tax liability, after other credits, for all prior tax years that are within the carryover period.

(a) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer must use the credit from the prior year first and then the current year's credit.

(b) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

(4) If the taxpayer is an individual and the tax year is changed resulting in a short period return (a return covering a period of less than 12 months), the credit must be computed in a manner consistent with ORS 314.085.

(5) If the taxpayer is a part-year resident individual, the credit must be computed in a manner consistent with ORS 316.117.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.204
Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.134-(A); REV 8-2001, f. & cert. ef. 12-31-01; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10; REV 5-2010, f. & cert. ef. 3-15-10; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.102
Credit for Political Contributions

(1) In General: To qualify for the political contribution credit, the contribution must be a voluntary contribution of money made to one of the following:

(a) A major political party or its political committees, or a minor political party or its political committees;

(b) A candidate for federal, state or local office; or

(c) A political committee. Each of these categories is discussed in more detail in the following sections.

(2) Contributions to political parties. For purposes of this rule, a major political party is defined in ORS 248.006. A minor political party is defined in ORS 248.008. Contributions to any of these parties, or their political committees, qualify for the credit.

Example 1: In 2012, Jim contributes $50 to the Republican National Party, $50 to the Republican Committee to Re-elect U.S. Senators, $50 to the Democratic National Party Committee to Re-elect Senator Jones of California and $50 to the Libertarian

Party. All contributions qualify for the political contribution credit. Jim will be able to claim a credit of $50 on his 2012 income tax return. If he files a joint return with his wife, they may claim a $100 credit.

(3) Contributions to candidates. Qualifying contributions are those made directly to the candidate or the principal campaign committee of the candidate.

(a) A principal campaign committee (PCC) means a candidate's political committee. The PCC must have met the filing requirements contained in ORS Chapter 260.

(b) Candidates do not have to appear on a ballot in this state in the same year the contribution is made for the credit to be claimed. However, if the candidate is not on a ballot, at least one of the following must have occurred in the same year the contribution is made:

(A) A prospective petition is filed;

(B) A declaration of candidacy is filed;

(C) A certificate of nomination is filed; or

(D) A designation of a principal campaign committee is filed.

Example 2: Amanda filed a declaration of candidacy in November 2011 and appeared on the ballot for the 2012 primary election as a candidate for Oregon state senator. Contributions made in 2011 or 2012 to Amanda, or her principal campaign committee, will qualify for the credit.

(4) Contributions to political committees. Contributions made to a political committee will qualify only if the committee has certified the name of its treasurer to the appropriate filing officerin the manner provided in ORS Chapter 260. As used in this rule, "filing officer" means:

(a) For a political committee whose purpose is to support or oppose a candidate or measure in an election concerning an irrigation district formed under ORS chapter 545, the county clerk or secretary of the irrigation district as provided under ORS 260.005(9)(b).

(b) For all other purposes, the Secretary of State as provided under ORS 260.005(9)(a).

(c) Contributions may qualify under this provision even though:

(A) No measure appears on the ballot in the same year the contribution is made;

(B) The contribution is made to reduce a deficit from a prior year; or

(C) The political committee is formed by a national committee.

Example 3: Royal is a member of the Association of Certified Engineers of America. The association forms a Political Action Committee (PAC) in Oregon, certifies the name of its treasurer to the Secretary of State, and solicits voluntary donations from individual members. The PAC states in its material that it is organized and operated to support or oppose any political candidates or measures the directors of the association determine will impact its members. Contributions made to the PAC will qualify for the credit.

Example 4: Debra belongs to a trade union that engages in political activities. The union informs Debra that a certain percentage of her monthly dues is used for political purposes. No part of her dues payment will qualify for the credit because it is not a voluntary payment of money to a candidate or a political committee.

Example 5: Same facts as Example 4, but the union also solicits voluntary political contributions from its members. These funds are placed directly into a separate PAC, which is not subsidized in any way by the union, and are used for political activities. In January 1999, Debra signs up for a payroll deduction of $5 to be taken from her monthly checks. She may claim a credit of up to $50 on her tax return, or a credit of $60 (12 months x $5) if she files jointly with her husband.

(5) The amount of the contribution must be reduced by the fair market value of any items or services received in exchange for the contributions.

Example 6: A political committee solicits donations and offers T-shirts in return for contributions of $50 or more. Douglas contributes $50 and receives a T-shirt valued at $10. He may claim a political contribution credit of $40.

Example 7: Same facts as Example 6, except that Douglas contributes $100. He is entitled to a credit of $50 on a single return, or $90 on a joint return.

(6) A partnership or S corporation may make political contributions on behalf of its partners or shareholders. The credit may be claimed on the individual tax return, subject to all of the limitations in ORS 316.102 and this rule.

(7) Proof of the credit, such as a canceled check or receipt, should not be attached to the tax return but should be kept with the taxpayer's records. Upon audit or examination, the taxpayer must provide documentation to verify the credit.

Stat. Auth.: ORS 305.100 & 316.102
Stats. Implemented: ORS 316.102
Hist.: 1-69; 12-70; 11-73; 12-19-75; 12-19-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 6-1983(Temp), f. 12-20-83, cert. ef. 12-31-83; RD 2-1984, f. & cert. ef. 2-21-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.127(10)
Gross Income of Nonresidents: Waterway Workers

(1) General Policy. The State of Oregon imposes taxes on Oregon source income of nonresidents to the extent allowed under Oregon and federal law and exempts Oregon source income of nonresidents to the extent provided under federal law: 46 USCA 11108. Under both federal and state law, compensation of a nonresident waterway worker is exempt from Oregon taxation to the extent the compensation is paid to an individual engaged on a vessel and performing assigned duties as a licensed pilot in more than one State or to an individual performing regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters in two or more states.

(2) For purposes of ORS 316.127(10) and this rule:

(a) "Master" is the commander of a merchant vessel, who is in charge of the vessel, its crew, its passengers, and the care and control of the vessel and cargo.

(b) "Member of a crew" or "crew member" is an individual carried on board a vessel who is not required to obtain a license (though they may be required to obtain certification) who provides services such as navigation and maintenance of the vessel, its machinery, systems, or services essential for propulsion and safe navigation or to provide services for passengers on board.

(c) "Navigable waters" are waters that are subject to the ebb and flow of the tide and waters that are presently used, or were used in the past, to transport interstate or foreign commerce.

(d) "Officer" is an individual carried on board the vessel who must obtain a specialized license and who provides navigation and maintenance of the vessel, its machinery, systems, and arrangements essential for propulsion and safe navigation.

(e) "Passenger" is a person on board a vessel other than:

(A) The master, a member of the crew, or other person employed or engaged in any capacity in the business of the vessel; or

(B) A child under one year of age.

(f) "Regularly assigned duties" are those duties performed on a regular basis (i.e. daily, weekly, or monthly). Duties that are performed on sporadically or intermittently as occurs when serving on an "on-call" or "as-needed" basis are not "regularly assigned duties."

(g) "Vessel" is watercraft used, or capable of being used, as a means of transportation on navigable waters in 2 or more states for business purposes.

(h) "Waterway worker" is a nonresident who is:

(A) Engaged on a vessel to perform assigned duties in more than one State as a pilot licensed under section 7101 of Title 46 of the United States Code or licensed or authorized under the laws of a State, or

(B) An individual who performs regularly assigned duties while engaged as a master, officer, or member of a crew on a vessel operating on the navigable waters in two or more states.

Example 1: Ben, a resident of Washington, is a crew member and works on a dredging vessel on the Willamette River in Oregon and the Cowlitz River in Washington six months of the year. The other six months of the year Ben works in the company's office in Portland, Oregon. Only six months of compensation from his employer is exempt because it's for services Ben performed on the dredging vessel and is not taxable by Oregon. The remaining six months of compensation is taxable by Oregon.

Example 2: Kirk, a nonresident, works for a log mill located on the Oregon shore of the Columbia River. He spends 6 hours a day piloting a tugboat on the river carrying logs to the mill. For the remaining 2 hours of his shift, he works in the mill doing maintenance on mill equipment as well as other tasks. Kirk's compensation for his time working on the tugboat is not subject to Oregon tax. However, the time he spent working in the mill in Oregon is Oregon-source income and subject to Oregon tax. Kirk may exclude 75 percent (6 divided by 8) of his total compensation from this employer from Oregon taxation. He will only report 25 percent of his wages in the Oregon column of his nonresident return.

Example 3: Remy, a nonresident, is a crew member and works on a vessel plying the Columbia and Willamette rivers. Remy makes weekly trips from Hood River to Tualatin and back, hauling cargo on the vessel. Each trip entails three days on the Columbia River and two days on the Willamette River. All of Remy's income is exempt and is not taxable to Oregon.

Example 4: Jim, a nonresident, works in Oregon for a water transportation company that plies the waters of the Columbia River. On occasion, he is called upon to work as a member of a crew for a full day on one of the company's vessels when they are short-handed. His income is taxable by Oregon, even for the days he works on the vessel, because his work on the vessel is on an as-needed, sporadic, or intermittent basis.

Example 5: Ken, a Washington resident, works in Oregon as a manager for a water transportation company whose two vessels traverse the Columbia River. Once every quarter, Ken boards the company's vessels to check on the employees working on the vessel. Ken's income is taxable by Oregon, even for the days that he spends on board a vessel because he is not a pilot, master, officer, or crew member of the vessel.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.368
Petitioning Department to Equally Split Joint Liability

(1) A tax liability incurred by spouses filing a joint tax return is joint and several. Each spouse is responsible for the entire liability. However, the department may split a joint tax liability equally between two separated or divorced spouses. Either spouse may file a petition to split the joint liability equally between the spouses. In order to split the liability, the department

must be satisfied that payment of the entire liability by the petitioning spouse will cause undue hardship on the petitioner and petitioner's household. Mere inconvenience is insufficient to establish hardship. A statement in the divorce decree is also insufficient to relieve either spouse of the liability.

(2) The conditions listed below may constitute hardship. The examples given are not intended to be all-inclusive.

(a) Annual household income of the petitioning spouse, number of dependents and limited assets within the household are such that petitioner could not, in the department's opinion, pay the entire liability within five years.

Example 1: The petitioning spouse receives social security income with no other income and only minimal assets.

Example 2: The petitioning spouse earns $20,000 annually, is not receiving child or spousal support, and is the sole support of three adolescent dependents. Household assets are minimal. The liability owed jointly with the petitioner's ex-spouse is $4,000.

(b) Major medical problems or a prolonged illness of either the petitioning spouse or a family member that either severely limits petitioning spouse's earning ability or creates an extreme financial burden on household resources.

Example 3: Petitioning spouse or family member has a major illness and has been forced to retire. The only household income is from social security.

Example 4: The petitioning spouse has a major illness and family is living on disability and attempting to meet high medical costs.

(3) Included within the petition must be:

(a) An explanation of how payment of the entire liability will cause undue hardship on the petitioner and petitioner's household;

(b) The current address of the non-petitioning spouse (if known);

(c) A completed Statement of Financial Condition for Individuals (form number 150-860-009);

(d) A copy of the legal separation or divorce decree; and

(e) An explanation of how the petitioner will pay the remaining liability.

(4) Following review of the petition, the department will either:

(a) Accept the petition, cause the liability to be split equally between spouses and notify both spouses of the action; or

(b) Notify the petitioning spouse the petition has not been accepted.

(5) Acceptance by the department of the petition is discretionary. If the department denies a petition to split a joint liability, the petitioner may appeal that denial to the Magistrate Division of the Oregon Tax Court.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.368
Hist.: RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.693
Special Oregon Medical Subtraction

(1) Eligible Expenses. Expenses eligible for this subtraction are those authorized under IRC §213. Medical and dental expenses not allowed for this subtraction include expenses:

(a) Otherwise deducted in the calculation of Oregon taxable income for any tax period; or

(b) Paid on behalf of any other individual who is not an eligible taxpayer or eligible spouse of the taxpayer under ORS 316.693.

Example 1: Sam (age 66) and Rebecca (age 60) file a joint return and claim Rebecca's 80-year-old mother as a dependent. During the year, Sam and Rebecca paid $4,000 in medical and dental expenses: $1,000 for Sam, $1,000 for Rebecca and $2,000 for Rebecca's mother. Sam's medical expenses are the only medical expenses that qualify for the special Oregon medical subtraction because Rebecca does not meet the age requirement and Rebecca's mother is a dependent.

Example 2: Shannon and Dustin, both age 66, file a joint return with Oregon itemized deductions. During the year, Shannon and Dustin paid $18,900 in unreimbursed medical and dental expenses: $6,900 for self-employed health insurance premiums (claimed on the front of Form 1040), $10,000 for health insurance for two employees (claimed on Schedule C), and $2,000 of unreimbursed medical and dental expenses (claimed on Schedule A, line 1). Only the medical and dental expenses on Schedule A, line 1 ($2,000) can be used in the calculation of eligible expenses for the special Oregon medical subtraction because deduction for the self-employed health insurance was already used in the calculation of Oregon taxable income and employee insurance is not an eligible expense.

(2) Calculation of Eligible Expenses.

(a) General rule. The general rule is that if the expenses can be attributed to a particular individual, only that individual can claim those expenses.

Example 3: Mary (age 59) and Steve (age 66). Mary and Steve each have their own insurance policy and do not cover each other on the individual policies. Mary's premium is $350 per month and Steve's premium is $400 per month. The only expenses that are eligible to be considered for this subtraction are Steve's premiums, ($4,800). Depending on his income and the portion of Steve's premiums already included in itemized deductions on Schedule A, Steve may claim up to $1,800 as a special Oregon medical subtraction.

(b) Expenses that cannot be attributed to a particular individual. A taxpayer that cannot determine to whom the expense is attributable must prorate the expense using a method that is reasonable based on the taxpayer's particular facts and circumstances. Common examples of expenses that are not attributable to a particular individual include, but are not limited to, medical, dental or long-term care insurance premiums. Depending on the facts and circumstances, reasonable methods of proration for such expenses may include:

(A) Dividing the eligible expenses that are for more than one person by the number of individuals covered by the policy.

(B) In the case of spouses filing separate returns, splitting any eligible expenses paid out of a joint checking account in which the taxpayer and the taxpayer's spouse have the same interest equally, unless you can show otherwise.

Example 4: Branden (age 66) and Natalie (age 61) file a joint return with Oregon itemized deductions and three dependent children. During the year, Branden and Natalie paid $19,380 in medical expenses: $16,600 in health insurance premiums for a plan that covered Branden, Natalie, and all three children; $500 in dental expenses for Branden; $1,500 in medical expenses for Natalie; and $780 in medical and dental expenses for the children. Natalie and the children's medical and dental expenses do not qualify for this subtraction because Natalie does not meet the age requirement and the children are dependents. For Branden and Natalie, a reasonable method to calculate the joint expenses attributable to Branden is to divide the total health insurance premiums paid ($16,600) by the number of insured (5) to arrive at $3,320 for Branden's portion of the joint expenses. Add the additional medical expenses attributable to Branden, $500, to arrive at a total of $3,820 of eligible expenses.

(3) Taxpayer who itemizes deductions. If a taxpayer has already claimed a portion of the eligible expenses as an itemized deduction on federal schedule A, line 4, the taxpayer must make an adjustment for those eligible expenses already deducted. Only medical and dental expenses for an age-qualifying taxpayer that are not already deducted in the calculation of Oregon taxable income are eligible for the subtraction. The taxpayer must prorate medical and dental expenses included in itemized deductions to determine what portion is eligible for this subtraction.

Example 5: Jeff and Maggie, both age 64, file a joint return with Oregon itemized deductions and federal Adjusted Gross Income (AGI) of $55,000. Jeff and Maggie also claim Maggie's 84-year-old mother as a dependent. During the year, Jeff and Maggie paid $12,300 in unreimbursed medical and dental expenses: $3,400 for self-employed health insurance premiums (claimed on the front of the 1040), $1,200 for Jeff, $4,200 for Maggie, $1,500 for Maggie's mother, and $2,000 in long-term care insurance premiums for Jeff and Maggie.

Jeff and Maggie deduct the entire self-employed health insurance premiums on the federal return; therefore, they do not include those expenses in the calculation of the subtraction. They can only include the $8,900 of medical expenses claimed on Schedule A, line 1, to calculate the subtraction ($1,200 for Jeff, $4,200 for Maggie, $1,500 for Maggie's mother, and $2,000 in long-term care insurance premiums for Jeff and Maggie).

For Jeff and Maggie, a reasonable method to calculate their joint expenses is to divide by two the total long-term care insurance premiums paid ($2,000) to arrive at $1,000 for each individual. Add the additional medical expenses attributable to Jeff and Maggie to arrive at total eligible expenses before calculating the subtraction. Jeff's expenses total $2,200 ($1,200 + $1,000) and Maggie's expenses total $5,200 ($4,200 + $1,000).

Jeff's expenses claimed on the Schedule A are 24.7% of the total expenses ($2,200 divided by $8,900). Maggie's expenses claimed on the Schedule A are 58.4% of the total expenses ($5,200 divided by $8,900). Jeff and Maggie could not deduct $5,500 of their expenses on Schedule A because of the AGI limitation. Jeff's portion of the expenses that were not deducted are $1,359 ($5,500 x 24.7%; rounded). Maggie's portion of the expenses that were not deducted is $3,212 ($5,500 x 58.4%). Based on their federal AGI, each of their expenses may not exceed $1,400 for this subtraction. Jeff's expenses are less than the limit, so his subtraction is limited to $1,359. Maggie's expenses are more than the limit, so her subtraction is $1,400. They will claim a $2,759 special Oregon medical subtraction on their return.

Stat. Auth.: ORS 305.100 & 316.693
Stats. Implemented: ORS 316.693
Hist.: REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.792
Military Pay Subtraction

(1) Definitions.

(a) "Uniformed services" refers only to services under the orders of the President of the United States and means the commissioned corps of the National Oceanic and Atmospheric Administration (i.e., the Coast and Geodetic Survey) and the Public Health Service (regular and reserve), consistent with 10 USC § 101(a)(5)(B) and (5)(C). Other members of the National Oceanic and Atmospheric Administration and the Public Health Service, or members of these organizations not under the orders of the President, are not included in this definition and would not qualify for an Oregon military pay subtraction.

(b) "Home of the taxpayer" is where the taxpayer does any of the following:

(A) Maintains his or her primary residence;

(B) Lives with his or her family; or

(C) Incurs continuing living expenses, such as mortgage or rent, utilities, and real and personal property taxes and insurance.

(2) Military pay subtraction. A member of the Armed Forces as defined in ORS Chapter 316 and this rule may subtract the following from their taxable military pay:

(a) Year of entry-Year of discharge. Military pay earned for services performed outside of Oregon.

(A) Year of discharge includes termination of full-time active duty from the Armed Forces of the United States.

(B) Year of entry is for initial enlistment or draft and only allowed one time per taxpayer, but the subtraction for year of discharge is allowed each time a taxpayer is discharged.

(C) The date of the enlistment order or date of discharge is the applicable tax year.

Example 1: Brian is domiciled in Oregon and remains domiciled in Oregon for all years relevant to this example. He enlists in the U.S. Army for the first time in 2004 and is stationed in California. In 2008, he is discharged and moves back to Oregon. The Army offers him a position in Portland, Oregon. He accepts the offer and reenlists shortly after the discharge. In 2012, Brian is reassigned to Florida. He plans to retire from the Army in 2024 and move back to Oregon. Brian will qualify for a subtraction of all military pay earned outside Oregon for tax year 2004 because that is his initial year of enlistment into the Armed Forces. He will also qualify for a subtraction for all of his military pay earned outside Oregon for tax years 2008 and 2024 because both years are treated as a year of discharge. From 2008 to 2012, he will qualify for a subtraction of $6,000 of his military pay while stationed in Oregon.

Example 2: Karen is domiciled in Oregon and remains domiciled in Oregon for all years relevant to this example. She enlists in the U.S. Navy in 2000 and is discharged in 2004 and returns to Oregon. Karen decides to reenlist in 2005 at which time she leaves Oregon and is assigned outside Oregon for the rest of her military career. In 2021, she retires from the Navy and returns to Oregon. Karen qualifies for a subtraction of military pay earned outside Oregon for tax year 2000 because that is her initial year of enlistment into the Armed Forces. She will also qualify for a subtraction for her military pay earned outside Oregon for tax years 2004 and 2021 because both years are treated as a year of discharge. Karen does not qualify for a subtraction for her military pay earned outside Oregon in 2005 under the year of entry or year of discharge rules because it was not her initial year of entry. However, she may subtract all of her military pay earned outside Oregon for that year under the subtraction for service performed outside of Oregon discussed in subsection (2)(b) of this rule.

(b) Service outside Oregon. Military pay earned for service performed outside of Oregon from August 1, 1990, to the date set by the President as the end of combat activities in the Persian Gulf Desert Shield area can be subtracted (Executive Order 12744).

Example 3: Jan enlisted in the Air Force Reserves in 2010. She was called to active duty September 15, 2013, and shipped to Fort Lewis, Washington. She earned a total of $10,000 military pay in 2013. $2,000 was earned in Oregon before September 15. She qualifies to subtract her military pay earned outside Oregon after September 15. Jan also qualifies to subtract the remaining $2,000 because it is less than $6,000. Her military pay subtraction is $10,000.

Example 4: Mike enlisted in the Oregon Army National Guard in 2000. He was called to active duty on August 1, 2013 and assigned outside Oregon. He earned $15,000 in military pay -- $10,000 prior to August 1, and $5,000 after. Mike's military pay subtraction for 2013 is $11,000 ($5,000 for service performed outside Oregon and up to $6,000 of his remaining military pay).

(c) Reserve component members away from home overnight. The taxpayer is "away from home" when the taxpayer is required to stay in a temporary location that is not a home of the taxpayer and is not allowed to go home while at the temporary location. The pay earned while away from home for 21 days or longer may only be subtracted by someone who is a member of a reserve component; reserves or National Guard.

Example 5: Hallie is a member of the Army National Guard assigned to her unit in Medford and earned a total of $12,000 for the year. She was required to go on assignment to Umatilla from April 5 to June 23 and stayed overnight in that area. Hallie wasn't authorized to go home during this time. She may subtract the $3,000 she earned during her assignment because she was away from home overnight for 21 days or longer. She may also subtract $6,000 of her remaining military pay.

(d) Other military pay. Any taxable military pay that is not eligible for one of the above subtractions may be subtracted up to $6,000. The military pay subtraction may not exceed the taxable military pay on the return. If both taxpayers on a joint tax return are eligible for a military pay subtraction, each person's subtraction is separately figured before adding them together to report on the return.

Example 6: Joe is a member of the Marine Corps and on active duty for all of 2013. He is domiciled and stationed in Oregon. He earned $25,000 of military pay during 2013. Joe's military pay subtraction is $6,000.

Example 7: Mary and Clyde are married and both members of the Army National Guard. During 2013, Mary was stationed overseas on active duty for 10 months. She received $1,000 of military pay before she was deployed. During her deployment she received $28,000 and $15,000 of that was excluded from federal taxable income. Of the total $29,000 she made, she's only reporting $14,000 as taxable income. She qualifies for a military pay subtraction of all $14,000; $13,000 of her taxable military pay was earned outside Oregon and the remaining taxable military pay is eligible as other military pay. Clyde remained in Oregon during 2013 and earned $10,000 of taxable military pay. He isn't eligible for any of the subtractions allowed for certain situations, but he is eligible to subtract up to $6,000 of his taxable military pay. Together the subtraction on their joint Oregon tax return is $20,000; $14,000 is Mary's and $6,000 is Clyde's.

(3) Combat zone benefits.

(a) Additional time to file and pay. Members of the Armed Forces who served in a combat zone are allowed extra time to take care of their Oregon income tax matters. Taxpayers are allowed the statutory filing period of 3 months and 15 days following the close of the tax year plus at least 180 days after the later of:

(A) The last day the person was in a combat zone (or the last day the area qualifies as a combat zone); or

(B) The last day of any continuous qualified hospitalization for injury from service in the combat.

(b) Eligible actions. The following are some of the income tax actions that can be extended:

(A) Filing any return of income tax (except withholding taxes);

(B) Paying any income tax (except withholding taxes);

(C) Filing a petition with the Tax Court;

(D) Filing a refund claim;

(E) Collection of any income tax due by the Department of Revenue.

(c) For purposes of this subsection (3), "income tax" includes the taxes imposed upon the income of estates and trusts and paid by the fiduciary thereof.

Example 8: Margaret entered Saudi Arabia on August 26, 2012. She remained there through March 16, 2013, when she departed for the United States. She was not injured and did not return to the combat zone. She has 285 days (180 plus 105) after her last day in the combat zone, March 16, to file her 2012 income tax return. The 105 additional days are the number of days in the three and a half month filing period that were left when she entered the combat zone (January 1–April 15). Margaret's return is due by December 26, 2013.

Example 9: Leonard's ship entered the Persian Gulf on January 5, 2013. On February 15, 2013, he was injured and flown to a U.S. hospital. Leonard remained in the hospital through April 21, 2013. He has 281 days (180 plus 101) after April 21, his last day in the hospital, to file his 2012 income tax return. The 101 additional days are the number of days in the three and a half month filing period that were left when he entered the combat zone (January 5–April 15). His 2012 return is due by January 27, 2014.

Stat. Auth.: ORS 305.100 & 316.792
Stats. Implemented: ORS 316.792
Hist.: REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

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Rule Caption: Corporate tax: apportionment, time for adjustments, HOA income, conforming changes: HB 3477, SB 307, and minimum tax.
Adm. Order No.: REV 11-2013
Filed with Sec. of State: 12-26-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 150-314.280(3), 150-314.410(4), 150-315.304(9), 150-317.010(4), 150-317.067
Rules Repealed: 150-305.655
Subject: 150-314.280(3) provides for the manner of making the double-weighted apportionment election for certain entities.

150-314.400(4) provides instructions for time to adjust a return based on another taxing authority's correction that causes a change to the Oregon tax return.

150-315.304(9) makes conforming changes to the Pollution Control Facilities tax credit based on the Con-Way tax court case.

150-317.010 removes language made obsolete because of 2013 HB 3477

150-317.067 explains how homeowners' associations calculate income.

150-305.655 is repealed based on changes to MTC statute in 2013 SB 307.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-314.280(3)
Election to Use Alternative Apportionment Weightings by Taxpayers Engaged in Utilities or Telecommunications; Revocation of Election

(1) A taxpayer engaged in utilities or telecommunications as defined in ORS 314.280(3)(e)(A) and (B) may elect to use the double-weighted sales apportionment factor weightings in ORS 314.650 (1999 Edition).

(2) This election is made by completing schedule AP using the double-weighted sales apportionment factor weightings on the original or amended tax return for each tax year for which the election is made to use the alternative factor weightings. For processing purposes check the appropriate box in the information section.

(3) A taxpayer may revoke the election to use the double-weighted sales apportionment factor weightings. This revocation is made by completing schedule AP using the single-sales apportionment factor on the original tax return.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.280
Hist.: REV 8-2002, f. & cert. ef. 12-31-02; REV 3-2005, f. 12-30-05, cert. ef 1-1-06; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.410(4)
Time Limit to Make Adjustment

(1) The provisions of this rule that apply to a federal change or correction apply to reports that are received by the department on or after October 4, 1997. The provisions of this rule that apply to another state's change or correction apply to changes or corrections made on or after October 23, 1999.

(2) The department may mail a Notice of Deficiency at any time within two years after the department receives notification of a change or correction contained in:

(a) A report received from the Internal Revenue Service;

(b) A report received from another state's taxing authority; or

(c) The written report filed by the taxpayer as required by ORS 314.380(2)(a)(A).

Example 1: Ron filed his 1996 federal and state returns on time. The Internal Revenue Service (IRS) audited and adjusted his federal return in March 2000. The department may mail a Notice of Deficiency within two years of receiving the report of the Internal Revenue Service adjustment.

(3) The department may mail a Notice of Deficiency if, at the time the change or correction by the Internal Revenue Service or another state's taxing authority was made, an assessment or issuance of a refund of federal or other state's tax based on the change or correction was within the time permitted by federal tax law or the tax law of the other state, as applicable. This provision applies regardless of whether an adjustment to the return is allowable under any other provision of Oregon law.

Example 2: ABC Corporation was audited by the IRS for tax year 1991. ABC Corporation signed an agreement with the IRS to extend the period of time for assessing federal tax. No separate extension agreement was signed with Oregon. Following completion of the federal audit, the department may mail a Notice of Deficiency at any time within two years of receiving the report of the Internal Revenue Service adjustment.

Example 3: Sally filed a timely 1993 tax return. In 1999, the IRS determined that Sally had omitted an item of income that was more than 25 percent of the gross income shown on the return. The IRS assessed additional tax based on Internal Revenue Code section 6501(e), which allows an assessment to be issued within six years of the filing of the return when there is such an omission. The department may mail a Notice of Deficiency based on the federal RAR within two years of receiving that report.

(4) The department may not mail a Notice of Deficiency based on a federal adjustment or the audit report of another state if, at the time of the change or correction, the tax year was closed to adjustment for Oregon purposes and also closed for adjustment under federal tax law, or the law of the other state, whichever applies.

Example 4: Lester filed timely 1995, 1996 and 1997 federal and state tax returns. In 1999, the Internal Revenue Service issued an adjustment that indicated Lester had incorrectly figured a capital loss for 1995. However, the IRS did not assess additional federal tax for 1995 because the year was not open to adjustment under any provision of federal law. Because both the federal and state returns were closed to adjustment, the department may not use the provisions of ORS 314.410(3)(b) to issue a Notice of Deficiency based on the Internal Revenue Service adjustment.

(5) When the department is notified of a change or correction, the department is not limited to the adjustments reflected in the IRS report, the report of the other state's taxing authority, or the taxpayer's written report submitted in the format required by OAR 150-314.380(2)-(B). The department may make any adjustments deemed necessary to properly reflect Oregon taxable income or Oregon tax liability for the year in question.

Example 5: Paul, a California resident, worked temporarily in Oregon in 1995 before returning to California. In April 1996, Paul filed a nonresident Oregon return for 1995 and claimed a credit for taxes paid to California. In March 2000, California audited his 1995 California return and in July 2000 Paul paid additional tax to California based on additional wages earned in Oregon. Paul filed a claim for refund with Oregon in November 2000, as allowed by ORS 314.380(2)(b). In reviewing the claim, the department allowed the increase in the credit for taxes paid to another state based on the increased wages. However, the department determined Paul had incorrectly calculated the political contribution credit and issued an adjusted refund.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.410
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-314.410(3), REV 8-2008, f. 8-29-08, cert. ef. 8-31-08; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-315.304(9)
Pollution Control Facilities: Tax Credit Carry Forward

(1) The amount of pollution control facility tax credit that may be carried forward to a succeeding tax year is the sum of credits that exceed the tax liability, after other credits, for all prior tax years that are within the carryover period.

Example 1: A corporate excise taxpayer built a pollution control facility in 1995 at a certified cost of $80,000. The certified percentage allocable to pollution control is 50 percent and the facility has a useful life of eight years. The maximum credit allowed in one tax year is calculated as follows: The $80,000 certified cost is multiplied by the 50 percent allocable to pollution control, yielding $40,000 as the total amount of credit to be claimed over the eight year life of the facility. The $40,000 divided by eight equals $5,000, the maximum yearly credit. See ORS 315.304(2). The taxpayer claimed the maximum credit on tax returns for 1995 and 1996. On the taxpayer's 1997 return, the taxpayer is subject to a corporate excise tax of $1,000 that is offset by $1,000 of the pollution control facility tax credit, leaving $4,000 of credit to be carried forward.

(2) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer must use the credit from a previous year first and then the current year's credit.

(3) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

Example 2: The taxpayer described in the prior example computes a tax of $8,000 for 1998. The taxpayer will offset that tax with $8,000 of credit ($4,000 carried over from 1997 plus $4,000 of the current year's $5,000 credit), leaving $1,000 of the 1998 credit to be carried forward.

(4) When a facility is sold, the amount of unused credit carried forward from tax years before the sale is retained by the seller to offset tax in future years.

Example 3: Calendar year taxpayer A sold a facility to taxpayer B on January 1, 2001. A's allowable pollution control facility credit for 2000 was $500, but A had a net loss and no tax liability to offset. The unused 2000 credit will be carried forward by A to offset A's future taxes.

(5) A taxpayer that has unexpired credits at the beginning of tax year 2001 may carry those credits forward for up to three additional tax years, but only if the facility is in use and operation during the tax year to which the credit is carried.

Example 4: Calendar year corporation taxpayer B received certification for a pollution control facility with a 10 year asset life and was first eligible to claim the credit in tax year 1996. B reported losses for tax years 1996 through 2000 and was not able to claim the allowable credits for those years. The credit allowed for 1996 was carried forward to 1997, 1998, and 1999 and expired. The credit allowed for 1997 was carried forward to 1998, 1999, and 2000 and expired. The credits allowed for tax years 1998 through 2005 were unexpired at the beginning of B's 2001 tax year and are eligible to be carried forward for up to six years.

Example 5: Taxpayer B from Example 4 reports a loss in tax year 2002 and closes the pollution control facility on December 31, 2002. B's unused credits from 1998 and 1999 may not be carried forward to 2003 because the facility was not in use and operation during the tax year to which the credit is carried and the three year period for carryover expired in 2001 and 2002 respectively. The credits for tax years 2000, 2001, and 2002 are eligible to be carried forward for up to three years. No credits may be computed for tax years 2003, 2004, and 2005, but the unused credits carried forward from 2000, 2001, and 2002 may be claimed in the three later years.

Example 6: Corporation taxpayer C's pollution control facility is certified on January 1, 2001. C is able to offset only half of its allowable credit against tax on its 2001 return. The balance of the 2001 credit may only be carried forward for up to three years. C did not have unexpired credits at the beginning of its tax year beginning in 2001.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.304
Hist.: 1-69; 10-73; 7-76; 1-1-77, Renumbered from 150-316.097(11) to 150-316.097(9); 12-31-85; 12-31-86; 12-31-88, Renumbered from 150-316.097(9); 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-317.010(4)
Definition: "Doing Business"

(1) A taxpayer is doing business when it engages in any profit-seeking activity in the State of Oregon. What transaction or transactions need be entered into within this state in the course of such an activity to constitute the doing or carrying on of business within the state is primarily a question of fact, depending upon the circumstances in each case.

Example 1: The taxpayer is clearly doing business within this state if it occupies, has, maintains or operates an office, shop, store, warehouse, factory, agency or other place within this state where some of its affairs are systematically and regularly carried on, notwithstanding the fact that it may also enter into transactions outside this state.

Example 2: A corporation engaged in the sale of tangible personal property is doing business within this state if sales activities are regularly carried on within this state by an employee or agent of the seller, and if either a stock of goods is maintained within this state, or an office or other place of business where affairs of the corporation are regularly carried on is maintained within this state.

Example 3: A foreign corporation consigns goods to one or more consignees within Oregon who then sell the goods. The foreign corporation is doing business in Oregon since it has sales activity and a stock of goods within Oregon.

(2) A foreign corporation whose business is providing services is "doing business" in this state if it has employees providing those services in Oregon. It does not matter whether the services are provided on the client's property or on the corporation's own property since it is engaged in a profit seeking activity in Oregon.

(3) If a foreign corporation's business activities in this state are confined to purchase and storage of personal property incident to shipment outside the state, the corporation is not deemed to be doing business for corporation excise tax purposes if the following conditions are met:

(a) The personal property remains in the exact state or form as it was when purchased during the time it is located within Oregon.

(b) The foreign corporation is not an affiliate of another foreign or domestic corporation, as defined in section 1504 of the Internal Revenue Code, which is doing business in Oregon.

(4) The fact that a corporation has no employees in Oregon does not mean the corporation is not doing business in this state. If activities are performed in Oregon by a third party on behalf of the corporation, and the activities are not protected under Public Law 86-272, the corporation is doing business in Oregon.

Example 4: The provision of in-state repair and warranty services by an independent contractor for a direct marketing computer company, advertised as part of its standard warranty or as an option that can be separately purchased, contribute significantly to the company's ability to establish and maintain its market for computer hardware sales in Oregon. Therefore, the computer company is doing business in Oregon. The extension of immunity for activities by independent contractors under Public Law 86-272 does not include repair and warranty service.

(5) A corporation that is not "doing business" in Oregon may still be subject to tax in this state. The Oregon corporation income tax under ORS Chapter 318 imposes tax on corporations that have income derived from sources within Oregon. See OAR 150-318.020(2) for a list and description of the activities that, if conducted in Oregon, will result in a corporation being subject to the corporation income tax.

[Publications: The publication(s) referred to in this rule is available from the agency pursuant to ORS 183.360(2) and 183.355(6).]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.010
Hist.: 1959; 1-1-77, Renumbered from 150-317.010(8); RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-317.067
Tax on Homeowner's Association Income

Homeowners associations, such as condominium management associations and residential real estate management associations, may elect to be treated as tax-exempt organizations for taxable years beginning on and after January 1, 1978. But this tax-exempt status will protect the association from tax only on its exempt function income, such as membership dues, fees, and assessments received from member-owners of residential units in the particular condominium or subdivision involved. The homeowners association taxable income will be taxed at the corporate rates provided in ORS 317.061. To qualify for the election, the association must meet the following conditions:

(1) A copy of the federal Form 1120-H filed with the Internal Revenue Service must be filed with the Oregon Department of Revenue no later than the time prescribed by law for filing the return.

(2) It must be organized and operated as provided in section 528(c) of the Internal Revenue Code.

(3) "Homeowners association taxable income" is determined pursuant to section 528(d) of the Internal Revenue Code and pertinent federal regulations. However, net capital gains shall be included in the computation of homeowners association taxable income and shall receive no special treatment.

(4) "Exempt function income" is determined pursuant to section 528(d) of the Internal Revenue Code and pertinent federal regulations.

(5) If a homeowners association that elects to be treated as a tax exempt organization has positive homeowners association taxable income, it shall be reported on an Oregon Corporation Excise Tax Return, Form 20and the association is subject to the greater of the calculated corporation excise tax or the minimum tax.

(6) If a homeowners association that elects to be treated as a tax-exempt organization does not have positive homeowners association taxable income, the association is not required to file an Oregon Corporation Excise Tax Return, Form 20 and is not subject to the minimum tax.

[Publications: Publications referenced are available from the agency pursuant to ORS 183.360(2) and 183.355(1)(b).]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.067
Hist.: 10-7-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-317.080(6)(b); RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

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Department of State Lands
Chapter 141

Rule Caption: Clarify, streamline, and simplify Estates and Unclaimed Property reporting and claims procedures
Adm. Order No.: DSL 1-2014
Filed with Sec. of State: 1-13-2014
Certified to be Effective: 2-1-14
Notice Publication Date: 12-1-2013
Rules Amended: 141-030-0015, 141-030-0025, 141-030-0037, 141-035-0012, 141-035-0013, 141-035-0016, 141-035-0018, 141-035-0020, 141-035-0025, 141-035-0030, 141-035-0035, 141-035-0040, 141-035-0045, 141-035-0047, 141-035-0048, 141-035-0050, 141-035-0065, 141-035-0068, 141-040-0020, 141-040-0214, 141-045-0010, 141-045-0031, 141-045-0041, 141-045-0061, 141-045-0100
Rules Repealed: 141-030-0036, 141-035-0015
Subject: The revised rules repeal all references to institutional escheat property which was no longer reportable to the Department when ORS 179.540 was repealed in 1997, and all such property currently being held has been held for more than 10 years and is no longer available for claim. Other sections of the rules are revised to reflect the current statutory authority and/or remove authority that has been repealed.

The revised rules clarify the types of abandoned tangible personal property that are not considered reportable as unclaimed. The revisions provide specific exclusions for willful abandonment of things such as automobiles, furniture, household goods, used clothing, and hazardous materials.

The agency and its stakeholders have been able to achieve efficiencies in administration of and compliance with program requirements by advances in technology. The rules have been revised to reflect the increased use of technology and electronic reporting and record keeping.

The Division 35 rules were last revised in December 2003. The majority of the revisions are intended to provide clarity and improve the readability of the rules.
Rules Coordinator: Tiana Teeters—(503) 986-5239

141-030-0015
Definitions

As used in this division and division 35 of these rules:

(1) "Administration" means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.

(2) "Affiant" means the person or persons signing an affidavit for a small estate filed under ORS 114.515.

(3) "Agent" means a person who is filing a petition to recover escheat property on behalf of a claimant.

(4) "Assets" includes real, personal and intangible property.

(5) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

(6) "Claimant" means a person or entity claiming to be the rightful owner and legally entitled to escheat property held by the Department.

(7) "Claiming Successor" means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, the Director of the Department of State Lands;

(b) If the decedent died testate, the devisee or devisees of the decedent; and

(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545(1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent's death.

(8) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes and proceeding is vested as provided in ORS 111.075.

(9) "Decedent" means a person who has died.

(10) "Department" means the Department of State Lands.

(11) "Devisee" includes "legatee" and "beneficiary".

(12) "Director" means the Director of the Department of State Lands or the designee of the director.

(13) "Distributee" means a person entitled to any property of a decedent under the will of the decedent or under intestate succession.

(14) "Escheat property" means property paid or delivered to the Department because the devisee or heir could not be found, or refused to accept the property.

(15) "Estate" means the real and personal property of a decedent as from time to time changed in form by sale, reinvestment or otherwise, and augmented by any accretions or additions thereto and substitutions therefore or diminished by any decreases and distributions therefrom.

(16) "Estate Administrator" means an employee of the Department appointed by the Director to protect the assets of a decedent, and administer the estate on behalf of the Department.

(17) "Finder" means any person who independently searches for and finds the owners of escheat property for a fee paid by the owner.

(18) "Funeral" includes burial, cremation or other disposition of the remains of a decedent, including the plot or tomb and other necessary incidents to the disposition of the remains.

(19) "Heir" means any person, including the surviving spouse, who is entitled under intestate succession to the property of a decedent who died wholly or partially intestate.

(20) "Interested person" includes heirs, devisees, children, spouses, creditors and any others having a property right or claim against the estate of a decedent that may be affected by the proceeding. It also includes fiduciaries representing interested persons.

(21) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all the estate.

(22) "Intestate succession" means succession to property of a decedent who dies intestate or partially intestate.

(23) "Issue" includes adopted children and their issue and, when used to refer to persons who take by intestate succession, includes all lineal descendants, except those who are the lineal descendants of living lineal descendants.

(24) "Known heir" means an heir who has been identified and found.

(25) "Personal property" includes all property other than real property.

(26) "Personal Representative" includes executor, administrator, administrator with will annexed and administrator de bonis non, but does not include special administrator.

(27) "Property" means both real and personal property.

(28) "Probate" means the court procedure that encompasses all matters and proceedings pertaining to administration of estates as described in ORS 111.085, including but not limited to appointment and qualification of personal representatives, determination of heirships, construction of wills, and the administration, settlement and distribution of estates of decedents. As to the estate of a decedent, "settlement" includes, the full process of administration, distribution and closing.

(29) "Real property" means all legal and equitable interests in land, in fee and for life.

(30) "Testate" means the circumstances of dying with a legal, valid will that effectively disposes of all the estate.

(31) "Will" means the legal, valid, written document that disposes of the estate. "Will" includes a codicil or a testamentary instrument that merely appoints an executor or that merely revokes or revives another will.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 31, f. & cert. ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-030-0025
Petitions to Recover Estate Property

(1) Pursuant to ORS 116.253, a claimant or agent may initiate a claim to recover escheat estate property by filing a petition with the Department within the later of 10 years after the death of a decedent from whose estate the Department received the property, or eight years after the entry of a decree or order escheating the property to the state.

(2) A petition shall be considered filed upon its receipt by the Department.

(3) The petition shall provide all information required under subsections (4) and (5) of this rule. The petition shall be verified and state the following:

(a) The name, age, and place of residence of the claimant by whom or on whose behalf the petition is filed.

(b) That the claimant is lawfully entitled to the property or proceeds, and a brief description of the property or proceeds.

(c) That at the time the property escheated to the state, the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement.

(d) That the claimant claims the property or proceeds as:

(A) (For escheat of an estate) An heir or as the personal representative of the estate of an heir.

(B) (For escheat of a distributive share of an estate) The person who was entitled to receive the distributive share or that person's personal representative.

(e) That 10 years have not elapsed since the death of the decedent from whose estate the Department received the property, or that eight years have not elapsed since the entry of the decree or order escheating the property to the state.

(f) If the petition is filed on behalf of the claimant, the identity and authority of the claimant's agent.

(4) The petition to recover estates and distributive shares shall be supported by the following documents:

(a) Current photo identification of the claimant, or other satisfactory proof of identity.

(b) An acknowledged indemnification agreement signed by the claimant(s) and acceptable to the Department.

(c) If the petition is being filed by an agent for a claimant, a Power of Attorney or written, acknowledged authorization given by each claimant to the agent to act on behalf of the claimant. The original Power of Attorney or authorization shall be filed with the petition. A finder who is acting as an agent for a claimant shall be licensed and comply with the requirements of ORS 703.401 to 703.470. The finder shall forward a copy of the finder's current license issued by the Department of Public Safety Standards and Training with the initial Power of Attorney. Subsequent claims filed by a finder shall include the current license number on the Power of Attorney.

(d) If the property was paid or delivered to the Department because a decedent died intestate with no known heirs, a genealogical chart showing the relationship of all heirs of the decedent. If the line has lapsed, a statement shall be included that no issue exists and proof that the line lapsed by death. If persons in a line have not been identified or found, the statement shall include information on the efforts made to identify and find the persons in that line and all known information on that line.

(e) If the property was paid or delivered to the Department because a decedent died intestate with no known heirs, certified copies of birth, death, and/or marriage certificates, that show the family relationships of the heirs to the decedent.

(5) In addition to the documents required by subsection (4) of this rule, a petition may also include the following records to verify and establish the relationship of the heirs to the decedent:

(a) Bureau of Census Records;

(b) Published obituaries and funeral Notices;

(c) Wills of deceased family members, which show the relationship of heirs to each other;

(d) Church records showing birth, death, baptism, or marriages;

(e) Applications for Social Security cards, naturalization records, employee pension plans or any records containing the signature of the applicant/claimant and listing any designated beneficiaries, other family members or parents;

(f) Court records and duly authenticated records of proceedings conducted before domestic and foreign courts to show the heirs of the decedent and the entitlement of the claimant to the escheat funds.

(6) Copies of documents submitted to support a petition shall be certified by the custodian of the original document or shall include an appropriate reference to the source at which they may be verified.

(7) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the application.

(8) In order to assist the Department in determining the rightful owner of an account, a claimant may voluntarily include the claimant's Social Security number on the petition.

(9) For the purposes of this rule, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-030-0037
Review by the Department

(1) The Department shall review the petition and the sufficiency of the supporting documents. If a preponderance of the evidence indicates that the claimant is legally entitled to the property, the Department shall satisfy charges due, if any, to the Department of Human Resources, and prepare the necessary administrative deeds and assignment of contracts for property that is part of the estate. The Department may require the Department of Justice to review the petition or claim and supporting documents.

(2) Upon completion of the requirements of subsection (1) of this section, the Department shall request a warrant from the State Treasurer and make payment to the claimant, agent, or attorney for the claimant.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119
Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0012
Authority of Department of State Lands in Administration of Estates

(1) In any estate administered by the Department pursuant to 141-035-0011, the Department may:

(a) Administer the estate under the probate laws of Oregon in accordance with ORS Chapters 113 to 116;

(b) Administer the estate under the provisions for small estates in ORS 114.505 to 114.560;

(c) Submit an affidavit and receive funds from a financial institution under ORS 708A.430;

(d) Submit an affidavit to examine the contents of a safe deposit box under ORS 708A.655, 722.660 or 723.844;

(e) Submit an affidavit and receive the withdrawal of value of property in accordance with ORS 722.262;

(f) Submit an affidavit and receive the moneys of the decedent on deposit with a credit union in accordance with ORS 723.466; or

(g) Deposit to the Common School Fund without formal proceedings assets of a decedent which are voluntarily delivered to the Department or secured by the Department in accordance with ORS 113.242. In such cases, the Department shall take reasonable steps under the circumstances to identify and notify heirs and to identify and pay from the assets received creditors of the estate.

(2) Except for expenses disallowed by the court with authority over the probate, any expenses of the Department in carrying out the authority set forth in subsection (1) of this rule shall be paid from the proceeds of the estate. Such expenses shall be calculated in the manner described in OAR 141-035-0068. The Department encourages personal representatives sending notices and documents required by statute to the Department to include a letter explaining the practical circumstances of the estate and such additional information as will assist the estate administrator in protecting the interest of the State of Oregon in the estate.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0013
Delivery of Information to Division

(1) Upon appointment, a personal representative shall deliver or mail to an estate administrator a copy of the petition filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative has not identified and found all heirs and devisees of the decedent. The personal representative shall file an affidavit in the probate proceeding proving the delivery or mailing.

(2) If, within 60 days after the appointment of a personal representative it appears that any heir or devisee of the decedent cannot be identified and found, the personal representative shall promptly deliver or mail to an estate administrator a notice indicating that an heir or devisee cannot be identified and found. The personal representative shall file an affidavit in the probate proceeding proving the delivery or mailing.

(3) A personal representative who files a report under ORS 116.203 that shows that payment or delivery of property cannot be made to a distributee entitled to the property shall provide to the Department of State Lands:

(a) A copy of the order of escheat;

(b) The property;

(c) The name of the person entitled to the property; and

(d) The relationship of the devisee or heir to the decedent.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0016
Notice to Department of Decedent Who Died Without Known Heirs

(1) Any person who has knowledge that a decedent died wholly intestate, that the decedent owned property subject to probate in Oregon and that the decedent died without a known heir shall give notice of the death within 48 hours after acquiring that knowledge to an estate administrator of the Department of State Lands.

(2) Except as provided by ORS 708A.430 and 723.466, a person may not dispose of or diminish any assets of the estate of a decedent who has died wholly intestate, who owned property subject to probate in Oregon and who died without a known heir unless the person has prior written approval of an estate administrator of the Department of State Lands. The prohibition of this subsection:

(a) Applies to a guardian or conservator for the decedent; and

(b) Does not apply to a personal representative appointed under ORS 113.085(3) or to an affiant authorized under 114.520 to file an affidavit under 114.515.

(3) For purposes of this rule, "person" includes, but is not limited to friends, neighbors, care centers, nursing homes, hospitals, banking institutions, attorneys, guardians and conservators.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0018
Taking Custody of Property; Payment of Expenses of Estate

(1) An estate administrator of the Department of State Lands may take custody of the property of a decedent who died owning property subject to probate in Oregon upon the estate administrator receiving notice that:

(a) The decedent died wholly intestate and without a known heir; or

(b) The decedent left a valid will, but no devisee has been identified and found.

(2) For any estate described in subsection (1) of this section, an estate administrator of the Department of State Lands may:

(a) Incur expenses for the funeral, burial or other disposition of the remains of the decedent in a manner suitable to the condition in life of the decedent;

(b) Incur expenses for the protection of the property of the estate;

(c) Incur expenses searching for a will or for heirs or devisees of the decedent;

(d) Have access to the property and records of the decedent other than records that are made confidential or privileged by statute;

(e) With proof of the death of the decedent, have access to all financial records of accounts or safe deposit boxes of the decedent at banks or other financial institutions; and

(f) Sell or dispose of perishable property of the estate.

(3) The reasonable funeral and administrative expenses of the Department of State Lands incurred under this section, including a reasonable attorney fee, shall be paid from the assets of the estate with the same priority as funeral and administration expenses under ORS 115.125.

(4) When the Department receives notice of a person who has died and for whom it appears there are no known heirs to inherit and no known will, the Estate Administrator shall complete an intake form, which shall include, but need not be limited to, the following information:

(a) Decedent's name, address, Social Security number, date of death, place of death, and date of birth, if known;

(b) Notifier's name, contact information, and relationship to the decedent;

(c) Funeral home where the body has been taken, name of the director or principal;

(d) The decedent's place of residence, personal property, financial assets, and any other information determined to be pertinent;

(e) Names, addresses and phone numbers of friends and neighbors who can lend assistance in trying to establish identity of nearest of kin; and

(f) Any other information regarding relatives of the decedent, or that might assist in locating heirs.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0020
Initial Proceedings

(1) Pursuant to ORS 113.085(2), if it appears that the decedent died wholly intestate and without known heirs, the Court shall appoint the Department of State Lands as personal representative or small estates affiant. The Department of Justice shall represent the Department of State Lands in the administration of the estate.

(2) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.085(3) attaches written authorization from an estate administrator approving the filing of the petition by the person. Except as provided in subsection (3) of this rule, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

(3) Any person who wishes to petition the court for appointment as a personal representative for the estate of a decedent who died wholly intestate and without known heirs shall submit a written request to the

Department. The estate administrator may authorize the appointment of another person to act as personal representative if:

(a) After investigation, the estate administrator determines the estate is insolvent; or

(b) The estate administrator determines that the appointment is the most cost-effective method to administer the estate and protect the assets of the estate.

(4) A creditor of an estate shall give written notice to the Department informing the Director that the creditor intends to file a Small Estates Affidavit. The Department shall investigate the assets and liabilities of the estate, and within 30 days after receipt of the notice, either:

(a) Give written authorization to the creditor to file the Small Estates Affidavit; or

(b) Inform the creditor that the Department will file a Small Estates Affidavit, and include the creditor as an interested person.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0025
Funeral Arrangements

(1) If the body is delivered to a funeral home and it appears the decedent has died intestate and without known heirs, the funeral director shall contact the Estate Administrator within two working days after receipt of the body. The Department must approve all funeral arrangements.

(2) Either the funeral director or the Estate Administrator, after consultation with the funeral director, shall complete applications for Social Security, Veterans Administration, and other available death benefits.

(3) The Estate Administrator and the funeral director shall negotiate appropriate funeral charges and disposition of the remains pursuant to ORS 113.242(2).

(4) In determining the nature and amount of services to be rendered for a "plain and decent funeral," the Estate Administrator shall consider the amount of assets available in the estate, the expressed desires of the decedent's friends and associates concerning appropriate funeral services, the number of persons expected to attend any funeral services offered, and the prominence of the decedent in the local community.

(5) Burial and cemetery costs are considered separate from funeral costs and the amount payable is contingent upon the amount of funds available in the estate. The funeral director shall notify the Estate Administrator of the proposed cemetery and the cost estimate for burial expenses. Expenses are limited to the available resources in the estate.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0030
Assessment of Assets

(1) As soon as possible but not more than five working days after the Department receives notification under OAR 141-035-0016(1) or 141-035-0025, the Estate Administrator may travel to the decedent's residence to:

(a) Inventory, evaluate, and determine best method of liquidation of tangible assets.

(b) Gather and secure all pertinent papers and records of the decedent to provide a source of information that may be reviewed to determine whether a will exists, and whether there are existing heirs as defined in ORS Chapter 111, and 112.015 to 112.055, 112.065, 112.075, 112.095, 112.105 and 112.115.

(2) If the search of the residence does not produce evidence of a will or heirs, the Estate Administrator shall:

(a) Contact local banks, savings and loan associations, credit unions, and other financial institutions to freeze accounts pending delivery of appropriate documents to withdraw the accounts and to obtain balances of accounts and information regarding safe deposit boxes.

(b) Contact utilities, delivery services, and postal authorities to forward billings and statements to the Department and to arrange for the termination of services if in the best interest of the estate to protect the property.

(3) The Estate Administrator may request assistance from available law enforcement personnel to provide for the security of real property, personal property, and household goods.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0035
Inventory

(1) Within five working days after verifying that the decedent apparently has no legal will, nor known heirs, the Estate Administrator shall compile an inventory of the decedent's assets.

(2) The Estate staff shall assign an estimated value to the inventory. The value of investment-type assets shall be recorded at the value of the asset as of the date of death.

(3) Any items with commercial value will be itemized on the inventory.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0040
Administration of the Estate

(1) If the value of the estate does not exceed the amounts stated in ORS 114.515 for a Small Estates Affidavit, the Department as a claiming successor of the decedent may file an affidavit for a proceeding with the appropriate court as described in ORS 114.505 to 114.560. If the value of the estate exceeds the limits authorized under the procedure for a Small Estate, the Estate Administrator shall file a petition with the appropriate court to be appointed personal representative and administer the estate according to ORS 111.005 through 117.095.

(2) The Estate Administrator may pay funeral and cemetery costs as soon as the Estate Administrator determines that enough funds will remain to pay administrative costs.

(3) A formal claim against the estate may be allowed, contingent on the validity of the claim. If it appears there are insufficient funds to pay all claims in full, the Estate Administrator shall follow the order of payment of expenses and claims as set forth in ORS 115.125.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 3-1982, f. & ef. 6-10-82; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0045
Search for Heirs

(1) The Estate Administrator shall conduct a search of records to locate any heirs that may have a legal right to inherit. The search may include but not be limited to the following:

(a) Papers, records, albums, newspaper clippings, letters, personal telephone books, etc., included in the personal effects of the decedent;

(b) Friends and neighbors;

(c) Employee unions, businesses or places of employment, retirement funds, insurance companies or any other association of which the decedent may have been a member;

(d) Banks, credit unions and other financial institutions, savings and loan associations, mortgage and investment funds with which the decedent may have conducted financial affairs;

(e) Public agencies;

(f) Paid genealogists or other heir searching method.

(2) If the Estate Administrator finds a valid will before filing a full probate or Small Estates Affidavit, the Estate Administrator shall immediately contact the personal representative named in the will. If the Estate Administrator cannot locate the personal representative, the Estate Administrator shall notify the primary beneficiary. The Department shall then make arrangements to turn over all assets, less the Department's administrative costs to the appropriate individual upon proof of identity.

(3) The Department's probate file is a public record under Oregon's public meetings and records laws. The Department file may contain privileged and/or protected information subject to being withheld. Researching firms or heir finders must make an appointment with the Estate Administrator to view the Department files after the Department has filed the records with the probate court.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0047
When Heirs Are Discovered

(1) A person claiming to be an heir of the decedent during the administration of a full probate or Small Estates Affidavit must submit to the Estate Administrator acceptable proof to substantiate kinship to the decedent. Acceptable proof includes, but is not limited to, certified copies of death and birth certificates, genealogical search records, obituaries, funeral notices, Baptism records, and family Bibles. The Department may continue to administer the estate until the Estate Administrator determines that evidence submitted is sufficient to prove that the person is legally entitled to the decedent's assets. If other heirs are identified but not located, the Department may continue to administer the estate in order to protect the interest of the missing heirs and the Common School Fund, or if administration of the probate is substantially complete and the Estate Administrator and the known heirs agree that it is in the best interests of the estate for the Department to complete the administration.

(2) If the Department has filed a probate, and all heirs are subsequently identified and found, the heir shall file a substitution of personal representative with the probate court, and a court certified copy of the order of substitution with the Department.

(3) If the administration is by a Small Estates Affidavit, the heir shall file an amended Small Estates Affidavit with the court, which shows that the heir is taking over control and responsibility of the estate from the Department, and submit a court certified copy to the Department.

(4) Upon receipt of the court certified copy of the amended Small Estates Affidavit or the order of substitution of Personal Representative, the Estate Administrator shall turn over the assets, less the Department's administrative costs and attorney fees, to the claiming successor or successor Personal Representative, including all bills and claims against the estate.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0048
Disclaimer Of Interest In Estate

(1) In accordance with ORS 105.623 to 105.649, any heir or devisee to an estate may disclaim all interest in an estate by delivering the disclaimer to the Department as personal representative of the estate, or if the Department is not serving at the time the disclaimer is made, by delivering the disclaimer:

(a) If a personal representative other than the Department is presently serving, to that personal representative; or

(b) If a personal representative is not serving at the time the disclaimer is made the disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

(2) Upon notification to the Department of any heir or devisee who refuses to act as personal representative of the estate of a decedent, and who refuses an interest in the estate, the Department may forward a disclaimer to the person disclaiming.

(3) The disclaimer shall:

(a) Be in writing or otherwise recorded by inscription on a tangible medium or by storage in an electronic or other medium in a manner that allows the disclaimer to be retrieved in perceivable form;

(b) Declare that the person disclaims the interest in the property or in the power of appointment;

(c) Describe the interest in property or power over property that is disclaimed;

(d) Be signed by the person making the disclaimer; and

(e) Be delivered in the manner provided in ORS 105.642.

(4) Upon receipt of the properly executed disclaimer by the Department, the decedent shall be treated as though he or she died wholly intestate and without heirs with respect to the disclaimant, and the Estate Administrator shall petition the court to be appointed as personal representative or Small Estates Affiant to administer the estate in the usual manner.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0050
Sale of Real Property and Personal Effects

When serving as affiant or personal representative for an estate, the Department shall sell those items determined to have significant commercial value and dispose of the items with little or no value in accordance with OAR 141-045-0185.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0065
Closing the Estate and Escheat of Assets

(1) The Department shall make every effort to close full estates admitted to probate within one year after the court appointment date. If the full probate cannot be closed within one year the Estate Administrator shall file an annual accounting with the appropriate probate court.

(2) Prior to closing, the Estate Administrator shall compute the administrative and Department of Justice expenses. If the estate was admitted to full probate, fees shall be computed in accordance with ORS 116.173. The Estate Administrator shall compute administrative expenses of the Department in the manner described in OAR 141-350-0068. In addition, extraordinary expenses such as special trips by the Estate Administrator, additional manpower required to inventory, transport or dispose of personal property shall be computed and included as administrative expenses in the final account submitted to the court.

(3) If the estate was filed under the Small Estates procedure, the Estate Administrator shall:

(a) Complete administration and processing of claims and expenses immediately after the end of the four month period after the affidavit is filed with the probate court; and

(b) Compute administrative and legal expenses as actual costs incurred in accordance with ORS 116.183. The Estate Administrator shall compute administrative expenses of the Department in the manner described in OAR 141-350-0068.

(4) The amount remaining after payment of expenses shall be placed in a trust fund of the Department and held for ten (10) years after the date of death or eight (8) years after of the date entry of the judgment or order of escheat. If heirs claim the estate during that period, Department shall apply the procedures of OAR 141-030-0025 and ORS 116.253. If an heir does not file a petition for recovery within the time period, the Department shall deposit the total amount credited to the estate subsidiary account in the Common School Fund.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-035-0068
Computation of Department Expenses

(1) The Department shall recover its actual expenses incurred in administering an estate, including attorney fees, probated under ORS Chapter 113 and 114, a small estate proceeding under 114.505 to 114.560, actions to recover the escheated portion of an estate under 116.203, investigation or recovery of assets under 708A.430, 708A.655, 722.262, 722.660, 723.466 or 723.844 and for any expenses incurred in securing an estate and identifying heirs when it is unknown as to whether the decedent died intestate and without known heirs.

(2) The calculation of the expenses of the Department under subsection (1) of this rule shall consist of the amount of the basic hourly rate of the employee in addition to the overhead for the time spent. As used in this subsection:

(a) "Basic hourly rate" means the actual salary and other personnel expenses of the employee, divided by the annual number of hours of employment.

(b) "Overhead" includes all other expenses of the agency proportionately attributable to the activities of the employee that are not separately itemized and billable as expenses.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-040-0020
Definitions

As used in OAR 141-040-0010 to 141-040-0220:

(1) "Agent" means a person who is filing a claim to recover unclaimed property on behalf of a claimant.

(2) "Claimant" means a person or entity claiming to be the rightful owner, or a person claiming to be legally authorized to act on behalf of a person or entity claiming to be the rightful owner, and claiming to be legally entitled to unclaimed property held by the Department.

(3) "Department" means the Department of State Lands.

(4) "Entity" includes a domestic or foreign limited liability company, corporation, professional corporation, foreign corporation, domestic or foreign nonprofit corporation, domestic or foreign cooperative corporation, profit or nonprofit unincorporated association, business trust, domestic or foreign general or limited partnership, or trust.

(5) "Escheat property" means property paid or delivered to the Department because the distributee, devisee, or heir could not be found, or refused to accept the property.

(6) "Finder" means any person who independently searches for and finds the owners of unclaimed or escheat property for a fee paid by the owner.

(7) "Finder's Report of Unclaimed or Escheat Property" means a report that lists the names of owners of unclaimed or escheat property in the custody of the Department, and may include additional information that would assist in finding the owners.

(8) "Governmental Entity" means the federal government, the state, any agency or political subdivision of the state or federal government, or any unit of local government.

(9) "Holder" means a person, wherever organized or domiciled, who is in possession of property belonging to another, a trustee or indebted to another on an obligation.

(10) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person, or the person's legal representative, having a legal or equitable interest in property.

(11) "Unclaimed Property" means any asset that is paid or delivered to the Department pursuant to ORS 98.352 because the owner cannot be found by the company or person holding the asset.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 7-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-040-0214
Review Criteria/Time

(1) The administrator shall approve or deny a claim to recover unclaimed property within 120 days after the claimant files a completed claim form under ORS 98.392.

(2) Except as may be authorized by an agreement between the Department and another agency or entity, when the Department determines that the claim, or some portion thereof, relates to property reported to the Department but held by another agency or entity responsible for reviewing claims and payment of claims, the claim file or relevant copies will be forwarded to the responsible agency or entity. The Department will notify the claimant of the transfer of the claim file and the contact information for the responsible agency or entity. OAR 141-040-0200 through 141-040-0220 (the "Rules for Recovery of Unclaimed Property") shall not apply to the procedures utilized by the responsible agency or entity in review of the claim.

(3) Except as otherwise provided in subsection (4) of this section, the Department will review claims in the order of receipt.

(4) The Department may expedite the review of a claim where:

(a) The claimant, in the sole discretion of the Department, has provided to the Department evidence of extenuating circumstances warranting expedited review.

(b) The Department's automated selection technology demonstrates that:

(A) The claimant is the original owner, there are no co-owners, and claimant still lives at the address reported by the holder, or

(B) The claimant is the original owner, there are no co-owners and claimant has provided other information that matches the reported data.

(5) In determining if there is sufficient evidence to support a claim, the Department shall consider:

(a) The age and likelihood of the existence of direct evidence to support the claim;

(b) The existence of any competing claims for the property; and

(c) Any other related evidence the Department determines appropriate under the circumstances of the particular claim.

(6) The Department shall determine whether a preponderance of the evidence proves the claimant is legally entitled to the unclaimed property.

(7) If the Department approves a claim, the Department shall request a warrant from the Oregon State Treasury. If the claim is allowed for funds deposited in the General Fund, the Department shall pay the claim and file a request for reimbursement from the State Treasurer, who shall reimburse the Department within five working days from the fund against which the warrant represented in the claim was issued.

(8) A holder may make payment to or delivery of property to an owner and file a claim with the Department for reimbursement. The Department shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Department may not assess any fee or other service charge to the holder. Upon receiving the funds from the Department, the holder shall assume liability for the claimed asset and hold the Department harmless from all future claims to the property.

(9) If the property is being recovered by a finder who has submitted a Power of Attorney that authorizes disbursement to the finder, the Department shall issue a warrant payable to both the claimant and Finder and mail the warrant to the finder.

(10) When a claim is for the benefit of the heirs of a deceased owner:

(a) If the amount of the claim is less than $1000, the Department shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)).

(b) If the amount of the claim is $1000 or more, but less than $5000, the Department shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)) and, if the estate was not probated, require the claimant to complete an Affidavit in Lieu of Probate.

(c) If the amount of the claim is $5,000 or more, prior to payment the Department shall require evidence of probate or the filing of probate in accordance with the applicable requirements of Chapters 111, 113–117, Oregon Revised Statutes.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 7-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 2-2010, f. 12-13-10, cert. ef. 1-1-11; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-045-0010
Definitions

(1) "Capital Gain" means gain or profit realized on the sale or exchange of a capital asset, or the excess of proceeds over cost, or other basis, from the sale of a capital asset.

(2) "Credit Memorandum" or "Credit Memo" means a transaction posted to a customer account which reduced the account balance and is related to a previously posted invoice or charge, correcting and reducing the amount originally charged.

(3) "Department" means the Department of State Lands.

(4) "Dividend" means cash which accrues by the earnings of a company and which is paid to the owner of securities issued by that company.

(5) "Dividend Reinvestment Plan" means additional securities of the same company which are credited to an owner's account in lieu of cash.

(6) "Dormant" means without owner generated activity or owner contact for a prescribed time.

(7) "Due Diligence" means the degree of effort required by statute that holders of unclaimed property must take to find the rightful owner of property before the property is remitted to the state.

(8) "Financial Institution" means a financial institution, or a trust company, as those terms are defined in ORS 706.008, a safe deposit company, a private banker, a savings and loan association, a building and loan association or an investment company.

(9) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another;

(b) A trustee; or

(c) Indebted to another on an obligation.

(10) "Inactive" means a lack of owner generated activity or owner contact for a prescribed time.

(11) "Insurance Company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including, but not limited to, accident, burial, casualty, workers' compensation, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(12) "Intangible Property" includes but is not limited to:

(a) Credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, stored value card balances or similar electronically maintained credit balances except gift cards as defined in ORS 646A.274, and unidentified remittances;

(b) Stocks and other intangible ownership interests in business associations;

(c) Money deposited to redeem stock, bonds, coupons, and other securities, or to make distributions;

(d) Amounts due and payable under the terms of insurance policies;

(e) Amounts distributed from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits; and

(f) Money, checks, drafts, deposits, interest, dividends, and income.

(13) "Last-known Address" means a description of the location of the apparent owner sufficient for the purpose of delivery of mail.

(14) "Negative Report" means a report showing the holder had no inactive accounts or other unclaimed assets to report for a particular reporting period.

(15) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person, or the person's legal representative, having a legal or equitable interest in property.

(16) "Person" means an individual, business association, state or other governmental or political subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(17) "Positive Owner Contact" means documented contact between an owner and the holder; either generated or initiated by the owner or in response to the holder.

(18) "Property" includes tangible and intangible property.

(19) "Reportable" means the appropriate dormancy period as set forth in OAR 141-045-026 after which time an owner has not claimed his or her asset from a holding company, and the holder has taken appropriate steps to find the owner, as described in 141-045-0061.

(20) "Safekeeping Depository" means any leased or rented depository used as a deposit for safekeeping of tangible or intangible property.

(21) "Tangible Property" means:

(a) Property actually being held in a safekeeping depository and includes, but is not limited to:

(A) Contents of safe deposit boxes in financial organizations;

(B) Contents of safekeeping repositories located in hospitals, healthcare facilities, motels, hotels, jewelry stores, department stores, professional offices, or any other site where the holder is acting as a safekeeping custodian for the rightful owner subject to the following exceptions:

(i) Used personal clothing or similar items with little or no commercial value

(ii) Items that are hazardous including, but not limited to: batteries, chemicals, explosives, medical waste, ammo, drugs or similar controlled substances.

(b) Property held for the owner by a court, state or other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority (for instance unclaimed court exhibits) subject to the following exceptions:

(A) Used personal clothing or similar items with little or no commercial value

(B) Items that are hazardous including, but not limited to: batteries, chemicals, explosives, medical waste, ammo, drugs or similar controlled substances.

(22) "Third Party Administrator" is a person contracted by the holder to manage and process account records.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1984, f. & ef. 3-13-84; LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 8-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-045-0031

Examples of Unclaimed Property

(1) The following types of property that are unclaimed for three years without positive owner contact are presumed abandoned and are reportable to the Department:

(a) Any account deposited in a financial institution and any accrued interest and dividends;

(b) Any account including shares, dividends, deposit accounts, and interest held by credit unions as defined in ORS 723.006 that are due or standing in the name of a member, beneficiary or other person who cannot be contacted by first class mail at the last address shown on the records of the credit union;

(c) Any sums payable for which a financial institution is directly liable, including checks, drafts, cashier's checks, certified checks, or similar instruments;

(d) Any stock, mutual fund, or other certificate of ownership, dividend, profit, distribution interest, payment on principal or other sum held or owing by a business association for a shareholder, certificate holder, member, bondholder or the actual instrument or book entry shares which shows ownership or interest in stocks, bonds, or mutual funds;

(e) Any certificate of deposit. If the account is in the form of a dividend reinvestment plan, the dormancy period shall begin at the first maturity date after the holder determines that the owner cannot be located;

(f) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated and has become due and payable as established from the records of the insurance company.

(g) Credit memos issued in the ordinary course of the holder's business;

(h) Except as provided in OAR 141-045-0031(3)(c), unpaid wages, including commissions and wages represented by uncashed payroll checks owing in the ordinary course of the holder's business;

(i) Any other disbursements generated during the ordinary course of the holder's business; and

(j) All intangible personal property not otherwise covered by ORS 98.302 through 98.436 that is held or owing in the ordinary course of the holder's business after it becomes due and payable.

(2) The following types of property that are unclaimed for two years without positive owner contact are presumed abandoned and are payable to the Department:

(a) A life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the insurance company, pursuant to ORS 98.314(3);

(b) All tangible and intangible property held in a safe deposit box or any other safekeeping depository in the ordinary course of the holder's business after the lease or rental period has expired. This category of property does not include:

(A) Personal property that has been willfully abandoned by the owner, such as automobiles, furniture, household goods, or property covered by other statutes;

(B) Tangible property consisting of used personal clothing or household items with little or no commercial value or any hazardous materials.

(c) All intangible property held for the owner by any court, state or other government, governmental subdivision or agency, county fiscal officer, public corporation, public authority, quasi-governmental agency, public officer of this state, political subdivision of this state, or Public Employees' Retirement System, except those with a court order prohibiting the withdrawal of same, including, but not limited to:

(A) Fines;

(B) Bail;

(C) Restitution;

(D) Child support;

(E) Condemnation payments;

(F) Judgment proceeds;

(G) Unclaimed municipal bonds and the interest thereon.

(d) All intangible personal property and any accrued interest held in a fiduciary capacity, including but not limited to property management security deposits, attorney trust accounts, escrow accounts, trust accounts and funds in an individual retirement account or a retirement plan or a similar account or plan established under the Internal Revenue laws of the United States if under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(e) Tangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation or public authority; law enforcement agency, other than property seized by a removing authority as defined by ORS 98.245(1)(b). This category of property does not include:

(A) Personal property that has been willfully abandoned by the owner, such as automobiles, furniture, household goods, or property covered by other statutes;

(B) Tangible property consisting of used personal clothing or household items with little or no commercial value or any hazardous materials

(f) Property held by a dissolved cooperative.

(3) Funds in an individual retirement account or a retirement plan or a similar account or plan established according to the Internal Revenue laws of the United States of America are not payable or distributable within the meaning of OAR 141-045-0021(4)(f) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory or the holder has determined the account owner is deceased and is unable to distribute to the beneficiaries.

(4) The following types of property that are unclaimed for one year without positive owner contact are presumed abandoned and are reportable to the Department:

(a) Deposits made by a subscriber with a utility to secure payment or any sum paid in advance for utility services;

(b) Sums received for utility services which a utility has been ordered to refund;

(c) All unclaimed intangible personal property distributable in the course of a dissolution of a business association, or financial institution.

(5) Any sums payable on a money order or similar written instrument, other than a third party bank check that has been outstanding for more than seven years after its issuance is considered unclaimed and reportable to the Department.

(6) Any sum payable on a traveler's check that has been outstanding for more than 15 years is considered unclaimed and reportable to the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 2-1995, f. & cert. ef. 6-15-95; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 8-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-045-0041
Report Forms

(1) A holder shall submit reports electronically in a format prescribed by the Department.

(2) A holder may request permission to submit a hard copy report. The request must be in writing and include an explanation of the difficulty of filing electronically.

(3) The Department shall post on its website, electronic formatting requirements, and instructions. Any changes to electronic formatting requirements shall be posted at least one reporting cycle prior to the effective date.

(4) The Department may provide a separate reporting form to holders of any safekeeping repository, for a detailed listing of all contents and owners.

(5) The Department may, at its discretion, require holders to file negative reports.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 8-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-045-0061
Actions Required of Holders Before Reporting

(1) As soon as it appears that an account with a value of $100 or more is inactive, but not less than 60 (sixty) days prior to filing the annual report, each holder shall exercise due diligence in making a reasonable, good faith effort to:

(a) Confirm that an account is in fact inactive;

(b) Notify the owner that the holder will report the account to the Department as unclaimed property: and

(c) Locate the owner.

(2) In exercising due diligence under subsection (1) of this section, a holder may:

(a) Verify that the owner has not communicated in writing with the holder concerning the asset;

(b) Verify that the owner has not otherwise indicated an interest in the asset as evidenced by a memorandum or other record on file prepared by an employee of the holder;

(c) Verify that the owner does not own other accounts in the holder's organization about which the owner has communicated with the holder (for example, the Trust Department of a financial institution could contact other departments of that institution): or

(d) Where the account is that of a credit union member, verify that the member has participated in voting during a regularly scheduled credit union meeting.

(3) If a holder is unable to locate an owner, the holder may exercise due diligence under subsection (1) of this section by:

(a) Verifying that the owner is not a current employee of the holder;

(b) Reviewing telephone directories, or other available databases to verify address and telephone number;

(c) Verifying that the owner is not a well-known individual or organization (for example, Department of Treasury, IRS); or

(d) Any other effort the holder may take to find an owner.

(4) A holder shall retain records or documentation of its compliance with the requirements of this section for three years and make the records or documentation available for inspection by the Department upon request.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045
Stats. Implemented: ORS 98
Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 8-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

141-045-0100
Report and Delivery of Unclaimed Property to Division

(1) Every person holding funds or other tangible or intangible property, presumed abandoned according to ORS 98.302 to 98.352 shall report and pay or deliver all such property to the Department, except that funds transferred to the General Fund by governmental agencies pursuant to ORS 293.455(1)(a) shall only be reported to the Department.

(2) Each holder shall be responsible for the content, accuracy, and timeliness of the holder's report, regardless of whether the report is prepared by the holder or its agent. The holder shall designate a staff contact person responsible for the report.

(3) For accounts dormant as of June 30, the holder shall file the report after October 1, but not later than November 1.

(4) The Department may, at its discretion, postpone the reporting date, or allow early reporting and payment or delivery upon written request by any person required to file a report.

(5) A holder shall report property having a value of $50 or more per account or owner of record, individually, and shall include the following information, if known:

(a) The complete name, address of record, Social Security number, previous names, and any previous addresses of each listed owner; and

(b) The type of account, identification number, reference number, last activity or transaction date used to presume abandonment, and any specific description of the unclaimed property according to the records of the holder.

(6) If the holder believes it is more efficient, it may report a lump sum value, known as an aggregate, for the total of individual accounts $49.99 or less, except when the total amount held for any one owner of several small amounts equal or exceed $50 dollars. If owner detail is not submitted, the Department may request the holder to certify ownership when a potential claim exists for a portion of the lump sum reported.

(7) To assist the Department in returning funds to the owner of record, a holder may report the owner detail information required under subsection (5) of this rule for property having a value of $49.99 or less per account or owner of record but the Department may not require this action.

(8) In addition to the information required above, a life insurance company shall also report the following information, if known:

(a) The full name of each insured or annuitant, or if a class of beneficiaries is named, the full name of each current beneficiary in the class, and last known address according to the holder's records;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured.

(9) A holder of safekeeping depositories shall comply with the following additional requirements:

(a) The holder shall complete the specific report form for safekeeping contents or include the required information in the holder's computer-generated format and file the report, separate from the contents, no later than November 1.

(b) In addition to the information required in subsection (5) of this section, list each item left in a safekeeping depository, and the identity of the owner. The holder shall include information about the original box if the holder moved items to a safekeeping area.

(c) In accordance with directions from the Department, the holder shall deliver the package of safekeeping depository contents marked "to be delivered unopened," to the Department by certified mail, return receipt requested or hand carried by a courier. The Department shall sign a receipt for the unopened package upon delivery to the Department, and forward the receipt to the holder within five working days.

(d) The holder shall clearly identify on the package the holder's complete name and return address.

(e) With the exception of hazardous tangible property noted in OAR 141-045-0031(2)(b), the holder shall forward the complete contents of safekeeping depositories to the Department intact. The holder may not convert, substitute or exchange any coins and currency found in the box.

(f) The holder may include information about safekeeping depository costs in its report to the Department. When the owner files a claim for the property, the Department shall require the owner to furnish a paid receipt or waiver for these costs from the holder before the claim will be approved.

(10) Any holder, business association, transfer agent, registrar or other person acting on behalf of the holder of an intangible equity owner-

ship interest deemed unclaimed according to ORS 98.322 shall, in addition to supplying the information required in OAR 141-045-0100(5) above:

(a) Report and transfer the shares directly to the Department's designated stock broker or transfer agent via available electronic medium and include a confirmation of the transfer with the report.

(b) When an electronic method of transfer is not available the holder shall:

(A) Where the original certificate is being held by the holder for the owner (i.e., stock or other certificate of ownership of a business association which has been returned to the holder, who cannot find the owner), cancel that certificate and issue a replacement certificate of ownership to the Department; or

(B) When the holder does not hold the original certificate, issue a replacement certificate i.e., a duplicate certificate of ownership or other distribution or stock or other certificates of ownership of a business association issued in the name of the Department of State Lands as custodian of unclaimed property. The original certificate of ownership is presumed to be in the possession of the missing owner to the Department.

(c) In any case, the holder shall report and forward to the Department all outstanding accrued dividends, along with the certificate.

(11) In addition to supplying the information required in OAR 141-045-0100(5), a holder reporting mutual funds in book entry form shall:

(a) Transfer the account directly into the Department's account at the Department's designated broker dealer and forward a confirmation of account transfer to the Department along with the report; and

(b) Forward future income in the form of cash (for example, dividends, capital gains, etc.) payable to the Department from mutual fund accounts with dividend reinvestment plans.

(12) If the holder is a dissolved agricultural cooperative, the holder shall forward the original reports detailing unclaimed dissolved agricultural cooperative accounts to the Department along with the funds, and file a copy of the report with the State Board of Higher Education. The Department shall reconcile the report to the delivered funds, deduct the costs as provided for in ORS 62.720 and forward the funds to the State Board of Higher Education within 14 working days after receiving the funds.

(13) The receiver or other liquidating agent for a dissolved corporation shall prepare a report containing the names and last-known addresses of the persons entitled to such funds.

(14) Before October 1 each year, each state agency shall prepare a report of all checks, warrants, and orders drawn by it which have been outstanding for a period of more than two years prior to July 1, and that have not been paid by the State Treasurer. The report shall not include checks or orders that have already been paid pursuant to indemnity bonds. The agency shall forward the report to the Department before November 1.

(15) After October 1, the State Treasurer may refuse payment of the unpresented checks or orders included in the report, and upon instructions by the issuing agency shall:

(a) Transfer and credit the amounts of the unpresented checks or orders dedicated for general funding to the General Fund;

(b) Except for federal funds governed by federal laws and rules as provided in ORS 291.003 and 409.040(2), transfer all other funds to the Department; and

(c) Report information about any payment made to an owner subsequent to filing the report, but before transferring the funds to the Department.

(16) If the holder of the unclaimed account is a successor to other persons who previously held the property, or if the holder has had a name change, the holder shall include in the initial report prior known names and addresses of the original or previous holder.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04; DSL 8-2008, f. 12-10-08, cert. ef. 1-1-09; DSL 1-2014, f. 1-13-14, cert. ef. 2-1-14

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Rule Caption: Adopt new rules governing the management of remediation and restoration activities on state-owned land.

Adm. Order No.: DSL 2-2014

Filed with Sec. of State: 1-13-2014

Certified to be Effective: 2-1-14

Notice Publication Date: 12-1-2012

Rules Adopted: 141-145-0000, 141-145-0005, 141-145-0010, 141-145-0015, 141-145-0020, 141-145-0025, 141-145-0030, 141-145-0035, 141-145-0040, 141-145-0045, 141-145-0050, 141-145-0055, 141-145-0060, 141-145-0065, 141-145-0070, 141-145-0075, 141-145-0080, 141-145-0085, 141-145-0090

Subject: On December 14, 2010 the State Land Board directed the Department of State Lands to initiate rulemaking to develop new rules governing the processes to be used by the Department to authorize environmental remediation and/or restoration activities undertaken by, or pursuant to an order issued by DEQ or the EPA within the Portland Harbor Superfund Site and other locations throughout Oregon.

The proposed rules define the administrative process by which the Department will authorize remedial actions on state-owned submerged and/or submersible lands. The Department will authorize these uses by issuing access authorizations, easements, and leases. The authorization type can vary depending on the time requested, type of remediation, and applicant preference. The proposed rules also define the administrative process by which conservation easements for habitat restoration will be issued.

The Department convened a rulemaking advisory committee (RAC) to assist in the drafting of this rule. The RAC had seven all day meetings spanning from December of 2011 to September of 2012. The RAC discussed remediation and restoration issues; and provided comment, edits and proposed language for this rulemaking effort. At the September 6, 2012 meeting, the RAC voted unanimously that the draft rules were ready to move to the public comment phase.

Rules Coordinator: Tiana Teeters—(503) 986-5239

141-145-0000

Purpose and Applicability

(1) These rules:

(a) Govern the granting and renewal of access authorizations, leases, and easements issued to facilitate remediation conducted pursuant to an order issued by the Oregon Department of Environmental Quality (ODEQ) or the United States Environmental Protection Agency (EPA) and habitat restoration activities in, on, under or over state-owned submerged and submersible land including, but not limited to:

(A) Site monitoring;

(B) Site habitat restoration;

(C) Environmental dredging;

(D) Mitigation;

(E) Monitored natural recovery;

(F) Enhanced monitored natural recovery; and

(G) Construction and maintenance of a soil cap or sediment cap

(b) Are to facilitate access needed for remediation and restoration of state-owned submerged and submersible lands and not to require any action that is contrary to or in conflict with any order, work plan, design, or other deliverable approved by the ODEQ or EPA, and do not apply to the granting of:

(A) Easements on state-owned submerged and submersible land governed by division 122 of the Department's administrative rules;

(B) Authorizations for leases, licenses and registrations for structures on and uses of state-owned submerged and submersible lands governed by division 82 of the Department's rules;

(C) Authorizations for special uses of state-owned submerged and submersible land such as to conduct site investigations and scientific experiments as governed by division 125 of the Department's administrative rules;

(D) Land sale approvals governed by division 67 of the Department's administrative rules.

(E) Any regulatory permits that may be required, including permits governed by division 85 of the Department's administrative rules.

(F) Authorizations for uses and structures specifically governed by any other chapter of the Department's administrative rules; and,

(G) Authorizations for uses other than removal, remediation, or restoration.

(c) Clarify that all uses of, and structures occupying state-owned submerged and submersible land not otherwise exempt from authorization under these rules or other state law, require prior written authorization from the Department pursuant to these rules.

(2) The Director may determine other uses and structures similar to those specified in OAR 141-145-0015 that are subject to a specific authorization under these rules.

(3) An application submitted under these rules to remove royalty exempt material (as defined in ORS 274.550) does not require a sand and gravel authorization under division 14. Submitting an application for this activity under these rules satisfies the requirement that an application be submitted under division 14.

(4) Requirements of the Lower Willamette River Management Plan, OAR 141-080-0105, do not apply to authorizations issued under these rules.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0005
Definitions

As used in these rules:

(1) "Access Authorization" is a written authorization issued by the Department for a specific length of time determined by the Director that allows access to state land for remediation or habitat restoration activities.

(2) "Applicant" is any person applying for an authorization.

(3) "Appraised Value" means an estimate of current fair market value of property (not including improvements) in dollars per square foot derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.

(4) "Assessed Value" means the current fair market value of the property (not including improvements) in dollars per square foot assigned to the land within the adjacent riparian tax lot or comparable tax lot by the county tax assessor.

(5) "Authorization" means an approval of a use of state land granted by the Department in its capacity as a landowner, including for purposes of these rules access authorizations, leases, and easements.

(6) "Authorized Area" is the area of state-owned land defined in the authorization for which a use is authorized.

(7) "Compensation" or "Compensatory Payment" is the amount of money, or something of equivalent value, paid or provided for an authorization to the Department for the use of state-owned land.

(8) "Conservation Easement" as defined in ORS 271.715(1), means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(9) "Department" means the Department of State Lands. The Department is the administrative arm of the State Land Board.

(10) "Director" means the Director of the Department of State Lands or designee.

(11) "Easement" is an authorization granted by the Department that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.

(12) "Enhanced Monitored Natural Recovery" combines natural recovery with engineering approaches such as installing flow control structures to encourage natural deposition, or the placement of a thin layer of additional clean sediment or additives to enhance sorption or chemical transformation.

(13) "Environmental Dredging" means the removal of contaminated sediments from a waterbody as part of a removal, remediation or habitat restoration project.

(14) "Fair Market Value" is the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts concerning the property.

(15) "Habitat Restoration" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural functions to the lost or degraded native habitat.

(16) "Holder" is the person who has been issued an authorization under these rules.

(17) "Lease" for the purposes of these rules, is a valid, enforceable contract executed by the Department and signed by the lessee allowing the use of a specific area of state-owned submerged and submersible land for a specific use under the terms and conditions of the lease and these rules.

(18) "Line of Ordinary High Water" as defined in ORS 274.005, means the line on the bank or shore to which the high water ordinarily rises annually in season.

(19) "Line of Ordinary Low Water" as defined in ORS 274.005, means the line on the bank or shore to which the low water ordinarily recedes annually in season.

(20) "Monitored Natural Recovery" is a remedy for contaminated sediment that uses ongoing, naturally occurring processes to contain, destroy, or reduce the bioavailability or toxicity of contaminants in sediment.

(21) "Mitigation" means compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

(22) "Natural Resource Damage Assessment" is a process by which a designated Natural Resources Trustee evaluates how natural resources were harmed over the time that an area has been contaminated and develops a restoration plan to compensate for those losses.

(23) "Not for Profit" refers to an association or group organized for purposes other than generating profit, such as an educational, charitable, scientific, or other organization qualifying under Section 501(c) of the Internal Revenue Code.

(24) "Permanent Easement" is a type of easement that is issued in perpetuity.

(25) "Permanent Structure" means a structure existing or intended to exist for an indefinite period.

(26) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, not for profit organizations, or Indian Tribe.

(27) "Preference Right" means a riparian property owner's statutory privilege, as found in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner's property. The preference right does not apply to the renewal of an existing lease where the lessee is in compliance with all the terms and conditions of the lease. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested lease area.

(28) "Preference Right Holder" means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).

(29) "Public Trust Use(s)" means those uses embodied in the Public Trust Doctrine under federal and state law including, but not limited to navigation, recreation, commerce and fisheries, and other uses that support, protect, and enhance those uses. Examples of Public Trust Uses include, but are not limited to, short term moorage, camping, bank fishing, picnicking, and boating.

(30) "Remediation" or "Remedial Action" as defined in ORS 465.200(23), means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of a hazardous substance so that it does not migrate to cause substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes, but is not limited to:

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that the actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials.

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release.

(31) "Removal" as defined in ORS 465.200(25), means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, that may otherwise result from a release or threat of release. "Removal" also includes but

is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260.

(32) "Site Diminishment Impact" is a measure of the negative effect, including but not limited to use restrictions, of the applicant's proposed use on public trust uses of the state-owned submerged and submersible lands. It is used in calculating the fair compensation that a holder will pay for the use of the authorized area.

(33) "Site Monitoring" means visiting a property on an established schedule to check compliance with an order or other agreement to complete remedial action or habitat restoration; or periodically visiting a property to determine compliance with the terms of a conservation easement. This includes the use of property and placement of structures not eligible for an authorization under Division 125.

(34) "Soil Cap" or "Sediment Cap" means the placement of capping material over contaminated material. The contaminated material remains permanently in place.

(35) "State Land" or "State-Owned Land" is land owned or managed by the Department or its agents and includes both Trust Land and Non-Trust Land.

(36) "State Land Board" means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.

(37) "Structure" means anything placed, constructed, or erected on, in, under or over state-owned submerged and submersible land that is associated with a use that requires an authorization. A "structure" includes but is not limited to, a soil or sediment cap, moored dredge equipment, monitoring equipment, a ship, boat, vessel, or components of a restoration project.

(38) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(39) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(40) "Use" means an activity on state-owned Trust and Non-Trust Land that requires an authorization under these rules.

(41) "Use Restriction" means a proposed activity that encumbers state land resulting in the limiting or restriction of one or more public trust uses.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0010
General Provisions

(1) All tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon State Legislature under the jurisdiction of the State Land Board and the Department, as the administrative arm of the State Land Board.

(2) The State Land Board, through the Department, has a constitutional responsibility to manage "the lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management" pursuant to Article 8, Section 5(2) of the Oregon Constitution. This responsibility requires that the Department receives fair compensation for the use or disposal of state-owned land managed by the Department.

(3) State-owned submerged and submersible land is managed to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values. These rights are collectively referred to as "public trust rights."

(4) No person is allowed to place a structure on, or make use of state-owned submerged and submersible land, regardless of the length of time the structure may have existed on, or the use may have occurred on the land, without the required authorization described in these rules, unless the structure or use is exempt from such authorization. Ownership of state-owned submerged and submersible land cannot be obtained by adverse possession regardless of the length of time the structure or use has been in existence.

(5) All uses of state-owned submerged and submersible land must conform to applicable local (including local comprehensive land use planning and zoning ordinance requirements), state and federal laws.

(6) No applicant or holder is allowed to request from any government agency a change in the zoning for, or approved uses of state-owned submerged and submersible land without first applying to, and receiving written approval from the Department.

(7) All references in these rules to "state-owned submerged and submersible land" include state-owned submerged lands or submersible lands or both.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0015
Types of Authorizations

(1) Access Authorization: Uses of state-owned submerged and submersible land for a term less than three (3) years, for purposes of, including but not limited to:

(a) Site monitoring;
(b) Habitat restoration;
(c) Environmental dredging;
(d) Monitored natural recovery; or
(e) Enhanced monitored natural recovery.

(2) Easement: Uses of state-owned submerged and submersible land for more than three (3) years including but not limited to:

(a) Construction and maintenance of permanent structures associated with removal or remedial activities. For the purposes of these rules, soil and sediment caps are considered a permanent structure.
(b) Site monitoring;
(c) Environmental dredging;
(d) Monitored natural recovery; or
(e) Enhanced monitored natural recovery

(3) Lease: Uses of state-owned submerged and submersible land including but not limited to construction and maintenance of a non-permanent structure or structures.

(4) Conservation Easement: Use of state-owned submerged and submersible land for which the applicant is seeking long-term use restrictions to protect its conservation value. Conservation easements may be issued in perpetuity or for a term of years.

(5) The Department may, at its discretion, authorize multiple uses by a holder under one authorization. The Department will evaluate the proposed project as a whole, and offer the authorization that accommodates the longer term use. For example, the Department may evaluate a project that includes environmental dredging for one year and monitored natural recovery for twenty years. In this example the Department would offer one easement, or lease, that would authorize both uses of state-owned submerged and submersible lands.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0020
Pre-Application Requirements

Prospective applicants for an easement, conservation easement, or lease shall meet with Department staff to discuss the proposed project and use before submitting an application to the Department. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in a pre-application meeting.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0025
Application Requirements for an Access Authorization, Lease or Easement

(1) Any person wanting to use state-owned submerged and submersible land for a use that is subject to an access authorization, lease or easement must, using a form provided by the Department, apply for and obtain the required authorization prior to using the submerged and submersible land.

(2) An application for an access authorization should be submitted at least ninety (90) days before the requested issuance date.

(3) An application for an easement or lease should be submitted at least one hundred and twenty (120) days before the requested issuance date.

(4) The applicant for an easement or lease must have a survey of the requested area conducted by a registered professional land surveyor. The Department will provide survey instructions and specify the information required in the survey and accompanying notes. The application will not be

deemed complete without the survey. The applicant is responsible for any costs of the survey.

(5) All applications for an access authorization must be fully completed and accompanied by a non-refundable application fee in the amount of $750, payable to the Department.

(6) All applications for an easement, conservation easement, or lease administered under these rules must be fully completed and accompanied by a non-refundable application fee in the amount of $1,250, payable to the Department.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0030
Access Authorization and Easement Application Review and Approval Process

(1) Upon receipt of an application to use state-owned submerged and submersible land, the Department will review it to determine if it is complete. If the application is complete and the use is subject to these rules, the application will be deemed accepted by the Department.

(2) If an application is determined by the Department to be incomplete, the Department will notify the applicant that the application is incomplete and provide a list of additional information required. If an incomplete application is resubmitted within 120 calendar days from the date the Department determined the application incomplete, no additional application fee will be assessed.

(3) The Department may reject an application for an authorization if:

(a) The applicant's financial status or past business/management practices or experience indicates that it may not:

(A) Be able to fully meet the terms and conditions of the authorization offered by the Department; or

(B) Use the land for which authorization is sought in a way that meets the provisions of these rules.

(b) The applicant is not in compliance with the terms and conditions on any other authorization granted to them by the Department.

(4) Except as provided in OAR 141-145-0030(5), the Department will notify the appropriate city or county planning department, pertinent state and federal agencies, federally recognized tribal governments, ports and all lessees and adjacent riparian property owners (as available from the local county assessor's office records) and other interested parties of the application and request review and comment. The Department may require the applicant to respond to comments where applicable.

(5) The Department may elect not to request review and comment on an application as provided in OAR 141-145-0030(4) if the use or structure:

(a) Has already received the necessary city or county approvals;

(b) Has been subjected to public comment during a prior circulation; and,

(c) Has not changed in terms of the size of the authorized area or use of that area since the time those approvals were given.

(6) Based on its evaluation of the application and the comments received, the Department will:

(a) Approve the application and move forward with the issuance of the requested authorization.

(b) Require that the applicant modify, and as deemed necessary by the Department, resubmit the application; or

(c) Deny the application.

(7) An applicant or an affected party who submitted a timely comment on the proposed project has the right to appeal a decision under the provisions of OAR 141-145-0090.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0035
Lease Application Review and Approval Process

(1) An application for a lease shall meet the provisions of OAR 141-145-0030.

(2) Pursuant to ORS 274.040, a preference right to lease state-owned submerged and submersible lands must be offered to the adjacent riparian property owner.

(3) If the preference right holder waives the preference right, the Department will put the lease out for competitive bid pursuant to the requirements of OAR 274.040.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0040
General Terms and Conditions

(1) The following terms and conditions apply for authorizations administered under these rules.

(a) Authorizations issued by the Department will be for the minimum area determined to be required for the requested use.

(b) The Department may grant additional authorizations which, as determined by the Department, do not substantially interfere with an authorized use administered under these rules.

(c) The Department will offer access authorizations for a term up to three (3) years.

(d) Unless otherwise approved by the Director, the Department will offer leases for a term up to fifteen (15) years.

(e) Unless otherwise approved by the Director, the Department will offer easements for a term up to thirty (30) years.

(f) The Department will, upon request of the applicant, grant permanent easements only for conservation purposes or as required by a regulatory order. Requests for permanent easements will be taken to the State Land Board for review and approval.

(g) An authorization granted by the Department under these rules will generally be to a specific person for a specific use, location, and term. The holder must apply to and obtain prior written approval from the Department as provided in OAR 141-145-0025 prior to:

(A) Changing the authorized use;

(B) Expanding the number of authorized developments or uses;

(C) Changing the authorized area; or

(D) Permitting other persons to utilize the authorized area for uses and developments requiring separate authorization by the Department.

(h) The Department or authorized representative(s) of the Department have the right to enter into and upon the authorized area at any time for the purposes of inspection or management.

(i) Except as provided in OAR 141-145-0050 or as otherwise provided in the authorization, the holder of an authorization must terminate all use, and at the Department's discretion, remove any or all structures or uses placed within the authorized use area upon expiration or cancellation of the authorization. If the holder refuses to terminate its use or remove its structures, the Department may remove them and charge the holder for doing so.

(j) The holder must defend, indemnify and hold the State of Oregon, its boards, commissions, agencies, officers, employees, contractors and agents harmless from and against any and all claims, demands, actions, judgment, losses, damages, penalties, fines, costs and expenses (including expert witness fees and costs and attorney's fees in any administrative proceeding, mediation, trial, or appeal) arising from or attributable, in whole or in part, to the use that is the subject to the authorization, including without limitation, any such claims or costs arising from a release of a hazardous substance as a result of the authorized activity, exacerbation of existing contamination or holder's failure to comply fully with the authorization or any order or agreement under which holder is conducting its use. This requirement will survive termination or expiration of any authorization issued under these rules.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0045
Insurance and Bond

(1) The Department may require the holder to obtain insurance in specified types and amounts if the Department determines that the proposed use presents a potential risk to other uses, to public trust uses, to public health, welfare, safety, the environment or to the State of Oregon, or if otherwise required by law. The Department shall require that the State of Oregon be named as an additional insured party in any such policy.

(2) The Department shall determine the required types and amounts of the insurance coverage the holder must obtain based on the nature and location of the use, potential risks and liabilities associated with that use, use restrictions associated with that use, any requirements of law, and any other unique aspects of the proposed use the Department determines to be relevant.

(3) The Department may, at its discretion, require that the holder obtain a surety bond or letter of credit in an amount specified by the Department or as required by law to secure performance of all terms and conditions of an authorization and performance of all terms and conditions of any order or agreement under which remedial work is being conducted.

(4) Nothing in this section shall be construed as preempting, limiting, or superseding any protections and limitations afforded to sureties under federal and state law.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0050
Special Conditions for a Soil or Sediment Cap

(1) The holder of an authorization for a soil or sediment cap must maintain cost estimates of the amount of financial assurance that is necessary for the purposes below, and demonstrate to the Department's satisfaction that the holder has in effect the amount and form of required financial assurance, for:

(a) The costs of maintaining and monitoring of the sediment cap; and

(b) Any corrective action required by the Department or any other local, state or federal government agency with jurisdiction over the site to be taken at the site of the sediment cap.

(2) Such cost estimates and evidence of the required financial assurance must be provided in writing to the Department:

(a) Prior to the granting of the authorization; and

(b) On an annual basis to be received by the Department by January 31 of every calendar year following the granting of the authorization by the Department or, on a more frequent basis as required by the Department.

(3) The financial assurance required by OAR 141-145-0050(1) may be satisfied by any one, or a combination of the following:

(a) Insurance specific to the construction and maintenance of a soil or sediment cap;

(b) Establishment of a trust fund with cash to the required dollar amount, with the benefactor as the State of Oregon, Department of State Lands;

(c) Surety bond;

(d) Letter of credit; or

(e) Other financial assurance mechanisms as deemed acceptable by the Department.

(4) The Department will accept documented financial assurance provided by a holder through an existing order issued by the ODEQ or EPA as evidence that the requirements of this section have been met.

(5) Nothing in this section shall be construed as preempting, limiting, or superseding any protections and limitations afforded to sureties under federal and state law.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0055
Renewal of Authorizations

(1) Access authorizations and leases are eligible for renewal.

(2) The holder of an access authorization may renew for one (1) additional term.

(3) The holder of a lease may renew for additional terms.

(4) The holder of an easement may apply for a new easement prior to the expiration of the term.

(5) The holder of an access authorization or lease shall exercise the right to renew not less than 90 calendar days prior to the expiration of the then current term. If the holder fails to renew within the time required, the authorization will terminate at the expiration of the current term.

(6) To exercise the right to renew, the holder must submit to the Department:

(a) A written statement, on a form provided by the Department:

(A) Notifying the Department of the holder's intent to renew;

(B) Certifying that the uses or structures that are the subject of the existing authorization are consistent with local, state, and federal law; and

(C) Certifying that the existing uses and structures are consistent with the existing authorization.

(b) A non-refundable renewal fee of $375, payable to the Department.

(7) Upon receipt of the required information and renewal fee, the Department shall determine, in its sole discretion, whether:

(a) The right to renew was exercised not less than 90 calendar days prior to the expiration of the then current term of the authorization;

(b) The holder has fully complied with the terms of the current authorization, the applicable statutes, or Oregon Administrative Rules; and

(c) The holder has fully complied with any other authorizations granted to them by the Department.

(8) If the Department determines that the renewal complies with the requirements of OAR 141-145-0055(5), the Department will provide written notice to the holder that the authorization has been renewed for the additional term stated in the notice.

(9) Compensation for the use of state-owned land shall be re-calculated upon renewal in accordance with in OAR 141-145-0060. Compensation shall be due prior to the issuance of the renewal.

(10) As a condition of renewal, the Department may amend the terms and conditions of the authorization at the time of renewal.

(11) If the Department determines that the renewal does not comply with the requirements of OAR 141-145-0055, the Department will provide written notice to the holder that the authorization will not be renewed. In that event, the authorization will terminate at the expiration of the current term.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0060
Compensation

(1) The compensation for an authorization for remediation necessitated by operations at an orphan site as determined by and under the management of the ODEQ or EPA shall be five hundred ($500) dollars. If at any point a party is located to perform or pay for the remediation of what had previously been designated an orphan site, that party must compensate the Department for the cost of that use of state-owned land according to these rules.

(2) The minimum compensation for any authorization issued under these rules shall be one thousand dollars ($1,000), with the following exceptions:

(a) Authorizations meeting the provisions of OAR 141-145-0060(1), and;

(b) Proposed uses determined by the Department to have a "no or minimal impact" in OAR 141-145-0060(4)(a). Uses considered to have a "no or minimal impact" in 141-145-0060(4)(a) require no compensation.

(3) Subject to the base minimum compensation established in OAR 141-145-0060(2), the method for calculating compensation due for an authorization issued under these rules shall be determined through the following formula.

COMP = AV x LA x SDI
NOTE: Formula Explanation
AV= Appraised value or assessed value (as defined in OAR 141-145-0005(3) and (4) of these rules) whichever is less except as stated in OAR 141-145-0060(7). AV is expressed as a value per square foot.
LA= Authorized use area in square feet of state-owned submerged and submersible land.
SDI= Defined in OAR 141-145-0005(32). SDI is expressed as a percentage in this formula.
COMP= Compensation due to the Department for the authorization.

(a) For access authorizations, compensation due to the Department for the authorization will be a one-time payment determined by the formula COMP = AV x LA x SDI.

(b) For easements, compensation due the Department for the authorization will be a one-time payment that is the lesser of:

(A) [(AV x LA x SDI)/30] x number of years authorized; or

(B) Flat rate method for a non-marine use (as described in Division 82) of $0.5301 per square foot (which will be increased each year on July 1st by three percent) x LA x number of years authorized.

(c) For conservation easements, compensation due the Department for the authorization will be a one-time payment equal to AV x LA x 50%.

(d) For lease authorizations, annual lease payment calculation is the lesser of the:

(A) AV x LA x SDI x 5%; or

(B) Flat rate method for a non-marine use (as described in Division 82) of $0.5301 per square foot (which will be increased each year on July 1st by three percent) x LA

(4) The Site Diminishment Impact percentage for an access authorization is calculated by the Department as follows:

(a) A proposed use is considered to have a "no or minimal impact" and an SDI of 0% if the Department determines:

(A) The proposed use would not impose any public trust use restrictions that last more than fourteen (14) consecutive days per calendar year, and

(B) The proposed use would not limit or constrain the Department in issuing other waterway authorizations administered under Division 82.

(b) A proposed use is considered to have a "moderate impact" and an SDI of 3.5% if the Department determines:

(A) The proposed use would impose one public trust use restriction that lasts more than fourteen (14) consecutive days, or

(B) The proposed use would limit or constrain the Department in issuing other waterway authorizations administered under Division 82.

(c) A proposed use is considered to have a "significant impact" and an SDI of 7% if the Department determines:

(A) The proposed use would impose more than one public trust use restrictions that last more than fourteen (14) consecutive days, or,

(B) The proposed use would preclude the Department from issuing any other waterway authorizations administered under division 82.

(5) The Site Diminishment Impact for an easement or lease is calculated by the Department as follows:

(a) A proposed use is considered to have "no or minimal impact" and an SDI of 1% if the Department determines that:

(A) The proposed use would not impose any public trust use restrictions that last more than fourteen (14) consecutive days per calendar year, and

(B) The proposed use would not limit or constrain the Department in issuing other waterway authorizations administered under Division 82.

(b) A proposed use is considered to have a "moderate impact" and an SDI of 50% if the Department determines that:

(A) The proposed use would impose one public trust use restriction that lasts more than fourteen (14) consecutive days, or

(B) The proposed use would limit or constrain the Department in issuing other waterway authorizations administered under division 82.

(c) An easement or lease is considered to have a "significant impact" and an SDI of 100% if the Department determines that:

(A) The proposed use would impose more than one public trust use restrictions that last more than fourteen (14) consecutive days, or,

(B) The proposed use would preclude the Department from issuing any other waterway authorizations administered under division 82.

(6) In calculating compensation under these rules, applicants may substitute an appraised value of the adjacent riparian tax lot or as determined by the Department, a comparable tax lot in place of the assessed value. The Department reserves the right to evaluate, review, and challenge the appraisal. The appraisal shall be conducted at the applicant's expense. If the appraisal is used by the Department to calculate the compensation, the Department will credit one-half of the cost of the appraisal to the applicant's compensation. In the event of a dispute between the Department and the applicant, the value shall be determined through the three-appraiser method specified in ORS 274.929(3).

(7) If in the process of calculating compensation, the AV is found to be depressed due to the presence of hazardous substances or some other extenuating circumstance(s) as determined by the Department, another comparable upland tax lot shall be selected by the Department as the basis for calculating the compensation. The applicant may suggest a comparable tax lot or may appeal the Department's selection as allowed in OAR 141-145-0090.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0065
Assignment of Authorizations

(1) An access authorization is not assignable.

(2) The holder of an easement or lease in good standing can assign its easement or lease with prior written consent of the Department.

(3) To assign an easement or lease, the holder must submit to the Department a:

(a) Notice of proposed assignment on a form provided by the Department at least 60 calendar days prior to the date that the assignment is to occur; and

(b) Non-refundable administrative processing fee of $750, payable to the Department.

(4) The Department may reject an assignment if:

(a) The assignee's financial status, past business, or management practices or experience indicates to the Department that the assignee may not:

(A) Be able to fully meet the terms and conditions of a lease or easement; or

(B) Be able to fully comply with all applicable terms or conditions of the Order under which remediation is being conducted, including without limitation, terms and conditions related to ongoing monitoring and maintenance, insurance, indemnification and financial assurance; or

(C) Use the land applied for in a way that is consistent with the provisions of these rules.

(b) The assignee is not in compliance with the terms and conditions on any other authorization granted to them by the Department.

(5) The Department may request additional information concerning the proposed assignment.

(6) The Department may condition the assignment on the assignor retaining responsibility for some or all of the terms and conditions in the lease or easement guaranteeing the performance of the assignee.

(7) An assignment does not take effect until the Department authorizes it in writing.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0070
Termination of Authorizations

(1) If a holder fails to comply with these rules, the terms and conditions of an authorization, or violates other laws covering the use of the authorized area, the Department shall notify the holder in writing of the default and demand correction within a specified time frame.

(2) If a holder fails to correct the default within the time frame specified, the Department may take one or more of the following actions:

(a) Modify the authorization;

(b) Terminate the authorization;

(c) Request the Attorney General to take or cause to be taken appropriate legal action against the holder.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0075
Removal of Unauthorized Structures

The Department may pursue the removal of unauthorized structures on state-owned submerged and submersible land through Division 82; Rules Governing the Management of, and Issuing of Leases, Licenses and Registrations for Structures on, and Uses of State-Owned Submerged and Submersible Land.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0080
Closure of Submerged and Submersible Land Subject to Remedial Activity or Habitat Restoration to Public Use

(1) State-owned submerged and submersible land must remain open to Public Trust Uses unless a restriction is approved by the Department or other agencies with jurisdiction over navigation or public safety.

(a) Notwithstanding the provisions of division 88, a holder may close all or a portion of the authorized area to Public Trust Uses, or restrict Public Trust Uses within all or a portion of the authorized area, provided the closure or restriction is:

(A) Reasonably necessary to protect persons and property from harm arising from holder's authorized use of the submerged and submersible land;

(B) Limited in duration; and

(C) Limited in scope.

(b) If the proposed closure or restriction is wholly or partially within the navigation channel of the waterway as established by the United States Coast Guard, or is located in such a way as to increase traffic in or otherwise impact use of the navigation channel, holder shall consult with the United States Coast Guard, the Oregon Marine Board and any applicable port prior to implementing the closure or restriction. Holder must comply with all requirements imposed by the United States Coast Guard and the Oregon Marine Board.

(c) The holder must provide written notice to the Department no less than fourteen (14) days prior to the implementation of any closure or restriction. The written notice must identify the need for and the scope, and duration of the closure or restriction, and must certify that holder has consulted and received approval from the United States Coast Guard and the Oregon Marine Board regarding the closure or restriction, if required under OAR 141-145-0080(1)(b).

(d) The Department, in its sole discretion, may at any time require holder to terminate or modify the closure or restriction. The Department, in its sole discretion, may at any time require the closure or restriction to be established pursuant to Division 88.

(2) The Director may impose restrictions on, or close state-owned land if the Director determines that the restriction or closure is necessary to facilitate or protect any removal or remedial action undertaken by or pursuant to an order issued by ODEQ or EPA.

(3) The procedures for imposing these restrictions are set forth in OAR 141-088-0008.

(4) The State Land Board may impose restrictions on or close state-owned land if the State Land Board determines that the restriction or closure is necessary to facilitate or protect a habitat restoration project.

(5) The procedures for imposing these restrictions are set forth in OAR 141-088-0006

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0085
Civil Penalties

(1) The unauthorized use of state-owned land managed by the Department constitutes a trespass.

(2) In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty of not less than $50 per day, and not more than $1,000 per day of violation of any provision of these rules or ORS 274 that occurs on state-owned submerged and submersible lands pursuant to ORS 274.992.

(3) The Director will give written notice of a civil penalty incurred under OAR 141-145-0085(2) by registered or certified mail to the person incurring the penalty. The notice will include, but not be limited to the following:

(a) The particular section of the statute, rule, or written authorization involved;

(b) A short and clear statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within twenty (20) calendar days of the date of service of the notice;

(d) The time allowed to correct a violation; and

(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-145-0085(3). Such a request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.

(5) The amount of a civil penalty will be not less than $50 per day, or more than $1,000 per day for violation of an authorization issued under ORS 274.040 or violation of any administrative rule adopted under ORS 274.040.

(6) In imposing a penalty under OAR 141-145-0085 of these rules, the Director will consider the following factors as specified in ORS 274.994:

(a) The past history of the person incurring a penalty with regard to other trespasses on state-owned land managed by the Department and the willingness of the person to take all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible lands;

(c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and

(d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.

(7) Pursuant to ORS 183.745(2), a civil penalty imposed under OAR 141-145-0085 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(8) If a civil penalty is not paid as required by OAR 141-145-0085, interest will accrue at the maximum rate allowed by law.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

141-145-0090
Appeals

(1) An applicant for an authorization, or any other person adversely affected by a decision by the Department under these rules may appeal the decision to the Director.

(a) Such an appeal must be received by the Director no later than 30 calendar days after the delivery of the decision.

(b) The Director will decide the appeal within 60 calendar days after the date of delivery of the appeal.

(c) The Director may affirm the decision, issue a new or modified decision, or request the appellant to submit additional information to support the appeal.

(2) When an applicant for an authorization to use state-owned submerged and submersible land or any other person adversely affected by a decision of the Department concerning an authorization has exhausted the appeal process before the Director, they may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 183, 273 & 274
Stats. Implemented: ORS 274
Hist.: DSL 2-2014, f. 1-13-14, cert. ef. 2-1-14

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Department of Transportation
Chapter 731

Rule Caption: Procurement Rules Addressing 2013 Legislative Changes and DOJ Model Rules Updates for Public Contracting
Adm. Order No.: DOT 5-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 731-147-0010, 731-147-0040, 731-149-0010
Subject: The amendments to Chapter 731, Divisions 147 and 149 include the following:

731-147-0010; Revised the version of DOJ Model Rules ODOT is adopting and effective date.

731-147-0040; Revised dollar amount in 147-0040 to reflect increase in small procurement threshold to $10,000 (per 2013 HB 2212).

731-149-0010; Revised the version of DOJ Model Rules ODOT is adopting and effective date. Deleted section (2) because it included a reference to a rule that was repealed in 2011 and no longer exists.

Rules Coordinator: Lauri Kunze—(503) 986-3171

731-147-0010
Application

(1) The Oregon Department of Transportation adopts OAR 137-047-0000 through 137-047-0810 (effective January 1, 2014) with the exception of 137-047-0275, the Department of Justice Model Rules, Public Procurements for Goods or Services General Provisions including the additional provisions provided in these rules.

(2) This rule applies retroactively to January 1, 2014.

Stat. Auth.: ORS 184.616, 184.619, 279A.065
Stats. Implemented: ORS 279B.015
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DOT 1-2010, f. & cert. ef. 5-18-10; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12; DOT 5-2013, f. 12-20-13, cert. ef. 1-1-14

731-147-0040
Special Delegated Procurements

(1) Terms used in division 147 rules have the same meaning as defined in ORS 279B.085.

(2) Authorization. The Chief Procurement Officer of the DAS State Procurement Office has granted approval and authority per OAR 125-246-0140, and 125-247-0288 to the ODOT Designated Procurement Officer for the following Special Procurements:

(a) Brand Names or Products, "or Equal," Single Seller and Sole Source;

(b) Equipment Repair and Overhaul;

(c) Purchases of Used Personal Property; and

(d) Reverse Auctions.

(3) The following apply to Brand Names or Products, "or Equal," Single Seller and Sole Source procurements:

(a) "Procurement of Brand Name 'or Equal' Products" means the Procurement of a product after specifying the registered Brand name of the product or requiring the same Specifications of the Brand Name product.

(b) Specifications. Solicitation Specifications for Public Contracts must not expressly or implicitly require any product of any particular manufacturer or seller except:

(A) "Or Equal" Specification. ODOT may specify a particular brand name, make or product suffixed by "or equal," "or approved equal," "or equivalent," "or approved equivalent," or similar language if there is no other practical method of Specification; and

(B) Specifying a particular make or product. ODOT may specify a Brand Name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of Specification, after documenting the Procurement File with the following:

(i) A brief description of the Solicitation(s) to be covered including volume of contemplated future purchases;

(ii) The Brand Name, mark, or product to be specified; and

(iii) The reason ODOT is seeking this procurement method, which must include at least one of the following findings in the Procurement File:

(I) It is unlikely that Specification of the Brand Name, mark or product will encourage favoritism in the award of the Public Contracts or substantially diminish competition;

(II) Specification of the Brand Name, mark or product would result in substantial cost savings to ODOT; or

(III) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(c) Public Notice. ODOT must make a reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or proposals; or must document the Procurement File with findings of current market research to support the determination that the product is available from only one seller. Posting a notice on ORPIN for a reasonable time period satisfies this requirement.

(d) Purchasing From Sole Source, Single Seller. ODOT may purchase a particular product or service (also known as Goods or Services) available from only one source if ODOT meets the requirements of paragraphs (b)(A) and (B) of this section and a Sole-Source Procurement pursuant to ORS 279B.075. ODOT, prior to purchase, must document the Procurement File with ODOT's findings of current market research to support the determination that the product or service is available from only one seller or source. ODOT's findings must also include:

(A) A brief description of the Contract or Contracts to be covered including volume of contemplated future purchases;

(B) Description of the Goods or Services to be purchased; and

(C) The reason ODOT is seeking this procurement method, that could include the following reasons:

(i) Efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;

(ii) The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments; or

(iii) The particular product is for use in a pilot or an experimental project.

(e) Single Manufacturer, Multiple Sellers. ODOT may specify Goods or Services available from only one manufacturer, but available through multiple sellers, if ODOT meets the requirements of paragraphs (b)(A) and (B) of this section and the following:

(A) If the total purchase is $10,000 or more but does not exceed $150,000 and a comparable product or service is not available under an existing Mandatory Use Contract, competitive quotes must be obtained and retained in the Procurement File for Intermediate Procurements; or

(B) If the purchase exceeds $150,000, and the comparable Good or Services is not available under an existing Mandatory Use Contract, ODOT must follow the Solicitation process for Competitive Sealed Bids or Competitive Sealed Proposals.

(f) Single Manufacturer, Multiple Purchases. If ODOT intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five (5) years, ODOT must so state in the Procurement file, the Solicitation Document, if any, and the public notice described in paragraph (b)(B) of this section. Such documentation and public notice constitute sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed $150,000, this must be stated in the advertisement for Bids or Proposals.

(g) If ODOT competitively solicits, it must comply with the rules for that method of Solicitation pursuant to ORS 279B.055 through 279B.075 and 137-047-0255 through 137-047-0263.

(h) Nothing in this rule exempts ODOT from obtaining the approval of the Attorney General for legal sufficiency review requirement pursuant to ORS 291.047.

(i) ODOT must comply with ORS 200.035, notwithstanding this rule.

(4) The following apply to Equipment Repair and Overhaul procurements:

(a) Conditions. ODOT may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(b) Process and Criteria. ODOT must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed impractical. If the anticipated purchase exceeds $5,000, ODOT must post notice on ORPIN. The resulting Contract must be in Writing and ODOT's Procurement File must document the use of this Special Procurement rule by number to identify the sourcing method. Nothing in this rule waives the Department of Justice legal sufficiency review requirement if applicable under ORS 291.047.

(5) The following apply to Purchase of Used Personal Property procurements:

(a) Authorization. Subject to the provisions of this rule, ODOT may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if, at the time of purchase, ODOT has determined and documented that the purchase will:

(A) Be unlikely to encourage favoritism or diminish competition; and

(B) Result in substantial cost savings or promote the public interest.

(b) "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of ODOT's purchase. "Used personal property or equipment" generally does not include property or equipment if ODOT was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(c) Process and Criteria:

(A) For purchases of used personal property or equipment with a cost not exceeding $150,000, ODOT must, where feasible, obtain three competitive Quotes, unless ODOT has determined and documented that a purchase without obtaining competitive Quotes will result in cost savings and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding $150,000, ODOT must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed impractical. If the anticipated purchase amount exceeds $5,000, ODOT must post notice on ORPIN. The resulting Contract must be in Writing and ODOT's Procurement File must document the use of this Special Procurement rule by number to identify the sourcing method. Nothing in this rule waives the Department of Justice legal sufficiency review requirement if applicable under ORS 291.047.

(6) The following apply to Reverse Auction procurements:

(a) Process. A Reverse Auction means a process for the purchase of Goods or Services by a buyer from the lowest Bidder. ODOT, as the buyer, must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, and the Contract terms and conditions. Then, ODOT must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify any combination of the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if ODOT chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of paragraphs (A), (B) and (C) of this subsection.

(b) Before the Reverse Auction commences, Bidders must be required by ODOT to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by ODOT. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. ODOT may cancel this Solicitation if it determines that it is in ODOT's or the State's best interest. At the end of the Bidding process, and if the solicitation has not been cancelled, ODOT must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders pursuant to ORS 279A.055(10)(b). This process allows ODOT to test and determine the suitability of the Goods or Services before making the Award. ODOT must comply with the following public notice procedures for this type of Solicitation:

(A) ODOT must disclose the Reverse Auction process in the Solicitation Documents.

(B) ODOT must provide initial notice of this Solicitation through ORPIN.

(C) ODOT must give subsequent notices of the price(s) offered, rank(s), score(s) and related details to the initial Bidders, as described in the Solicitation Document.

(D) ODOT must issue a Notice of Intent to award at least seven (7) calendar days prior to making the Award.

(c) Prequalification. For each Solicitation, under ORS 279B.085, on a case-by-case basis, ODOT may determine whether prequalification of suppliers is needed. If prequalification is used, ODOT must pre-qualify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

(7) The following process applies to Advertising Contracts: ODOT must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds $5,000, ODOT must post notice on ORPIN. The resulting Contract must be in Writing and the Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this rule waves the Department of Justice Legal Sufficiency Review requirement, if applicable under ORS 291.047.

Stat. Auth.: ORS 184.616, 184.619, 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12; DOT 5-2013, f. 12-20-13, cert. ef. 1-1-14

731-149-0010
Application

(1) The Oregon Department of Transportation adopts OAR 137-049-0100 through 137-049-0910 (effective January 1, 2014), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services. The adoption of the Department of Justice Model Rules by this rule does not apply to any contracts that are subject to OAR chapter 731, division 5 or 7.

(2) This rule applies retroactively to January 1, 2014.

Stat. Auth: ORS 184.616, 184.619, 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06; DOT 5-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DOT 1-2010, f. & cert. ef. 5-18-10; DOT 4-2011, f. 12-22-11, cert. ef. 1-1-12; DOT 5-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Procedures for grants and loans under the Multimodal Transportation Fund program
Adm. Order No.: DOT 6-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 12-20-13
Notice Publication Date: 11-1-2013
Rules Amended: 731-035-0010, 731-035-0020, 731-035-0050, 731-035-0060, 731-035-0080
Subject: These amendments implement Sections 1, 2, 3 and 5 of SB 260 (Ch. 765 OL 2013) by adding language allowing bicycle and pedestrian projects as eligible projects for the Multimodal Transportation Fund. The amendments also make minor revisions to the disbursal of program funds that are paid out on a reimbursement basis as called for in the Budget Note to HB 5008 (Ch. 723 OL 2013).
Rules Coordinator: Lauri Kunze—(503) 986-3171

731-035-0010
Purpose

ORS 367.080 to 367.086 creates the Multimodal Transportation Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects that involve air, marine, rail, public transit, or bicycle and pedestrian modes. The purpose of division 35 rules is to establish the Multimodal Transportation Fund Program.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 6-2013, f. & cert. ef. 12-20-13

731-035-0020
Definitions

For the purposes of division 35 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Agreement" means a legally binding contract between the Department and Recipient that contains the terms and conditions under which the Department is providing funds from the Multimodal Transportation Fund for an Approved Project.

(2) "Applicant" means a Person or Public Body that applies for funds from the Multimodal Transportation Fund.

(3) "Approved Project" means a Project that the Commission has selected to receive funding through either a grant or loan from the Multimodal Transportation Fund.

(4) "Area Commissions on Transportation" means advisory bodies chartered by the Oregon Transportation Commission (OTC) through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.

(5) "Aviation" is defined in ORS 836.005(5).

(6) "Oregon Bicycle and Pedestrian Advisory Committee" means the committee created in ORS 366.112.

(7) "Collateral" means real or personal property subject to a pledge, lien or security interest, and includes any property included in the definition of collateral in ORS 79.0102(1), and with respect to a Public Body, any real or personal property as defined in ORS 288.594.

(8) "Commission" means the Oregon Transportation Commission.

(9) "Department" means the Oregon Department of Transportation.

(10) "Director" means the Director of the Oregon Department of Transportation.

(11) "Department of Aviation" means the Oregon Department of Aviation (ODA).

(12) "Oregon Business Development Department" means the department defined in ORS 285A.070.

(13) "Freight Advisory Committee" means the committee created in ORS 366.212.

(14) "Person" has the meaning given in ORS 174.100(5), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.

(15) "Program" means the Multimodal Transportation Fund Program established by division 35 rules to administer the Multimodal Transportation Fund.

(16) "Program Funds" means the money appropriated by the Legislature to the Multimodal Transportation Fund. These funds may be used as either grants or loans to eligible projects.

(17) "Public Body" is defined in ORS 174.109.

(18) "Public Transit Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs related to public transportation in Oregon.

(19) "Rail Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs that affect rail freight and rail passenger facilities and services in Oregon.

(20) "Recipient" means an Applicant that enters into Agreement with the Department to receive funds from the Multimodal Transportation Fund.

(21) "Recipient's Total Project Costs" means the funds received from the Multimodal Transportation Fund program plus the matching funds required under Oregon Administrative Rule 731-035-0070(3)(a)(B), if applicable.

(22) "Receive Federal Grants" means execution of a grant agreement with any agency of the United States.

(23) "State Aviation Board" means the board created in ORS 835.102.

(24) "Transportation Project" or "project" is defined in ORS 367.010(11). A Multimodal Transportation Fund Program Project must involve one or more of the following modes of transportation: air, marine, rail, public transit or bicycle and pedestrian. The term includes, but is not limited to, a project for capital infrastructure and other projects that facilitate the transportation of materials, animals, or people.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 6-2013, f. & cert. ef. 12-20-13

731-035-0050
Application Review

(1) The Department will review applications received to determine whether the application is complete and the Applicant and the Project are eligible for Program Funds.

(2) Applicants that meet all of the following criteria are eligible:

(a) The Applicant is a Public Body or Person within the state of Oregon.

(b) The Applicant, if applicable, is current on all state and local taxes, fees and assessments.

(c) The Applicant has sufficient management and financial capacity to complete the Project including without limitation the ability to contribute 20 percent of the Recipient's Total Project Cost.

(d) The Applicant is not a railroad owner that operates a railroad wholly within the boundaries of Benton and Linn counties that:

(A) Charges landowners a fee for an easement to cross a railroad that is necessary for the landowner to access the landowner's property; and

(B) Has imposed or collected fees for such an easement on or after January 1, 2013.

(3) Projects that meet all of the following criteria are eligible:

(a) The project is a Transportation Project.

(b) The Project will assist in developing a multimodal transportation system that supports state and local government efforts to attract new businesses to Oregon or that keeps and encourages expansion of existing businesses.

(c) The Project is eligible for funding with lottery bond proceeds under the Oregon Constitution and laws of the State of Oregon.

(d) The Project will not require or rely upon continuing subsidies from the Department for ongoing operations.

(e) The Project is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the State Highway Trust Fund.

(f) The Project is feasible, including the estimated cost of the Project, the expected results from the proposed Project for each of the considerations as prescribed in 731-035-0060, the Project schedule, and all applicable and required permits may be obtained within the Project schedule.

(4) If an Applicant or Project is not eligible for Program Funds, the Department will, within 15 days of determination:

(a) Specify the additional information the Applicant must provide to establish eligibility; or

(b) Notify the Applicant that the application request is ineligible.

(5) The Department may deem an application ineligible if the Applicant fails to meet eligibility requirements of subsections (2) and (3) of this rule, or fails to provide requested information in writing by the date required by the Department, or if the application contains false or misleading information.

(6) The Director will consider protests of the eligibility determination for the Program. Only the Applicant may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final.

(7) The Department will make all eligible applications available for review, as applicable under OAR 731-035-0060, to the State Aviation Board, the Freight Advisory Committee, the Public Transit Advisory Committee, the Rail Advisory Committee, the Oregon Business Development Department, the Oregon Bicycle and Pedestrian Advisory Committee and any other transportation stakeholder and advocate entities identified by the Commission to provide recommendations on Project funding including the Area Commissions on Transportation.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 5-2011, f. & cert. ef. 12-22-11

731-035-0060
Project Selection

(1) The Commission will select Projects to be funded through either a grant or loan with moneys in the Multimodal Transportation Fund.

(2) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission shall solicit recommendations from:

(a) The State Aviation Board for aviation Transportation Projects.

(b) The Freight Advisory Committee for freight Transportation Projects.

(c) The Public Transit Advisory Committee for public transit Transportation Projects.

(d) The Rail Advisory Committee for rail Transportation Projects.

(e) The Oregon Business Development Department for marine transportation projects.

(f) The Oregon Bicycle and Pedestrian Advisory Committee.

(3) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule including the Area Commissions on Transportation.

(4) On behalf of the Commission, the Department shall solicit recommendations from the committees and entities in section (2) of this rule before soliciting recommendations from entities in section (3) of this rule. The Department shall provide the recommendations from the committees and entities in section (2) of this rule to the entities in section (3) of this rule.

(5) The Director, in consultation with committees and entities in section (2) of this rule and the Area Commissions on Transportation, shall appoint a Final Review Committee that includes representatives from each of the committees and entities in section (2) and section (3) of this rule. Following the receipt of recommendations from the entities in section (3) of this rule and prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission shall solicit a Final Recommendation Report from the Final Review Committee. The Department shall provide the Final Review Committee a list of recommendations from all committees and entities in section (2) and section (3) of this rule. The list shall include the evaluation results and recommendations from each of the committees and entities in sections (2) and (3) of this rule. The Final Review Committee shall provide the Commission its Final Recommendation Report of projects to be funded with moneys in the Multimodal Transportation Fund listing in priority order eligible Projects together with a reasonable number of alternate Projects in priority order.

(6) The Department shall determine the organizational guidance for the committees' and entities' processes and protocols.

(7) The committees and entities in sections (2), (3) and (5) of this rule shall follow the organizational guidance determined by the Department under section (6) of this rule.

(8) The Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Multimodal Transportation Fund:

(a) Whether a proposed Project reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor.

(b) Whether a proposed transportation project results in an economic benefit to this state.

(c) Whether a proposed Project is a critical link connecting elements of Oregon's transportation system that will measurably improve utilization and efficiency of the system.

(d) How much of the cost of a proposed Project can be borne by the Applicant for the grant or loan from any source other than the Multimodal Transportation Fund.

(e) Whether a Project is ready for construction, or if the Project does not involve construction, whether the Project is ready for implementation.

(f) Whether a Project leverages other investment and public benefits from the state, other government units, or private business.

(g) Whether the Applicant proposes to contribute more than the minimum 20 percent of the eligible grant Project costs established in OAR 731-035-0070(4).

(h) Whether the Applicant is applying for a loan rather than a grant.

(9) To award funds that become available due to loan repayment, completion of an approved Project with less funds than the amount awarded, earnings on moneys held in the Multimodal Transportation Fund, withdrawal, termination as prescribed in OAR 731-035-0070(1) or sanction as prescribed in 731-035-0080(5) of an approved Project the Commission shall select projects for grants or loans in accordance with ORS 367.084 solely, notwithstanding any other provision of division 35 rules.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 6-2013, f. & cert. ef. 12-20-13

731-035-0080
Project Administration

(1) The Department will administer all Projects.

(2) The Department and an Applicant of an Approved Project will execute an Agreement prior to the disbursal of Program Funds for an

Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement. Applicant will not be reimbursed for any funds expended prior to the execution of the Agreement except for a Director-granted waiver for emergency situations.

(3) The Agreement will contain provisions and requirements, including but not limited to:

(a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursal of Program Funds.

(b) Except as identified in subsection (2) of this rule, only Project costs incurred on or after the effective date of the Agreement are eligible for grant or loan funds.

(c) Disbursal of Program Funds for grants and loans will be paid on a reimbursement basis and will not exceed one disbursal per month. The Director or the OTC may make exceptions to the reimbursement basis if the Department finds that the applicant would have difficulty meeting this requirement.

(d) Five percent (5%) of funds received from the Multimodal Transportation Fund will be withheld from each reimbursement request and shall be released to grant recipient as the following condition are met:

(A) Eighty percent (80%) of funds withheld shall be released to recipient upon final project acceptance by the Department.

(B) Twenty percent (20%) of funds withheld shall be released upon receipt and approval by the Department of a project report that, at a minimum, describes project performance measures and jobs retained or created as a result of the project within 18 months of project acceptance by the Department.

(e) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(f) Recipients must separately account for all moneys received from the Multimodal Transportation Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

(g) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.

(h) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.

(i) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued under the Program.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply with the Program requirements as specified in this Rule and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the terms and conditions of the Agreement; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project and those corrective actions are not, or will not be, made within a reasonable time.

(e) The Department finds that a railroad operating wholly within Benton and Linn counties has charged landowners an easement fee on or after January 1, 2013 to access a landowner's property.

(f) Applicant fails to submit a project report as described in OAR 731-035-0080(3)(d)(B).

(5) The Department may impose one or more of the following sanctions:

(a) Revoke an existing award.

(b) Withhold unexpended Program Funds.

(c) Require return of unexpended Program Funds or repayment of expended Program Funds.

(d) Bar the Applicant from applying for future assistance.

(e) Other remedies that may be incorporated into grant and loan Agreements.

(6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.

(7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Applicant or Recipient may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.

(8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 6-2013, f. & cert. ef. 12-20-13

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

Rule Caption: Eliminates Drive Test Every Two Years for Person with Limited Vision Condition
Adm. Order No.: DMV 18-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 10-1-2013
Rules Amended: 735-062-0385
Subject: Chapter 473, Oregon Laws 2013 (Senate Bill 288) amends ORS 807.363 to eliminate a requirement that a person with a limited vision condition who is granted driving privileges pass a DMV drive test every two years to retain those privileges. The person must continue to provide a report from their vision specialist showing vision requirements for maintaining driving privileges are met. DMV has amended OAR 735-062-0385 to eliminate all references to the drive test requirement.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-062-0385
A Person with a Limited Vision Condition Must Qualify Every Two Years

(1) Beginning two years from the date of issuance and at least every two years thereafter, a person issued a license under ORS 807.363 must be examined by a licensed vision specialist and submit a Report of Limited Vision Examination form showing the person meets the vision requirements under ORS 807.359. If the person's driving privileges are not restricted to daylight driving only, the Report of Limited Vision Examination form must include the nighttime driving vision specialist certification.

(2) Approximately 90 days before it is due, DMV will send the person a requirement letter and Report of Limited Vision Examination form. The Report of Limited Vision Examination form must be completed by the person's licensed vision specialist and returned to DMV no later than the return date on the requirement letter.

(3) DMV will cancel the person's driving privileges if the Report of Limited Vision Examination form is not completed and returned to DMV by the return date set forth in the requirement letter described in section (2) of this rule or the person fails to meet the vision requirements as set forth in section (1) of this rule.

(4) If the person's driving privileges are not restricted to daylight driving only, DMV will issue a driver license with a daylight driving only restriction if the Report of Limited Vision Examination report submitted pursuant to section (1)(a) of this rule does not include the nighttime driving vision specialist certification.

(5) A Report of Limited Vision Examination must be received by DMV no later than two years from the date the most recently submitted report was signed by the licensed vision specialist.

Stat. Auth.: ORS 184.616, 184.619 & 802.010
Stats. Implemented: ORS 807.363 & 809.310(1)
Hist.: DMV 20-2009, f. & cert. ef. 10-27-09; DMV 18-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Expiration Date of a Driver License or Identification Card Under Specific Circumstances

Adm. Order No.: DMV 19-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 10-1-2013
Rules Amended: 735-062-0007, 735-062-0010
Subject: Oregon Law 2013, Chapter 238 (HB 2517) amends ORS 807.130 to specify that a driver license or identification card issued to a person legally present in the United States on a temporary basis and who is a citizen of a country with a Compact of Free Association (Compact) with the United States, is valid for eight years before it expires. The Compact countries are: Federated States of Micronesia; Republic of Palau; and Republic of the Marshall Islands. DMV has amended OAR 735-062-0007 and 735-062-0010 to implement HB 2517, including the requirement that a person from a Compact country must provide proof of legal presence to DMV.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-062-0007
Driver Permits or Driver Licenses

(1) Before the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a driver permit or driver license, the person applying for the driver permit or driver license must:

(a) Satisfy all requirements set forth in ORS 807.040 and 807.060(2)(a) if under the age of 18. For purposes of ORS 807.060 and this subsection:

(A) "Mother" means the biological or adoptive mother of the applicant;

(B) "Father" means the biological or adoptive father of the applicant; and

(C) "Legal guardian" means an individual, or the authorized representative of an entity, private or public institution or agency appointed as guardian of the applicant by a court having jurisdiction.

(b) Satisfy all requirements set forth in ORS 807.065 and 807.066 to receive a driver license (provisional) if under 18 years of age;

(c) Provide a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(d) Provide proof of legal presence as provided in OAR 735-062-0015;

(e) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016;

(f) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020;

(g) Provide proof of the person's residence address as provided in OAR 735-062-0030;

(h) Provide proof, as provided in OAR 735-016-0070, that the person is domiciled in or a resident of Oregon;

(i) Surrender all driver permits and driver licenses in the person's possession issued outside of Oregon.

(j) In addition to all requirements in subsections (a) through (i) of this section, a person applying for a commercial driver license or commercial instruction permit must:

(A) Certify driving type; and

(B) Meet medical qualifications as described in OAR 735-063-0050.

(C) Satisfy all requirements set forth in ORS 807.045 and OAR 735-062-0200 if the person holds a commercial driver license from another jurisdiction.

(2) A person is not eligible for driving privileges under ORS 807.060(4) or (5) and DMV will not issue or renew driving privileges or replace a driver license or driver permit if on an application for driving privileges or a replacement license or permit a person:

(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?" and the person is unable to pass a DMV vision screening;

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?";

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?"

(3) A person who is denied issuance or renewal of driving privileges or replacement of a driver license or driver permit under section (2) of this rule will be allowed to establish or reestablish eligibility by passing DMV examinations under ORS 807.070, by getting a determination of eligibility from the Medical Determination Officer under ORS 807.090 or both, as determined by DMV. The requirement may be waived if DMV determines the application was completed in error and the person is eligible for driving privileges.

(4) Upon receipt of an application for a driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. For issuance of a commercial driver license (CDL), DMV will also make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(5) DMV may require the applicant to provide a clearance letter in compliance with OAR 735-062-0160, indicating the applicant has valid driving privileges from any jurisdiction in which an inquiry with the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both indicates the applicant's driving privilege is not fully valid.

(6) DMV will not issue driving privileges to a person until his or her driving privilege is reinstated in all jurisdictions, unless the only remaining reinstatement requirement in the other jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from issuing a regular Class C driver license to a person whose CDL driving privileges are not valid as long as the person's regular Class C or equivalent driving privileges are valid.

(7) DMV will not issue a driver license or permit to a person with a current, valid Oregon identification card (ID card). To become eligible, the person must surrender the ID card before DMV may issue the Oregon driver license or permit. If the person's ID card is lost or destroyed, the person must make a statement that the card is lost or destroyed and that it will be returned to DMV if found.

(8) A driver license issued to a person with a February 29 birth date expires:

(a) On February 29 if the expiration year is a leap year; or

(b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the license or permit and mail it to the address provided by the applicant at the time of the application.

(10) After determining that an applicant has met all requirements under this rule and has provided proof of legal presence in the United States on a temporary basis, as described in OAR 735-062-0015(4), DMV will issue a limited term driver license or limited term driver permit and mail it to the address provided by the applicant at the time of the application. The expiration date of a limited term driver license or limited term driver permit is as described in ORS 807.130(3).

(11) DMV will issue a person who is a citizen of a country with a Compact of Free Association with the United States and who provides proof of legal presence as set forth in OAR 735-062-0015, a driver license with an expiration date as described in ORS 807.130(1) or (2).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021, 807.040, 807.050, 807.060, 807.120, 809.310 & 807.050
Stats. Implemented: ORS 807.021, 807.040, 807.060, 807.066 & 807.130
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0000; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 3-2003, f. & cert. ef. 4-21-03; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; Renumbered from 735-062-0000, DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12; DMV 19-2013, f. 12-20-13, cert. ef. 1-1-14

735-062-0010
Identification Cards

(1) Pursuant to ORS 807.400 and as provided in this rule, DMV will issue an identification card to a person who does not have a valid driver license.

(2) A person applying for an identification card must:

(a) Satisfy all identification card requirements set forth in ORS 807.400 and 807.410, except as described under section (7) of this rule;

(b) Provide a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(c) Provide proof of legal presence as provided in OAR 735-062-0015;

(d) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016.

(e) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020; and

(f) Provide proof of the person's residence address as provided in OAR 735-016-0070 and 735-062-0030.

(3) Identification cards issued to persons for whom DMV has created an Oregon driving record will reflect the same number as that on the existing record.

(4) An applicant in possession of a driver license issued by another jurisdiction must surrender that license to DMV before an identification card will be issued. The person must provide a statement to DMV if the person's license is lost, destroyed or the person no longer has the license in his or her possession, and must agree that the license will be surrendered to DMV if found.

(5) Applicants for an identification card must personally apply at a DMV office to receive an identification card.

(6) All identification cards must include a photograph of the cardholder.

(7) DMV will waive the fee requirements set forth in ORS 807.410 for those persons applying for an identification card when:

(a) The person voluntarily surrenders an Oregon license or driver permit to DMV based upon the person's recognition that the person is no longer competent to drive; or

(b) The person's driving privileges are suspended under ORS 809.419(1) and the person voluntarily surrenders the person's license or driver permit to DMV.

(8) An identification card issue to a person with a February 29 birth date expires:

(a) On February 29 if the expiration year is a leap year; or

(b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the identification card and mail it to the address provided by the applicant at the time of application.

(10) After determining that an applicant has met all requirements under this rule and has provided proof of legal presence in the United States on a temporary basis, as described in OAR 735-062-0015(4), DMV will issue a limited term identification card and mail it to the address provided by the applicant at the time of the application. The expiration date of a limited term driver license or limited term driver permit is as described in ORS 807.130(3).

(11) DMV will issue a person who is a citizen of a country with a Compact of Free Association with the United States and who provides proof of legal presence as specified in OAR 735-062-0015 an identification card with an expiration date as described in ORS 807.400(8).

(12) DMV may renew an identification card as provided in OAR 735-062-0090 or may do so using a previous photograph only as provided 735-062-0125.

(13) DMV may replace an identification card as provided in OAR 735-062-0110 or may do so using a previous photograph only as provided 735-062-0125.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021, 807.040, 807.050 & 807.400
Stats. Implemented: ORS 807.021, 807.022 807.130 & 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0003; MV 19-1990, f. 12-17-90, cert. ef. 1-1-91; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 24-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 12-2013, f. & cert. ef. 9-24-13; DMV 19-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Establishes Method of Notification of Certain Information to Oregon Department of Veterans' Affairs
Adm. Order No.: DMV 20-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 12-20-13
Notice Publication Date: 11-1-2013
Rules Adopted: 735-010-0250, 735-018-0130
Rules Amended: 735-018-0010
Subject: This rulemaking implements legislation enacted by the 2013 Legislative Assembly. Chapter 647, Oregon Laws 2013 requires:

1. The Director of Transportation (DMV) to notify the Director of Veterans' Affairs (ODVA), at least once a month, of the receipt of a written authorization from a member or veteran of a uniformed service to provide their name and address to ODVA. Written authorization may only be obtained in conjunction with an application for driving privileges, identification card, vehicle title or vehicle registration.

2. DMV to adopt administrative rules in consultation with ODVA to implement the provisions of the Act.

In consultation with ODVA, DMV has adopted OAR 735-010-0250 to define terms and to specify procedures and requirements regarding the method of providing notification to ODVA as required under Chapter 647, Oregon Laws 2013.

In addition, DMV amended OAR 735-018-0010 and adopted OAR 735-018-0130 to specify that DMV may accept authorizations submitted to DMV by means of an electronic transaction through DMV's website. This includes an authorization to provide name and address information to the Director of Veterans' Affairs.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-010-0250
Notification of Name and Address to the Director of Veterans' Affairs

(1) This rule specifies the procedures and the method for the Director of Transportation to notify the Director of Veterans' Affairs of the name and residence or mailing address of a member or veteran of a uniformed service, as authorized under Chapter 647, Oregon Laws 2013.

(2) The following definitions apply:

(a) "Authorization" means a written consent form signed by a Member or Veteran allowing DMV to provide the name and residence address or mailing address of the Member or Veteran to ODVA. An Authorization includes an electronic transaction as described in OAR 735-018-0130.

(b) "DMV" as used in Chapter 647, Oregon Laws 2013 and this rule means the Director of Transportation, the Department of Transportation, and the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(c) "ODVA" as used in Chapter 647, Oregon Laws 2013 and this rule means the Director of Veterans' Affairs and the Oregon Department of Veterans' Affairs.

(d) "Member or Veteran" means a member or veteran of a "Uniformed Service" as that term is defined in Chapter 647, Oregon Laws 2013.

(3) In conjunction with any application for driving privileges, identification card, vehicle title or vehicle registration, DMV will provide a written Authorization that may only be completed by an applicant who is a Member or Veteran of a uniformed service. DMV will not verify whether a person who has completed an Authorization is a Member or Veteran of a Uniformed Service.

(4) Upon receipt of an Authorization as described in section (2)(a) of this rule, DMV will enter the person's name and residence address or mailing address into an electronic file.

(5) No later than the 5th day of each month, the electronic file described in section (4) of this rule will be transmitted electronically to ODVA using a secure file transfer protocol.

Statutory Auth.: ORS 184.616, 184.612, 802.010, 802.179, Ch. 647 OL 2013
Stats. Implemented: Ch. 647 OL 2013
Hist.: DMV 20-2013, f. & cert. ef. 12-20-13

735-018-0010
Definitions

For purposes of OAR chapter 735, division 18:

(1) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(2) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

(3) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person or organization with the intent to sign the record.

(4) "Electronic transaction" means the exchange of an electronic record and, in those transactions where an ink on paper signature would also be required under Oregon law, an electronic signature, between a person or organization and DMV for the purposes of:

(a) Facilitating access to public records or public information;

(b) Purchasing or selling goods or services;

(c) Transferring funds;

(d) Facilitating the submission of an electronic record or electronic signature required or accepted by DMV; or

(e) Creating records upon which DMV or another person or organization will reasonably rely upon, including but not limited to formal commu-

nications, notices, certifications, authorizations and any other record that is issued under a signature.

(f) This section does not apply to informational publications and informal communications.

(5) "Hardcopy" means a document printed on paper.

(6) "Hyperlink" means a connection from one Webpage to another using a HyperText Markup Language (HTML) command.

(7) "Organization" means corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. "Organization" does not include an individual.

(8) "Person" means an individual.

(9) "Personal Information" means the following information that identifies the individual: driver license, driver permit or identification card number; name; address (excluding five-digit ZIP code); and telephone number.

(10) "PIN" means a personal identification number assigned by DMV to a person or organization to establish a secure means of authenticating the identity of a person or organization when conducting certain specified electronic transactions with DMV.

(11) "PIN transaction" means an electronic transaction that requires the use of a PIN assigned by DMV.

(12) "Record" means a document or information that is customarily printed on paper, which contains information relating to and evidencing the transaction of business between a person or an organization and DMV.

(13) "Unique identifier" means a number, name, symbol or other identifier used singly or in combination by DMV to uniquely identify a person, organization or vehicle to DMV. For example, a driver license number, customer identification number, date of birth, place of birth, mother's maiden name, vehicle license plate number, vehicle identification number, etc.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 803.460, Ch. 647 OL 2013
Stats. Implemented: ORS 802.012, 802.560, 803.200, 803.220, 803.360, 803.370, 803.450, 803.460, 807.420, 807.560, Ch. 647 OL 2013
Hist.: DMV 4-2003, f. & cert. ef. 5-14-03; DMV 20-2013, f. & cert. ef. 12-20-13

735-018-0130

Authorization to Provide Name and Address to the Director of Veterans' Affairs

An Authorization to provide the name and address of a Member or Veteran of a Uniformed Service to the Director of Veterans' Affairs as described in OAR 735-010-0250 may be submitted to DMV by means of an electronic transaction through DMV's website.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 803.460, Ch. 647 OL 2013
Stats. Implemented: ORS 802.012, 802.560, 803.200, 803.220, 803.360, 803.370, 803.450, 803.460, 807.420, 807.560, Ch. 647 OL 2013
Hist.: DMV 20-2013, f. & cert. ef. 12-20-13

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Rule Caption: Ignition Interlock Device; Medical Exemption from Requirement and When Required With Hardship Permit
Adm. Order No.: DMV 21-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 735-070-0082
Rules Amended: 735-064-0070
Subject: Chapter 315, Oregon Laws 2013 (House Bill 2116) amends ORS 813.602 to allow a court to exempt a person from the condition in a diversion agreement to install and use an ignition interlock device (IID) if the court determines that the person meets the requirements for a medical exemption in accordance with rules adopted by the department. HB 2116 prompted DMV to review and amend OAR 735-064-0070 by deleting the sections concerning the process for obtaining an IID medical exemption and to clarify current requirements related to issuance of a hardship, probationary and hardship/probationary permit when the person must have an IID. DMV also adopted a new rule, OAR 735-070-0082, to clarify in more detail the process for obtaining an IID medical exemption, which includes implementation of HB 2116. OAR 735-070-0082 clarifies DMV's procedure for applying for an IID exemption, including submission of a form completed by the applicant and the applicant's physician or health care provider, and clarifying the criteria for determining if the person qualifies for an IID medical exemption. It also differentiates between a DMV issued IID medical exemption and one issued by the court.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-064-0070

Ignition Interlock Device (IID) Requirement for Issuance of Hardship, Probationary or Hardship/Probationary Permits

(1) When a person whose driving privileges are suspended or revoked applies for a hardship, probationary or hardship/probationary permit, DMV will require the applicant to install an ignition interlock device (IID) in any vehicle operated by the applicant if the applicant's driving record shows any of the following:

(a) The applicant's driving privileges are currently suspended based on a conviction for DUII in an Oregon court;

(b) The applicant is currently participating in a DUII Diversion Agreement and the court ordered an IID as a condition of the agreement; or

(c) The applicant's driving privileges are revoked as a habitual offender and the applicant is also required to install an IID:

(A) As a condition of a DUII Diversion Agreement;

(B) During the suspension period for a conviction for DUII entered in an Oregon court; or

(C) Following the end of a suspension or revocation of driving privileges for DUII or any crime described in ORS 813.602(1) or (2).

(2) As a condition of a hardship, probationary or hardship/probationary permit, the IID must be installed, maintained and used in any vehicle the person operates for the duration of the person's IID requirement. The IID requirement may exceed the period the person's hardship, probationary or hardship/probationary permit is valid.

(3) When installation of an IID is required, DMV will not issue a hardship, probationary or hardship/probationary permit to the person until a provider submits an installation report form showing an approved device has been installed in each vehicle the person intends to operate during the permit period. The provider who installed the device(s) must sign the installation report form.

(4) Notwithstanding section (1) of this rule, DMV may issue a hardship, probationary or a hardship/probationary permit to a person who has not installed an IID if the person will only operate a vehicle(s) owned or leased by his or her employer during the course and scope of the person's employment. For purposes of ORS 813.606, DMV will place a notation on the driving record and on the hardship, probationary or hardship/probationary permit issued to the person that the person's employer has been informed of the IID requirement. To qualify, DMV must receive:

(a) A letter on business letterhead, signed by the employer, stating that the employer has been informed of the IID requirement and that the person is required to operate the employer's vehicle(s) in the course and scope of employment; or

(b) An Employer IID Exemption, (DMV form 735-6874) submitted by the employer.

(5) For purposes of ORS 813.606, a person who is self-employed is not an employee and DMV will not place an employer IID notification notation on the person's driving record.

(6) Notwithstanding section (1) of this rule, DMV may issue a hardship, probationary or hardship/probationary permit to a person who has not installed an IID if the person has been issued a medical exemption under OAR 735-070-0082.

(7) The hardship, probationary or hardship/probationary permit will contain a restriction that the person may only operate vehicles equipped with an IID. If the person operates a vehicle owned or leased by the person's employer in the course and scope of employment or has been issued a medical exemption, the hardship, probationary or hardship/probationary permit driving restrictions will state that the person must have in his or her possession a copy of the employer's IID exemption letter, a completed DMV Employer IID Exemption Form, an IID medical exemption letter issued by DMV, or an IID medical exemption approval issued by a court.

(8) The IID restriction in a hardship, probationary, or hardship/probationary permit will specify the length of time allowed for the person to travel to and from an IID provider's facility to have the IID checked or maintained.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.270 & 813.602
Stats. Implemented: ORS 807.240, 807.270 & 813.602
Hist.: MV 40-1987, f. 12-11-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-031-0107; MV 18-1989(Temp), f. 8-31-89, cert. ef. 9-5-89; MV 2-1990, f. & cert. ef. 2-1-90; MV 4-1991, f. 6-18-91, cert. ef. 7-1-91; DMV 5-1994, f. & cert. ef. 7-21-94; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 15-2001, f. & cert. ef. 9-21-01; DMV 12-2007, f. 11-30-07, cert. ef. 1-1-08; DMV 21-2013, f. 12-20-13, cert. ef. 1-1-14

735-070-0082
Medical Exemption from IID Requirement

(1) A person may qualify for a medical exemption from the ignition interlock device (IID) requirement under ORS 813.602(1) and (2) if the person provides satisfactory evidence to DMV that due to a medical condition or impairment the person is unable to operate an IID or unable to safely operate a motor vehicle equipped with an IID. (2) The following definitions apply:

(a) A "health care provider" is a person licensed, certified or otherwise authorized or permitted by law to administer health care in the State of Oregon. For purposes of these rules, the term health care provider is limited to: a chiropractic physician, nurse practitioner, and physician assistant.

(b) A "primary care provider" is a physician or health care provider who is responsible for supervising, coordinating and providing a person's initial and ongoing health care.

(c) "Unable to safely operate a motor vehicle equipped with an IID" means the person's medical condition or functional impairment prevents the person from safely operating a motor vehicle when requested to perform an IID rolling retest while operating a motor vehicle equipped with an IID.

(2) To apply for a medical exemption a person must submit a completed IID Medical Exemption form (DMV form 735-6941). The form must be completed by both the person and the person's primary care provider or the physician or health care provider providing specialized treatment to the person for the particular medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(3) The person must fully complete the information in Section 1 of the IID Medical Exemption form, including:

(a) The reason(s) the person is required to install an IID; and

(b) An explanation of why the person believes he or she has a medical condition or functional impairment that prevents the operation of an IID or prevents safe operation of a vehicle equipped with an IID.

(4) Section 2 of the IID Medical Exemption form must be completed by the person's primary care provider, or a physician or health care provider providing specialized treatment to the person for a medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID. The physician or health care provider must determine that in his or her professional opinion the person is unable to operate an IID or is unable to safely operate a vehicle equipped with an IID because of the person's medical condition or functional impairment, including but not limited to a determination that:

(a) The person has a medical condition or functional impairment that does not allow the person to provide the necessary alveolar air or deep lung air sample to properly operate the device; or

(b) The person consistently has a ketone level in his or her breath which creates a false positive reading of over .025 blood alcohol concentration even though the person has had no alcohol.

(5) If the determination of the physician or health care provider described in section (4) of this rule is not based on subsection (a) or (b), the physician or health care provider must provide a detailed description of why the medical condition or functional impairment prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(6) In completing Section 2 of the IID Medical Exemption form, the physician or health care provider must:

(a) Specify the medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a vehicle equipped with an IID;

(b) State whether the medical condition or functional impairment is permanent or temporary, and if temporary, the projected length of time; and

(c) Specify why the medical condition or functional impairment prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(7) From the information provided on the IID Medical Exemption form, DMV will determine if the person qualifies for a medical exemption. If DMV determines from the information on the form that the person qualifies, DMV will issue a medical exemption. If DMV is unable to determine from the information provided that the person qualifies, DMV will deny the medical exemption.

(8) If the person's medical condition or functional impairment is temporary, DMV will issue a temporary IID medical exemption that expires on the date specified in Section 2 of the IID Medical Exemption form, or a date six months from the date of issuance if no date is provided. If the temporary condition or functional impairment continues beyond the expiration date of the temporary IID medical exemption, the person may submit a signed statement from the physician or health care provider who completed the Request for IID Medical Exemption form describing the person's continuing need for a medical exemption, or the person may submit a new application as set forth in sections (2) through (4) of this rule. From the information submitted DMV will determine if the person continues to qualify for a temporary IID medical exemption.

(9) Before granting or denying an IID medical exemption, DMV may require the person to provide additional information from a physician or health care provider or to obtain a statement from an IID provider that the device cannot be adjusted to accommodate the person's medical condition or functional impairment.

(10) A person who is granted an IID medical exemption by DMV will be issued a medical exemption letter. The person must carry the IID medical exemption letter issued by DMV when driving.

(11) A person who must install and use an IID as a condition of a DUII diversion agreement must obtain an IID medical exemption from the court. The person must submit a completed IID Medical Exemption form directly to the court that approved the DUII diversion agreement. The court must approve or deny the IID medical exemption request. DMV will not forward an IID Medical Exemption form to a court if it is submitted to DMV in error.

(12) A person may need both an IID medical exemption letter issued by DMV and an IID medical exemption approval issued by a court. An IID medical exemption letter issued by DMV is not valid if the person is required to install an IID as a condition of a DUII diversion. A medical exemption issued by a court is not valid if the requirement to install and use an IID is required for any reason other than a DUII diversion agreement. Both an IID medical exemption letter issued by DMV and IID medical exemption approval issued by a court must be carried by the person when driving.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 813.602
Stats. Implemented: ORS 813.602
Hist.: DMV 21-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Drug and Alcohol Test; Report of Positive Result, Entry to Employment Driving Record, Hearing Request
Adm. Order No.: DMV 22-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 735-070-0185, 735-070-0190
Subject: Under Oregon Law 2013, Chapter 163 (SB 193) a school transportation provider must have an in-house drug and alcohol testing program, or be a member of a consortium that provides drug and alcohol testing that meets federal standards. A medical review officer of a school transportation provider's testing program must report a positive drug or alcohol test to DMV. DMV will notify a person who is the subject of such a report that he or she has the right to request a hearing. If the person does not request a hearing or if the hearing results in a finding that the test report was valid, the positive test will be noted on the person's employment driving record. DMV had existing rules that outline the reporting requirements and the process for requesting a hearing for motor carrier drug and alcohol programs. DMV will use the same process for school transportation provider reports and requests for hearing, and amended OAR 735-070-0185 and 735-070-0190 to include Chapter 163, Oregon Laws 2013 in the existing rules.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-070-0185
Report of Positive Drug Test Result from Medical Review Officer

(1) The report submitted by a medical review officer under ORS 825.410 or Chapter 163, Oregon Laws 2013 must include a Report of Positive Drug Test Under ORS 825.410 or Chapter 163, Oregon Laws 2013 (DMV form 735-7200) and:

(a) A legible copy of a completed Federal Custody and Control Form, Copy 2 — Medical Review Officer Copy; or

(b) Either an original or legible copy of a document that contains, at a minimum, the following information:

(A) Full name of the person tested;

(B) Specimen ID number;

(C) Place of Specimen Collection;
(D) Date of Specimen Collection;
(E) Collector's name;
(F) Whether a split specimen was collected;
(G) The person tested certified by signature that: he or she provided an unadulterated specimen to the collector; the specimen bottle was sealed with a tamper evident seal in the person's presence; and the information on the label affixed to the specimen bottle was correct;
(H) The date the Medical Review Officer verified the test result; and
(I) Signature of the Medical Review Officer.
(2) The Department of Transportation will not send notice as required by ORS 825.412 or Chapter 163, Oregon Laws 2013 until a report as described in section (1) of this rule is received by the agency.

Stat. Auth.: ORS 184.616, 184.619 & 802.010
Stats. Implemented: ORS 825.410, 825.412, Ch. 163 OL 2013
Hist.: DMV 8-2001, f. & cert. ef. 3-7-01; DMV 5-2002(Temp), f. & cert. ef. 3-14-02 thru 9-9-02; DMV 9-2002, f. & cert. ef. 5-16-02; DMV 4-2005(Temp), f. 2-16-05, cert. ef. 2-17-05 thru 8-15-05; DMV 17-2005, f. & cert. ef. 7-22-05; DMV 22-2013, f. 12-20-13, cert. ef. 1-1-14

735-070-0190
Hearing Request for Entry of Positive Drug Test Result on Employment Driving Record

When the Department of Transportation (ODOT) receives a report described in OAR 735-070-0185, ODOT will notify the person who is the subject of the report that the person has a right to request a hearing to determine whether a positive drug test result will be placed on the person's employment driving record.
(1) A hearing request must be in writing and must:
(a) Include the person's full name;
(b) Include the person's complete mailing address;
(c) Include the person's Oregon driver license number;
(d) Include a brief statement of the issues the person proposes to raise at the hearing. The issues are limited to those set forth in ORS 825.412(3) or Chapter 163, Oregon Laws 2013;
(e) Be postmarked within 30 days of the date of the notice. If the hearing request is not postmarked or a postmark date cannot be determined, it must be received by the Driver and Motor Vehicle Services Division of ODOT (DMV) within 30 days of the date of the notice; and
(f) Be mailed or personally delivered to DMV Headquarters, 1905 Lana Avenue NE, Salem, OR 97314, or if sent by facsimile machine (FAX), received by DMV at FAX number (503) 945-5521.
(2) A hearing request should also include:
(a) The person's date of birth;
(b) The telephone number where the person can be reached between 8 a.m. and 5 p.m.; and
(c) The dates and times the person or the person's attorney cannot appear at a hearing.
(3) Except for good cause shown:
(a) Any factual or legal defense not set forth in the hearing request is considered waived; and
(b) No evidence offered by a person who requests a hearing will be admitted into the hearing record on any factual or legal defense that is waived.
(4) If good cause is shown under section (3) of this rule, the administrative law judge must give ODOT sufficient opportunity to obtain and present in the contested case hearing any testimony or documents deemed necessary by the agency to respond to evidence offered by the person on any factual or legal defense.
(5) Except as provided in OAR 137-003-0528, the person's right to a hearing is waived if a hearing is not requested within the time period specified in section (1) of this rule and the notice becomes the final order by default. The test results will be posted to the person's employment driving record. The time period for requesting a hearing will be computed as set forth in OAR 137-003-0520(10).

Stat. Auth.: ORS 184.616, 184.619 & 802.010
Stats. Implemented: ORS 825.410, 825.412, Ch. 163 OL 2013
Hist.: DMV 11-2000(Temp), f. 9-21-00, cert. ef. 9-21-00 thru 3-19-01; DMV 8-2001, f. & cert. ef 3-7-01; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 14-2007, f. & cert. ef. 12-24-07; DMV 22-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Driver Improvement Offenses
Adm. Order No.: DMV 23-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 735-072-0035
Subject: ORS 809.480 authorizes the Oregon Department of Transportation, Driver and Motor Vehicle Services Division (DMV) to establish by administrative rule a Driver Improvement Program with the goal of reducing traffic convictions and especially accidents. The Driver Improvement Program uses two specific lists of traffic offenses under separate rules to determine whether a person meets the criteria for a restriction or suspension of driving privileges. OAR 735-072-0035 lists those traffic offenses, and requires five convictions to count as one driver improvement violation.

Chapter 361, Oregon Laws 2013 (Senate Bill 444) creates a new traffic offense to add to OAR 735-072-0035. The offense is smoking in a motor vehicle while a person under 18 years of age is in the motor vehicle. This rule amendment adds this offense to the list of offenses in OAR 735-072-0035.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-072-0035
Driver Improvement Offenses

(1) The conviction for an offense listed below counts toward both the Provisional and Adult Driver Improvement Programs. It takes five convictions from the following list to equal one driver improvement violation. All other convictions counting in the Driver Improvement Programs are outlined in OAR 735-064-0220.
(2) Offenses from other states are posted to driver records using an AAMVAnet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, a description of the offense and the ORS or administrative rule reference to the equivalent offense(s) in Oregon. The offenses listed below also count towards both the Provisional and Adult Driver Improvement Programs as described in section (1) of this rule.
(3) The following ACD codes are obsolete but convictions reported under these codes may still count as a conviction for an offense for both the Provisional and Adult Driver Improvement Programs as described in section (1) of this rule if DMV received notice from another state of a conviction using the following codes:

[ED. NOTE: Lists referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.480
Stats. Implemented: ORS 809.480
Hist.: DMV 29-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 12-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 19-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 28-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 18-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 23-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Implements 2013 Legislation; Amends Rules Relating to Vehicle Dealers and Vehicle Dismantlers
Adm. Order No.: DMV 24-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 735-150-0045, 735-150-0105, 735-152-0037
Subject: This rulemaking implements legislation enacted by the 2013 Legislative Assembly. Chapter 372, Oregon Laws 2013:

Section 1 of the Act repeals DMV's authority under ORS 822.084 to establish (by rule) a fee schedule for a recreational vehicle (RV) show license.

Section 2 amends ORS 822.700 in part to establish-for a certified vehicle dealer and certified dismantler — a late payment charge for the late renewal of: 1) a certificate; 2) a duplicate certificate; 3) or issuance of a certificate for a supplemental business location.

Consequently, DMV amended the following rules:

1. OAR 735-150-0045(6) to remove reference to the RV show license fee. The fee is now established under ORS 822.700.

2. OAR 735-150-0105 and 735-152-0037 to remove reference to the fees for the late renewal of a vehicle dealer certificate and the late renewal of dismantler certificate. Those fees are now established under ORS 822.700.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-150-0045
Special Rules Concerning Recreational Vehicle Dealers

(1) The purpose of this rule is to:
(a) Establish a process for issuing recreational vehicle (RV) show licenses and establish a fee for RV show licenses; and

(b) Clarify ORS 822.025(9) concerning maintenance of a service facility by RV dealers.

(2) Nothing in this rule is intended to limit or conflict with any other rule or law governing RV dealers.

(3) Definitions. As used in this rule and ORS 822.082 through 822.084:

(a) "Primary purpose" means that at least 51% of the RV service facility's income-producing activity is derived from the service and repair of recreational vehicles, as shown by gross service receipts;

(b) "Prominently display" means clearly and conspicuously posted in plain view in the area most frequently visited by the public and legible at a distance of six feet or more. For example, the main entrance of an RV show or the main lobby of an RV dealer;

(c) "Recreational vehicle service facility" means a permanent facility listed on the vehicle dealer's certificate and having the primary purpose of servicing and repairing RVs;

(d) "RV" means a recreational vehicle, as defined in ORS 446.003(37); and

(e) "Show license" means a license issued by DMV pursuant to ORS 822.084.

(4) Application for show license. The show organizer must submit an application for a show license to DMV, Business Regulation Section, no sooner than 60 days before the first day of the proposed show, and not later than 30 days before the first day of the proposed show. The show license application must be on a form provided by DMV and must include the following:

(a) The name, address and telephone number of the show organizer;

(b) The total number of days of the show, the date(s), location and times of the show;

(c) The date of the application for the show license;

(d) For each dealer displaying at the show the following information as listed in the dealer's main location application:

(A) The name under which the business is conducted;

(B) The street address, city and county of the dealer;

(C) The dealer number; and

(D) The expiration date of the dealer certification.

(e) That the show will include two or more recreational vehicle dealers, one of whose place of business as listed in the dealer's main location application is located more than 50 miles from the site of the show and the number of dealers participating in the RV show;

(f) Whether or not the public will be charged an admission fee;

(g) A show license application may be amended to add or delete show participants, or to correct information if submitted to DMV Business Regulation Section no later than 30 days before the date of a prospective show. In the event a participant printed on a show license is unable to attend or withdraws from the show after the 30th day, the organizer must mark a line on the approved show license using black ink through the name of that participant.

(5) Issuance and Display of License. DMV will issue a show license to the organizer, authorizing the listed dealers to participate in the RV show if the application is complete, the fee established under ORS 822.700 is paid and all other requirements are met. The show license must be conspicuously posted at the main entrance to the RV show for each day of the show and must be available for inspection by DMV.

(6) Service Facility. Vehicle dealers that sell new RVs must maintain, within Oregon, a recreational vehicle service facility that has the primary purpose of servicing and repairing recreational vehicles. The location of the recreational vehicle service facility must be prominently displayed at the RV dealer's sales site. In order to meet the requirement that the vehicle dealer "maintain" a recreational vehicle service facility, the dealer must own or lease the service facility and directly conduct the servicing and repair operation, without subcontracting.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.035, 822.040, 822.084 & 2013 OL Ch. 372
Stats. Implemented: ORS 184.616, 184.619, 802.010, 822.035, 822.040, 822.084 & 2013 OL Ch. 372
Hist.: DMV 26-2001 f. 12-14-01, cert. ef. 1-1-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 24-2013, f. 12-20-13, cert. ef. 1-1-14

735-150-0105
Late Renewal of Dealer Certificate

(1) An application to renew a dealer certificate will not be considered late if the dealer submits an application for renewal within 15 days of the date that the previous certificate expired, and the application is submitted with all applicable fees and a surety bond in effect during that 15-day period.

(2) An application to renew a dealer certificate is late, and subject to the late payment charge under ORS 822.700(6), if the dealer submits:

(a) An application not later than 45 days after the previous certificate expired and the application is submitted with all applicable fees; and

(b) A surety bond in effect during that 45-day period.

(3) A dealer who continues business operations 45 days after their certificate has expired is in violation of ORS 822.005 and is subject to civil penalties under OAR 735-150-0170.

(4) Except for the late payment fee under ORS 822.700, DMV may waive or reduce a penalty described under this rule if the dealer provides DMV with written documentation that shows mitigating circumstances prevented the dealer from renewing their certificate on time. Mitigating circumstances DMV may consider include:

(a) The dealer took action to renew the certificate on a date reasonably calculated to complete the process in a timely manner; and

(b) The delay in renewal was due to circumstances beyond the dealer's ability to control.

Stat. Auth.: ORS 183.430, 802.010, 802.370, 803.600, 803.625, 821.060, 821.080, 822.005 - 822.080 & 2013 OL Ch. 372
Stats. Implemented: ORS 822.040 & 2013 OL Ch. 372
Hist.: MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 24-2013, f. 12-20-13, cert. ef. 1-1-14

735-152-0037
Late Renewal of Dismantler Certificate

(1) An application to renew a dismantler certificate will not be considered late if the dismantler submits an application for renewal within 15 days of the date that the previous certificate expired, and the application is submitted with all applicable fees and a surety bond in effect during that 15-day period.

(2) An application to renew a dismantler certificate is late, and subject to the late payment charge under ORS 822.700(3), if the dismantler submits:

(a) An application for renewal no later than 45 days after the previous certificate expired, and the application is submitted with all applicable fees; and

(b) A surety bond in effect during that 45-day period.

(3) A dismantler who continues business operations 45 days after their certificate has expired is in violation of ORS 822.100 and is subject to civil penalties under OAR 735-152-0060.

(4) Except for the late payment fee under ORS 822.700, DMV may waive or reduce a penalty described under this rule if the dismantler provides DMV with written documentation that shows mitigating circumstances prevented the dismantler from renewing their certificate on time. Mitigating circumstances DMV may consider include:

(a) The dismantler took action to renew the certificate on a date reasonably calculated to complete the process in a timely manner; and

(b) The delay in renewal was due to circumstances beyond the dismantler's ability to control.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.100–822.150 & 2013 OL Ch. 372
Stats. Implemented: ORS 822.100–822.150 & 2013 OL Ch. 372
Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 24-2013, f. 12-20-13, cert. ef. 1-1-14

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Department of Transportation, Highway Division
Chapter 734

Rule Caption: Highway Approach Permitting, Access Control, and Access Management Standards
Adm. Order No.: HWD 7-2013(Temp)
Filed with Sec. of State: 12-23-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Adopted: 734-051-8010, 734-051-8015, 734-051-8020, 734-051-8025, 734-051-8030
Subject: The provisions of SB 408 will become effective January 1, 2014. Permanent rules are still under development and will not be completed before the January 1, 2014 effective date. Parts of the current rules that are in conflict with SB 408 will no longer be applicable when the bill takes effect. Temporary rules were adopted to implement those parts of the SB 408 that specifically require the department to establish rules for implementation and to ensure that ODOT is in compliance with the new laws beginning January 1. The temporary rules will also provide clarification for ODOT staff and the public about implementation of the new laws.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-051-8010

Notice and Review of Key Principles and Related Methodology for Facility Plans for Affected Real Property Owners

(1) The Department shall provide written notice to all affected real property owners at least twenty (20) calendar days prior to the taking action to approve the key principles and related methodology for a highway facility plan.

(2) Affected real property owners may make a written request for a review of the key principles and related methodology for the Facility Plan through either of the following:

(a) A Collaborative Discussion under 734-051-8020; or

(b) An Access Management Dispute Review Board under 734-051-8025.

(3) Affected real property owners must request a review not later than twenty (20) calendar days following the date of the Department notice under Section (1) of this rule. The request for review must be made in writing and state whether the request is for review through a Collaborative Discussion or an Access Management Dispute Review Board.

(4) An affected real property owner who requests a review of the key principles and related methodology through Collaborative Discussion may also request a review by an Access Management Dispute Review Board after completion of the Collaborative Discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the Region Manager following the Collaborative Discussion under 734-051-8020.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

734-051-8015

Notice and Review of the Access Management Methodology for a Highway Project

(1) The Department shall provide written notice to all affected real property owners at least twenty-one (21) calendar days prior to taking action to finalize the Access Management Methodology for a highway project.

(2) Affected real property owners may make a written request for a review of the Access Management Methodology prior to the department finalizing the Methodology, through either of the following:

(a) A Collaborative Discussion under 734-051-8020; or

(b) An Access Management Dispute Review Board under 734-051-8025.

(3) Affected real property owners must request a review of the Methodology not later than twenty-one (21) calendar days following the date of the Department notice under Section (1) of this rule. The request for review of the Methodology must be made in writing and state whether the request is for a review through Collaborative Discussion or an Access Management Dispute Review Board.

(4) An affected real property owner who requests a review of an Access Management Methodology through Collaborative Discussion may also request a review by an Access Management Dispute Review Board after completion of the Collaborative Discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the Region Manager following the Collaborative Discussion under 734-051-8020.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

734-051-8020

Collaborative Discussion Process for Facility Plans and Access Management Strategies in Project Delivery

(1) If an affected real property owner requests a Collaborative Discussion, the Collaborative Discussion shall be conducted not more than forty five (45) calendar days from the date of written request from the affected real property owner(s), unless the Department and affected real property owner(s) agree to a time extension in writing.

(2) The Region Manager may include any Department staff that he or she finds appropriate or necessary in the Collaborative Discussion process. In addition, the Region Manager shall invite local government representatives, and may include other facility users, economic development representatives or other parties which the Region Manager believes will contribute to finding appropriate solutions. The Collaborative Discussion shall be conducted under the alternative dispute resolution model in ORS 183.502.

(3) The Region Manager shall consider the information presented as part of the Collaborative Discussion and make the final decision. Within twenty-one (21) calendar days following the completion of the Collaborative Discussion, the Region Manager shall notify the property owner(s) in writing of the final decision to:

(a) Modify the key principles or related methodology; or,

(b) Finalize or adopt the key principles or related methodology without modifications.

Stat. Auth.: ORS 183.502, 184.616, 184.619, 374.310–374.314, 374.345, 374.355, 374.360
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

734-051-8025

Access Management Dispute Review Board Process

(1) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(2) Where more than one affected real property owner with the same or similar concerns requests review by an Access Management Dispute Review Board of the Key Principles and related Methodology for a facility plan or an Access Management Methodology for a highway project, the Department may consolidate the reviews.

(3) The Access Management Dispute Review Board shall include the following:

(a) The Director, or a designee of the Director, who is familiar with the location in which the facility plan is being prepared;

(b) A representative of the local jurisdiction for which the state highway is located;

(c) A traffic engineer who practices engineering in Oregon; and

(d) A representative from the economic or business sector.

(4) The Access Management Dispute Review Board shall be conducted not later than forty-five (45) calendar days from the date of written request from the affected real property owner(s), unless the Department and affected real property owner(s) agree to an time extension in writing. The Access Management Dispute Review Board shall make its recommendation to the Director not later than fourteen (14) calendar days following the conclusion of its deliberations.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

734-051-8030

Director Decisions Based on the Recommendations of the Access Management Dispute Review Board

(1) The Director or designee shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The Director or designee shall notify all parties participating in the review of the final decision in writing to either:

(a) Modify the key principles or methodology; or

(b) Finalize or adopt the key principles or methodology without modifications.

(2) The Director or designee's decision under Section (1) of this rule shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

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Department of Transportation, Motor Carrier Transportation Division
Chapter 740

Rule Caption: Annual re-adoption of IRP, HVUT and IFTA regulations
Adm. Order No.: MCTD 7-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 740-200-0010, 740-200-0020, 740-200-0040
Subject: These amendments include adoption of the rules of the International Registration Plan (IRP) to the date of January 1, 2014. Title 26 Code of Federal Regulations Part 41 (HVUT) requires the State to confirm proof of payment of the tax, and require proof of payment by the State as a condition of issuing a registration for a highway motor vehicle. The amendment of OAR 740- 740-200-0020 adopts HVUT and amendments with the effective date of January 1,

2014, and ensures Oregon remains current with national commercial motor vehicle registration standards. International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants with the effective date of January 1, 2014 to ensure Oregon remains current with the international IFTA standards.

Rules Coordinator: Lauri Kunze—(503) 986-3171

740-200-0010

Prorate Registration

(1) The provisions contained in the "International Registration Plan" (IRP), the IRP Audit Procedures Manual and all amendments thereto in effect January 1, 2014, are hereby adopted and prescribed by the Oregon Department of Transportation and apply to the apportioned registration of vehicles. Unless otherwise revised by written delegation, the designated person to cast a vote on an IRP ballot for Oregon is the Administrator of the Motor Carrier Transportation Division.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IRP:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Audit assessments are subject to penalty, late payment charges and interest described in IRP and the IRP Audit Procedures Manual;

(c) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(d) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days' notice of the time and place of the hearing. The Department may assess a penalty of $150 for failure to appear at a scheduled hearing.

(3) The mileage reporting period for application and renewal purposes will be the previous July through June twelve-month period.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 823.011 & 826.003
Stats. Implemented: ORS 826.005 & 826.007
Hist.: PUC 8-1990, f. & cert. ef. 5-25-90 (Order No. 90-834); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0005; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 6-2012, f. & cert. ef. 7-19-12; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14

740-200-0020

Adoption of Federal Rules Governing Payment of Heavy Vehicle Use Tax (HVUT)

The Department hereby adopts the rules of the United States Internal Revenue Service contained in 26 CFR Part 41 (HVUT) and all amendments thereto in effect January 1, 2014. These rules apply to carriers conducting operations subject to ORS Chapter 826. As provided in CFR Title 26 Part 41.6001-2(b)(3), the Department will suspend the registration of a vehicle for which proof of HVUT payment has not been received within four months of the effective date of registration.

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 826.003
Stats. Implemented: ORS 803.370(5) & 826.007
Hist.: PUC 19-1990, f. & cert. ef. 12-31-90 (Order No. 90-1919); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0015; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 2-2012, f.& cert. ef. 2-21-12; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14

740-200-0040

Adoption of International Fuel Tax Agreement

(1) The provisions contained in the International Fuel Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures Manual, and all amendments thereto in effect January 1, 2014, are hereby adopted and prescribed by the Oregon Department of Transportation (ODOT) and apply to Oregon-based motor carriers who participate in IFTA.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IFTA:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Records of monthly over the road and bulk fuel reconciliations must be maintained;

(c) The Department will assess a penalty of $50 or 10 percent of the amount of delinquent taxes due, whichever is greater, for failing to file a return, filing a late return, or underpaying taxes due on a return;

(d) The Department will assess a penalty of 10 percent of the amount of delinquent taxes due, for additional assessments as the result of an audit;

(e) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served to the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(f) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days' notice of the time and place of the hearing. The Department may assess a penalty of $150 for failure to appear at a scheduled hearing.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619 & 823.011
Stat. Implemented: ORS 825.490, 825.494 & 825.555
Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 4-2009, f. 12-22-09, cert. ef. 1-1-10; MCTD 1-2011, f. & cert. ef. 2-18-11; MCTD 2-2012, f.& cert. ef. 2-21-12; MCTD 1-2013, f. & cert. ef. 1-17-13; MCTD 7-2013, f. 12-20-13, cert. ef. 1-1-14

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Department of Transportation, Rail Division
Chapter 741

Rule Caption: Notification of Sale of Public Real Property Near Rail Infrastructure
Adm. Order No.: RD 2-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 12-20-13
Notice Publication Date: 11-1-2013
Rules Amended: 741-040-0040
Subject: Passage of SB 810 necessitates this amendment. Section 32 of SB 810 eases the requirements for notification to private providers of rail service when nearby public property is to be sold, exchanged or conveyed by excluding transactions where the proposed sale is to a provider of rail service or when the transaction involves the sale, exchange or conveyance of easements.
Rules Coordinator: Lauri Kunze—(503) 986-3171

741-040-0040

Exempt from Notification

The requirement for notification does not apply:

(1) To listing or placing any Real Property for sale, exchange or conveyance within a Light Rail Corridor;

(2) If the proposed sale, exchange or conveyance of the real property is to a provider of rail service; or

(3) To the proposed sale, exchange or conveyance of easements.

Stat. Auth.: ORS 184.616, 184.619 & 271.310
Stats. Implemented: ORS 271
Hist.: RD 1-2012, f. & cert. ef. 1-27-12; RD 2-2013, f. & cert. ef. 12-20-13

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Department of Veterans' Affairs
Chapter 274

Rule Caption: Conservatorship fees, fee waiver and retraction of fee waiver
Adm. Order No.: DVA 12-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013
Rules Amended: 274-015-0010
Rules Repealed: 274-015-0010(T)
Subject: The Department filed this rule as a temporary rule on August 29, 2013 that is effective from August 30, 2013 through January 3, 2014. The rule is needed to implement Chapter 258, 2013 Oregon Laws (HB 2044) and Chapter 190, 2013 Oregon Laws (HB 2046), that amended ORS 406.100 and 406.110. The temporary rule is repealed and the new amended rule is adopted.

The amendments to ORS 406.100 (HB 2044, 2013) changed the fees the Department may charge when acting as a conservator for a protected person. The fees were "an amount not to exceed 5% of the income to the estate" for all ordinary and usual conservatorship services. The statute now allows the Department to charge a "reasonable" compensation for ordinary services. The amended rule provides that the Department will charge 7% for ordinary services, an hourly rate of $40 for unusual services and $50 per real property inspection. The amendments to ORS 406.110 (HB 2046, 2013) allow the Department to retract a previously granted waiver of all or a portion of the fees charged to the estate of a protected person.

The amendments to the rule include adding some definitions, and housekeeping for readability and clarity.
Rules Coordinator: Laurie Skillman—(503) 373-2016

274-015-0010
Conservatorship Fees

(1) As used in this rule:

(a) "Department" means the Department of Veterans' Affairs.

(b) "Protected person" means a person for whom a protective order has been entered by a count that appoints the Department as the conservator.

(c) "Ordinary services" means ordinary and routine conservatorship services performed by the Department on behalf of a protected person.

(d) "Unusual services" means conservatorship services performed by the Department on behalf of a protected person that are uncommon or unusual.

(e) "USDVA" means the Unites States Department of Veterans' Affairs.

(2) The Department will charge the following fees when acting as the conservator of the estate of a protected person:

(a) For ordinary services, 7% of the income to the estate.

(b) For unusual services, $40 per hour except for real property inspections. The fee for real property inspections is $50 per inspection.

(3) The Department will impose a fee on the following sources of income to the estate of a protected person:

(a) USDVA compensation.
(b) USDVA pension.
(c) USDVA accumulated benefits.
(d) USDVA death indemnity compensation (DIC).
(e) USDVA death pension for a surviving spouse or child.
(f) USDVA education.
(g) USDVA rehabilitation.
(h) Social Security.
(i) State retirement.
(j) Federal Civil Service Retirement.
(k) Worker's compensation.
(l) Railroad retirement.
(m) Union pension.
(n) Life insurance annuity.
(o) Private disability insurance.
(p) Military retirement.
(q) Wages.

(r) Interest income on the funds in the estate earned through investments made by the Oregon State Treasurer.

(4) The Director of Veterans' Affairs may waive all or any portion of the fees charged under section (2) of this rule if the director finds that payment of a claim, or a portion thereof, would pose a hardship to the protected person or would deplete the protected person's estate.

(5) The director may retract a waiver made under subsection (4) of this rule if the director finds that payment of the claim, or a portion thereof, would no longer pose a hardship to the person from whose estate the claim is payable, or would no longer deplete the estate.

Stat. Auth.: ORS 406.005, 406.050 & 406.100
Stats. Implemented: ORS 406.100, 406110 & 406.120, 2013 OL Ch. 258 & 190
Hist.: DVA 9-1987, f. 11-25-87, ef. 12-1-87; DVA 4-1991, f. & cert. ef. 7-1-91; DVA 1-2012, f. & cert. ef. 2-22-12; DVA 3-2013(Temp), f. & cert. ef. 7-9-13 thru 1-3-14; DVA 7-2013(Temp), f. 8-29-13, cert. ef. 8-30-13 thru 1-3-14; DVA 12-2013, f. 12-20-13, cert. ef. 1-1-14

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Employment Department
Chapter 471

Rule Caption: 2013 Unemployment Insurance Updates per Legislative Session
Adm. Order No.: ED 1-2014
Filed with Sec. of State: 1-3-2014
Certified to be Effective: 2-23-14
Notice Publication Date: 10-1-2013
Rules Adopted: 471-030-0058, 471-030-0083
Rules Amended: 471-030-0036, 471-030-0040, 471-030-0045, 471-030-0052, 471-030-0053, 471-030-0210, 471-031-0151, 471-040-0020
Rules Repealed: 471-030-0078, 471-030-0040(T), 471-030-0045(T), 471-030-0053(T), 471-030-0058(T), 471-030-0052(T)
Subject: 471-030-0036 — Updates to eligibility requirements.

471-030-0040 — Updates to initial claims, additional claims, and reopened claims.

471-030-0045 — Updates to continued claims.

471-030-0052 — Updates to fraud penalty and cancellation of penalty weeks.

471-030-0053 — Updates to waiving overpayment recovery.

471-030-0058 — New rule, establishes rules for Treasury Offset Payment program.

471-030-0078 — Repeals rule relating to offshore workers.

471-030-0083 — New rule regarding employer non-relief of charges for pattern of not responding.

471-030-0210 — Updates to electronic notices for interstate reciprocal overpayment recoveries.

471-031-0151 — Updates to good cause regarding tax filing deadlines.

471-040-0020 — Updates to permissible fees for representing UI claimants.
Rules Coordinator: Courtney Brooks—(503) 947-1724

471-030-0036
Eligibility Factors

(1) In considering suitable work factors under ORS 657.190 and for purposes of determining eligibility under 657.155(1)(c), the Director may require an individual to actively seek the type of work the individual is most capable of performing due to prior job experience and training except that:

(a) If an individual is unable to secure the individual's customary type of work after contacting the potential employers in the labor market where benefits are being claimed, the Director may require the individual to seek less desirable but similar work or work of another type which the individual is capable of performing by virtue of experience and training.

(b) If the type of work an individual is most capable of performing does not exist in the labor market where the individual is claiming benefits, the Director may require the individual to seek any work that exists in the labor market for which the individual is suited by virtue of experience and training.

(c) After the individual has contacted the potential employers in the labor market where benefits are being claimed and is still unable to obtain work as described in (1)(a) and (b) of this section, the Director may require the individual to further expand work-seeking activities.

(2) For the purposes of ORS 657.155(1)(c), an individual shall be considered able to work in a particular week only if physically and mentally capable of performing the work he or she actually is seeking during all of the week except:

(a) An occasional and temporary disability for less than half of the week shall not result in a finding that the individual is unable to work for that week; and

(b) An individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work solely on that basis so long as the individual remains available for some work.

(3) For the purposes of ORS 657.155(1)(c), an individual shall be considered available for work if, at a minimum, he or she is:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and

(d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week, unless:

(A) The individual is actively seeking work outside his or her normal labor market area; or

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

(e) However, an individual with a permanent or long-term physical or mental impairment (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unavailable for work solely on that basis so long as the individual remains available for some work.

(f) For the purposes of ORS 657.155(1)(c), an individual is not available for work in any week claimed if:

(A) The individual has an opportunity to perform suitable work during the week and fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity.

(B) During the week, the individual is incarcerated during any days or hours customary for the type of work the individual is seeking.

(i) "Incarcerated" means in custody at a city, county, state, or federal law enforcement or correctional facility to include any "arrest" as defined in ORS 133.005 or a similar law in another state or jurisdiction.

(ii) When an individual is in an alternative sentencing facility operated pursuant to a community corrections plan that individual will not be considered unavailable for work solely because of their non-traditional custody. Alternative sentencing is defined by the jurisdiction responsible for supervision of the suspect or offender.

(iii) "Incarcerated" does not include a "stop" as authorized under ORS 131.605 to 131.625.

(iv) "Incarcerated" does not mean being involved in questioning by peace officers as part of an investigation where the individual is free to leave and not charged with a crime.

(g) An individual will be considered not available for work if he or she fails or refuses to seek the type of work required by the Director pursuant to section (1) of this rule.

(h) Providing the individual is otherwise eligible for benefits pursuant to OAR 471-030-0036(3)(a) through (g), a person who has been found to be qualified for benefits under the provisions of ORS 657.176(2)(f) or (g) or 657.176(9)(b)(A) shall be considered available for work only during weeks in which the individual is enrolled in and participating in a recognized drug or alcohol treatment program if such participation was a condition in the determination to allow benefits. This provision does not apply if the individual has satisfactorily completed the course of treatment in accordance with the terms and conditions of the recognized treatment program.

(A) An individual is participating when engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;

(B) A recognized drug or alcohol rehabilitation program is a program authorized and licensed under the provisions of OAR chapter 415.

(i) An individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:

(A) In Canada unless the individual is authorized to work in both the United States and Canada;

(B) In a country not included in the Compact of Free Association with the United States of America; or

(C) outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government; except,

(i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States;

(ii) Job opportunities exist on the military base or embassy for family members of those stationed there;

(iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and

(iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.

(4) Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent, step-parent, guardian or other court/legally-appointed caretaker of a child under 13 years of age or of a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her age, who is not willing to or capable of working a particular shift because of a lack of care for that child acceptable to the individual shall be considered available for work if:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s).

(5)(a) For purposes of ORS 657.155(1)(c) an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. Unless otherwise directed by the director or an authorized representative of the employment department, an individual who is not on temporary layoff as described in subsection (b), is not a union member as described in subsection (d), nor is filing a continued claim for the first week of an initial or additional claim as described in subsection (e), shall be required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual.

(A) Work seeking activities include but are not limited to registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer.

(B) Direct contact with an employer means making contact with an employer in person, by phone, mail, or electronically to inquire about a job opening or applying for job openings in the manner required by the hiring employer.

(b) For an individual on temporary layoff of four weeks or less with the individual's regular employer:

(A) If the individual had, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. The individual no longer meets the requirements of this subsection if four calendar weeks have passed following the week in which the temporary layoff occurred, therefore the individual must seek work consistent with subsection (a) of this section in addition to the individual's regular employer.

(B) The individual does not meet the requirements of this subsection if the individual had not, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount.

(c) For an individual on temporary layoff of more than four weeks with the individual's regular employer: such individual must immediately seek work consistent with the requirements of subsection (a) of this section

(d) For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union.

(e) For an individual who is filing a continued claim for the first week of an initial or additional claim:

(A) If the individual worked less than full time and remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount, each day the individual worked for the employer shall be considered a direct employer contact.

(B) An individual does not meet the requirements of this subsection if the individual performed no work for an employer during the first week of an initial or additional claim; therefore the individual must seek work consistent with subsection (a) of this section

(f) In determining whether to modify the requirements in this section for an individual the Employment Department may consider among other factors, length of unemployment, economic conditions in the individual's

labor market and prospective job openings, weather conditions affecting occupations or industries, seasonal aspects of the individual's regular occupation, expected date of return to work in regular occupation, seniority status of individual, registration with a union hiring hall and normal practices for obtaining the type of work which the individual is seeking pursuant to section (1) of this rule. The Department shall provide a written copy of the work search requirements to the individual if the individual's work search requirements are modified.

(6)(a) An individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria set forth in this section;

(b) When an individual seeks work through a union hiring hall, the individual's normal labor market area for the work sought is the normal referral jurisdiction of the union, as indicated by the applicable contract.

(7) Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in any state or country.

Stat. Auth.: ORS 657.610 & 657.155
Stats. Implemented: ORS 657.155,657.190, 657.195 & 657.260
Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; 1DE 4-1979(Temp), f. & ef. 7-5-79; 1DE 5-1979, f. & ef. 8-27-79; 1DE 1-1982, f. & ef. 6-30-82; ED 2-1992, f. & cert. ef. 6-29-92; ED 5-1994(Temp), f. 10-13-94, cert. ef. 10-16-94; ED 2-1997, f. 10-24-97, cert. ef. 11-3-97; ED 5-2003, f. 4-11-03, cert. ef. 4-13-03; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04; ED 1-2006. f. 1-5-06, cert. ef. 1-8-06; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-030-0040
Initial, Additional, and Reopened Claims

(1) As used in these rules, unless the context requires otherwise:

(a) "Claimant" is an individual who has filed an initial, additional, or reopened claim for unemployment insurance purposes within a benefit year or other eligibility period;

(b) An "initial claim" is a new claim that is a certification by a claimant completed as required by OAR 471-030-0025 to establish a benefit year or other eligibility period;

(c) "Additional claim" is a claim certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies to the end of a period of employment;

(d) "Reopened claim" is a certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies that there was no employment in any week since last reporting on this claim;

(e) "Backdating" occurs when an authorized representative of the Employment Department corrects, adjusts, resets or otherwise changes the effective date of an initial, additional or reopened claim to reflect filing in a prior week. Backdating may occur based upon evidence of the individual's documented contact on the prior date with the Employment Department or with any other state Workforce agency, or as otherwise provided in this rule.

(2) For the purposes of filing an initial, additional, or reopened claim:

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) When filed by Internet, the date of filing shall be the initial date of transmission of the online claim; or

(e) When filed by telephone, the date of filing shall be the date recorded in the completed telephone initial claim record of the agency system or by an employee completing the filing of the claim record.

(f) An incomplete certification must be completed and returned within seven business days from the date of notification that the original was incomplete to preserve the original date of filing.

(3) An initial, additional, or reopened claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or noncompensable credit is claimed and prior to or during the first week of any subsequent series thereafter. An initial claim is effective the Sunday of the calendar week in which it is filed. An authorized representative of the Employment Department will backdate an additional or reopened claim to the calendar week immediately preceding the week in which the request to backdate was made when a claimant requests backdating of the additional or reopened claim.

(4) The provisions of this section do not apply to an individual claiming benefits as a "partially unemployed individual," as defined in OAR 471-030-0060.

Stat. Auth.: ORS 657.610 & 657.155
Stats. Implemented: ORS 657.155 & 657.260
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 1-1982, f. & ef. 6-30-82; ED 1-1987, f. & ef. 1-12-87; ED 14-2003, f. 12-12-03 cert. ef. 12-14-03; ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-030-0045
Continued Claims

(1) As used in these rules, unless the context requires otherwise:

(a) "Continued Claim" means an application that certifies to the claimant's completion of one or more weeks of unemployment and to the claimant's status during these weeks. The certification may request benefits, waiting week credit, or non-compensable credit for such week or weeks. A continued claim must follow the first effective week of an initial, additional or reopen claim, or the claimant's continued claim for the preceding week;

(b) A "non-compensable credit week" is a week of unemployment for which benefits will not be allowed but which may qualify as a week allowed toward satisfying a disqualification as provided in ORS 657.215.

(2) A claimant, in order to obtain benefits, waiting week credit, or non-compensable credit for a week of unemployment, must file a continued claim for the week by any method approved by the Director.

(3) As directed by the Director, a continued claim must be filed:

(a) In person at any Employment Department office in the state of Oregon. When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) By United States mail. When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) By fax. When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) By Internet. When filed on line, the date of filing shall be the initial date of transmission of the on line continued claim; or

(e) By telephone. When filed by telephone, the date of filing shall be the date marked, stamped, or imprinted on the document by the agency system that records the oral request or by the employee accepting the continued claim.

(4) A continued claim must be filed no later than seven days following the end of the week for which benefits, waiting week credit, or non-compensable credit, or any combination of the foregoing is claimed, unless:

(a) The continued claim is for the first effective week of the benefit year, in which case the week must be claimed no later than 13 days following the end of the week for which waiting week credit is claimed, or

(b) The claimant routinely files weekly claims by submitting a weekly paper certification forms, in which case the week is timely if it is filed to the Employment Department no later than seven days, as per sections (3)(a)–(c) of this rule, after the Employment Department originally sent the paper certification form to the claimant.

(5) The Director may, with respect to individual claimants or groups of claimants, direct that continued claims be filed on any reporting schedule appropriate to existing facilities and conditions.

(6) The provisions of this rule do not apply to an individual claiming benefits as a "partially unemployed individual," as defined in OAR 471-030-0060.

Stat. Auth.: ORS 657.610 & 657.155
Stats. Implemented: ORS 657.155 & 657.260
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 3-1981, f. & ef. 2-16-81; 1DE 1-1984, f. & ef. 3-21-84; ED 4-1993, f. & cert. ef. 11-22-93; ED 4-1994, f. & cert.

ef. 9-2-94; ED 14-2003, f. 12-12-03 cert. ef. 12-14-03; ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-030-0052
Misrepresentation Disqualification

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

(b) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176, the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or four weeks, whichever is greater.

(c) When the disqualification is imposed because the disqualifying act(s) relates to the provisions of ORS 657.155 (other than work and/or earnings), the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or the number of weeks in which a disqualifying act(s) occurred, whichever is greater.

(d) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176 and a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in subsection (a) plus four weeks.

(e) When the disqualification is imposed because the disqualifying act(s) relates to the provisions of ORS 657.155 (other than work and/or earnings) and a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in subsection (a) plus the number of weeks in which a disqualifying act(s) occurred relating to the provisions of 657.155 (other than work and earnings).

(2) The number of weeks of disqualification assessed under section (1) of this rule shall be doubled, but not to exceed 52 weeks, if the individual has one previous disqualification under ORS 657.215, and that prior disqualification determination has become final.

(3) Notwithstanding sections (1) and (2) of this rule, the number of weeks of disqualification under ORS 657.215 shall be 52 weeks if:

(a) The disqualification under ORS 657.215 is because the individual committed forgery; or

(b) The individual has two previous disqualifications under ORS 657.215, and those prior two disqualification determinations have become final.

(4) Notwithstanding Sections (1), (2) and (3), an authorized representative of the Employment Department may determine the number of weeks of disqualification according to the circumstances of the individual case, but not to exceed 52 weeks.

(5) All disqualifications imposed under ORS 657.215 shall be served consecutively.

(6) Any week of disqualification imposed under ORS 657.215 may be satisfied by meeting all of the eligibility requirements of Chapter 657, other than 657.155(1)(e).

(7) The department will review the number of occurrences of misrepresentation when applying the penalty as described in ORS 657.310(2). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. The department shall use the date the individual failed to report a material fact or willfully made a false statement as the date of the occurrence. For an individual subject to disqualification by administrative action under 657.215, the penalty will be:

(a) For the first or second occurrence within 5 years of the occurrence for which a penalty is being assessed, 15 percent of the total amount of benefits the individual received but to which the individual was not entitled.

(b) For the third or fourth occurrence within 5 years of the occurrence for which a penalty is being assessed, 20 percent of the total amount of benefits the individual received but to which the individual was not entitled.

(c) For the fifth or sixth occurrence within 5 years of the occurrence for which a penalty is being assessed, 25 percent of the total amount of benefits the individual received but to which the individual was not entitled.

(d) For the seventh or greater occurrence within 5 years of the occurrence for which a penalty is being assessed, 30 percent of the total amount of benefits the individual received but to which the individual was not entitled.

(e) In cases of forgery or identity theft, 30 percent of the amount of benefits the individual received but to which the individual was not entitled.

(8)(a) Under ORS 657.215, the Director or an authorized representative of the Employment Department may determine it is proper and equitable to cancel the disqualification if:

(A) All benefits, interest, penalties, fees, and court costs have been paid in full;

(B) Three or more years have passed since the decision assessing the number of weeks of disqualification was issued; and

(C) The department has issued only one decision assessing weeks of disqualification to the individual within the last 10 years from the date of the request to cancel.

(b) For the purposes of the section (c) of this rule, an "occurrence" is each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits within the same willful misrepresentation decision.

(c) The Director or an authorized representative of the Employment Department shall determine the amount of weeks applicable for cancellation under ORS 657.215 according to the following criteria:

(A) The individual has satisfied the requirements of subsection (a);

(B) When the individual has committed one occurrence of violating ORS 657.215 within the same willful misrepresentation decision, the director may cancel the remaining weeks of disqualification in whole.

(C) When the individual has committed two occurrences of violating ORS 657.215 within the same willful misrepresentation decision, the director may cancel half the weeks of disqualification.

(D) When the individual has committed three or more occurrences of violating ORS 657.215 within the same willful misrepresentation decision or the disqualification under 657.215 is because the individual committed forgery, weeks of disqualification shall not be cancelled.

(d) Weeks of disqualification served prior to the request for cancellation shall not be cancelled.

Stat. Auth.: ORS 657.610 & 657.155
Stats. Implemented: ORS 657.155, 657.215 & 657.310
Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; ED 10-2003, f. 7-25-03, cert. ef. 7-27-03; ED 3-2008(Temp), f. & cert. ef. 2-15-08 thru 8-13-08; ED 8-2008, f. 5-20-08, cert. ef. 7-1-08; ED 3-2013(Temp), f. 9-10-13, cert. ef. 10-1-13 thru 3-28-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-030-0053
Waiving Recovery of Overpayments

(1) This rule addresses waiving recovery of overpayments pursuant to ORS 657.317.

(2) Recovering overpaid benefits is against equity and good conscience if the person requesting a waiver has no means to repay the benefits and has total allowable household expenses that equal or exceed 90% of the total household income less unemployment benefits. The Employment Department will use the IRS Collection Financial Standards to determine maximum allowable household expenses. The Employment Department may allow expenses higher than those provided for in the IRS Collection Financial standards if the person requesting a waiver provides documents showing that using those IRS Collection Financial Standards would leave him or her an inadequate means of providing for basic living expenses.

(3) If a waiver is granted, the Department will stop collection activity of the overpaid benefits that are waived. The Department will give written notice of any waivers that are granted, indicating the amount of the overpaid benefits for which the waiver is granted, and the time period of the waiver.

(4) The amount of overpaid benefits that are waived will be removed from the balance of remaining benefits that the claimant has remaining on the claim during the duration of the waiver of recovery of benefits.

(5) Waivers are effective the Sunday of the week in which the request for waiver was filed with the Employment Department. The date of the post mark from the United States Postal Service, a date stamp from an Employment Department office, or an embedded fax date, whichever is earliest, will be used to determine the date of filing.

(6) If a request for waiver of recovery is denied, the claimant may submit another request for waiver of recovery if his or her situation changes significantly enough to establish that recovery of the benefits would be against equity and good conscience. No such subsequent request will be granted unless the claimant explains the significant change in financial situation in writing and provides supporting documentation.

(7) If a waiver is granted but the Employment Department then determines a hardship no longer exists, or that the person who received the waiver gave inaccurate or incomplete information in the request for waiver, the Employment Department may end the waiver.

(8) If a request for a waiver of recovery is denied or if the Employment Department determines a hardship no longer exists and ends the waiver of recovery, the claimant will receive an administrative decision as defined in OAR 471-030-0039.

(9) Overpaid benefits that have been recovered prior to the filing of a waiver request will not be waived.

(10) If a person is paid more than once for the same week(s), only the amount in excess of the final entitlement is eligible to be waived.

(11) In applying ORS 657.317(4), a waiver will not be granted if the overpayment is a result of willful misrepresentation or fraud as established in 657.215

(12) Overpayments caused by the negotiation of an original and a replacement check that were issued for the same period pursuant to OAR 471-030-0049 will not be waived.

(13) The determination to waive recovery of overpayments under ORS 657.317 and this rule shall be made by employees authorized by the Director.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.267, 657.268, 657.315 & 657.317
Hist.: ED 2-1995, f. 8-29-95, cert. ef. 9-3-95; ED 4-2011(Temp), f. & cert. ef. 6-29-11 thru 12-15-11; ED 11-2011, f. & cert. ef. 12-5-11; ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-030-0058
Offset of Unemployment Compensation Debt Through U.S. Treasury Offset Program

(1) The Oregon Employment Department may submit liquidated unemployment insurance overpayments for offset against federal tax refunds through the "Treasury Offset Program" under 31 USC 3716(h) and 31 CFR 285.6. For purposes of this rule, liquidated means legally enforceable because:

(a) The liability is assessed by the department;

(b) The department has made written demand for payment of the liability;

(c) The claimant is not in bankruptcy; and

(d) All relevant appeal periods for contesting the liability have expired.

(2) Notice of intent to offset. Before submitting an unemployment insurance overpayment to Financial Management Service, U.S. Treasury for offset against a federal refund, the Oregon Employment Department must send written notice of intent to offset to the claimant by mail.

(3) Disagreement procedures. If a claimant disagrees with the notice of intent to offset and wants reconsideration, the claimant must submit a letter of disagreement within 60 days of the date shown on the notice of intent to offset. The claimant must provide, and the department will limit consideration to, evidence that the overpayment scheduled for offset is not:

(a) Past due; or

(b) Legally enforceable.

(4) If the claimant claims that the debt is not legally enforceable, the department will consider the merits of such a claim unless the issue has already been finally adjudicated by the Office of Administrative Hearings or Employment Appeals Board in a proceeding to which the department is a party.

(5) Review of disagreement. For each letter of disagreement provided by the claimant, the department will:

(a) Review evidence provided by the claimant, and

(b) Remove claimant's name from the federal refund offset list for this debt if evidence supports the claimant's position that the debt is not past due or legally enforceable.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.610, 657.155, 657.260 & SB 259 2013
Hist.: ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-030-0083
Employer Penalties

For the purposes of ORS 657.471:

(1) A request for information means when the Department asks an employer or its representative to provide the Department with information regarding Unemployment Insurance by:

(a) A written notice of claim filing as provided in ORS 657.265, where an individual was discharged, suspended, or voluntarily left work;

(b) Any communication made by mail, telephone, or electronically, to an employer or agent of the employer relating to a notice of claim filing as provided in ORS 657.265 regarding an individual's discharge, suspension, or voluntary leaving work;

(c) Any communication made by mail, telephone, or electronically, to an employer or agent of the employer in order for the department to make a determination under ORS 657.215.

(2) An employer or agent of the employer has failed to respond timely when they do not respond within the time frame provided by the department to a request for information.

(3) An employer or agent of the employer has failed to respond adequately when:

(a) The employer or agent of the employer does not respond to a request for information; or

(b) The employer or agent of the employer responds to a request for information but provides incomplete or inaccurate information to the questions asked.

(4) An employer or agent of the employer has established a pattern when the employer or agent of the employer has failed to respond timely or adequately to the greater of:

(a) More than (2%) of the requests for information; or,

(b) More than (2) requests for information.

(5) For the purposes of this rule, the department will determine if the employer or agent of the employer has established a pattern of failing to respond timely or accurately to requests for information by reviewing requests for information during the previous twelve months ending the month prior to which the decision creating the overpayment of unemployment insurance benefits is issued.

Stat. Auth.: ORS 657.610
Stats. Implemented: 657.610, 657.155, 657.260 & 657.471
Hist.: ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-030-0210
Interstate Reciprocal Overpayment Recovery Arrangement

(1) The following rules shall govern the Oregon Employment Department in its administrative cooperation with other States adopting similar regulations for the recovery of overpayments.

(2) Definitions: As used in these rules unless the context clearly requires otherwise:

(a) "State" includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(b) "Offset" means the withholding of an amount against benefits which would otherwise be payable for a compensable week of unemployment.

(c) "Overpayment" means an improper payment of benefits, from a State or Federal unemployment compensation fund that has been determined recoverable under the Requesting State's law.

(d) "Participating State" means a State which has subscribed to the Interstate Reciprocal Overpayment Recovery Arrangement.

(e) "Paying State" means the State under whose law a claim for unemployment benefits has been established on the basis of combining wages and employment covered in more than one State.

(f) "Recovering State" means the state that has received a request for assistance from a "Requesting State".

(g) "Requesting State" means the State that has issued a final determination of overpayment and is requesting another State to assist it in recovering the outstanding balance from the overpaid individual.

(h) "Transferring State" means a State in which a Combined Wage claimant had covered employment and wages in the base period of a paying State, and which transfers such employment and wages to the paying State for its use in determining the benefit rights of such claimant under its law.

(i) "Liable State" means any state against which an individual files, through another state, a claim for benefits.

(3) Recovery of State or Federal Benefit Overpayments:

(a) Duties of the Requesting State. The requesting State shall:

(A) Send the recovering State a written request or a request using an approved electronic application for overpayment recovery assistance which includes:

(i) Certification that the overpayment is legally collectable under the requesting State's law;

(ii) Certification that the determination is final and that any rights to postponement of recoupment have been exhausted or have expired;

(iii) A statement as to whether the State is participating in cross-program offset by agreement with the U.S. Secretary of Labor; and,

(iv) A copy of the initial overpayment determination and a statement of the outstanding balance.

(B) Send notice of this request to the claimant; and

(C) Send to the recovering State a new outstanding overpayment balance whenever the requesting State receives any amount of repayment from a source other than the recovering State (e.g., interception of tax refund, etc.).

(b) Duties of Recovering State. The Recovering State shall:

(A) Issue an overpayment recovery determination to the claimant which includes at a minimum:

(i) The statutory authority for the offset;

(ii) The name of the State requesting recoupment;

(iii) The date of the original overpayment determination;

(iv) Type of overpayment (fraud or nonfraud);

(v) Program type (UI, UCFE, UCX, TRA, etc.)

(vi) Total amount to be offset;

(vii) The amount to be offset weekly;

(viii) The right to request redetermination and appeal of the determination to recover the overpayment by offset.

(B) Offset benefits payable for each week claimed in the amount determined under State law; and

(C) Provide the claimant with a notice of the amount offset; and,

(D) Prepare and forward, no less than once a month, a payment representing the amount recovered made payable to the requesting State, except as provided in section (c) below.

(E) Retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefits period, or other extensions of benefits, whichever is later.

(F) The Recovering State shall not redetermine the original overpayment determination.

(c) Combined Wage Claims. When processing combined wage claims, the following shall apply:

(A) Recovery of Outstanding Overpayment in Transferring State. The paying State shall:

(i) Offset any outstanding overpayment in a Transferring State(s) prior to honoring a request from any other "Participating State" under this Arrangement.

(ii) Credit the deductions against the Statement Of Benefits Paid To Combined Wage Claimants, Form IB-6 or forward a check to the Transferring State as described in (b)(D).

(B) Withdrawal of Combined Wage Claim After Benefits Have Been Paid. Withdrawal of a Combined Wage Claim after benefits have been paid shall be honored only if the combined wage claimant has repaid any benefits paid or authorizes the new liable State to offset the overpayment.

(i) The Paying State shall issue an overpayment determination and forward a copy, together with an overpayment recovery request and an authorization to offset, with the initial claim to the new liable State.

(ii) The Recovering State (which is the new liable State) shall:

(I) Offset the total amount of any overpayment, resulting from the withdrawal of a Combined Wage claim, prior to the release of any payments to the claimant;

(II) Offset the total amount of any overpayment, resulting from the withdrawal of a Combined Wage Claim prior to honoring a request from any other Participating State under this arrangement;

(III) Provide the claimant with a notice for the amount offset; and,

(IV) Prepare and forward a check representing the amount recovered to the Requesting State as described in (b)(D).

(d) Cross-Program Offset: The Recovering State shall offset benefits payable under a State unemployment compensation program to recover any benefits overpaid under a Federal unemployment compensation program (as described in the Recovering State's Agreement with the Secretary of Labor) and vice versa, in the same manner as required under subsection (3)(b) and (c) of this section, as appropriate, if the Recovering State and Requesting State have entered into an agreement with the U.S. Secretary of Labor to implement Section 303(g)(2) of the Social Security Act.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.155 & 657.760

Hist.: ED 12-2001(Temp), f. 10-12-01, cert. ef. 10-14-01 thru 4-7-02; ED 2-2002, f. 3-29-02, cert. ef. 3-31-02; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-031-0151

Failure to File Reports or Pay Tax — Good Cause

(1) As used in ORS 657.457, 657.552, and 657.663 "good cause" will be found to exist when the employer establishes by satisfactory evidence that factors or circumstances beyond the employer's reasonable control caused the delay in filing the required document or paying the tax due.

(2) In determining "good cause" under section (1) of this rule, the Director or an authorized representative may consider all circumstances, but shall require at a minimum that the employer:

(a) Prior to the date the document or tax was due, gave notice to the Employment Department, when reasonably possible, of the factors or circumstances which ultimately caused the delay;

(b) Filed the required document or paid the tax due within seven days after the date determined by the Director to be the date the factors or circumstances causing the delay ceased to exist; and

(c) Made a diligent effort to remove the cause of the delay and to prevent its recurrence.

(d) Provide an official police report, or other documentation of the criminal act acceptable to the Director or an authorized representative, that was made within 20 days of the incident, or discovery of the incident, if the delay was due to a criminal act by any party.

(3) In applying sections (1) and (2) of this rule, a lack of funds on the part of the employer shall not constitute good cause for failure to pay all taxes when due.

(4) In applying sections (1) and (2) of this rule, failure to notify the Employment Department of an updated mailing address per ORS 657.660(4) shall not constitute good cause for failure to file reports.

(5) The period within which an employer may request a waiver of the penalty or hearing on the denial of a waiver may be extended a reasonable time upon a showing of "good cause" for the late request as defined in OAR 471-040-0010.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610, 657.457, 657.552 & 657.663

Hist.: 1DE 2-1984, f. & ef. 9-28-84; ED 15-2008, f. 11-24-08, cert. ef. 12-1-08; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

471-040-0020

Subpoenas

(1) At the timely request of a party or on the administrative law judge's own initiative, an administrative law judge may issue a subpoena requiring a person to appear at a scheduled hearing for the purpose of giving testimony, or producing books, records, documents, or other physical evidence.

(2) A party that submits a request for subpoena should show:

(a) The name of the witness and the address where the witness can be served the subpoena;

(b) That the testimony of the person is material; and

(c) That the person will not voluntarily appear.

(3) If the requesting party wishes the witness to produce books, records, documents, or other physical evidence, the party should also show:

(a) The name or a detailed description of the specific books, records, documents, or other physical evidence the witness should bring to the hearing;

(b) That such evidence is material; and

(c) That such evidence is in the possession of the person who will not voluntarily appear and bring such evidence to the hearing.

(4) An administrative law judge may limit the number of subpoenas for witnesses material to the proof of any one issue at the hearing.

(5) Service of the subpoena upon the witness is the responsibility of the party requesting the subpoena.

(6) A witness who attends a hearing pursuant to subpoena issued under this rule is entitled to witness fees and mileage as provided in Rule 55 E. (1), Rules of Civil Procedure, and in ORS 44.415(2) for subpoenaed witnesses. Fees will be paid by check mailed subsequent to the conclusion of the hearing. The witness shall request payment of fees by completion of forms approved by the Employment Department. Payment of fees shall be made promptly upon receipt of the request for payment.

(7) Only witnesses, other than parties, who attend a hearing pursuant to subpoena issued under this rule may be paid or reimbursed by the Employment Department for witness fees and mileage.

(8) For the purposes of ORS 657.295, the amount approved by the Director that counsel or agent representing an individual who is claiming benefits may charge or receive for the services is no more than 25% of an individual's benefits affected by the administrative decision on a disputed claim and no more than 25% of the maximum benefit amount payable as defined under 657.150(5).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610, 657.155, 657.260, 657.295 & 657.317

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 153, f. 12-23-77, ef. 1-1-78; 1DE 8-1981, f. & ef. 11-2-81; 1DE 1-1985, f. & ef. 11-18-85; ED 1-1991, f. & cert. ef. 4-1-91; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14

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Subject: Second filing due to missing 10-day Legislative Counsel window on first filing.

471-030-0036 — Updates to eligibility requirements.

471-030-0040 — Updates to initial claims, additional claims, and reopened claims.

471-030-0045 — Updates to continued claims.

471-030-0052 — Updates to fraud penalty and cancellation of penalty weeks.

471-030-0053 — Updates to waiving overpayment recovery.

471-030-0058 — New rule, establishes rules for Treasury Offset Payment program.

471-030-0078 — Repeals rule relating to offshore workers.

471-030-0083 — New rule regarding employer non-relief of charges for pattern of not responding.

471-030-0210 — Updates to electronic notices for interstate reciprocal overpayment recoveries.

471-031-0151 — Updates to good cause regarding tax filing deadlines.

471-040-0020 — Updates to permissible fees for representing UI claimants.

Rules Coordinator: Courtney Brooks—(503) 947-1724

471-030-0036
Eligibility Factors

(1) In considering suitable work factors under ORS 657.190 and for purposes of determining eligibility under 657.155(1)(c), the Director may require an individual to actively seek the type of work the individual is most capable of performing due to prior job experience and training except that:

(a) If an individual is unable to secure the individual's customary type of work after contacting the potential employers in the labor market where benefits are being claimed, the Director may require the individual to seek less desirable but similar work or work of another type which the individual is capable of performing by virtue of experience and training.

(b) If the type of work an individual is most capable of performing does not exist in the labor market where the individual is claiming benefits, the Director may require the individual to seek any work that exists in the labor market for which the individual is suited by virtue of experience and training.

(c) After the individual has contacted the potential employers in the labor market where benefits are being claimed and is still unable to obtain work as described in (1)(a) and (b) of this section, the Director may require the individual to further expand work-seeking activities.

(2) For the purposes of ORS 657.155(1)(c), an individual shall be considered able to work in a particular week only if physically and mentally capable of performing the work he or she actually is seeking during all of the week except:

(a) An occasional and temporary disability for less than half of the week shall not result in a finding that the individual is unable to work for that week; and

(b) An individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work solely on that basis so long as the individual remains available for some work.

(3) For the purposes of ORS 657.155(1)(c), an individual shall be considered available for work if, at a minimum, he or she is:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and

(d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week, unless:

(A) The individual is actively seeking work outside his or her normal labor market area; or

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

(e) However, an individual with a permanent or long-term physical or mental impairment (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unavailable for work solely on that basis so long as the individual remains available for some work.

(f) For the purposes of ORS 657.155(1)(c), an individual is not available for work in any week claimed if:

(A) The individual has an opportunity to perform suitable work during the week and fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity.

(B) During the week, the individual is incarcerated during any days or hours customary for the type of work the individual is seeking.

(i) "Incarcerated" means in custody at a city, county, state, or federal law enforcement or correctional facility to include any "arrest" as defined in ORS 133.005 or a similar law in another state or jurisdiction.

(ii) When an individual is in an alternative sentencing facility operated pursuant to a community corrections plan that individual will not be considered unavailable for work solely because of their non-traditional custody. Alternative sentencing is defined by the jurisdiction responsible for supervision of the suspect or offender.

(iii) "Incarcerated" does not include a "stop" as authorized under ORS 131.605 to 131.625.

(iv) "Incarcerated" does not mean being involved in questioning by peace officers as part of an investigation where the individual is free to leave and not charged with a crime.

(g) An individual will be considered not available for work if he or she fails or refuses to seek the type of work required by the Director pursuant to section (1) of this rule.

(h) Providing the individual is otherwise eligible for benefits pursuant to OAR 471-030-0036(3)(a) through (g), a person who has been found to be qualified for benefits under the provisions of ORS 657.176(2)(f) or (g) or 657.176(9)(b)(A) shall be considered available for work only during weeks in which the individual is enrolled in and participating in a recognized drug or alcohol treatment program if such participation was a condition in the determination to allow benefits. This provision does not apply if the individual has satisfactorily completed the course of treatment in accordance with the terms and conditions of the recognized treatment program.

(A) An individual is participating when engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;

(B) A recognized drug or alcohol rehabilitation program is a program authorized and licensed under the provisions of OAR chapter 415.

(i) An individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:

(A) In Canada unless the individual is authorized to work in both the United States and Canada;

(B) In a country not included in the Compact of Free Association with the United States of America; or

(C) outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government; except,

(i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States;

(ii) Job opportunities exist on the military base or embassy for family members of those stationed there;

(iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and

(iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.

(4) Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent, step-parent, guardian or other court/legally-appointed caretaker of a child under 13 years of age or of a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her age, who is not willing to or capable of working a particular shift because of a lack of care for that child acceptable to the individual shall be considered available for work if:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s).

(5)(a) For purposes of ORS 657.155(1)(c) an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. Unless otherwise directed by the director or an authorized representative of the employment department, an individual who is not on temporary layoff as described in subsection (b), is not a union member as described in subsection (d), nor is filing a continued claim for the first week of an initial or additional claim as described in subsection (e), shall be required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual.

(A) Work seeking activities include but are not limited to registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer.

(B) Direct contact with an employer means making contact with an employer in person, by phone, mail, or electronically to inquire about a job opening or applying for job openings in the manner required by the hiring employer.

(b) For an individual on temporary layoff of four weeks or less with the individual's regular employer:

(A) If the individual had, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. The individual no longer meets the requirements of this subsection if four calendar weeks have passed following the week in which the temporary layoff occurred, therefore the individual must seek work consistent with subsection (a) of this section in addition to the individual's regular employer.

(B) The individual does not meet the requirements of this subsection if the individual had not, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount.

(c) For an individual on temporary layoff of more than four weeks with the individual's regular employer: such individual must immediately seek work consistent with the requirements of subsection (a) of this section

(d) For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union.

(e) For an individual who is filing a continued claim for the first week of an initial or additional claim:

(A) If the individual worked less than full time and remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount, each day the individual worked for the employer shall be considered a direct employer contact.

(B) An individual does not meet the requirements of this subsection if the individual performed no work for an employer during the first week of an initial or additional claim; therefore the individual must seek work consistent with subsection (a) of this section

(f) In determining whether to modify the requirements in this section for an individual the Employment Department may consider among other factors, length of unemployment, economic conditions in the individual's labor market and prospective job openings, weather conditions affecting occupations or industries, seasonal aspects of the individual's regular occupation, expected date of return to work in regular occupation, seniority status of individual, registration with a union hiring hall and normal practices for obtaining the type of work which the individual is seeking pursuant to section (1) of this rule. The Department shall provide a written copy of the work search requirements to the individual if the individual's work search requirements are modified.

(6)(a) An individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria set forth in this section;

(b) When an individual seeks work through a union hiring hall, the individual's normal labor market area for the work sought is the normal referral jurisdiction of the union, as indicated by the applicable contract.

(7) Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in any state or country.

Stat. Auth.: ORS 657.610 & 657.155
Stats. Implemented: ORS 657.155,657.190, 657.195 & 657.260
Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; 1DE 4-1979(Temp), f. & ef. 7-5-79; 1DE 5-1979, f. & ef. 8-27-79; 1DE 1-1982, f. & ef. 6-30-82; ED 2-1992, f. & cert. ef. 6-29-92; ED 5-1994(Temp), f. 10-13-94, cert. ef. 10-16-94; ED 2-1997, f. 10-24-97, cert. ef. 11-3-97; ED 5-2003, f. 4-11-03, cert. ef. 4-13-03; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04; ED 1-2006. f. 1-5-06, cert. ef. 1-8-06; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-030-0040
Initial, Additional, and Reopened Claims

(1) As used in these rules, unless the context requires otherwise:

(a) "Claimant" is an individual who has filed an initial, additional, or reopened claim for unemployment insurance purposes within a benefit year or other eligibility period;

(b) An "initial claim" is a new claim that is a certification by a claimant completed as required by OAR 471-030-0025 to establish a benefit year or other eligibility period;

(c) "Additional claim" is a claim certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies to the end of a period of employment;

(d) "Reopened claim" is a certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies that there was no employment in any week since last reporting on this claim;

(e) "Backdating" occurs when an authorized representative of the Employment Department corrects, adjusts, resets or otherwise changes the effective date of an initial, additional or reopened claim to reflect filing in a prior week. Backdating may occur based upon evidence of the individual's documented contact on the prior date with the Employment Department or with any other state Workforce agency, or as otherwise provided in this rule.

(2) For the purposes of filing an initial, additional, or reopened claim:

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) When filed by Internet, the date of filing shall be the initial date of transmission of the online claim; or

(e) When filed by telephone, the date of filing shall be the date recorded in the completed telephone initial claim record of the agency system or by an employee completing the filing of the claim record.

(f) An incomplete certification must be completed and returned within seven business days from the date of notification that the original was incomplete to preserve the original date of filing.

(3) An initial, additional, or reopened claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or noncompensable credit is claimed and prior to or during the first week of any subsequent series thereafter. An initial claim is effective the Sunday of the calendar week in which it is filed. An authorized representa-

tive of the Employment Department will backdate an additional or reopened claim to the calendar week immediately preceding the week in which the request to backdate was made when a claimant requests backdating of the additional or reopened claim.

(4) The provisions of this section do not apply to an individual claiming benefits as a "partially unemployed individual," as defined in OAR 471-030-0060.

Stat. Auth.: ORS 657.610 & 657.155
Stats. Implemented: ORS 657.155 & 657.260
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 1-1982, f. & ef. 6-30-82; ED 1-1987, f. & ef. 1-12-87; ED 14-2003, f. 12-12-03 cert. ef. 12-14-03; ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-030-0045
Continued Claims

(1) As used in these rules, unless the context requires otherwise:

(a) "Continued Claim" means an application that certifies to the claimant's completion of one or more weeks of unemployment and to the claimant's status during these weeks. The certification may request benefits, waiting week credit, or non-compensable credit for such week or weeks. A continued claim must follow the first effective week of an initial, additional or reopen claim, or the claimant's continued claim for the preceding week;

(b) A "non-compensable credit week" is a week of unemployment for which benefits [shall] will not be allowed but which may qualify as a week allowed toward satisfying a disqualification as provided in ORS 657.215.

(2) A claimant, in order to obtain benefits, waiting week credit, or non-compensable credit for a week of unemployment, must file a continued claim for the week by any method approved by the Director.

(3) As directed by the Director, a continued claim must be filed:

(a) In person at any Employment Department office in the state of Oregon. When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) By United States mail. When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) By fax. When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) By Internet. When filed on line, the date of filing shall be the initial date of transmission of the on line continued claim; or

(e) By telephone. When filed by telephone, the date of filing shall be the date marked, stamped, or imprinted on the document by the agency system that records the oral request or by the employee accepting the continued claim.

(4) A continued claim must be filed no later than seven days following the end of the week for which benefits, waiting week credit, or non-compensable credit, or any combination of the foregoing is claimed, unless:

(a) The continued claim is for the first effective week of the benefit year, in which case the week must be claimed no later than 13 days following the end of the week for which waiting week credit is claimed, or

(b) The claimant routinely files weekly claims by submitting a weekly paper certification forms, in which case the week is timely if it is filed to the Employment Department no later than seven days, as per sections (3)(a)–(c) of this rule, after the Employment Department originally sent the paper certification form to the claimant.

(5) The Director may, with respect to individual claimants or groups of claimants, direct that continued claims be filed on any reporting schedule appropriate to existing facilities and conditions.

(6) The provisions of this rule do not apply to an individual claiming benefits as a "partially unemployed individual," as defined in OAR 471-030-0060.

Stat. Auth.: ORS 657.610 & 657.155
Stats. Implemented: ORS 657.155 & 657.260
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 3-1981, f. & ef. 2-16-81; 1DE 1-1984, f. & ef. 3-21-84; ED 4-1993, f. & cert. ef. 11-22-93; ED 4-1994, f. & cert. ef. 9-2-94; ED 14-2003, f. 12-12-03 cert. ef. 12-14-03; ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-030-0052
Misrepresentation Disqualification

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

(b) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176, the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or four weeks, whichever is greater.

(c) When the disqualification is imposed because the disqualifying act(s) relates to the provisions of ORS 657.155 (other than work and/or earnings), the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or the number of weeks in which a disqualifying act(s) occurred, whichever is greater.

(d) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176 and a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in subsection (a) plus four weeks.

(e) When the disqualification is imposed because the disqualifying act(s) relates to the provisions of ORS 657.155 (other than work and/or earnings) and a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in subsection (a) plus the number of weeks in which a disqualifying act(s) occurred relating to the provisions of 657.155 (other than work and earnings).

(2) The number of weeks of disqualification assessed under section (1) of this rule shall be doubled, but not to exceed 52 weeks, if the individual has one previous disqualification under ORS 657.215, and that prior disqualification determination has become final.

(3) Notwithstanding sections (1) and (2) of this rule, the number of weeks of disqualification under ORS 657.215 shall be 52 weeks if:

(a) The disqualification under ORS 657.215 is because the individual committed forgery; or

(b) The individual has two previous disqualifications under ORS 657.215, and those prior two disqualification determinations have become final.

(4) Notwithstanding sections (1), (2) and (3), an authorized representative of the Employment Department may determine the number of weeks of disqualification according to the circumstances of the individual case, but not to exceed 52 weeks.

(5) All disqualifications imposed under ORS 657.215 shall be served consecutively.

(6) Any week of disqualification imposed under ORS 657.215 may be satisfied by meeting all of the eligibility requirements of Chapter 657, other than 657.155(1)(e).

(7) The department will review the number of occurrences of misrepresentation when applying the penalty as described in ORS 657.310(2). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. The department shall use the date the individual failed to report a material fact or willfully made a false statement as the date of the occurrence. For an individual subject to disqualification by administrative action under 657.215, the penalty will be:

(a) For the first or second occurrence within 5 years of the occurrence for which a penalty is being assessed, 15 percent of the total amount of benefits the individual received but to which the individual was not entitled.

(b) For the third or fourth occurrence within 5 years of the occurrence for which a penalty is being assessed, 20 percent of the total amount of benefits the individual received but to which the individual was not entitled.

(c) For the fifth or sixth occurrence within 5 years of the occurrence for which a penalty is being assessed, 25 percent of the total amount of benefits the individual received but to which the individual was not entitled.

(d) For the seventh or greater occurrence within 5 years of the occurrence for which a penalty is being assessed, 30 percent of the total amount

of benefits the individual received but to which the individual was not entitled.

(e) In cases of forgery or identity theft, 30 percent of the amount of benefits the individual received but to which the individual was not entitled.

(8)(a) Under ORS 657.215, the Director or an authorized representative of the Employment Department may determine it is proper and equitable to cancel the disqualification if:

(A) All benefits, interest, penalties, fees, and court costs have been paid in full;

(B) Three or more years have passed since the decision assessing the number of weeks of disqualification was issued; and

(C) The department has issued only one decision assessing weeks of disqualification to the individual within the last 10 years from the date of the request to cancel.

(b) For the purposes of the section (c) of this rule, an "occurrence" is each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits within the same willful misrepresentation decision.

(c) The Director or an authorized representative of the Employment Department shall determine the amount of weeks applicable for cancellation under ORS 657.215 according to the following criteria:

(A) The individual has satisfied the requirements of subsection (a);

(B) When the individual has committed one occurrence of violating ORS 657.215 within the same willful misrepresentation decision, the director may cancel the remaining weeks of disqualification in whole.

(C) When the individual has committed two occurrences of violating ORS 657.215 within the same willful misrepresentation decision, the director may cancel half the weeks of disqualification.

(D) When the individual has committed three or more occurrences of violating ORS 657.215 within the same willful misrepresentation decision or the disqualification under 657.215 is because the individual committed forgery, weeks of disqualification shall not be cancelled.

(d) Weeks of disqualification served prior to the request for cancellation shall not be cancelled.

Stat. Auth.: ORS 657.610 & 657.155
Stats. Implemented: ORS 657.155, 657.215 & 657.310
Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; ED 10-2003, f. 7-25-03, cert. ef. 7-27-03; ED 3-2008(Temp), f. & cert. ef. 2-15-08 thru 8-13-08; ED 8-2008, f. 5-20-08, cert. ef. 7-1-08; ED 3-2013(Temp), f. 9-10-13, cert. ef. 10-1-13 thru 3-28-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-030-0053
Waiving Recovery of Overpayments

(1) This rule addresses waiving recovery of overpayments pursuant to ORS 657.317.

(2) Recovering overpaid benefits is against equity and good conscience if the person requesting a waiver has no means to repay the benefits and has total allowable household expenses that equal or exceed 90% of the total household income less unemployment benefits. The Employment Department will use the IRS Collection Financial Standards to determine maximum allowable household expenses. The Employment Department may allow expenses higher than those provided for in the IRS Collection Financial standards if the person requesting a waiver provides documents showing that using those IRS Collection Financial Standards would leave him or her an inadequate means of providing for basic living expenses.

(3) If a waiver is granted, the Department will stop collection activity of the overpaid benefits that are waived. The Department will give written notice of any waivers that are granted, indicating the amount of the overpaid benefits for which the waiver is granted, and the time period of the waiver.

(4) The amount of overpaid benefits that are waived will be removed from the balance of remaining benefits that the claimant has remaining on the claim during the duration of the waiver of recovery of benefits.

(5) Waivers are effective the Sunday of the week in which the request for waiver was filed with the Employment Department. The date of the post mark from the United States Postal Service, a date stamp from an Employment Department office, or an embedded fax date, whichever is earliest, will be used to determine the date of filing.

(6) If a request for waiver of recovery is denied, the claimant may submit another request for waiver of recovery if his or her situation changes significantly enough to establish that recovery of the benefits would be against equity and good conscience. No such subsequent request will be granted unless the claimant explains the significant change in financial situation in writing and provides supporting documentation.

(7) If a waiver is granted but the Employment Department then determines a hardship no longer exists, or that the person who received the waiver gave inaccurate or incomplete information in the request for waiver, the Employment Department may end the waiver.

(8) If a request for a waiver of recovery is denied or if the Employment Department determines a hardship no longer exists and ends the waiver of recovery, the claimant will receive an administrative decision as defined in OAR 471-030-0039.

(9) Overpaid benefits that have been recovered prior to the filing of a waiver request will not be waived.

(10) If a person is paid more than once for the same week(s), only the amount in excess of the final entitlement is eligible to be waived.

(11) In applying ORS 657.317(4), a waiver will not be granted if the overpayment is a result of willful misrepresentation or fraud as established in ORS 657.215

(12) Overpayments caused by the negotiation of an original and a replacement check that were issued for the same period pursuant to OAR 471-030-0049 will not be waived.

(13) The determination to waive recovery of overpayments under ORS 657.317 and this rule shall be made by employees authorized by the Director.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.267, 657.268, 657.315 & 657.317
Hist.: ED 2-1995, f. 8-29-95, cert. ef. 9-3-95; ED 4-2011(Temp), f. & cert. ef. 6-29-11 thru 12-15-11; ED 11-2011, f. & cert. ef. 12-5-11; ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-030-0058
Offset of Unemployment Compensation Debt Through U.S. Treasury Offset Program

(1) The Oregon Employment Department may submit liquidated unemployment insurance overpayments for offset against federal tax refunds through the "Treasury Offset Program" under 31 USC 3716(h) and 31 CFR 285.6. For purposes of this rule, liquidated means legally enforceable because:

(a) The liability is assessed by the department;

(b) The department has made written demand for payment of the liability;

(c) The claimant is not in bankruptcy; and

(d) All relevant appeal periods for contesting the liability have expired.

(2) Notice of intent to offset. Before submitting an unemployment insurance overpayment to Financial Management Service, U.S. Treasury for offset against a federal refund, the Oregon Employment Department must send written notice of intent to offset to the claimant by mail.

(3) Disagreement procedures. If a claimant disagrees with the notice of intent to offset and wants reconsideration, the claimant must submit a letter of disagreement within 60 days of the date shown on the notice of intent to offset. The claimant must provide, and the department will limit consideration to, evidence that the overpayment scheduled for offset is not:

(a) Past due; or

(b) Legally enforceable.

(4) If the claimant claims that the debt is not legally enforceable, the department will consider the merits of such a claim unless the issue has already been finally adjudicated by the Office of Administrative Hearings or Employment Appeals Board in a proceeding to which the department is a party.

(5) Review of disagreement. For each letter of disagreement provided by the claimant, the department will:

(a) Review evidence provided by the claimant, and

(b) Remove claimant's name from the federal refund offset list for this debt if evidence supports the claimant's position that the debt is not past due or legally enforceable.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.610, 657.155, 657.260 & SB 259 2013
Hist.: ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-030-0083
Employer Penalties

For the purposes of ORS 657.471:

(1) A request for information means when the Department asks an employer or its representative to provide the Department with information regarding Unemployment Insurance by:

(a) A written notice of claim filing as provided in ORS 657.265, where an individual was discharged, suspended, or voluntarily left work;

(b) Any communication made by mail, telephone, or electronically, to an employer or agent of the employer relating to a notice of claim filing as

provided in ORS 657.265 regarding an individual's discharge, suspension, or voluntary leaving work;

(c) Any communication made by mail, telephone, or electronically, to an employer or agent of the employer in order for the department to make a determination under ORS 657.215.

(2) An employer or agent of the employer has failed to respond timely when they do not respond within the time frame provided by the department to a request for information.

(3) An employer or agent of the employer has failed to respond adequately when:

(a) The employer or agent of the employer does not respond to a request for information; or

(b) The employer or agent of the employer responds to a request for information but provides incomplete or inaccurate information to the questions asked.

(4) An employer or agent of the employer has established a pattern when the employer or agent of the employer has failed to respond timely or adequately to the greater of:

(a) More than (2%) of the requests for information; or,

(b) More than (2) requests for information.

(5) For the purposes of this rule, the department will determine if the employer or agent of the employer has established a pattern of failing to respond timely or accurately to requests for information by reviewing requests for information during the previous twelve months ending the month prior to which the decision creating the overpayment of unemployment insurance benefits is issued.

Stat. Auth.: ORS 657.610
Stats. Implemented: 657.610, 657.155, 657.260 & 657.471
Hist.: ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-030-0210

Interstate Reciprocal Overpayment Recovery Arrangement

(1) The following rules shall govern the Oregon Employment Department in its administrative cooperation with other States adopting similar regulations for the recovery of overpayments.

(2) Definitions: As used in these rules unless the context clearly requires otherwise:

(a) "State" includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(b) "Offset" means the withholding of an amount against benefits which would otherwise be payable for a compensable week of unemployment.

(c) "Overpayment" means an improper payment of benefits, from a State or Federal unemployment compensation fund that has been determined recoverable under the Requesting State's law.

(d) "Participating State" means a State which has subscribed to the Interstate Reciprocal Overpayment Recovery Arrangement.

(e) "Paying State" means the State under whose law a claim for unemployment benefits has been established on the basis of combining wages and employment covered in more than one State.

(f) "Recovering State" means the state that has received a request for assistance from a "Requesting State".

(g) "Requesting State" means the State that has issued a final determination of overpayment and is requesting another State to assist it in recovering the outstanding balance from the overpaid individual.

(h) "Transferring State" means a State in which a Combined Wage claimant had covered employment and wages in the base period of a paying State, and which transfers such employment and wages to the paying State for its use in determining the benefit rights of such claimant under its law.

(i) "Liable State" means any state against which an individual files, through another state, a claim for benefits.

(3) Recovery of State or Federal Benefit Overpayments:

(a) Duties of the Requesting State. The requesting State shall:

(A) Send the recovering State a written request or a request using an approved electronic application for overpayment recovery assistance which includes:

(i) Certification that the overpayment is legally collectable under the requesting State's law;

(ii) Certification that the determination is final and that any rights to postponement of recoupment have been exhausted or have expired;

(iii) A statement as to whether the State is participating in cross-program offset by agreement with the U.S. Secretary of Labor; and,

(iv) A copy of the initial overpayment determination and a statement of the outstanding balance.

(B) Send notice of this request to the claimant; and

(C) Send to the recovering State a new outstanding overpayment balance whenever the requesting State receives any amount of repayment from a source other than the recovering State (e.g., interception of tax refund, etc.).

(b) Duties of Recovering State. The Recovering State shall:

(A) Issue an overpayment recovery determination to the claimant which includes at a minimum:

(i) The statutory authority for the offset;

(ii) The name of the State requesting recoupment;

(iii) The date of the original overpayment determination;

(iv) Type of overpayment (fraud or nonfraud);

(v) Program type (UI, UCFE, UCX, TRA, etc.)

(vi) Total amount to be offset;

(vii) The amount to be offset weekly;

(viii) The right to request redetermination and appeal of the determination to recover the overpayment by offset.

(B) Offset benefits payable for each week claimed in the amount determined under State law; and

(C) Provide the claimant with a notice of the amount offset; and,

(D) Prepare and forward, no less than once a month, a payment representing the amount recovered made payable to the requesting State, except as provided in section (c) below.

(E) Retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefits period, or other extensions of benefits, whichever is later.

(F) The Recovering State shall not redetermine the original overpayment determination.

(c) Combined Wage Claims. When processing combined wage claims, the following shall apply:

(A) Recovery of Outstanding Overpayment in Transferring State. The paying State shall:

(i) Offset any outstanding overpayment in a Transferring State(s) prior to honoring a request from any other "Participating State" under this Arrangement.

(ii) Credit the deductions against the Statement Of Benefits Paid To Combined Wage Claimants, Form IB-6 or forward a check to the Transferring State as described in (b)(D).

(B) Withdrawal of Combined Wage Claim After Benefits Have Been Paid. Withdrawal of a Combined Wage Claim after benefits have been paid shall be honored only if the combined wage claimant has repaid any benefits paid or authorizes the new liable State to offset the overpayment.

(i) The Paying State shall issue an overpayment determination and forward a copy, together with an overpayment recovery request and an authorization to offset, with the initial claim to the new liable State.

(ii) The Recovering State (which is the new liable State) shall:

(I) Offset the total amount of any overpayment, resulting from the withdrawal of a Combined Wage claim, prior to the release of any payments to the claimant;

(II) Offset the total amount of any overpayment, resulting from the withdrawal of a Combined Wage Claim prior to honoring a request from any other Participating State under this arrangement;

(III) Provide the claimant with a notice for the amount offset; and,

(IV) Prepare and forward a check representing the amount recovered to the Requesting State as described in (b)(D).

(d) Cross-Program Offset: The Recovering State shall offset benefits payable under a State unemployment compensation program to recover any benefits overpaid under a Federal unemployment compensation program (as described in the Recovering State's Agreement with the Secretary of Labor) and vice versa, in the same manner as required under subsection (3)(b) and (c) of this Section, as appropriate, if the Recovering State and Requesting State have entered into an agreement with the U.S. Secretary of Labor to implement Section 303(g)(2) of the Social Security Act.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.155 & 657.760
Hist.: ED 12-2001(Temp), f. 10-12-01, cert. ef. 10-14-01 thru 4-7-02; ED 2-2002, f. 3-29-02, cert. ef. 3-31-02; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-031-0151

Failure to File Reports or Pay Tax — Good Cause

(1) As used in ORS 657.457, 657.552, and 657.663 "good cause" will be found to exist when the employer establishes by satisfactory evidence that factors or circumstances beyond the employer's reasonable control caused the delay in filing the required document or paying the tax due.

(2) In determining "good cause" under section (1) of this rule, the Director or an authorized representative may consider all circumstances, but shall require at a minimum that the employer:

(a) Prior to the date the document or tax was due, gave notice to the Employment Department, when reasonably possible, of the factors or circumstances which ultimately caused the delay;

(b) Filed the required document or paid the tax due within seven days after the date determined by the Director to be the date the factors or circumstances causing the delay ceased to exist; and

(c) Made a diligent effort to remove the cause of the delay and to prevent its recurrence.

(d) Provide an official police report, or other documentation of the criminal act acceptable to the Director or an authorized representative, that was made within 20 days of the incident, or discovery of the incident, if the delay was due to a criminal act by any party.

(3) In applying sections (1) and (2) of this rule, a lack of funds on the part of the employer shall not constitute good cause for failure to pay all taxes when due.

(4) In applying sections (1) and (2) of this rule, failure to notify the Employment Department of an updated mailing address per ORS 657.660(4) shall not constitute good cause for failure to file reports.

(5) The period within which an employer may request a waiver of the penalty or hearing on the denial of a waiver may be extended a reasonable time upon a showing of "good cause" for the late request as defined in OAR 471-040-0010.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.610, 657.457, 657.552 & 657.663
Hist.: 1DE 2-1984, f. & ef. 9-28-84; ED 15-2008, f. 11-24-08, cert. ef. 12-1-08; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

471-040-0020
Subpoenas

(1) At the timely request of a party or on the administrative law judge's own initiative, an administrative law judge may issue a subpoena requiring a person to appear at a scheduled hearing for the purpose of giving testimony, or producing books, records, documents, or other physical evidence.

(2) A party that submits a request for subpoena should show:

(a) The name of the witness and the address where the witness can be served the subpoena;

(b) That the testimony of the person is material; and

(c) That the person will not voluntarily appear.

(3) If the requesting party wishes the witness to produce books, records, documents, or other physical evidence, the party should also show:

(a) The name or a detailed description of the specific books, records, documents, or other physical evidence the witness should bring to the hearing;

(b) That such evidence is material; and

(c) That such evidence is in the possession of the person who will not voluntarily appear and bring such evidence to the hearing.

(4) An administrative law judge may limit the number of subpoenas for witnesses material to the proof of any one issue at the hearing.

(5) Service of the subpoena upon the witness is the responsibility of the party requesting the subpoena.

(6) A witness who attends a hearing pursuant to subpoena issued under this rule is entitled to witness fees and mileage as provided in Rule 55 E. (1), Rules of Civil Procedure, and in ORS 44.415(2) for subpoenaed witnesses. Fees will be paid by check mailed subsequent to the conclusion of the hearing. The witness shall request payment of fees by completion of forms approved by the Employment Department. Payment of fees shall be made promptly upon receipt of the request for payment.

(7) Only witnesses, other than parties, who attend a hearing pursuant to subpoena issued under this rule may be paid or reimbursed by the Employment Department for witness fees and mileage.

(8) For the purposes of ORS 657.295, the amount approved by the Director that counsel or agent representing an individual who is claiming benefits may charge or receive for the services is no more than 25% of an individual's benefits affected by the administrative decision on a disputed claim and no more than 25% of the maximum benefit amount payable as defined under 657.150(5).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.610, 657.155, 657.260, 657.295 & 657.317
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 153, f. 12-23-77, ef. 1-1-78; 1DE 8-1981, f. & ef. 11-2-81; 1DE 1-1985, f. & ef. 11-18-85; ED 1-1991, f. & cert. ef. 4-1-91; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

Land Conservation and Development Department
Chapter 660

Rule Caption: Electronic submittal of proposed and adopted changes to comprehensive land use plans.
Adm. Order No.: LCDD 4-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 8-1-2013
Rules Amended: 660-018-0020, 660-018-0040
Subject: The proposed amendments to OAR 660, division 18 authorize, but do not require, local governments to submit mandatory notification materials to the Department of Land Conservation and Development in an electronic format rather than a paper medium as formerly required.
Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-018-0020
Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation

(1) Before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation, unless circumstances described in OAR 660-018-0022 apply, the local government shall submit the proposed change to the department, including the information described in section (2) of this rule. The local government must submit the proposed change to the director at the department's Salem office at least 35 days before holding the first evidentiary hearing on adoption of the proposed change.

(2) The submittal must include applicable forms provided by the department, be in a format acceptable to the department, and include all of the following materials:

(a) The text of the proposed change to the comprehensive plan or land use regulation implementing the plan, as provided in section (3) of this rule;

(b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the relevant portion of the map that is created or altered;

(c) A brief narrative summary of the proposed change and any supplemental information that the local government believes may be useful to inform the director and members of the public of the effect of the proposed change;

(d) The date set for the first evidentiary hearing;

(e) The notice or a draft of the notice required under ORS 197.763 regarding a quasi-judicial land use hearing, if applicable; and

(f) Any staff report on the proposed change or information that describes when the staff report will be available and how a copy may be obtained.

(3) The proposed text submitted to comply with subsection (2)(a) of this rule must include all of the proposed wording to be added to or deleted from the acknowledged plan or land use regulations. A general description of the proposal or its purpose, by itself, is not sufficient. For map changes, the material submitted to comply with Subsection (2)(b) must include a graphic depiction of the change; a legal description, tax account number, address or similar general description, by itself, is not sufficient. If a goal exception is proposed, the submittal must include the proposed wording of the exception.

(4) If a local government proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the purpose of conforming the plan and regulations to new requirements in a land use statute, statewide land use planning goal, or a rule implementing the statutes or goals, the local government may adopt such a change without holding a public hearing, notwithstanding contrary provisions of state and local law, provided:

(a) The local government provides notice to the department of the proposed change identifying it as a change described under this section, and includes the materials described in section (2) of this rule, 35 days before the proposed change is adopted by the local government, and

(b) The department confirms in writing prior to the adoption of the change that the only effect of the proposed change is to conform the comprehensive plan or the land use regulations to the new requirements.

(5) For purposes of computation of time for the 35-day notice under this rule and OAR 660-018-0035(1)(c), the proposed change is considered to have been "submitted" on the day that paper copies or an electronic file of the applicable notice forms and other documents required by section (2)

this rule are received or, if mailed, on the date of mailing. The materials must be mailed to or received by the department at its Salem office.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12; LCDD 4-2013, f. 12-20-13, cert. ef. 1-1-14

660-018-0040
Submittal of Adopted Change

(1) When a local government adopts a proposed change to an acknowledged comprehensive plan or a land use regulation it shall submit the decision to the department, with the appropriate notice forms provided by the department, within 20 days.

(2) For purposes of the 20-day requirement under section (1) of this rule, the proposed change is considered submitted to the department:

(a) On the day the applicable notice forms and other required documents are received by the department in its Salem office, if hand-delivered or submitted by electronic mail or similar electronic method, or

(b) On the date of mailing if the local government mails the forms and documents.

(3) The submission to the department must in a format acceptable to the department and include all of the following materials:

(a) A copy of final decision;

(b) The findings and the text of the change to the comprehensive plan or land use regulation;

(c) If a comprehensive plan map or zoning map is created or altered by the proposed change:

(A) A map showing the area changed and applicable designations; and

(B) Electronic files containing geospatial data showing the area changed, as specified in section (5) of this rule, if applicable.

(d) A brief narrative summary of the decision, including a summary of substantive differences from the proposed change submitted under OAR 660-018-0020 and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the actual change; and

(e) A statement by the individual transmitting the decision identifying the date of the decision and the date the submission was mailed to the department.

(4) Where amendments or new land use regulations, including supplementary materials, exceed 100 pages, a summary of the amendment briefly describing its purpose and requirements shall be included with the submittal to the director.

(5) For local governments that produce geospatial data describing an urban growth boundary (UGB) or urban or rural reserve that is created or altered as part of an adopted change to a comprehensive plan or land use regulation, the submission must include electronic geospatial data depicting the boundary change. Local governments that create or alter other zoning or comprehensive plan maps as geospatial data are encouraged but not required to share this data with the department. Geospatial data submitted to the department must comply with the following standards endorsed by the Oregon Geographic Information Council:

(a) Be in an electronic format compatible with the State's Geographic Information System software standard described in OAR 125-600-7550; and

(b) Be accompanied by metadata that meets at least the minimum requirements of the federal Content Standard for Digital Geospatial Metadata.

(6) Local government must notify the department of withdrawals or denials of proposals previously sent to the department under requirements of OAR 660-018-0020.

(7) If a local government did not submit a notice of a proposed change to a comprehensive plan or land use regulation to the department as required by OAR 660-018-0020, the transmittal must clearly indicate which provisions of OAR 660-018-022 are applicable.

NOTE: ORS 197.610 clearly requires all adopted plan and land use regulation amendments and new land use regulations to be submitted to the director even if they were not required to be submitted for review prior to adoption.

(8) ORS 197.620 provides that a local government may cure the untimely submission of materials by either postponing the date for the final evidentiary hearing by the greater of 10 days or the number of days by which the submission was late; or by holding the evidentiary record open for an additional period of time equal to 10 days or the number of days by which the submission was late, whichever is greater. The local government shall provide notice of such postponement or record extension to the department.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12; LCDD 4-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Minor and technical changes to conform to recent legislation regarding agricultural and forest land.
Adm. Order No.: LCDD 5-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 660-006-0025, 660-006-0026, 660-006-0055
Subject: The adopted amendments modify rules to make minor and technical changes to conform to recent legislation and to correct references.
Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-006-0025
Uses Authorized in Forest Zones

(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:

(a) Uses related to and in support of forest operations;

(b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;

(c) Locationally-dependent uses, such as communication towers, mineral and aggregate resources, etc.

(d) Dwellings authorized by ORS 215.705 to 215.755; and

(e) Other dwellings under prescribed conditions.

(2) The following uses pursuant to the Forest Practices Act (ORS Chapter 527) and Goal 4 shall be allowed in forest zones:

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;

(b) Temporary on-site structures that are auxiliary to and used during the term of a particular forest operation;

(c) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities; and

(d) For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(3) The following uses may be allowed outright on forest lands:

(a) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;

(b) Farm use as defined in ORS 215.203;

(c) Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups;

(d) Temporary portable facility for the primary processing of forest products;

(e) Exploration for mineral and aggregate resources as defined in ORS chapter 517;

(f) Private hunting and fishing operations without any lodging accommodations;

(g) Towers and fire stations for forest fire protection;

(h) Widening of roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans and public road and highway projects as described in ORS 215.213(1) and 215.283(1);

(i) Water intake facilities, canals and distribution lines for farm irrigation and ponds;

(j) Caretaker residences for public parks and public fish hatcheries;

(k) Uninhabitable structures accessory to fish and wildlife enhancement;

(l) Temporary forest labor camps;

(m) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head;

(n) Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.467 and Goal 8;

(o) Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation;

(p) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structures;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling;

(q) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this division;

(r) Dump truck parking as provided in ORS 215.311; and

(s) An agricultural building, as defined in ORS 455.315, customarily provided in conjunction with farm use or forest use. A person may not convert an agricultural building authorized by this section to another use.

(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:

(a) Permanent facility for the primary processing of forest products;

(b) Permanent logging equipment repair and storage;

(c) Log scaling and weigh stations;

(d) Disposal site for solid waste approved by the governing body of a city or county or both and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;

(e)(A) Private parks and campgrounds. Campgrounds in private parks shall only be those allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

(B) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by paragraph (4)(e)(C) of this rule.

(C) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(f) Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable;

(g) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517;

(h) Television, microwave and radio communication facilities and transmission towers;

(i) Fire stations for rural fire protection;

(j) Commercial utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4;

(k) Aids to navigation and aviation;

(l) Water intake facilities, related treatment facilities, pumping stations, and distribution lines;

(m) Reservoirs and water impoundments;

(n) Firearms training facility;

(o) Cemeteries;

(p) Private seasonal accommodations for fee hunting operations may be allowed subject to section (5) of this rule, OAR 660-006-0029, and 660-006-0035 and the following requirements:

(A) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations are occupied temporarily for the purpose of hunting during either or both game bird or big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and

(D) A governing body may impose other appropriate conditions.

(q) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width;

(r) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;

(s) Home occupations as defined in ORS 215.448;

(t) A manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative as defined in ORS 215.213 and 215.283. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this subsection is not eligible for replacement under subsection (3)(p) of this rule. Governing bodies every two years shall review the permit authorizing such mobile homes. When the hardships end, governing bodies or their designate shall require the removal of such mobile homes. Oregon Department of Environmental Quality review and removal requirements also apply to such mobile homes. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons;

(u) Expansion of existing airports;

(v) Public road and highway projects as described in ORS 215.213(2)(p) through (r) and (10) and 215.283(2)(q) through (s) and (3);

(w) Private accommodations for fishing occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035 and the following requirements:

(A) Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;

(D) Accommodations must be located within 1/4 mile of fish-bearing Class I waters; and

(E) A governing body may impose other appropriate conditions.

(x) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations; and

(y) An outdoor mass gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings are those of more than 3,000 persons that continue or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces.

(z) Storage structures for emergency supplies to serve communities and households that are located in tsunami inundation zones, if:

(A) Areas within an urban growth boundary cannot reasonably accommodate the structures;

(B) The structures are located outside tsunami inundation zones and consistent with evacuation maps prepared by Department of Geology and Mineral Industries (DOGAMI) or the local jurisdiction;

(C) Sites where the structures could be co-located with an existing use approved under this section are given preference for consideration;

(D) The structures are of a number and size no greater than necessary to accommodate the anticipated emergency needs of the population to be served;

(E) The structures are managed by a local government entity for the single purpose of providing for the temporary emergency support needs of the public; and

(F) Written notification has been provided to the County Office of Emergency Management of the application for the storage structures.

(5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:

(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.

(6) Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & 1993 OL Ch. 792

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 1-2013, f. 1-29-13, cert. ef. 2-1-13; LCDD 5-2013, f. 12-20-13, cert. ef. 1-1-14

660-006-0026

New Land Division Requirements in Forest Zones

(1) Governing bodies shall legislatively amend their land division standards to incorporate one or more of the following parcel sizes. Under these provisions, a governing body may not determine minimum parcel sizes for forest land on a case-by-case basis:

(a) An 80-acre or larger minimum parcel size; or

(b) One or more numeric minimum parcel sizes less than 80 acres provided that each parcel size is large enough to ensure:

(A) The opportunity for economically efficient forest operations typically occurring in the area;

(B) The opportunity for the continuous growing and harvesting of forest tree species;

(C) The conservation of other values found on forest lands as described in Goal 4; and

(D) That parcel meets the requirements of ORS 527.630.

(2) New land divisions less than the parcel size in section (1) of this rule may be approved for any of the following circumstances:

(a) For the uses listed in OAR 660-006-0025(3)(m) through (o) and (4)(a) through (o) provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the parcel created from the division is the minimum size necessary for the use.

(b) For the establishment of a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

(A) The parcel established may not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall not be larger than 10 acres; and

(B) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(i) Meets the minimum land division standards of the zone; or

(ii) Is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone.

(c) To allow a division of forest land to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of subsection (1)(a) or (b). Approvals shall be based on findings that demonstrate that there are unique property specific characteristics present in the proposed parcel that require an amount of land smaller than the minimum area requirements of subsections (1)(a) or (b) of this rule in order to conduct the forest practice. Parcels created pursuant to this subsection:

(A) Are not eligible for siting of new dwelling;

(B) May not serve as the justification for the siting of a future dwelling on other lots or parcels;

(C) May not, as a result of the land division, be used to justify redesignation or rezoning of resource lands; and

(D) May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:

(i) Facilitate an exchange of lands involving a governmental agency; or

(ii) Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forest land.

(d) To allow a division of a lot or parcel zoned for forest use if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213(1) or 215.283(1);

(C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two and five acres in size;

(D) At least one dwelling is located on each lot or parcel created under this paragraph; and

(E) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use.

(e) To allow a proposed division of land as provided in ORS 215.783.

(3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed by OAR 660-006-0026(2)(d) and (4). The record shall be available to the public.

(4) A lot or parcel may not be divided under OAR 660-006-0026(2)(d) if an existing dwelling on the lot or parcel was approved under:

(a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under statewide goal 4 (Forest Lands).

(5)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this rule shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under section (2) of this rule.

(b) A restriction imposed under this subsection shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forest land.

(c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this rule. The record shall be readily available to the public.

(6) A landowner allowed a land division under section (2) of this rule shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780, 215.783 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7 1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 5-2013, f. 12-20-13, cert. ef. 1-1-14

660-006-0055

New Land Division Requirements in Agriculture/Forest Zones

(1) A governing body shall apply the standards of OAR 660-006-0026 and 660-033-0100 to determine the proper minimum lot or parcel size for a mixed agriculture/forest zone. These standards are designed: To make new land divisions compatible with forest operations; to maintain the opportunity for economically efficient forest and agriculture practices; and to conserve values found on forest lands.

(2) New land divisions less than the parcel size established according to the requirements in section (1) of this rule may be approved for any of the following circumstances:

(a) For the uses listed in OAR 660-006-0025(3)(m) through (o) and (4)(a) through (o) provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the land division created is the minimum size necessary for the use.

(b) For the establishment of a parcel for a dwelling that has existed since before June 1, 1995, subject to the following requirements:

(A) The parcel established may not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall not be larger than 10 acres; and

(B) The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:

(i) Meets the minimum land divisions standards of the zone; or

(ii) Is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone;

(C) The minimum tract eligible under subsection (b) of this section is 40 acres;

(D) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321; and

(E) The remainder of the tract does not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(c) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of section (1). Parcels created pursuant to this subsection:

(A) Are not eligible for siting of a new dwelling;

(B) May not serve as the justification for the siting of a future dwelling on other lots or parcels;

(C) May not, as a result of the land division, be used to justify redesignation or rezoning of resource land; and

(D) May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:

(i) Facilitate an exchange of lands involving a governmental agency; or

(ii) Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland.

(d) To allow a division of a lot or parcel zoned for mixed farm and forest use if:

(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213(1) or 215.283(1);

(C) Except for one lot or parcel, each lot or parcel created under this section is between two and five acres in size;

(D) At least one dwelling is located on each lot or parcel created under this section; and

(E) The landowner of a lot or parcel created under this section provides evidence that a restriction prohibiting the landowner and the land owner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide goal 4 (Forest Lands) or unless the land division is subsequently authorized by law or by a change in statewide goal 4 (Forest Land);

(e) To allow a proposed division of land as provided in ORS 215.783.

(3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed by OAR 660-006-0055(2)(d) and (4). The record shall be readily available to the public.

(4) A lot or parcel may not be divided under OAR 660-006-0055(2)(d) if an existing dwelling on the lot or parcel was approved under:

(a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

(b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under statewide goal 4 (Forest Lands).

(5)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this rule shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under section (2) of this rule.

(b) A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.

(c) The county planning director shall maintain a record of parcels that do not qualify for the siting of a new dwelling under restrictions imposed by this section. The record shall be readily available to the public.

(6) A landowner allowed a land division under section (2) of this rule shall sign a statement that shall be recorded with the county clerk of the county in which the property is located, declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.213. 215.283. 215.700, 215.705, 215.720, 215.740, 215.750, 215.780, 215.783 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 5-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Minor and technical changes to conform to recent legislation regarding agricultural and forest land.
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Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-033-0030

Identifying Agricultural Land

(1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

(2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "Lands in other classes which are necessary to permit farm practices to be undertak-

en on adjacent or nearby lands." A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).

(3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.

(4) When inventoried land satisfies the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

(5)(a) More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.

(b) If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.

(c) This section and OAR 660-033-0045 apply to:

(A) A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and

(B) Excepting land use decisions under section (7) of this rule, any other proposed land use decision in which more detailed data is used to demonstrate that land planned and zoned for exclusive farm use does not meet the definition of agricultural land under OAR 660-033-0020(1)(a)(A).

(d) This section and OAR 660-033-0045 implement ORS 215.211, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.

(e) This section and OAR 660-033-0045 authorize a person to obtain additional information for use in the determination of whether land qualifies as agricultural land, but do not otherwise affect the process by which a county determines whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.

(6) Any county that adopted marginal lands provisions before January 1, 1993, may continue to designate lands as "marginal lands" according to those provisions and criteria in former ORS 197.247 (1991), as long as the county has not applied the provisions of ORS 215.705 to 215.750 to lands zoned for exclusive farm use.

(7)(a) For the purposes of approving a land use application on high-value farmland under ORS 215.705, the county may change the soil class, soil rating or other soil designation of a specific lot or parcel if the property owner:

(A) Submits a statement of agreement from the NRCS that the soil class, soil rating or other soil designation should be adjusted based on new information; or

(B) Submits a report from a soils scientist whose credentials are acceptable to the Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and

(C) Submits a statement from the Oregon Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in paragraph (a)(B) of this section and finds the analysis in the report to be soundly and scientifically based.

(b) Soil classes, soil ratings or other soil designations used in or made pursuant to this section are those of the NRCS Web Soil Survey for that class, rating or designation before November 4, 1993, except for changes made pursuant to subsection (a) of this section.

(8) For the purposes of approving a land use application on high-value farmland under OAR 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS Web Soil Survey as of January 2, 2012 for that class, rating or designation.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 - 215.710

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 10-2011, f. & cert. ef. 12-20-11; LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14

660-033-0120

Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are allowed or may be allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) A — Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.

(2) R — Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

(3) * — Use not allowed.

(4) # — Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

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

Stat. Auth.: ORS 197.040 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 9-2011, f. & cert. ef. 11-23-11; LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.

(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.

(3)(a) A dwelling may be approved on a pre-existing lot or parcel if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule; and

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrates that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;

(ii) The dwelling will comply with the provisions of ORS 215.296(1); and

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the Oregon Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d);

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(D) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(E) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) A single-family residential dwelling not provided in conjunction with farm use requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsection(3)(a) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall

describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph; and

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(7), the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) through 215.213(8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(6) A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities allowed under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be allowed subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling may be altered, restored or replaced under ORS 215.213(1)(q) or 215.283(1)(p) if, when an application for a permit is submitted, the permitting authority finds to its satisfaction, based on substantial evidence that:

(A) The dwelling to be altered, restored or replaced has, or formerly had:

(i) Intact exterior walls and roof structure;

(ii) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(iii) Interior wiring for interior lights; and

(iv) A heating system; and

(B) The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from that time; and

(C) Notwithstanding paragraph (B), if the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling was assessed as a dwelling until such time as the value of the dwelling was eliminated:

(i) The destruction (i.e by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or

(ii) The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.

(b) For replacement of a lawfully established dwelling under ORS 215.213(1)(q) or 215.283(1)(p):

(A) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

(i) Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or

(ii) If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the

permitting authority that is not less than 90 days after the replacement permit is issued; and

(iii) If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.

(B) The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.

(C) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, chapter 462, section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

(D) The county planning director, or the director's designee, shall maintain a record of:

(i) The lots and parcels for which dwellings to be replaced have been removed, demolished or converted; and

(ii) The lots and parcels that do not qualify for the siting of a new dwelling under subsection (b) of this section, including a copy of the deed restrictions filed under paragraph (B) of this subsection.

(c) A replacement dwelling under ORS 215.213(1)(q) or 215.283(1)(p) must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

(A) The siting standards of paragraph (B) of this subsection apply when a dwelling under ORS 215.213(1)(q) or 215.213(1)(p) qualifies for replacement because the dwelling:

(i) Formerly had the features described in paragraph (a)(A) of this section;

(ii) Was removed from the tax roll as described in paragraph (C) of subsection (a); or

(iii) Had a permit that expired as described under paragraph (d)(C) of this section.

(B) The replacement dwelling must be sited on the same lot or parcel:

(i) Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and

(ii) If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.

(C) Replacement dwellings that currently have the features described in paragraph (a)(A) of this subsection and that have been on the tax roll as described in paragraph (B) of subsection (a) may be sited on any part of the same lot or parcel.

(d) A replacement dwelling permit that is issued under ORS 215.213(1)(q) or 215.283(1)(p):

(A) Is a land use decision as defined in ORS 197.015 where the dwelling to be replaced:

(i) Formerly had the features described in paragraph (a)(A) of this section; or

(ii) Was removed from the tax roll as described in paragraph (a)(C) of this section;

(B) Is not subject to the time to act limits of ORS 215.417; and

(C) If expired before January 1, 2014, shall be deemed to be valid and effective if, before January 1, 2015, the holder of the permit:

(i) Removes, demolishes or converts to an allowable nonresidential use the dwelling to be replaced; and

(ii) Causes to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.

(9)(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under 215.780, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of subsection(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS Chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under 215.213(1)(q) or 215.283(1)(p). Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under 468B.095, and with the requirements of 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division is allowed.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility established under ORS 215.213(1)(c) or 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:

(A) Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(i) Technical and engineering feasibility;

(ii) The proposed facility is locationally-dependent. A utility facility is locationally-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of available urban and nonresource lands;

(iv) Availability of existing rights of way;

(v) Public health and safety; and

(vi) Other requirements of state and federal agencies.

(B) Costs associated with any of the factors listed in paragraph (A) of this subsection may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations

for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(C) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this paragraph shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(D) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(E) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.

(F) In addition to the provisions of paragraphs (A) to (D) of this subsection, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of 660-011-0060.

(G) The provisions of paragraphs (A) to (D) of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(b) An associated transmission line is necessary for public service and shall be approved by the governing body of a county or its designee if an applicant for approval under ORS 215.213(1)(c) or 215.283(1)(c) demonstrates to the governing body of a county or its designee that the associated transmission line meets either the requirements of paragraph (A) of this subsection or the requirements of paragraph (B) of this subsection.

(A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;

(ii) The associated transmission line is co-located with an existing transmission line;

(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or

(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

(B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:

(i) Technical and engineering feasibility;

(ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;

(iv) Public health and safety; or

(v) Other requirements of state or federal agencies.

(C) As pertains to paragraph (B), the applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm pratices or a significant increase in the cost of farm practices on the surrounding farmland.

(D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

(17) A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, the effective date of 2009 Oregon Laws, chapter 850, section 14, may be expanded subject to:

(A) The requirements of subsection (c) of this section; and

(B) Conditional approval of the county in the manner provided in ORS 215.296.

(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:

(A) The use was established on or before January 1, 2009; and

(B) The expansion occurs on:

(i) The tax lot on which the use was established on or before January 1, 2009; or

(ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS Chapter 65.

(22) A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling;

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract;

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules;

(iv) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. "Farmworker housing" shall have the meaning set forth in 215.278 and not the meaning in 315.163; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years or in an average of three of the last five years, the farm operator earned the lower of the following:

(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under former ORS 197.247 (1991

Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of 215.213(2)(a) or (b) or paragraph (A) of this subsection; or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm;

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in 660-033-0100.

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code.

(25) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center is allowed, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities associated with a site for the takeoff and landing of model aircraft shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the Oregon Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) A farm on which a processing facility is located must provide at least one-quarter of the farm crops processed at the facility. A farm may also be used for an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment. A county may not approve any division of a lot or parcel that separates a processing facility or establishment from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Composting operations that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract are allowed uses, while other composting operations are subject to the review standards of ORS 215.296. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in 197.015(10) or subject to review under this division. Agritourism and other commercial events or activities may not be permitted as mass gatherings under 215.213(11) and 215.283(4).

(34) Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by a county planning commission under the provisions of ORS 433.763.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a wind power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under paragraph (B);

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils;

(C) Costs associated with any of the factors listed in paragraph (A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary;

(D) The owner of a wind power generation facility approved under subsection (a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and

(E) The criteria of subsection (b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of 660-033-0130(37)(b) shall apply to the entire project.

(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:

(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.

(c) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.

(e) "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(f) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;

(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;

(E) The project is not located on high-value farmland soils unless it can be demonstrated that:

(i) Non high-value farmland soils are not available on the subject tract;

(ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils; and

(F) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.

(ii) When at least 48 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(g) For arable lands, a photovoltaic solar power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that:

(i) Nonarable soils are not available on the subject tract;

(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;

(B) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10) unless an exception is taken pursuant to 197.732 and OAR chapter 660, division 4;

(C) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area no further action is necessary.

(ii) When at least 80 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities, within the study area the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(D) The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are satisfied.

(h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude more than 250 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body or its designate must find that:

(A) The project is not located on high-value farmland soils or arable soils unless it can be demonstrated that:

(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(B) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(C) No more than 20 acres of the project will be sited on arable soils unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4;

(D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;

(E) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

(F) If a proposed photovoltaic solar power generation facility is located on lands where the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive), or to wildlife species of concern identified and mapped by the Oregon Department of Fish and Wildlife (including big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs), the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife species of concern are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife species of concern as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

(G) The provisions of paragraph (F) are repealed on January 1, 2022.

(i) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

(j) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

(k) The commission may re-evaluate the acreage thresholds identified in subsections (f), (g) and (h) should ORS 469.300(11)(a)(D) be amended.

(39) Dog training classes or testing trials conducted outdoors or in farm buildings that existed on January 1, 2013, when:

(a) The number of dogs participating in training does not exceed 10 per training class and the number of training classes to be held on-site does not exceed six per day; and

(b) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site does not exceed four per calendar year.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040, 215.213, 215.275, 215.282, 215.283, 215.301, 215.448, 215.459 & 215.705

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994 , f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LDCD 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 7-2010(Temp), f. & cert. ef. 6-17-10 thru 11-30-10; LCDD 9-2010, f. & cert. ef. 9-24-10; LCDD 11-2010, f. & cert. ef. 11-23-10; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 9-2011, f. & cert. ef. 11-23-11; LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 2-2013, f. & cert. ef. 1-29-13; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14

660-033-0140

Permit Expiration Dates

(1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this

division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

(2) A county may grant one extension period of up to 12 months if:

(a) An applicant makes a written request for an extension of the development approval period;

(b) The request is submitted to the county prior to the expiration of the approval period;

(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(3) Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

(4) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

(5)(a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.

(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.

(6) For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).

Stat. Auth.: ORS 197.040 & 215
Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14

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Land Use Board of Appeals
Chapter 661

Rule Caption: Rule amendments regarding filing the record, briefs, motions, costs, agency address and stipulated remand.
Adm. Order No.: LUBA 3-2013
Filed with Sec. of State: 12-23-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 10-1-2013
Rules Amended: 661-010-0021, 661-010-0025, 661-010-0030, 661-010-0050, 661-010-0067, 661-010-0071, 661-010-0073, 661-010-0075
Subject: (1) OAR 661-010-0021 is amended to conform ORS 197.830(13)(b). (2) OAR 661-010-0025 is amended to clarify record table of contents requirements and to allow filing of electronic records. (3) OAR 661-010-0030 is amended to require 14 point font for text in the petition for review, to require each assignment of error demonstrate the issue was preserved below if preservation is required and state the applicable standard of review, and to clarify the contents of a cross-petition for review. (4) OAR 661-010-0050 is amended to clarify how fees are determined for motions to intervene in consolidated appeals or with multiple intervenors. (5) OAR 661-010-0067 is amended to allow oral consents to extensions of time for most deadlines. (6) OAR 661-010-0071 and OAR 661-010-0073 are amended to provide for stipulated remands. (7) OAR 661-010-0075 is amended to provide for an award of the filing fee paid by a prevailing intervenor or state agency, and to make permanent the Board's address change.
Rules Coordinator: Kelly Burgess—(503) 373-1265

661-010-0021
Withdrawal of Decision for Reconsideration

(1) If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the Board on or before the date the record is due or, on appeal of a decision under 197.610 to 197.625, the local government shall file a notice of withdrawal prior to the filing of the respondent's brief. A copy of the decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.

(2) The filing of a notice of withdrawal under section (1) of this rule shall suspend proceedings on the appeal until a decision on reconsideration is filed with the Board, or the time designated therefor expires, unless otherwise ordered by the Board. If no decision on reconsideration is filed within the time designated therefor, the Board shall issue an order restarting the appeal.

(3) A copy of the decision on reconsideration under section (1) of this rule shall be filed with the Board within 7 days after the local government or state agency issues the decision on reconsideration and copies of the decision on reconsideration shall be served on all parties. The first page of the decision on reconsideration, or an accompanying transmittal letter, shall indicate the title and case number of the pending appeal before the Board.

(4) Petitioner(s) may seek review of the decision on reconsideration as provided in section (5) of this rule. Any other person may file a notice of intent to appeal the decision on reconsideration as provided in OAR 661-010-0015. If such an appeal is filed, and a petitioner files an amended notice of intent to appeal or refiles the original notice of intent to appeal as provided in section (5) of this rule, any party may move to consolidate the appeals challenging the decision on reconsideration as provided in 661 010-0055.

(5) After the filing of a decision on reconsideration:

(a) If the petitioner wishes review by the Board of the decision on reconsideration:

(A) Except as provided in paragraph (B) of this subsection, the petitioner shall file an amended notice of intent to appeal together with two copies within 21 days after the decision on reconsideration is received by the Board.

(B) In the event the local government or state agency affirms its decision or modifies its decision with only minor revisions, the petitioner may refile the original notice of intent to appeal, with the date of the decision on reconsideration indicated thereon, together with two copies within 21 days after the decision on reconsideration is received by the Board.

(b) Refiling of the original notice of intent to appeal or filing of an amended notice of intent to appeal is accomplished by delivery of the Notice to the Board, or receipt of the Notice by the Board, on or before the due date. Filing or refiling may also be accomplished by mailing on or before the due date by first-class, certified or registered mail.

(c) An amended notice of intent to appeal or a refiled notice of intent to appeal under paragraphs (A) and (B) of subsection (5)(a) of this rule shall conform with the requirements of OAR 661-010-0015(3) and shall be served on the following:

(A) All parties to the appeal suspended pursuant to section (2) of this rule;

(B) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, then the name, address and telephone number of the applicant's attorney shall also be included;

(C) Any other person to whom written notice of the original or reconsidered land use decision or limited land use decision was mailed as shown on the governing body's records. The telephone number may be omitted for any such person.

(d) No additional filing fee or deposit for costs shall be required to refile the original notice of intent to appeal or file an amended notice of intent to appeal under subsection (5)(a) of this rule.

(e) If no amended notice of intent to appeal is filed or no original notice of intent to appeal is refiled, as provided in subsection (5)(a) and (b) of this rule, the appeal will be dismissed.

(f) Parties who have already intervened in the appeal need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refiled.

(6) The local government or state agency shall, within 21 days after service of the amended notice of intent to appeal or refiled original notice of intent to appeal under subsection (5)(a) of this rule, transmit to the Board a certified copy of the record of the proceeding under review in accordance with OAR 661-010-0025. The record submitted by the local government or state agency in an appeal of a decision on reconsideration shall include the record of the original decision and the decision on reconsideration.

Stat. Auth.: ORS 197.820(4)
Stats. Implemented: ORS 197.830(13)(b)
Hist.: LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013; f. 12-12-13, cert. ef. 1-1-14

661-010-0025
Record

(1) Contents of Record: Unless the Board otherwise orders, or the parties otherwise agree in writing, the record shall include at least the following:

(a) The final decision including any findings of fact and conclusions of law.

(b) All written testimony and all exhibits, maps, documents or other materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.

(c) Minutes and tape, CD, DVD or other media recordings of the meetings conducted by the final decision maker as required by law, or incorporated into the record by the final decision maker. A verbatim transcript of media recordings shall not be required, but if a transcript has been prepared by the governing body, it shall be included. If a verbatim transcript is included in the record, the media recordings from which that transcript was prepared need not be included in the record, unless the accuracy of the transcript is challenged.

(d) Notices of proposed action, public hearing and adoption of a final decision, if any, published, posted or mailed during the course of the land use proceeding, including affidavits of publication, posting or mailing. Such notices shall include any notices concerning amendments to acknowledged comprehensive plans or land use regulations given pursuant to ORS 197.610(1) or 197.615(1) and (2).

(2) Transmittal of Record:

(a) The governing body shall, within 21 days after service of the Notice on the governing body, transmit to the Board a certified paper copy of the record of the proceeding under review. The governing body may, however, retain any large maps, media recordings, or difficult-to-duplicate documents and items until the date of oral argument. Where documents are retained until the date of oral argument, those retained documents shall be identified in the table of contents, as provided in OAR 661-010-0025(4)(B).Transmittal of the record is accomplished by delivery of the record to the Board, or by receipt of the record by the Board, on or before the due date.

(b) As an alternative to transmitting a certified paper copy of the record, a local government may transmit the record to the Board in electronic format. Transmittal of an electronic copy is accomplished by delivery of two complete copies of the record on optical disks, with documents recorded in a PDF format. If the record exceeds 100 pages, the electronic copy shall be searchable. A local government may transmit the record in electronic form, and also retain items until oral argument as described in OAR 661-010-0025(2)(a).

(3) Service of Record:

(a) Contemporaneously with transmittal, the governing body shall serve a paper copy of the record, exclusive of large maps, media recordings, and difficult-to-duplicate documents and items, on the petitioner or the lead petitioner, if one is designated. The governing body shall also serve a paper copy of the record on any other party, including intervenors-petitioner, requesting a copy provided such other party reimburses the governing body for the reasonable expense incurred in copying the record. The governing body shall also serve a copy of any media recording included in the record, or any recording from which a transcript included in the record was prepared, on any party requesting such a copy, provided such party reimburses the governing body for the reasonable expense incurred in copying the recording.

(b) By prior agreement of the party to be served, service of the record as described in OAR 661-010-0025(3)(a) may be in an electronic format instead of a paper copy.

(4) Specifications of Record:

(a) The record, including any supplements or amendments, shall:

(A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in the Notice or in the Board's order consolidating multiple appeals, and the Board's numerical designation for the case, and shall indicate the numerical designation given the land use decision or limited land use decision by the governing body; if the record consists of multiple volumes, the cover shall indicate the page numbers contained in each volume;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2).

(i) Where an item listed in the table of contents includes attached exhibits, the exhibits shall be separately listed as an exhibit to the item. Where the exhibit is also a document that is being retained under OAR 661-010-0025(2), the exhibit shall also be listed at the end of the table of contents as provided in subsection (ii) below.

(ii) Where large maps, media recordings, or other items or documents are retained by the governing body under section (2) of this rule, those retained items shall be separately listed at the end of the table of contents;

(C) Be securely fastened on the left side;

(D) Have pages numbered consecutively, with the page number at the bottom outside corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item first. Exhibits attached to a record item shall be included according to the numerical or alphabetical order in which they are attached, not the date of the exhibits. Upon motion of the governing body, the Board may allow the record to be organized differently.

(b) Where the record includes the record of a prior appeal to this Board, the table of contents shall specify the LUBA number of the prior appeal, and indicate that the record of the prior appeal is incorporated into the record of the current appeal.

(c) A record that does not substantially conform to the preceding requirements may be rejected by the Board.

(5) If no record objection is filed and the governing body transmits an amendment to the record, the date the amendment is received by the Board shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 197.820(4)
Stats. Implemented: ORS 197.830(10)(a), 197.830(14) & 197.835
Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1995, f. & cert. ef. 2-6-95; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013; f. 12-12-13, cert. ef. 1-1-14

661-010-0030
Petition for Review

(1) Filing and Service of Petition: The petition for review together with four copies shall be filed with the Board within 21 days after the date the record is received or settled by the Board. See OAR 661 010-0025(2) and 661-010-0026(6). The petition shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a petition for review within the time required by this section, and any extensions of that time under 661-010-0045(9) or 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. See 661-010-0075(1)(c).

(2) Specifications of Petition: The petition for review shall:

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer petition is given by the Board;

(c) Have blue front and back covers of at least 65-pound weight paper. The front cover page shall state the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by an attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. If there is more than one petitioner, the cover page shall specify which petitioner(s) are filing the petition. An intervenor shall be designated as either petitioner or respondent in accordance with OAR 661-010-0050;

(d) Be typewritten or word-processed in proportionately spaced font such as Times New Roman no smaller than 14 point both for text and for footnotes;

(e) Be double spaced, except that quotations and footnotes may be single-spaced with double space above and below each paragraph of quotation;

(f) Have text printed on only one side of the page; however, text may be printed on both sides of the page if the paper is sufficiently opaque to prevent material on one side from showing through, and the petition is bound along the left-hand margin so that the pages lie flat when open;

(g) Be printed on 8-1/2 by 11 inch paper, with numbers for each line of text;

(h) Have inside margins of 1-1/4 inches, outside margins of 1 inch, top and bottom margins of 3/4 inch; and

(i) Be signed on the last page by the author. In cases where multiple unrepresented petitioners or intervenors-petitioner file a single petition for review, the petition for review shall be signed by all petitioners or intervenors-petitioner who wish to join the petition for review.

(3) If the Board determines that the petition for review fails to conform with the requirements of section (2) of this rule, it shall notify the author, and a brief conforming with the requirements of section (2) shall be filed within three (3) days of notification by the Board. The Board may

refuse to consider a brief that does not substantially conform to the requirements of this rule.

(4) Contents of Petition: The petition for review shall:

(a) State the facts that establish petitioner's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The nature of the land use decision or limited land use decision and the relief sought by petitioner;

(B) A summary of the arguments appearing under the assignments of error in the body of the petition;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found. Where there is a map in the record that helps illustrate the material facts, the petitioner shall include a copy of that map in the summary of the material facts or attach it as an appendix to the petition.

(c) State why the challenged decision is a land use decision or a limited land use decision subject to the Board's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Each assignment of error must demonstrate that the issue raised in the assignment of error was preserved during the proceedings below. Where an assignment raises an issue that is not identified as preserved during the proceedings below, the petition shall state why preservation is not required. Each assignment of error must state the applicable standard of review. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law; and

(f) Contain a copy of any comprehensive plan provision, ordinance or other provision of local law cited in the petition, unless the provision is quoted verbatim in the petition.

(5) The petition for review may include appendices containing verbatim transcripts of relevant portions of media recordings that are part of the record.

(6) Amended Petition: A petition for review which fails to comply with section (4) of this rule may, with permission of the Board, be amended. The Board shall determine whether to allow an amended petition for review to be filed in accordance with OAR 661-010-0005.

(7) Cross Petition: Any respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal regardless of the outcome under the petition for review may file a cross petition for review that includes one or more assignments of error. A respondent or intervenor-respondent who seeks reversal or remand of an aspect of the decision on appeal only if the decision on appeal is reversed or remanded under the petition for review may file a cross petition for review that includes contingent cross-assignments of error, clearly labeled as such. The cover page shall identify the petition as a cross petition and the party filing the cross petition. The cross petition shall be filed within the time required for filing the petition for review and must comply in all respects with the requirements of this rule governing the petition for review, except that a notice of intent to appeal need not have been filed by such party.

Stat. Auth.: ORS 197.820(4)
Stats. Implemented: ORS 197.830(11), (12) & (13)(a)
Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013; f. 12-12-13, cert. ef. 1-1-14

661-010-0050
Intervention

(1) Standing to Intervene: The applicant and any person who appeared before the local government, special district or state agency may intervene in a review proceeding before the Board. Status as an intervenor is recognized when a motion to intervene is filed, but the Board may deny that status at any time.

(2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant to 661-010-0021. When two or more intervenors join in a motion to intervene and are unrepresented by an attorney, a lead intervenor shall be designated as the contact person for the purpose of receiving documents from the Board and other parties. The motion to intervene (see Exhibit 3) shall:

(a) List the names, addresses, and telephone numbers of all persons moving to intervene. If an attorney represents the intervenor(s), the attorney's name, address and telephone number shall be substituted for that of the intervenor(s);

(b) State whether the party is intervening on the side of the petitioner or the respondent;

(c) State the facts which show the party is entitled to intervene, supporting the statement with affidavits or other proof;

(d) On the last page, be signed by each intervenor, or the attorney representing that intervenor, on whose behalf the motion to intervene is filed;

(e) Be served upon the Board and all parties.

(3) Filing Fee: A motion to intervene shall be accompanied by a filing fee of $100 for each appeal in which intervention is sought, payable to the Land Use Board of Appeals. Where multiple parties file a single joint motion to intervene, only one fee per appeal is required. If a motion to intervene is received without payment of the filing fee or a check providing the filing fee is returned for insufficient funds, the intervenor will be given an opportunity to submit the required fee. If the filing fee is not paid within the time set by the Board, the Board shall deny the motion to intervene. Cash shall not be accepted.

(4) Intervention in an appeal that is consolidated with other appeals does not allow the intervenor to appear as a party with respect to those appeals in which the intervenor has not filed a timely motion to intervene.

(5) Parties who have already intervened in an appeal need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refiled pursuant to OAR 661-010-0021.

(6) Intervenor's Brief:

(a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for filing the petition for review, and shall satisfy the requirements for a petition for review in OAR 661-010-0030.

(b) If intervention is sought as a respondent, the brief shall be filed within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in OAR 661-010-0035.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 197.820(4)
Stats. Implemented: ORS 197.830(2) & (7)
Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 4-1980, f. & ef. 9-8-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2009(Temp), f. & cert. ef. 8-5-09 thru 12-31-09; LUBA 2-2009, f. 12-30-09, cert. ef. 1-1-10; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013; f. 12-12-13, cert. ef. 1-1-14

661-010-0067
Extensions of Time

(1) In no event shall the time limit for the filing of the notice of intent to appeal be extended.

(2) Except as provided in this section and OAR 661-010-0045(9), in no event shall the time limit for the filing of the petition for review be extended without the written consent of all parties. Written consent may include facsimile signatures. The Board may, on a motion of a party or its own motion, extend the deadline for filing the petition for review to allow time to rule on a motion to dismiss. Written consent to extend the deadline for filing record objections shall automatically extend the deadline for filing the petition for review for the same number of days granted to extend the deadline for filing record objections, unless the consenting parties expressly provide otherwise.

(3) All other time limits may be extended upon oral or written consent of all parties, the Board's motion or motion of a party. Written consent may include facsimile signatures.

(4) A motion for extension of time shall state the reasons for granting the extension and must be filed with the Board within the time required for performance of the act for which an extension of time is requested. A motion for extension of time that is not accompanied by a written consent by all parties to the requested extension shall state whether all parties to the appeal have agreed to the motion for extension of time, orally or otherwise.

(5) Any agreement by the parties allowing an extension of time shall automatically extend the time for subsequent filings, as well as the issuance of the Board's final order by an amount of time equal to the extension agreed to by the parties.

(6) In the event the Board extends the deadline for issuance of its final order without consent of the parties, it shall enter the findings required by ORS 197.840.

Stat. Auth.: ORS 197.820(4)
Stats. Implemented: ORS 197.830(13)(a)
Hist.: LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 3-2013; f. 12-12-13, cert. ef. 1-1-14

661-010-0071
Reversal or Remand of Land Use Decisions

(1) The Board shall reverse a land use decision when:

(a) The governing body exceeded its jurisdiction;

(b) The decision is unconstitutional; or

(c) The decision violates a provision of applicable law and is prohibited as a matter of law.

(2) The Board shall remand a land use decision for further proceedings when:

(a) The findings are insufficient to support the decision, except as provided in ORS 197.835(11)(b);

(b) The decision is not supported by substantial evidence in the whole record;

(c) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);

(d) The decision improperly construes the applicable law, but is not prohibited as a matter of law; or

(e) All parties stipulate in writing to remand.

Stat. Auth.: ORS 197.820(4) & 197.835(1)
Stats. Implemented: ORS 197.835
Hist.: LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 3-2013; f. 12-12-13, cert. ef. 1-1-14

661-010-0073
Reversal or Remand of Limited Land Use Decisions

(1) The Board shall reverse a limited land use decision when:

(a) The governing body exceeded its jurisdiction;

(b) The decision is unconstitutional; or

(c) The decision violates a provision of applicable law and is prohibited as a matter of law.

(2) The Board shall remand a limited land use decision for further proceedings when:

(a) The findings are insufficient to support the decision, except as provided in ORS 197.835(11)(b);

(b) The decision is not supported by substantial evidence in the record. The existence of evidence in the record supporting a different decision shall not be grounds for reversal or remand if there is evidence in the record to support the final decision;

(c) The local government committed a procedural error which prejudiced the substantial rights of the petitioner(s);

(d) The decision improperly construes the applicable law, but is not prohibited as a matter of law; or

(e) All parties stipulate in writing to remand.

Stat. Auth.: ORS 197.820(4) & 197.835(1)
Stats. Implemented: ORS 197.828 & 197.835
Hist.: LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 3-2013; f. 12-12-13, cert. ef. 1-1-14

661-010-0075
Miscellaneous Provisions

(1) Cost Bill and Attorney Fees:

(a) Time for Filing: The prevailing party may file a cost bill or a motion for attorney fees, or both, no later than 14 days after the final order is issued. The prevailing party shall serve a copy of any such cost bill or motion for attorney fees on all parties.

(b) Recoverable Costs: Costs may be recovered only for the items set forth in this subsection.

(A) If the petitioner is the prevailing party, the petitioner may be awarded the cost of the filing fee.

(B) If the governing body is the prevailing party, the governing body may be awarded copying costs for the required number of copies of the record, at 25 cents per page, whether or not the governing body actively participated in the review.

(C) Costs awarded to the governing body pursuant to this section shall be paid from the deposit required by OAR 661-010-0015(4) and shall not exceed the amount of that deposit.

(D) If an intervenor under OAR 661-010-0050 or a state agency under OAR 661-010-0038 is the prevailing party, the intervenor or state agency may be awarded the cost of the fee to intervene or to file a state agency brief.

(c) Forfeit of Filing Fee and Deposit: If a record has been filed and a petition for review is not filed within the time required by these rules, and the governing body files a cost bill pursuant to this section requesting forfeiture of the filing fee and deposit, the filing fee and deposit required by OAR 661-010-0015(4) shall be awarded to the governing body as cost of preparation of the record. See 661-010-0030(1).

(d) Return of Deposit: After any award of costs under subsection (b) of this section is made, any amount of the deposit remaining shall be returned to petitioner.

(e) Attorney Fees:

(A) Attorney fees shall be awarded by the Board to the prevailing party as specified in ORS 197.830(15)(b); a motion for attorney fees shall include a signed and detailed statement of the amount of attorney fees sought.

(B) Attorney fees shall be awarded to the applicant, against the governing body, if the Board reverses a land use decision or limited land use decision and orders a local government to approve a development application pursuant to ORS 197.835(10).

(C) Attorney fees shall be awarded to the applicant, against the person who requested a stay pursuant to ORS 197.845, if the Board affirms a quasi-judicial land use decision or limited land use decision for which such a stay was granted. The amount of the award shall be limited to reasonable attorney's fees incurred due to the stay request, and together with any actual damages awarded, shall not exceed the amount of the undertaking required under 197.845(2).

(f) Responses and Objections: Any response to a motion for attorney fees, together with any objections to the detailed statement of the amount of attorney fees sought, shall be filed with the Board within 14 days after the date of service of the motion. Objections to the cost bill shall be filed with the Board within 14 days after the date of service of the cost bill.

(g) If a cost bill, a motion for attorney fees, or both are filed, and the Board's decision is appealed to the Court of Appeals, the Board shall act on the cost bill or motion for attorney fees after an appellate judgment is issued and any further Board proceedings necessitated by that judgment are concluded.

(2) Filing and Service:

(a) Filing:

(A) Documents may not be filed by facsimile. Documents filed with the Board may include facsimile signatures.

(B) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to appeal, filing a document with the Board is accomplished by:

(i) Delivery to the Board on or before the date due; or

(ii) Mailing on or before the date due by first class mail with the United States Postal Service. If the date of mailing is relied upon as the date of filing, the date of the first class postmark on the envelope mailed to the Board is the date of filing.

(b) Service:

(A) Any document filed with the Board, other than the record as provided in OAR 661-010-0025(3), or the record after withdrawal for reconsideration as provided in 661-010-0021(6), must also be served on all parties contemporaneously. Service on two or more petitioners unrepresented by an attorney is accomplished by serving the lead petitioner designated under 661-010-0015(3)(f)(A). Service on two or more intervenors unrepresented by an attorney is accomplished by serving the lead intervenor designated under 661-010-0050(2).

(B) Service may be in person, or by first-class mail. Mail service is complete on deposit in the mail.

(C) Service copies of documents other than the Notice or the record shall include a certificate showing the date of filing with the Board (see Exhibit 5). [Exhibit not included. See ED. NOTE.]

(D) Documents filed with the Board shall contain either an acknowledgement of service by the person served or proof of service by a statement certified by the person who made service of the date of personal delivery or deposit in the mail, and the names and addresses of the persons served (see Exhibit 6). [Exhibit not included. See ED. NOTE.]

(c) Recycled Paper. Parties filing anything with the Board, including but not limited to notices of intent to appeal, records, motions, and briefs, are encouraged to use recycled paper if recycled paper is readily available at a reasonable price in the party's community. Further, parties are encouraged to use paper containing the highest available content of post-consumer waste, as defined in ORS 279.545, that is recyclable in the office paper recycling program in the party's community.

(3) Number of Copies Required: Unless these rules provide otherwise, all documents filed with the Board shall be filed with one copy. No copy of a record transmitted pursuant to OAR 661-010-0025(2), or a record after withdrawal for reconsideration transmitted pursuant to 661-010-0021(6), is required.

(4) Copying Fee: The following fees shall be charged for certified copies or scans of Board nonexempt public records as defined in ORS 192.410, 192.501, 192.502, and 192.505:

(a) 25 cents per page for copies or scans of any Board transcript or document of public record.

(b) $10 for a copy of a cassette tape, compact disc or similar media disc in the record.

(c) $20 for a copy of a videocassette tape in the record.

(d) The Board shall also charge the actual cost of copying and mailing oversized exhibits, plans or maps.

(5) Conferences: On its own motion or at the request of any party, the Board may conduct one or more conferences. Conferences may be by telephone. The Board shall provide reasonable notice advising all parties of the time, place and purpose of any conference.

(6) Appearances Before the Board: An individual shall either appear on his or her own behalf or be represented by an attorney. A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar. In the event someone other than an active member of the Oregon State Bar files a notice of intent to appeal on behalf of a corporation, other organization, or another individual, the individual filing the notice of intent to appeal will be given an opportunity to provide an amended notice of intent to appeal that conforms with this section. If an amended notice of intent to appeal is not filed within the time set by the Board, the Board will dismiss the appeal.

(7) Lead Petitioner or Intervenor:

(a) A lead petitioner is responsible for notifying the other petitioners of documents and communications received from the Board and other parties, but each petitioner remains responsible for his or her own representation.

(b) A lead intervenor is responsible for notifying the other intervenors of documents and communications received from the Board and other parties, but each intervenor remains responsible for his or her own representation. A lead intervenor's responsibilities under this subsection extend only to intervenors who joined in the lead intervenor's motion to intervene and does not extend to intervenors who filed separate motions to intervene.

(8) Computation of Time: Time deadlines in these rules shall be computed by excluding the first day and including the last day. If the last day is Saturday, Sunday or other state or federal legal holiday, the act must be performed on the next working day.

(9) Address and Hours of the Board: The Board's address is 775 Summer Street NE, Suite 330, Salem Oregon, 97301-1283. The telephone number is (503) 373-1265. The Board's office shall be open from 8:00 a.m. to 12:00 p.m., and 1:00 p.m. to 5:00 p.m. Monday through Friday.

(10) Citations to Board Decisions: Citations to Board decisions shall be in the following form:

(a) Reported Cases: John Doe v. XYZ County, 5 Or LUBA 654 (1981).

(b) Unreported Cases: John Doe v. XYZ County, ___ Or LUBA ___ (LUBA No. 80-123, February 15, 1981).

(11) Motion to Transfer to Circuit Court:

(a) Any party may request, pursuant to ORS 34.102, that an appeal be transferred to the circuit court of the county in which the appealed decision was made, in the event the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in 197.015(10) or (12).

(b) A request for a transfer pursuant to ORS 34.102 shall be initiated by filing a motion to transfer to circuit court not later than 14 days after the date a respondent's brief or motion that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional issue on its own motion, a motion to transfer to circuit court shall be filed not later than 14 days after the date the moving party learns the Board has raised a jurisdictional issue.

(c) If the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015(10) or (12), the Board shall dismiss the appeal unless a motion to transfer to circuit court is filed as provided in subsection (11)(b) of this rule, in which case the Board shall transfer the appeal to the circuit court of the county in which the appealed decision was made.

(12) Transfer from Circuit Court: When any appeal of a land use or limited land use decision is transferred to LUBA from circuit court, the petition for writ of review filed in the circuit court shall be treated as the notice of intent to appeal, and the case shall proceed as provided in LUBA's rules, subject to the following:

(a) No additional filing fee shall be required;

(b) After an appeal is transferred to LUBA, the Board, by letter, will establish a deadline for the petitioner to submit the deposit for costs and a deadline for the respondent to transmit the record.

(13) Transfer from the Oregon Department of Land Conservation and Development: Where the Director of the Oregon Department of Land Conservation and Development transfers a matter to LUBA pursuant to ORS 197.825(2)(c)(A), the case shall proceed as provided in LUBA's rules, subject to the following:

(a) The date of the notice from the Director making the transfer shall begin the running of a 21-day period within which one or more parties in the proceedings before the department may file a notice of intent to appeal with LUBA. A notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) Except as provided in this section, the notice of intent to appeal shall conform to the requirements of OAR 661-010-0015, including payment of the filing fee and deposit for costs. The notice of intent to appeal shall identify the local government as the respondent, rather than the Oregon Department of Land Conservation and Development or the Land Conservation and Development Commission.

(c) On receipt of a notice of intent to appeal, the Board shall, by letter, establish a deadline for the respondent to file the portion of the local record necessary to review the transferred matter. In all other respects, an appeal of a transferred matter shall proceed according to LUBA's rules.

(14) All briefs and motions filed with the Board shall comply with the rules in OAR 661-010-0030(2) with respect to type size, spacing, paper size and printing, numbering and margins.

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

Stat. Auth.: ORS 197.820(4)(a) & (b)

Stats. Implemented: ORS 34.102, 197.830(9), (13)(a) & (15), 197.835(10) & 197.845(3)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 2-1981(Temp), f. & ef. 8-20-81; LUBA 1-1982(Temp), f. & ef. 5-19-82; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1989, f. & cert. ef. 11-30-89; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 2-1998(Temp), f. & cert. ef. 6-15-98 thru 12-12-98; LUBA 3-1998, f. 12-1-98, cert. ef. 12-13-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10; LUBA 1-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 10-28-13; LUBA 2-2013(Temp), f. 10-28-13, cert. ef. 10-29-13 thru 4-27-14; LUBA 3-2013; f. 12-12-13, cert. ef. 1-1-14

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Oregon 529 College Savings Board
Chapter 173

Rule Caption: Allow duplicate accounts (i.e., accounts that have same owner and the same beneficiary).
Adm. Order No.: CSB 2-2013
Filed with Sec. of State: 12-19-2013
Certified to be Effective: 12-19-13
Notice Publication Date: 9-1-2013
Rules Amended: 173-006-0005, 173-008-0005
Subject: The Oregon 529 College Savings Board is amending its administrative rules in order to allow duplicate accounts in the Oregon 529 College Savings Network ("Network"). These rule changes are needed to leverage an industry interface that provides data sharing between each plan in the Network.
Rules Coordinator: Michael Parker—(503) 373-1903

173-006-0005
Designated Beneficiary

(1) There are no restrictions on the age of a designated beneficiary nor any required relationship between the account owner and the designated beneficiary of an account.

(2) At any one time there shall be only one account owner and one designated beneficiary per account.

(3) There is no limit on the number of accounts that may be opened for one designated beneficiary by different account owners.

(4) An account owner may also be the designated beneficiary of an account.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.857(4)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10; QTSB 2-2010, f. 9-10-10, cert. ef. 9-14-10; CSB 1-2013(Temp), f. 6-12-13, cert. ef. 7-1-13 thru 12-28-13; CSB 2-2013, f. & cert. ef. 12-19-13

173-008-0005
Refusal to Open an Account

The Board may refuse to open an account for reasons that may include but are not necessarily limited to the following:

(1) The applicant is not an eligible account owner.

(2) The applicant has not provided all of the information required by the application.

(3) The total account balance of all accounts in the network for the same designated beneficiary is (or would be when taking into account a contribution being made) greater than the maximum limit established by the board pursuant to OAR 173-009-0015. The network shall accept contributions for accounts for that designated beneficiary (including contributions establishing new accounts), in the order of their receipt until the maximum account balance limit for that designated beneficiary has been reached.

(4) Entering into a participation agreement between the board and the applicant violates any federal securities or state "blue sky" laws or any other federal or state law.

(5) The Board determines that, for any other reason, it would be advisable to limit the number of accounts in the network or the plan under which the account is being opened.

(6) The board reserves the right to refuse applications that it determines to be an abuse of the network or a plan.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.841(2), 348.857(4) & 348.853(2)
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10; QTSB 2-2010, f. 9-10-10, cert. ef. 9-14-10; CSB 1-2013(Temp), f. 6-12-13, cert. ef. 7-1-13 thru 12-28-13; CSB 2-2013, f. & cert. ef. 12-19-13

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Oregon Business Development Department
Chapter 123

Rule Caption: These rule amendments relate to the Water Fund administered by the Infrastructure Finance Authority.
Adm. Order No.: OBDD 12-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Amended: 123-043-0010, 123-043-0015, 123-043-0025, 123-043-0035, 123-043-0041, 123-043-0055, 123-043-0075, 123-043-0102, 123-043-0115
Subject: These rule amendments result from SB 181 in the 2013 Regular Legislative Session. The maximum term limits on a loan awarded by the Infrastructure Finance Authority for the Water Fund has been changed from 25 years to 30 years.

Language relating to the criteria for technical assistance grants has been amended to clarify what a grant shall be made for and how often.

Other minor housekeeping changes have been made.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-043-0010
Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "DEQ" means the State of Oregon Department of Environmental Quality.

(2) "Facilities" means something that is built or installed to perform some particular function.

(3) "Fund" means the water fund created by ORS 285B.563.

(4) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(5) "Non-compliance" means the municipality has received a notice of non-compliance with:

(a) Drinking water quality standards administered by the Oregon Health Authority Drinking Water Services; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(6) "Project" means only a project for constructing or improving a drinking water system, or a project for constructing or improving a system for waste water collection or treatment, including storm drainage systems as defined in ORS 285B.560(4) and (5).

(7) "System" means the interconnected facilities that are required or useful for performing the required function.

(8) "Technical Assistance" means preliminary engineering or planning; legal, financial, and economic investigations, reports and studies to determine the feasibility of a Project. Technical Assistance also means required Water Master Plans or Wastewater Facilities Plans needed to allow communities to properly plan for the future.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; Administrative correction 7-27-10; OBDD 6-2011(Temp), f. & cert. ef. 11-3-11 thru 4-30-12; OBDD 3-2012, f. 3-30-12, cert. ef. 4-2-12; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

123-043-0015
Eligible Project Costs and Activities

(1) Eligible costs include the reasonable costs as determined by the Authority for eligible program activities and include:

(a) Project development costs;

(b) Construction contingencies as approved by the Authority for a project;

(c) Financing costs associated with the department's financing including capitalized interest, issuance and debt service reserve costs, when such costs are incurred in funding a project;

(d) Costs incurred by the municipality prior to a non-technical assistance award if such costs are allowable under the Department's adopted policy for reimbursement of pre-award costs; and

(e) At the discretion of the Authority, reasonable, new project management costs but not expenses for current staff that are already included in the municipality's adopted budget.

(2) Eligible project and program activities include the construction, improvement or expansion of the following facilities owned and operated either by the municipality or under a management contract or an operating agreement with the municipality:

(a) Domestic drinking water systems including all facilities necessary for source, supply, filtration, treatment, storage, transmission, and metering;

(b) Wastewater systems including all facilities necessary for collecting; conveying, pumping, treating and disposing of sanitary sewage, including correction of infiltration and inflow through replacement of lines, sliplining, or other corrective processes approved by the Authority;

(c) Storm drainage systems including all facilities necessary for controlling, collecting, conveying, treating and discharging of storm water;

(d) The acquisition of real property directly related to or necessary for the proposed project; and

(e) Project development and the associated engineering, architectural and planning work involved in developing the facilities listed in (1) above, including technical assistance and support activities necessary to the construction of a project as determined by the Authority.

Stat. Auth.: ORS 285B.563
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

123-043-0025
Ineligible Project Costs

Expenses and costs expressly allowed by OAR 123-043-0015 are eligible for reimbursement from the fund. All other costs, including but not limited to those listed below, are ineligible for reimbursement:

(1) Costs incurred for facilities that are or will be privately owned.

(2) Cost of purchase of general purpose motor vehicles and other equipment not directly related to the project.

(3) Cost of purchase of off-site property for uses not directly related to the project; and

(4) Project operating or maintenance expenses.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; Administrative correction 7-27-10; OBDD 42-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 6-2011(Temp), f. & cert. ef. 11-3-11 thru 4-30-12; OBDD 3-2012, f. 3-30-12, cert. ef. 4-2-12; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

123-043-0035
Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the Safe Drinking Water Act and the Clean Water Act. Therefore, priority will be given to projects necessary to

ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Health Authority Drinking Water Services; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the Authority may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

(a) The Authority deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the Safe Drinking Water Act, the Clean Water Act, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the Authority as having responsibility for the protection of water quality and the supply of clean drinking water; or

(b) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the Safe Drinking Water Act or the Clean Water Act.

(3) The Authority generally will not fund projects without the conditions of 123-043-0035(2) being met.

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The Authority encourages regionalization whenever feasible.

(6) The Authority encourages asset management planning where possible.

(7) The Authority will apply approved prioritization utilizing criteria listed in this section when reviewing project information contained in project notification intake form.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

123-043-0041
Criteria and Limitations for Funding — Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required by a regulatory agency, the municipality is not required to document non-compliance. Other Technical Assistance projects may be considered after consulting with and receiving documentation of non-compliance from the regulatory agency.

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to $20,000 per water, sewer, and storm drainage system may be awarded once every three (3) years for a project;

(b) A loan of up to $50,000 may be awarded for a project. Interest shall be at 75 percent of the annual interest rate for other loans made in accordance with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years;

(c) Pre-award expenses are not eligible for reimbursement;

(d) No more than $600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under this section the Authority will not first consider a municipality's ability to repay a loan; and

(e) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

123-043-0055
Loan and Grant Information

(1) The Authority may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The Authority shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department determines is necessary to enable the project to proceed, and the Authority may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the Authority determines are not financially feasible will not be funded.

(2) Loans for non-technical assistance projects:

(a) The term of a loan is limited to the usable life of the contracted project, or 30 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the Authority on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project will be determined by the Authority on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management but will not exceed $10,000,000.

(e) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the Authority to be pledged in addition to the foregoing.

(3) Grants for non-technical assistance projects: When making a determination to award a grant, the Authority will apply prudent fiscal management of the fund in order to manage limited funding resources. The Authority shall determine if the project meets the criteria of a grant and make a determination on the amount of the grant based on financial need or other special circumstances. In making its determination, the Authority shall apply the following criteria:

(a) The Authority's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

(b) The projected annual residential utility rate for the system is at least equivalent to a minimum rate as determined by the Authority's policy. The Authority's policy may include such factors as the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census;

(c) Only a distressed community is eligible for a grant award; and

(d) Grants may be awarded up to $750,000 based on the Department's policy, but not more than 50 percent of the financial award from the fund.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

123-043-0075
Application Review and Approval

(1) For a non-technical assistance project, the Authority must make the following determinations:

(a) The municipality shall document that a professional engineer registered in the State of Oregon has certified in an engineering report, such as a Master Plan, that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the municipality has certified to the Authority that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) Moneys in the appropriate accounts of the fund are or will be available for the project;

(d) The municipality is willing and able to enter into a contract with the Authority;

(e) The project is consistent with the requirements governing assistance from the fund. If the Authority determines that the municipality or the proposed project does not meet the requirements of this OAR 123-043-

0075, the Authority may reject an application or require further documentation from the municipality; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance it shall proceed immediately.

(2) To award assistance from the fund for a technical assistance project, the Authority must make the following determinations:

(a) The technical assistance activities must be for a project that is eligible under the criteria listed in 123-043-0041; and

(b) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

123-043-0102
Eligibility Criteria for State Revenue Bond Loans

The Authority shall apply the following standards for determining the eligibility of projects for state revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the Authority;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments, and the term of the loan must not exceed the usable life of the contracted project or 30 years from the year of project completion, whichever is less;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for state revenue bond financing as established by Department policies.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

123-043-0115
Appeals and Exceptions

(1) Appeals of decisions made by the municipality regarding a project must be made at the local level in accordance with the requirements and procedures of the municipality.

(2) The director or the director's designee will consider appeals of the Authority's funding decisions. Only the municipality may appeal. Appeals must be submitted in writing to the director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the Authority's review of the application, as determined by the director, will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The director or the director's designee decision is final.

(3) The director or the director's designee may waive any non-statutory requirements of OAR chapter 123, division 43, if it is demonstrated such a waiver will further the goals and objectives of the program.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; Administrative correction 7-27-10; OBDD 6-2011(Temp), f. & cert. ef. 11-3-11 thru 4-30-12; OBDD 3-2012, f. 3-30-12, cert. ef. 4-2-12; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

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Rule Caption: This new division of rules relates to the Oregon Seismic Rehabilitation Grants Program.
Adm. Order No.: OBDD 13-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Adopted: 123-051-0100, 123-051-0200, 123-051-0300, 123-051-0400, 123-051-0500, 123-051-0600, 123-051-0700, 123-051-0800, 123-051-0900, 123-051-1000, 123-051-1100, 123-051-1200
Subject: The 2013 Legislature passed SB 813 transferring the Oregon Seismic Rehabilitation Grants Program from the Office of Emergency Management to the Oregon Business Development Department's Infrastructure Finance Authority. This new division of rules provides criteria, processes and standards for the program.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-051-0100
Purpose

(1) The Infrastructure Finance Authority, pursuant to Oregon Revised Statutes ORS 401.910, shall develop and administer grant programs for the seismic rehabilitation of critical public buildings.

(2) The funds for the seismic rehabilitation of critical public buildings under the grant program are provided from the issuance of bonds pursuant to the authority provided in Articles XI-M and XI-N of the Oregon Constitution.

Stat. Auth.: ORS 285A.093, 285A.098, 286A.760 – 286A.772, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.098, 286A.760 – 286A.772, 401.910 & 2013 OL Ch. 782
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-0200
Definitions

(1) "Acute inpatient care facility" means a licensed hospital with an organized medical staff, with permanent facilities that include inpatient beds, with comprehensive medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for, but not limited to acutely ill patients and accident victims. "Acute inpatient care facility" includes the Oregon Health and Science University.

(2) "Applicant" means a school district, community college, education service district, higher education institution, police, sheriff, fire, hospital which is applying for a grant from the Seismic Rehabilitation program.

(3) "Authority" means the Infrastructure Finance Authority within the Oregon Business Development Department.

(4) "Collapse Prevention" means a building at this performance level is capable of maintaining gravity loads though structural damage is severe and risk of falling hazard is high as set forth in the American Society of Civil Engineers Standard for Seismic Rehabilitation of Existing Buildings newest edition.

(5) "Critical Public Buildings" includes hospital buildings with acute inpatient care facilities, fire stations, police stations, sheriffs' offices, other facilities used by state, county, district, or municipal law enforcement agencies and buildings with a capacity of 250 or more persons that are routinely used for student activities by kindergarten through grade 12 public schools, community colleges, education service districts and institutions of higher education.

(6) "Distressed or Impoverished" means all Oregon cities and counties designated by Oregon Business Development Department as distressed or impoverished by established methodology.

(7) "Education Service District (ESD)" means a district created under ORS 334.010 that provides regional educational services to component school districts.

(8) "Grant Program" means The Seismic Rehabilitation Grant Program (SRGP).

(9) "Grant Selection Committee" means the committee that is charged with evaluating grant applications for the purpose of determining which projects receive funding. The grant selection committee membership shall include representatives of Oregon Department of Education, The Department of Human Services, The Office of Emergency Management/Oregon Military Department, The State Department of Geology and Mineral Industries, Oregon Seismic Safety Policy Advisory Commission, The Oregon Department of Administrative Services, The Oregon Fire Chiefs' Association, The Oregon Association of Chiefs of Police, Community Colleges and Workforce Development, Oregon University System, The Oregon Association of Hospitals and Health Systems, The Confederation of Oregon School Administrators and others who possess expertise in construction, construction grants and structural design as determined by the Authority.

(10) "Grantee" means applicant awarded grant funds for seismic rehabilitation project.

(11) "Holistic Project" means a project emphasizing the whole building instead of the separation of its parts.

(12) "Immediate Occupancy" means a building at this performance level is expected of being sufficiently functional for occupancy as set forth in the American Society of Civil Engineers Standard for Seismic Rehabilitation of Existing Buildings newest edition.

(13) "Life Safety" means a building at this performance level is expected to present low risk of life threatening injury to building inhabitants as set forth in the American Society of Civil Engineers Standard for Seismic Evaluation of Existing Buildings newest edition.

(14) "Match" is any contribution to a project that is non-seismic grant funds. Match may include:

(a) Cash on hand or cash that is pledged to be on hand prior to commencement of the project; and,

(b) Secured funding commitments from other sources.

(15) "Project" means seismic rehabilitation activity (or activities) to be performed on a building that is eligible for assistance from the Seismic Rehabilitation Grant Program.

(16) "Seismic Rehabilitation" means construction of structural improvements to a building that results in the increased capability of the building to resist earthquake forces and that is based on standards adopted by the State of Oregon or by local governments.

(17) "Structural" means components of a building that support or resist loads. Parts of a building that bear weight.

(18) "Tsunami Inundation Zone" means for purposes of the SRGP, the area depicted as the tsunami inundation zone in Oregon Department of Geology and Mineral Industries Open-File Reports O-95-09 through O-95-38, O-95-43 through O-95-66 and O-97-31 through O-97-32.

(19) "Useful Life" means the length of time that the building or structure is expected to be used, or 30 years, whichever is greater.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-0300
Eligible Applicants

The following are eligible to apply for a Seismic Rehabilitation Grant, except those determined to be ineligible by the Authority because of non-performance under a prior Seismic Rehabilitation Grant contract:

(1) All hospital buildings with acute inpatient care facilities, fire stations, police stations, sheriffs' offices, other facilities used by state, county, district or municipal law enforcement agencies.

(2) Kindergarten through grade 12 public schools, community colleges, education service districts and institutions of higher education buildings with a capacity of 250 or more persons that are routinely used for student activities and are owned by the State Board of Higher Education, a school district, an education service district, a community college district or a community college service district.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-0400
Program Information

(1) The Authority shall prepare a Grant Application Package. The application package may contain a guidance document, application forms, and other supplementary information that may help eligible applicants prepare grant applications.

(2) The guidance document will include a description of eligibility criteria, and ranking factors used to evaluate and select applications for funding.

(3) The Grant Application Package on file with the Authority is incorporated as part of these rules by reference.

(4) The Authority will provide to Seismic Rehabilitation grantee a Grant Contract which specifies legal requirements for grant management, reporting, and record keeping, and the Authority's monitoring and grant closeout procedures.

(5) The Authority shall administer Seismic Rehabilitation Grants in compliance with the requirements of applicable statutes, rules, and the Grant Guidance Document.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-0500
Program Sanctions

The grantee shall be responsible for taking all actions necessary to enforce the terms of the grant contract against any private or public participant who fails to comply with applicable provisions of the grant contract, and to recover on behalf of the state any liabilities that may arise as the result of the breach of the grant contract by any participant. Nothing in this paragraph shall restrict the state's rights to enforce independently the terms of any grant contract or to recover any sums that may become due as the result of a breach of such a contract.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-0600
Project Eligible Activities

Projects must meet the following criteria to be eligible for this program:

(1) Education building rehabilitation to life safety seismic safety performance level as defined in OAR 123-051-0200(14); or

(2) Emergency services building rehabilitation to immediate occupancy seismic safety performance level as defined in OAR 123-051-0200(13).

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-0700
Project Ineligible Activities

Project ineligible activities include, but are not limited to:

(1) The demolition and rebuild of an existing critical public building.

(2) Rehabilitation to a building located in the Tsunami Inundation Zone as defined in OAR 123-051-0200(19).

(3) Rehabilitation of a building located in the 100 flood zone.

(4) Partial rehabilitation of a building that does not holistically address all known seismic deficiencies, as defined in OAR 123-051-0200(12).

(5) Reimbursement for already budgeted staff and routine or ongoing expenses of the recipient.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-0800
Application Submittal, Review and Approval

(1) The Authority shall announce deadlines for submitting applications, how to obtain an application form, and required supplemental documents.

(2) An eligible critical public building may submit an application after consulting with the Authority on a preliminary determination of eligibility and otherwise follow the Authority's procedures for submitting applications. The application must be in the form provided by the Authority and must contain or be accompanied by such information as the Authority may require. The Authority will process only completed applications.

(3) Upon receipt of signed application, the Authority will notify the applicant within 30 days as to the receipt of the application.

(4) Upon receipt of a completed application, the Authority will evaluate the application using ranking factors and point values and will provide recommendations to the Grant Selection Committee to determine the project's prioritization ranking during a public meeting.

(5) Once a completed application is evaluated for a grant award, the applicant will be notified within 90 days of the status of their grant application.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-0900
Project Administration

(1) The Authority and the Applicant must execute a grant contract prior to disbursal of grant funds.

(2) Documentation of project costs incurred by entity must be submitted to the Authority prior to disbursal of funds.

(3) Disbursal of grant funds to entity will be made on the schedule determined by the Authority.

(4) Prior to final disbursement, the Authority will review and evaluate all documents produced as a result of the project, perform a final on-site inspection of the completed project and determine how closely the project delivered the outcome anticipated in the application.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-1000
Grant Awards and Match

(1) Grants will be awarded only when there are sufficient funds available in the Seismic Rehabilitation Grants program.

(2) Grant funds shall be distributed to public education facilities and emergency services facilities as allocated by the Legislative Assembly.

(3) The maximum grant award is $1.5 million.

(4) There is no required match for this program. Additional application points may be considered for applicants that provide matching funds.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-1100
Grant Agreement Conditions

(1) The Authority will only enter into new agreements or amendments to existing agreements, with prior Grantees, if all reporting obligations under earlier agreements have been met.

(2) If the grant agreement has not been fully executed by all the parties within 60 days of grantee receiving contract document, funding shall be terminated. The money allocated to the grant shall be available for reallocation by the grant committee.

(3) The Authority or designee shall establish grant agreement conditions. Grantees shall comply with all grant agreement conditions.

(4) The Grantee shall comply with all federal, state and local laws and ordinances applicable to the work to be done under the agreement.

(5) Upon notice to the Grantee in writing, the Authority may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the grant committee.

(6) The Grantee will account for funds distributed by the grant committee, using project expense forms provided by the Authority.

(7) The Grantee will obtain the necessary permits and licenses from local, state or federal agencies or governing bodies.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

123-051-1200
Waivers, Exceptions and Appeals

(1) The Authority may waive non-statutory requirements of the grant program if it is demonstrated such a waiver would serve to further the goals or objectives of the program.

(2) The Authority may consider appeals of the grant committee's funding decisions. Only the applicant may appeal. Appeals must be submitted in writing to the Authority within 30 days of the event or action that is being appealed. The Authority's decision is final.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782
Stats. Implemented: ORS 285A.093, 285A.098 & 401.910
Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

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Rule Caption: This rule amendments relate to the procedures for contracts entered into with the department.
Adm. Order No.: OBDD 14-2013(Temp)
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 12-30-13 thru 6-27-14
Notice Publication Date:
Rules Amended: 123-006-0035
Subject: The 2013 Legislature passed HB 2212 amended the small procurement threshold to $10,000 and permitting amendments to $12,500. The amendment to 123-006-0035 reflects these changes.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-006-0035
Contract Amendments

(1) General Rule. The Department may amend any contract without additional competition, including reinstatements and cost overruns, but only when the Department has determined:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract; or in the instance of a Special Procurement, the approval of Special Procurement;

(b) The amended Contract does not adversely affect the competitive conditions for the original contract; and

(c) If the Contract was selected according to the Small Procurement method, the total compensation does not exceed $10,000, or, if selected according to the Intermediate Procurement method, the total compensation does not exceed $150,000.

(2) Anticipated Amendments.

(a) "Anticipated Amendment" means the Department has text in any Solicitation Document and the Contract that explains:

(A) The possibility of one or more Amendments;

(B) A general description of circumstances that might require an Amendment to be issued under the Contract and any changes to the requirements of the Contract that may be anticipated or even planned for, but not necessarily quantified at the time of Contract execution. These changes may be described in any Solicitation and Contract as, for example: Extra Work or Goods; Additional Work; Work to be done if certain situations are encountered; or Changes in terms, conditions, price, or type of Work; etc.; and

(C) The provisions of the Contract that are subject to negotiation in order to finalize the details and costs of such an Amendment.

(b) Anticipated Amendments do not include cost overruns or reinstatements.

(c) The Department may make one or more Anticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, subject to section (1) of this rule.

(3) Unanticipated Amendments.

(a) Unanticipated Amendment" means any Amendment that does not meet the requirements of an Anticipated Amendment. Unanticipated Amendments do not include cost overruns or reinstatements.

(b) Limited Amount. The Department may make one or more Unanticipated Amendments to a Contract without any additional competitive process, provided the cumulative amounts of all Unanticipated Amendments do not exceed $12,500 for a Contract award as a small procurement under 137-047-0265 or 25% of the Original Contract amount of a Contract awarded as an intermediate procurement under 137-047-0270 and subject to section (1) of this rule.

(c) Unlimited Amount. The Department may make one or more Unanticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, subject to section (1) of this rule, and provided the Department's Designated Procurement Officer gives written approval of the Unanticipated Amendment as meeting the following requirements:

(A) The Unanticipated Amendment is due to circumstances that were unforeseen at the time the original Contract was established;

(B) The Unanticipated Amendment does not represent any important general change that alters the essential identity or main purpose of the original Contract, nor is of such importance that it should be a new undertaking; and

(C) The Unanticipated Amendment serves the public interest, including specific reasoning to support that conclusion. Reasons may include, but are not limited to: To address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed or Goods delivered; to comply with official or judicial commands or directives issued during contract performance; or to ensure that the purpose of the Contract will be realized.

(4) Cost Overruns.

(a) Unless the Contract provides that the maximum total compensation is based on an estimate and is subject to amendment, if Contractor expends all authorized compensation but the required Goods, Work or Services are not complete or are not satisfactory, Contractor is responsible to complete the Goods, Work or Services to Department's satisfaction without further compensation.

(b) Notwithstanding the general rule in subsection (4)(a) above, Department may, by Amendment to the Contract, agree to increases in the maximum total compensation, subject to section (1) of this rule, and provided the Department's Designated Procurement Officer gives written approval of the Cost Overrun Amendment as meeting the following requirements:

(A) The cost overrun arose out of circumstances or conditions encountered in the course of contract performance that were unavoidable and not reasonably anticipated at the time of the original Contract, or the most recent Amendment, if any;

(B) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Goods, Work or Services rendered; and

(C) The Cost Overrun Amendment serves the public interest, including specific reasoning to support that conclusion. Reasons may include, but are not limited to: To address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed; to comply with official or judicial commands or directives issued during contract performance; or to ensure that the purpose of the Contract will be realized.

(5) Reinstatements.

(a) "Reinstatement" of an expired Contract means an amendment to restore the full action of the Contract as though the expiration had not occurred, and extend the Contract to a new expiration. A reinstatement may be combined with any other amendment allowed by this rule.

(b) The Department's Designated Procurement Officer may give written approval to reinstate an expired Contract if the following requirements are met:

(A) The failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions, or if due to administrative mistake, the reason for the mistake and the steps taken to prevent similar mistakes;

(B) The expiration occurred in good faith on the part of both the Department and the Contractor;

(C) The reinstatement furthers the public interest, compared to a separate procurement process, including specific reasoning to support that conclusion; and

(c) When a Contract is reinstated pursuant to this section, the Department may compensate the Contractor only at the rate or terms of compensation established in the original Contract, for Goods, Work or Services performed in the interim between the expiration of the original Contract and the execution of the Reinstatement Amendment.

(6) Amendments of Contracts for Architectural, Engineering and Land Surveying Services. This rule does not apply to amendments of Contracts for Architectural, Engineering and Land Surveying Services. The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, division 48 for amendments to such contracts.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.075 & 279.070
Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08; OBDD 37-2010, f. 10-29-10, cert. ef. 11-1-10; OBDD 2-2012, f. 3-30-12, cert. ef. 4-2-12; OBDD 14-2013(Temp), f. & cert. ef. 12-30-13 thru 6-27-14

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Oregon Department of Education
Chapter 581

Rule Caption: Strategic Investments — Guiding Principles
Adm. Order No.: ODE 28-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 581-017-0005, 581-017-0010, 581-017-0020
Subject: The rules establish common definitions to be used in the grant programs established to implement the three strategic investments in the provisions of HB 3232: Oregon Early Reading Program, Guidance and Support for Postsecondary Aspirations Program, and Connecting to the World of Work Program.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-017-0005
Definitions

The following definitions apply to Oregon Administrative Rules in division 17, chapter 581 that implement strategic investments as part of the Oregon Early Reading Program, Guidance and Support for Post-Secondary Aspirations Program and Connecting to the World of Work Program:

(1) "40-40-20 goal" means the mission of Oregon's education system as described in ORS 351.009.

(2) "Achievement gap" means the research-based gap in achievement that often exists between students who are economically disadvantaged, students learning English as a second language, African American, Hispanic or Native American and their peers.

(3) "Network" means the Network of Quality Teaching and Learning established by chapter 661, Oregon Law 2013 (Enrolled House Bill 3233).

(4) "Students who are economically disadvantaged" means students who are eligible for free or reduced price school meals.

Stat. Auth.: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Stats. Implemented: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Hist.: ODE 15-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 28-2013, f. & cert. ef. 12-18-13

581-017-0010
Equity Lens

(1) The Department of Education will apply the Equity Lens adopted by the Oregon Education Investment Board when administering the strategic investments including when determining resource allocation and making strategic investments.

(2) Specifically the Department shall consider the following:

(a) Who are the racial or ethnic and underserved groups affected? What is the potential impact of the resource allocation and strategic investment to these groups?

(b) Does the decision being made ignore or worsen existing disparities or produce other unintended consequences? What is the impact on eliminating the opportunity gap?

(c) How does the resource allocation or strategic investment advance the 40-40-20 goal?

(d) What are the barriers to more equitable outcomes? (e.g., mandated, political, emotional, financial, programmatic or managerial)

(e) How has the Department intentionally involved stakeholders who are also members of the communities affected by the resource allocation or strategic investment? How does the Department validate its assessment in paragraphs (a), (b) and (c) of this subsection?

(f) How will the Department modify or enhance the strategic investment to ensure each learner and communities' individual and cultural needs are met?

(g) How is the Department collecting data on race, ethnicity, and native language relating to the strategic investments?

(h) What is the Department's commitment to P-20 professional learning for equity? What resources is the Department allocating for training in cultural responsive instruction?

Stat. Auth.: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Stats. Implemented: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Hist.: ODE 15-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 28-2013, f. & cert. ef. 12-18-13

581-017-0020
Timelines and Performance Measures

Recipients of strategic investment grant funds shall meet timelines, performance measures and other requirements related to the accumulation and evaluation of data collected as required by the Oregon Education Investment Board and the Oregon Department of Education.

Stat. Auth.: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Stats. Implemented: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Hist.: ODE 15-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 28-2013, f. & cert. ef. 12-18-13

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Rule Caption: Employment-related transition services for transition-age students.
Adm. Order No.: ODE 29-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 10-1-2013
Rules Adopted: 581-015-2930
Rules Amended: 581-015-2000, 581-015-2245
Subject: The rule implements the policies described in Executive Order 13-04 related to the Department of Education's involvement with integrated employment services. The rule directs the Department to establish the Statewide Transition Assistance Network to provide services related to employment-related transition services for transition-age students.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-015-2000
Definitions

The definitions below apply to OARs 581-015-2000–2999, unless the context indicates otherwise.

(1) "Adult student" is a student for whom special education procedural safeguard rights have transferred as described in OAR 581-015-2325.

(2) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(3) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(4) "Children with disabilities" or "students with disabilities" means children or students who require special education because of: autism; communication disorders; deafblindness; emotional disturbances; hearing impairments, including deafness; intellectual disability; orthopedic impairments; other health impairments; specific learning disabilities; traumatic brain injuries; or visual impairments, including blindness.

(a) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. Other characteristics that may be associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Essential features are typically but not necessarily manifested before age three. Autism may include autism spectrum disorders such as but not limited to autistic disorder, pervasive developmental disorder, not otherwise specified, and Asperger's syndrome. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. However, a child who qualifies for special education under the category of autism may also have an emotional disturbance as a secondary disability if the child meets the criteria under emotional disturbance.

(b) "Communication Disorder" means the impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics.

(c) "Deafblindness" means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments.

(d) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems;

(F) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(e) "Hearing Impairment" means a hearing condition, whether permanent or fluctuating, that adversely affects a child's educational performance. The term includes those children who are hard of hearing or deaf.

(f) "Intellectual Disability" means significantly sub average general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.

(g) "Orthopedic Impairment" means a motor disability that adversely affects the child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spinal bifida, muscular dystrophy or traumatic injury).

(h) "Other Health Impairment" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that:

(A) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette's syndrome or diabetes); and

(B) Adversely affects a child's educational performance.

(i) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific learning disability includes conditions such as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage.

(j) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(k) "Visual Impairment" means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.

(5) "Consent" means that:

(a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought; and the consent describes that activity and lists any records that will be released and to whom; and

(c) The parent or adult student understands that the granting of consent is voluntary and may be revoked at any time in accordance with OAR 581-015-2090(4) or 581-015-2735.

(6) "Day" means calendar day unless otherwise indicated as:

(a) "Business day," which means Mondays through Fridays, other than holidays; or as

(b) "School day," which means any day, including partial days that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including those with and without disabilities.

(7) "Department" means the Oregon Department of Education.

(8) "EI/ECSE" means early intervention/early childhood special education and refers to services or programs for preschool children with disabilities.

(9) "Elementary or secondary school or facility" means a school or facility with any combination of grades K through 12.

(10) "Evaluation" means procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.

(11) "General education curriculum" means the same curriculum as for children without disabilities (children without disabilities). For preschool children with disabilities, the term means age-appropriate activities.

(12) "Health assessment statement" means a written statement issued by a nurse practitioner licensed by a State Board of Nursing specially certified as a nurse practitioner, or by a physician assistant licensed by a State Board of Medical Examiners. Both a nurse practitioner and a physician assistant must be practicing within his or her area of specialty.

(13) "Homeless children" (or "homeless youth") has the same meaning as in section 725 of the McKinney-Vento Act, 42 USC § 11434a(2).

(14) "Identification" means the process of determining a child's disability and eligibility for special education and related services.

(15) "Individualized Education Program" (IEP) means a written statement of an educational program which is developed, reviewed, revised and implemented for a school-aged child with a disability.

(16) "Individualized Family Service Plan" (IFSP) is defined in OAR 581-051-2700.

(17) "Limited English proficient" has the same meaning as in the Elementary and Secondary Education Act, 20 USC § 9101(25).

(18) "Mediation" means a voluntary process in which an impartial mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such a time as a resolution is agreed to by the parties or the mediation process is terminated.

(19) "Medical statement" means a written statement issued by a physician licensed by a State Board of Medical Examiners.

(20) "Native language", when used with respect to a person who is limited English proficient, means the language normally used by that person or, in the case of a child, the language normally used by the parent of the child. For an individual with deafness, blindness, deafblindness or no written language, the term means the mode of communication normally used by the person (such as sign language, Braille, or oral communication). In direct contact with a child, the term means the language normally used by the child.

(21) "Parent" means:

(a) One or more of the following persons:

(A) A biological or adoptive parent of the child;

(B) A foster parent of the child,

(C) A legal guardian, other than a state agency;

(D) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(E) A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school-age children, or 581-015-2760 for preschool children.

(b) Except as provided in subsection (c), if more than one party is qualified under subsection (a) to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(c) If a judicial decree or order identifies a specific person under subsection (a) to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.

(22) "Participating agency" means a state or local agency, other than the school district responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(23) "Personally identifiable information" means information as defined in the Family Educational Rights and Privacy Act (FERPA), found at 34 CFR 99.3, which includes, but is not limited to:

(a) The name of the child, the child's parent or other family member;

(b) The address of the child or the child's family;

(c) A personal identifier, such as the child's social security number or student number, or biometric record; and

(d) Other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name;

(e) Other information that alone or in combination is linked or linkable to a specific child that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or

(f) Other information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(24) "Placement" means educational placement, not social service placement by a state agency.

(25) "Preschool child" means "preschool child with a disability" as defined under OAR 581-015-2700.

(26) "Private school" means an educational institution or agency not operated by a public agency.

(27) "Public agency" means a school district, an education service district, a state agency or institution, EI/ECSE contractor or subcontractor, responsible for early intervention, early childhood special education or special education.

(28) "Related services" includes transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes, and includes early identification and assessment of disabling conditions in children. This definition incorporates the exception for services for children with surgically implanted devices, including cochlear implants, in 34 CFR 300.34(b) and the definitions for individual related services in 34 CFR 300.34(c).

(29) "School age child or children" means a child or children who have reached 5 years of age but have not reached 21 years of age on or before September 1 of the current school year.

(30) "Scientifically Based Research" is defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended ESEA.

(31) "School district" means the public education agency (school district, ESD, or state agency) that is responsible by statute, rule or contract for providing education to children with disabilities.

(32) "Services plan" is defined in OAR 581-015-2450.

(33) "Sheltered Workshop" means a facility based service that congregates more than eight adults with intellectual or developmental disabilities which is operated by a service provider entity that employs only individuals with an intellectual or developmental disability , as defined in OAR 411-320-0020, except for service or support staff. Facility-based assessments, instruction, and activities that typically occur in public schools and that are provided either directly or by contract by public school, public charter school, an Educational Service District, or the Department of Education, in a school setting, are not sheltered workshops.

(34) "Short term objectives" means measurable intermediate performance steps that will enable parents, students and educators to gage, at intermediate times during the year, how well the child is progressing toward the annual goals by either:

(a) Breaking down the skills described in the goal into discrete components, or

(b) Describing the amount of progress the child is expected to make within specified segments of the year.

(35) "Special education" means specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability "Special education" includes instruction that:

(a) May be conducted in the classroom, the home, a hospital, an institution, a special school or another setting; and

(b) May involve physical education services, speech language services, transition services or other related services designated by rule to be services to meet the unique needs of a child with a disability.

(36) "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(37) "Supplementary aids and services" means aids, services and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.

(38) "Superintendent" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.

(39) "Surrogate parent" means an individual appointed under OAR 581-015-2320 for school age children or 581-015-2760 for preschool children who acts in place of a biological or adoptive parent in safeguarding a child's rights in the special education decision-making process.

(40) "Transition services" means a coordinated set of activities for a student with a disability that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(c) Includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and

(d) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(41) "Ward of the state" means child who is in the temporary or permanent custody of, or committed to, the Department of Human Services or Oregon Youth Authority through the action of the juvenile court.

Stat. Auth.: ORS 343.041, 343.045, 343.155 & 343.223
Stats. Implemented: ORS 343.045, 343.155, 343.223, 34 CFR 300.5, 300.6, 300.8, 300.11, 300.15, 300.19, 300.22, 300.27, 300.28, 300.29, 300.30, 300.34, 300.37, 300.39, 300.42, 300.43 & 300.45
Hist.: 1EB 8-1978, f. & ef. 3-3-78; 1EB 35-1978, f. & ef. 10-5-78; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 5-1985, f. 1-30-85, ef. 1-31-85; EB 39-1988(Temp), f. & cert. ef. 11-15-88; EB 18-1989, f. & cert. ef. 5-15-89; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 9-1993, f. & cert. ef. 3-25-93; EB 18-1994, f. & cert. ef. 12-15-94; EB 22-1995, f. & cert. ef. 9-15-95; ODE 10-2000, f. & cert. ef. 5-3-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0005, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 13-2009, f. & cert. ef. 12-10-09; ODE 12-2011, f. & cert. ef. 10-31-11; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 29-2013, f. & cert. ef. 12-18-13

581-015-2245
Alternative Placements and Supplementary Aids and Services

School districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must:

(1) Include as alternative placements, instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and

(2) Make provision for supplementary aids and services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(3) Not include sheltered workshops as defined in OAR 581-015-2000.

Stat. Auth.: ORS 343.041, 343.045 & 343.055,
Stats. Implemented: ORS 343.045 & 343.155, 34 CFR 300.115
Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995; f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0060, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 29-2013, f. & cert. ef. 12-18-13

581-015-2930
Employment-Related Transition Services

(1) This rule establishes the policies of Executive Order No. 13-04, related to the Department of Education's involvement with integrated employment services.

(2) For purposes of this rule, the following definitions apply:

(a) "Education Goals" means the following goals:

(A) Families, students, and educators will have the expectation that individuals with intellectual and developmental disabilities will work in integrated, community-based settings;

(B) Students transitioning to adult services will be prepared to transition to integrated work experiences; and

(C) Statewide systems will be coordinated to reach the goal of integrated employment opportunities as an outcome of students' education.

(b) "Transition age student" means a student with disabilities who is eligible for transition services under the Individuals with Disabilities Education Act (IDEA) and OAR 581-015-2200.

(c) "Transition Technical Assistance" is the substance of the work of the Statewide Transition Technical Assistance Network (TTAN) and includes development of competencies for teachers, administrators, and other educational service providers that include:

(A) Developing transition-related curriculum and instructional approaches which are consistent with the Education Goals;

(B) Developing outcome-based transition planning approaches that use precepts of discovery and person-centered planning;

(C) Implementing transition-related instructional approaches for students with disabilities, such as those that are community based, and which may include, but are not limited to, authentic experiences such as internships, mentorships, youth work experiences, job skill related instruction, and job shadowing;

(D) Facilitating and managing interagency teams and resources to help ensure students and families may utilize resources from applicable state agencies, local education agencies, and other available resources; and

(E) Encouraging the implementation of transition services in schools that are consistent with the Education Goals.

(F) Assisting Local Education Agencies to meet the requirements of OAR 581-015-2245 regarding the placement of students.

(3) The Department shall establish a statewide TTAN to assist high schools in Oregon in providing transition services. The TTAN shall seek to ensure that the Education Goals are implemented in assessment, curriculum, and instruction for transition age students.

(4) This rule and its provisions are not intended to expand or replace the obligations of the State or its schools under the IDEA.

Stat. Auth.: ORS 343.041, 343.045 & 343.055,
Stats. Implemented: ORS 343.041, 343.045 & 343.055
Hist.: ODE 29-2013, f. & cert. ef. 12-18-13

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Rule Caption: Network for Quality Teaching and Learning - Guiding Principles
Adm. Order No.: ODE 30-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 581-018-0005, 581-018-0010, 581-018-0020
Subject: The rules establish common definitions to be used in the grant programs established as part of the Network of Quality Teaching and Learning. The rules also incorporate the Equity Lens adopted by the Oregon Education Investment Board and direct the Department of Education to apply the Equity Lens when determining resource allocation and awarding grants and contracts.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0005
Definitions

The following definitions apply to Oregon Administrative Rules in division 18, chapter 581 that implement the Network of Quality Teaching and Learning:

(1) "40-40-20 goal" means the mission of Oregon's education system as described in ORS 351.009

(2) "Achievement gap" means the research based gap in achievement that often exists between students who are economically disadvantaged, students learning English as a second language, African American, Hispanic or Native American and their peers.

(3) "Network" means the Network of Quality Teaching and Learning established by chapter 661, Oregon Law 2013 (Enrolled House Bill 3233).

(4) "Students who are economically disadvantaged" means students who are eligible for free or reduced price school meals.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 16-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 30-2013, f. & cert. ef. 12-18-13

581-018-0010
Equity Lens

(1) The Department of Education will apply the Equity Lens adopted by the Oregon Education Investment Board when administering the network including when determining resource allocation and awarding grants and contracts.

(2) Specifically the Department shall consider the following:

(a) Who are the racial or ethnic and underserved groups affected? What is the potential impact of the resource allocation and grant or contract award to these groups?

(b) Does the decision being made ignore or worsen existing disparities or produce other unintended consequences? What is the impact on eliminating the opportunity gap?

(c) How does the resource allocation or grant or contract award advance the 40-40-20 goal?

(d) What are the barriers to more equitable outcomes? (e.g., mandated, political, emotional, financial, programmatic or managerial)

(e) How has the Department intentionally involved stakeholders who are also members of the communities affected by the resource allocation or grant or contract? How does the Department validate its assessment in paragraphs (a), (b) and (c) of this subsection?

(f) How will the Department modify or enhance the grant or contract to ensure each learner and communities' individual and cultural needs are met?

(g) How is the Department collecting data on race, ethnicity, and native language relating to the grants and contracts?

(h) What is the Department's commitment to P-20 professional learning for equity? What resources is the Department allocating for training in cultural responsive instruction?

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 16-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 30-2013, f. & cert. ef. 12-18-13

581-018-0020
Timelines and Performance Measures

Recipients of network grant or contract funds shall meet timelines, performance measures and other requirements related to the accumulation and evaluation of data collected as required by the Oregon Education Investment Board and the Oregon Department of Education.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 16-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 30-2013, f. & cert. ef. 12-18-13

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Rule Caption: Expanded Reading Opportunities Grant
Adm. Order No.: ODE 31-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 581-017-0100, 581-017-0105, 581-017-0110, 581-017-0115
Subject: Under the Early Reading Program, a strategic investment was designated by the Legislature and the Department of Education for the purpose of extending or expanding reading opportunities in public schools that meet criteria established by the Board by providing adult support, programs offered during non-school hours, or increased access to technology. The rules establish the Expanded Reading Opportunities Grant. These grants are designated for focus and priority schools that serve students in kindergarten through grade 3.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-017-0100
Definitions

The following definitions apply to 581-017-0100 to 581-017-0115:

(1) "CAP (Comprehensive Achievement Plan)" means the plan for program improvement that all Focus and Priority Schools are required to develop and implement. It describes the school's goals, tasks necessary to achieve those goals, and who is responsible for completion of each activity with anticipated due dates. The CAP is the vehicle for communication between the school and the Oregon Department of Education outlining the actions a school takes to implement interventions prescribed by the School Appraisal Team. The CAP, developed collaboratively by the district, school, and a team of educators and community members, commits the school to evidence-based interventions and fixed improvement goals.

(2) "Focus Schools" are those ranked in the fifth to the fifteenth percentile in overall rating and are:

(a) Within-School Gap: Title I schools with the largest within school achievement or graduation gaps, or

(b) With Low Achieving Subgroup: Title I schools with a subgroup or subgroups with low achievement in reading and mathematics, combined, or a subgroup with low graduation, or

(c) With Low Graduation Rate: Title I high schools with graduation rates under 60 percent that were not already identified as Priority Schools.

(3) "Focus and Priority Schools" means schools that were identified using the Department of Education's overall rating system that analyzed 2011-2012 student achievement data and graduation rates.

(4) "Priority Schools" are those schools satisfying at least one of the following:

(a) School Improvement Grant (SIG): A Tier I or Tier II school receiving funding under the SIG program.

(b) Low Graduation Rate: A Title I-participating high school with a graduation rate of less than 60 percent.

(c) Low Achievement: Among the lowest five percent of Title I schools in the state based on the percent of students meeting state benchmarks in reading and mathematics combined for 2010-11 and 2011-12 that is not a high-progress school.

(5) "SIG Schools" means the schools that have received the 3-year School Improvement Program Grant and whom begun their work during the 2010–2011 (Cohort 1) or 2011–2012 (Cohort 2) school years.

Stat. Auth.: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Stats. Implemented: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Hist.: ODE 19-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 31-2013, f. & cert. ef. 12-18-13

581-017-0105
Establishment

(1) The Expanded Reading Opportunities Grant is established as part of the Early Reading Program Strategic Investment.

(2) The purposes of the program are to:

(a) Extend and expand reading opportunities in public schools; and

(b) Improve the reading proficiency of students by the time the students complete the third grade.

Stat. Auth.: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Stats. Implemented: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Hist.: ODE 19-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 31-2013, f. & cert. ef. 12-18-13

581-017-0110
Eligibility

The Department of Education shall allocate funds for the Expanded Reading Opportunities Grant to schools based on the following eligibility criteria:

(1) Schools must be a designated Focus or Priority School.

(2) Schools must serve students in at least one grade from kindergarten through grade 3.

(3) Schools must not have received a SIG grant.

(4) Schools must use the funds in alignment with their CAP.

(5) Schools must use the funds to extend or expand reading opportunities by:

(a) Providing adult support;

(b) Offering programs during non-school hours; or

(c) Increasing access to technology.

Stat. Auth.: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Stats. Implemented: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Hist.: ODE 19-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 31-2013, f. & cert. ef. 12-18-13

581-017-0115
Implementation Grant Funding

(1) The Department of Education may award at least $40,000 for the 2013-2014 school year to each eligible Focus and Priority School that applies and meets the criteria.

(2) For the 2014-2015 school year each eligible Focus and Priority School that applied may be awarded an equal amount based on the amount available.

(3) The Department may not award more than $4 million dollars in total per biennium for Expanded Reading Opportunities Grants.

(4) School that receive funds under the grant program may not use those funds for administrative costs.

Stat. Auth.: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Stats. Implemented: 2013 OL Ch. 660, Sec. 1 (Enrolled HB 3232)
Hist.: ODE 19-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 31-2013, f. & cert. ef. 12-18-13

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Rule Caption: Establishes a Dual-Language/Two-Way Bilingual Grant Program
Adm. Order No.: ODE 32-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 581-018-0200, 581-018-0205, 581-018-0210, 581-018-0215, 581-018-0220, 581-018-0225
Subject: HB 3233 established a Network of Quality Teaching and Learning, and provides funding for a comprehensive system of support for educators that creates a culture of leadership, professionalism, continuous improvement and excellence for teachers and leaders across the P-20 system. One of the purposes of the network is to distribute funding to school districts, nonprofit organizations and postsecondary institutions for the purpose of closing the achievement gaps by providing and improving the effectiveness of professional development, implementing data-driven decision making, supporting practice communities and implementing culturally competent practices.

The rules establish a Dual-Language/Two-Way Bilingual Grant program as one of the methods to address this specific direction in HB 3233. The purpose of the grant program is to support school districts and public charter schools to design, implement and improve dual language/two-way bilingual programs.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0200
Definitions

The following definitions apply to OAR 581-018-0200 to 581-018-0225:

(1) "Dual-Language/Two-Way Bilingual Grant" means the Grant established in OAR 581-018-0205 to implement section 1(3)(f), chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233).

(2) "Dual-Language" means instruction in English and a targeted language.

(3) "Two-Way Bilingual" means two-way programs that have the demographics to invite native-English-speaking students to join their bilingual and English Language Learner peers in an integrated bilingual classroom.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 17-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 32-2013, f. & cert. ef. 12-18-13

581-018-0205
Establishment

(1) There is established the Dual-Language/Two-Way Bilingual Grant to support school districts and public charter schools to design, implement and improve dual language/two-way bilingual programs. The programs assist students in becoming academically proficient in two languages by providing research based enrichment schooling that closes the academic achievement gap in English and continues to develop a student's first language.

(2) Subject to available funds, the grants will be awarded for three years and in three phases:

(a) Planning phase.

(b) Implementation phase.

(c) Program evaluation phase.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 17-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 32-2013, f. & cert. ef. 12-18-13

581-018-0210
Eligibility

(1) The following entities shall be eligible to receive the Dual-Language/Two-Way Bilingual Grant:

(a) School districts;

(b) Public charter schools; and

(c) Consortium of school districts, public charter schools, non-profit organizations or post-secondary institutions. Each consortium must have at least one school district or public charter school as a member.

(2) A single grant proposal may include more than one eligible applicant, but the fiscal agent must be one of the eligible applicants identified in subsection (1)(a) or (b) of this rule.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 17-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 32-2013, f. & cert. ef. 12-18-13

581-018-0215
Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted each biennium for which the Dual-Language/Two-Way Bilingual grant funds are available. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) Grants shall be awarded based on the following criteria:

(a) Whether the grant application identifies how the funds will be used to reach the 40-40-20 goal and improve education outcomes identified by the Oregon Education Investment Board as contained in the achievement compact of the applicant.

(b) Whether the grant application demonstrates school district or public charter school support, commitment and readiness to design a Dual Language/Two-Way Bilingual Grant program.

(3) The Department shall give priority to proposals that meet the minimum criteria and:

(a) Provide a sustainability plan to continue the program for at least two additional years after the third year of the grant.

(b) The extent to which the applicant clearly documents its capacity to implement and carry out the Dual-Language/Two-Way Bilingual program, including demonstrated intentions to work in a collaborative way with other grantees.

(4) The Department of Education shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Geographic location of district to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Districts who have achievement gap between subgroup populations;

(c) Districts who have a high level of students who are economically disadvantaged; and

(d) Give preference to entities that have demonstrated success in improving student outcomes.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 17-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 32-2013, f. & cert. ef. 12-18-13

581-018-0220
Funding

(1) Each grantee may receive up to $120,000 which shall be awarded as following:

(a) 25 percent of the grant amount in year one for the planning phase.

(b) 50 percent of the grant amount in year two for the implementation phase.

(c) 25 percent of the grant amount in year two for year three for the program evaluation phase.

(2) Grantees shall use funds received for the planning phase to engage administrators, teachers, parents and the community in the planning of the program with a focus on building school and school district capacity to sustain efforts.

(3) Grantees must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 17-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 32-2013, f. & cert. ef. 12-18-13

581-018-0225
Reporting

The Oregon Department of Education shall provide to grant recipients a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final request for funds.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 17-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 32-2013, f. & cert. ef. 12-18-13

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Rule Caption: Modifies school district collaboration grant rules
Adm. Order No.: ODE 33-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 581-018-0100, 581-018-0105, 581-018-0110, 581-018-0115, 581-018-0120, 581-018-0125
Subject: The rules implement the collaboration grant as part of the Network for Quality Teaching and Learning established by HB 3233. The rules specify eligibility, award criteria, funding amounts and reporting.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0100
Definitions

The following definitions apply to 581-018-0100 to 581-018-0125:

(1) "Blueprints" means a description of the components of a school district's strategies for implementation and integration of the four areas: career pathways, evaluation processes, compensation models and enhanced professional development for teachers and administrators.

(2) "Career pathways" means descriptions of professional career achievement and advancement (e.g., Novice, Emerging Professional, Master Teacher) or specialized roles (e.g., Mentor Teacher, Master Teacher), and opportunities to increase professional responsibilities.

(3) "Compensation models" means alternative salary advancement systems based on a variety of elements aside from seniority (e.g., weighed systems based on professional involvement, increased expertise).

(4) "Design grants" means grants intended for districts or consortia of districts to create blueprints for implementation that integrate the four areas

of: career pathways, evaluation processes, compensation models and enhanced professional development.

(5) "Enhanced professional development" means professional learning opportunities that are ongoing, collaborative in nature, and aligned to the needs of educators identified through the evaluation process and student data.

(6) "Evaluation processes" means an educator performance evaluation system based on collaboration, that includes, but is not limited to standards of professional practice, four-level rubrics, multiple measures of professional practice, professional responsibilities and student learning and growth, an evaluation and growth cycle and professional learning aligned to student and educator performance data.

(7) "Implementation Grants" means grants intended for districts or consortia of districts to implement their blueprint designs.

Stat. Auth.: ORS 329.838
Stats. Implemented: ORS 329.838
Hist.: ODE 18-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 33-2013, f. & cert. ef. 12-18-13

581-018-0105
Eligibility

(1) The following shall be eligible to receive a School District Collaboration Grant:

(a) School districts;

(b) Consortium of school districts.

(2) To be eligible for a design grant:

(a) Districts must not have received a federal Teacher Incentive Fund (TIF) grant; and

(b) Districts must not be receiving CLASS grant dollars during the school year for which the funds received under the application for a design grant would be expended.

(3) To be eligible for an implementation grant:

(a) Districts must not have received a federal Teacher Incentive Fund (TIF) grant; and

(b) Districts must not have received three or more years of implementation funding from either the Creative Leadership Achieves Student Success (CLASS) or the District Collaboration Fund; and

(c) Districts must not be receiving CLASS grant dollars during the school year for which the funds received under the application for a design or implementation grant would be expended.

Stat. Auth.: ORS 329.838
Stats. Implemented: ORS 329.838
Hist.: ODE 18-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 33-2013, f. & cert. ef. 12-18-13

581-018-0110
Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted each biennium for when District Implementation and Design Collaboration grant funds are available. The Department shall notify eligible applicants of the proposal process and the due dates, and make available necessary guidelines and application forms.

(2) All proposals must comply with the requirements of ORS 329.838, section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement those laws. Grants shall be awarded based on whether the grant application identifies how the funds will be used to improve education outcomes identified by the Oregon Investment Board, contained in achievement compact or set forth in ORS 351.009.

(3) Prior to applying for a grant, the school district must receive the approval to apply for the grant from:

(a) The exclusive bargaining representative for the teachers of the school districts, or if the teachers are not represented by an exclusive bargaining representative, from the teachers of the school districts;

(b) The chairperson of the school district board; and

(c) The superintendent of the school district.

(4) Districts shall establish a collaborative leadership team to oversee the design and implementation process. The collaborative leadership team shall include the exclusive bargaining representative for the teachers of the school district or, if the teachers are not represented by an exclusive bargaining representative, the teachers of the school district.

(5) Districts shall display readiness and eligibility for an implementation grant by submitting detailed blueprints, developed collaboratively by teachers, administrators, and the teacher bargaining unit, in the four required areas:

(a) Career pathways processes for teachers and administrators;

(b) Evaluation processes for teachers and administrators;

(c) Compensation models for teachers and administrators, and

(d) Enhanced professional development opportunities for teachers and administrators.

(6) The Department of Education shall award design and implementation grants based on the evaluation of the district application, eligibility criteria, and the following considerations:

(a) Geographic location of districts to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Districts that have an achievement gap as defined in 581-018-0005;

(c) Districts that have a high level of economically disadvantaged students as defined in 581-018-0005.

Stat. Auth.: ORS 329.838
Stats. Implemented: ORS 329.838
Hist.: ODE 18-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 33-2013, f. & cert. ef. 12-18-13

581-018-0115
Design Grant Funding

(1) The Department of Education shall determine for each fiscal year the portion of the funds available for the School District Collaboration Grant Program that will be distributed as design grants.

(2) Based on the review of grant applications, the Department may not award a design grant to each district that is less than $20,000 or exceeds $50,000.

Stat. Auth.: ORS 329.838
Stats. Implemented: ORS 329.838
Hist.: ODE 18-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 33-2013, f. & cert. ef. 12-18-13

581-018-0120
Implementation Grant Funding

(1) The Department of Education shall determine for each fiscal year the total amount available for distribution to school districts as implementation grants.

(2) The Department of Education shall determine the grant amount to be awarded to each district that is eligible to receive a grant based on the following formula:

Grant Amount = school district ADMw x (the total amount available for distribution for an implementation grant in a fiscal year through the School District Collaboration Grant Program / the total ADMw of the School Districts that receive an implementation grant for the fiscal year.

Stat. Auth.: ORS 329.838
Stats. Implemented: ORS 329.838
Hist.: ODE 18-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 33-2013, f. & cert. ef. 12-18-13

581-018-0125
Reporting

(1) Districts shall meet timelines, performance measures and other requirements related to the accumulation and evaluation of data collected as required by the Oregon Investment Board and the Oregon Department of Education.

(2) Districts shall submit interim and final grant reports describing progress toward grant requirements and goals as defined by the Department of Education.

(3) Districts shall share lessons learned and school district models on the design and implementation of the four blueprint areas.

(4) The Department of Education shall disseminate best practices from the grant districts to districts statewide.

Stat. Auth.: ORS 329.838
Stats. Implemented: ORS 329.838
Hist.: ODE 18-2013(Temp), f. & cert. ef. 8-15-13 thru 2-11-14; ODE 33-2013, f. & cert. ef. 12-18-13

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Rule Caption: Establish Closing the Achievement Gap for African American Students Grant
Adm. Order No.: ODE 34-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 581-018-0250, 581-018-0255, 581-018-0260, 581-018-0265, 581-018-0270, 581-018-0275
Subject: Establishes the Closing the Achievement Gap for African American Students Grant Program for nonprofit organizations as part of the Network for Quality Teaching and Learning. Specifies criteria, purpose and reporting.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0250
Definitions

The following definitions apply to OAR 581-018-0205 to 581-018-0275:

(1) "Achievement gap" means the research-based gap in achievement that often exists between students who are economically disadvantaged, students learning English as a second language and students who are African American, Hispanic or Native American and their peers.

(2) "African American" means persons from African descent living in America; also referred to in census data as "Black."

(3) "Closing the Achievement Gap for African American Students Grant" means the Grant established in OAR 581-018-0205 to implement section 1(3)(f), chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233).

(4) "Non-profit organization" means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

(b) Qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 24-2013(Temp), f. & cert. ef. 10-18-13 thru 4-16-14; ODE 34-2013, f. & cert. ef. 12-18-13

581-018-0255
Establishment

(1) There is established the Closing the Achievement Gap for African American Students Grant to support nonprofit organizations who are working to design, implement, improve, expand, or otherwise revise programming and services for African American students. The programs and services assist African American students by offering unique opportunities to make strong home, school, and community connections in an effort to increase academic achievement and personal well-being. Research suggests that community organizations are positioned to provide targeted support to learners who are sometimes neglected in traditional school systems.

(2) Subject to available funds, the grants will be awarded for one year based on a detailed description of proposed programming or services. This can include but is not limited to:

(a) Planning phase.

(b) Implementation phase.

(c) Program evaluation phase.

(3) The purpose of the grant program is to provide funds to non-profit organizations that understand the unique needs of African American students, who have the potential to become exemplar programs and who can create collaborative practices around:

(a) Strengthening ties between home, school, and community;

(b) Creating space for active parent participation;

(c) Innovative programming that focuses on closing achievement gaps for African American students;

(d) Training or professional development for parents, educators, and interested community entities on closing achievement gaps for African American students;

(e) Literacy initiatives for closing achievement gaps for African American students; and

(f) College and career readiness and transition to college or career.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 24-2013(Temp), f. & cert. ef. 10-18-13 thru 4-16-14; ODE 34-2013, f. & cert. ef. 12-18-13

581-018-0260
Eligibility

(1) To be eligible to receive the Closing the Achievement Gap for African American Students Grant an organization must:

(a) Be a non-profit organizations; and

(b) Provide data to the Department of Education documenting that the majority of the students served through programming and resources by the organization are African American.

(2) A single grant proposal may include more than one eligible applicant, but the fiscal agent must be one of the eligible applicants identified in subsection (1) of this rule.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 24-2013(Temp), f. & cert. ef. 10-18-13 thru 4-16-14; ODE 34-2013, f. & cert. ef. 12-18-13

581-018-0265
Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Closing the Achievement Gap for African American Students Grant funds. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) Grants shall be awarded based on the following criteria:

(a) Whether the grant application identifies how the funds will be used to reach the 40-40-20 goal and improve education outcomes for African American students as identified by the Oregon Education Investment Board Equity Lens document.

(b) Whether the grant applicant demonstrates support, commitment and readiness to design or revise programming specifically for African American students.

(3) The Department shall give priority to proposals that meet the minimum criteria and:

(a) Provide a sustainability plan to continue the program for at least two years after the grant funding has ended.

(b) The extent to which the applicant clearly documents its capacity to implement and carry out programming and services for closing the achievement gap for African American student populations, including demonstrated intentions to work in a collaborative way with school districts, other non-profits or post-secondary institutions.

(4) The Department of Education shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Geographic location of the non-profit organization to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Organizations who have documented evidence of serving a primarily African American student population;

(c) Organizations who have a high level of students who are economically disadvantaged; and

(d) Give preference to entities that have demonstrated success in improving student outcomes.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 24-2013(Temp), f. & cert. ef. 10-18-13 thru 4-16-14; ODE 34-2013, f. & cert. ef. 12-18-13

581-018-0270
Funding

(1) Each grantee may receive up to $100,000 which shall be awarded during the following phases based on a detailed budget narrative and budget template:

(a) Planning phase.

(b) Implementation phase.

(c) Evaluation phase.

(2) Grantees shall use funds received for the planning, implementation, and evaluation phrases of the grant for activities outlined in the request for proposal.

(3) Grantees must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 24-2013(Temp), f. & cert. ef. 10-18-13 thru 4-16-14; ODE 34-2013, f. & cert. ef. 12-18-13

581-018-0275
Reporting

The Oregon Department of Education shall provide to grant recipients a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final request for funds.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Stats. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB 3233)
Hist.: ODE 24-2013(Temp), f. & cert. ef. 10-18-13 thru 4-16-14; ODE 34-2013, f. & cert. ef. 12-18-13

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Rule Caption: Public charter school renewal process
Adm. Order No.: ODE 35-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Amended: 581-020-0359

Subject: Modifies renewal timeline to conform with recent legislation. Directs that charter remains effective until new charter is negotiated.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-020-0359
Process to Renew Charter

(1) A public charter school governing body must request renewal of the charter (contract) by the sponsor in writing at least 180 days before expiration of the charter.

(2) When a sponsor has received a written request from a public charter school governing body, the sponsor must schedule and hold a public hearing on the renewal request within 45 days from the receipt of the request for renewal.

(3) Within 30 days after the public hearing, the sponsor must either:

(a) Renew the charter; or

(b) State in writing the reasons for denying the renewal of the charter.

(4)(a) A sponsor must base its decision to renew or not renew a charter on a good faith evaluation of whether the charter school:

(A) Is in compliance with state and federal laws;

(B) Is in compliance with the terms of the prior charter;

(C) Is meeting or working toward meeting the student performance goals and agreements specified in the charter or any other written agreements between the sponsor and the public charter school governing body;

(D) Is fiscally stable and evidence that a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter was used; and

(E) Is in compliance with any renewal criteria specified in the previous charter, if any.

(b) As used in this section, "good faith evaluation" means an evaluation of all criteria required by this section resulting in a conclusion that a reasonable person would come to who is informed of the law and the facts before that person.

(5) The sponsor must base the evaluation described in subsection (4) of this rule primarily on a review of the public charter school's annual performance reports, annual audit of accounts and annual site visit and review as required by ORS 338.095 and any other information mutually agreed upon by the public charter school governing body and the sponsor.

(6)(a) If the sponsor renews the charter, the sponsor and public charter school governing body shall negotiate in good faith a new charter within 90 days after the date on which the sponsor approved the renewal of the charter, unless both parties agree to an extension of time.

(b) If the sponsor and the charter school governing body have not executed a new charter agreement within 90 days after the date on which the sponsor approved the renewal of the charter or an alternative date agreed to by both parties, the expiring charter shall remain in effect until a new charter is negotiated.

(c) As used in this section, "negotiate in good faith" means to negotiate with an honest exchange of the facts of the matters under consideration with a view to obtaining agreement of each of the parties involved.

(7) If the sponsor does not renew the charter, the public charter school governing body may address the reasons for nonrenewal and resubmit its request to the sponsor within 30 days after the date on which the sponsor notified the public charter school governing body of the decision not to renew the charter. If a sponsor receives a revised request under this section, the sponsor shall review the request using the process required by sections (2) to (6) of this rule. A public charter school governing board may only submit a revised request once under this section unless otherwise specified by the sponsor.

(8) Notwithstanding sections (1) to (7) of this rule, a sponsor and a public charter school governing body may agree in the charter of the school to a timeline for renewing the charter that is different from the timeline required by sections (1) to (7) of this rule.

(9) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to determine if the charter of a school sponsored by the state board should be renewed. The Superintendent or designee shall follow the procedures and timelines required by this rule. This delegation to the Superintendent or designee includes, but is not limited to:

(a) Determining the form, contents, and timelines of the renewal;

(b) Determining the records required for determining the renewal and ordering the production of those records from the public charter school governing body and establishing timelines for the production of those records;

(c) Requiring the charter school governing body to respond to written or oral inquiries related to the sponsorship;

(d) Delegating the sponsorship function to Department of Education staff or a hearings officer to conduct a hearing and to issue a proposed order; and

(e) Issuing a final order.

(10) If the sponsor does not renew the charter based on the revised request for renewal submitted under section (7) of this rule, the public charter school governing body may:

(a) If the sponsor is a school district, appeal the decision of the sponsor to the State Board of Education under OAR 581-020-0361.

(b) If the sponsor is the State Board of Education, seek judicial review of the final order under ORS 183.484.

Stat. Auth.: ORS 338.025
Stats.. Implemented: ORS 338.065
Hist.: ODE 9-2008, f. & cert. ef. 3-21-08; ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10; Administrative correction 6-25-10; ODE 11-2010, f. & cert. ef. 6-30-10; ODE 35-2013, f. & cert. ef. 12-18-13

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Rule Caption: Establishes a Proficiency-Based Teaching and Learning Grant
Adm. Order No.: ODE 36-2013(Temp)
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13 thru 6-13-14
Notice Publication Date:
Rules Adopted: 581-018-0430, 581-018-0433, 581-018-0436, 581-018-0439, 581-018-0442
Subject: Implement provisions of HB 3233 by establishing a Proficiency-Based Teaching and Learning Grant which will be available to school districts and nonprofits working with school districts. The goal of the grants is to support one to four demonstration sites.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0430
Definitions

The following definitions apply to OAR 581-018-0430 to 581-018-0442:

(1) "Non-profit organization" means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

(b) Qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

(2) "Proficiency-based teaching and learning" means a practice that is student-centered and based upon several key principles:

(a) Students learn in a personalized environment and advance upon demonstrated mastery of state, industry, or national standards;

(b) Measurable learning objectives are explicit and empower students;

(c) Student assessment is meaningful and a positive learning experience; and

(d) Students receive rapid, differentiated support and learning outcomes including applied learning.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 36-2013(Temp), f. & cert. ef. 12-18-13 thru 6-13-14

581-018-0433
Establishment

(1) The Proficiency-Based Teaching and Learning Grant is established to support proficiency-based teaching and learning demonstration sites. The purposes of the grant are:

(a) To inform proficiency-based teaching and learning practices in other school sites; and

(b) To develop new proficiency-based teaching and learning school sites in underserved regions in the state.

(2) Grants will fund eligible entities committed to developing sustainable proficiency-based teaching and learning programs in a school district or consortia of school districts with a strong commitment to improving student achievement and to providing demonstration sites for proficiency-based teaching and learning in the state.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 36-2013(Temp), f. & cert. ef. 12-18-13 thru 6-13-14

581-018-0436
Eligibility

(1) The following entities shall be eligible to receive Proficiency-Based Teaching and Learning Grants:

(a) School districts.

(b) Non-profit organizations working with at least one school district.

(2) A single grant proposal may include more than one eligible applicant and may also include other entities such as education service districts or post-secondary institutions, but the fiscal agent must be one of the eligible applicants identified in subsection (1) of this rule.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 36-2013(Temp), f. & cert. ef. 12-18-13 thru 6-13-14

581-018-0439
Implementation of Grant Funding

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Proficiency-Based Teaching and Learning Grants. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) The Department may award up to two grants. Each grant shall support one to four demonstration sites within one or more school districts.

(3) To receive a grant an applicant must demonstrate a high level of support from school district boards and local education associations in all participating districts.

(4) The Department shall determine the amount of each grant based on the funds available for the grants and each grant application. The Department of shall allocate funds for the grant program based on an evaluation of the grant application and whether the applicant has:

(a) Demonstrated a focus on district, state, and Common Core standards as the learning targets for which students will be held accountable;

(b) Defined levels of proficiency laid out on a learning continuum that is used to identify baseline ability and that reflects a range of continuous learning;

(c) Has experience and training expertise in coaching and supporting schools in proficiency or will utilize another entity with this expertise as a sub-contractor and partner;

(d) Identified sites in the application that are willing to serve as a demonstration sites for other school districts and a source of evidence of best practices and evidence-based models; and

(e) A plan that includes a strong outreach to parent and business communities to insure that those groups understand the shift to standards at a school site and what it means to support students in reaching proficient levels of knowledge and skills.

(5) The Department of Education shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Geographic location of district to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Districts that have achievement gaps between subgroup populations; and

(c) Districts that have a high level of students who are economically disadvantaged.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 36-2013(Temp), f. & cert. ef. 12-18-13 thru 6-13-14

581-018-0442
Timelines and Performance Measures

The Oregon Department of Education shall provide award recipients a template for interim and final grant reports. Recipients are required to submit the interim and final report prior to receiving their final request for funds.

Stat. Auth.: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Stats. Implemented: Sect. 1, ch. 661, OL 2013 (Enrolled HB 3233)
Hist.: ODE 36-2013(Temp), f. & cert. ef. 12-18-13 thru 6-13-14

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Rule Caption: Modifies small school weighting for purposes of State School Fund calculations
Adm. Order No.: ODE 37-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Amended: 581-023-0015
Subject: Modifies rule relating to small school weighting for purposes of State School Fund calculation. Rule amendment clarifies that there is remote small elementary school weighting and small high school weighting for State School Fund calculation. Implements SB 453 (2011).
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-023-0015
Additional Remote Small Elementary School and Small High School Weightings

(1) Qualifications for remote small elementary school or small high school status for school districts organized in a manner other than 1 through 8 and 9 through 12:

(a) When grades 1–12 are located in the same building or in adjacent buildings, the Department of Education shall consider these schools to be organized on a 1–8 and 9–12 basis for remote small elementary school and small high school correction purposes;

(b) In school districts where grades 1–12 or portions thereof are located in geographically separated buildings, the Department of Education shall consider these schools to be organized for remote small elementary school and small high school correction purposes in the same manner as the school district boards considers these schools to be organized.

(2) The Department shall measure distances for remote small elementary school qualification and calculation of additional weighted average daily membership based on the closest, reasonable and prudent access point of an elementary school to the closest, reasonable and prudent access point of the nearest elementary school over the shortest practicable route on maintained public roadways.

(3) The additional weighting for each school qualifying as a remote small elementary school or a small high school shall be calculated based on the applicable formula stated in ORS 327.077.

(4) Questions regarding the administration of the remote small elementary school weighting and small high school weighting not specifically addressed by this rule shall be resolved by the State Superintendent of Public Instruction and the Superintendent's determination shall be final.

(5) The provisions of this administrative rule shall apply to the apportionment of the State School Fund for 2011–12 and subsequent years.

Stat. Auth.: ORS 327.125
Stats. Implemented: ORS 327.077 & 327.125
Hist.: 1EB 118, f. 11-28-67, ef. 12-25-67; 1EB 134, f. 6-26-72, ef. 7-15-72; 1EB 211, f. 1-19-76, ef. 2-11-76; 1EB 267, f. & ef. 11-8-77; 1EB 42-1978, f. 10-31-78, ef. 11-1-78; 1EB 1-1979, f. & ef. 1-30-79; 1EB 11-1980, f. & ef. 5-5-80; 1EB 10-1982, f. & ef. 3-24-82; 1EB 20-1982, f. & ef. 11-23-82; EB 6-1996, f. & cert. ef. 4-15-96; ODE 37-2013, f. & cert. ef. 12-18-13

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Rule Caption: School District Continuous Improvement Plans
Adm. Order No.: ODE 38-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Amended: 581-022-0606
Subject: The rule amendments change the frequency of the submission of district improvement plans. The amendments direct districts to submit once every three years unless there are substantial changes to the districts. The rules also add library plans to the goals.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-0606
District Continuous Improvement Plan

(1) For the purposes of OAR 581-022-0606 the following definitions apply:

(a) "Aligned with standards" means that the taught curriculum (what teachers teach), the learned curriculum (what students learn), and the assessed curriculum (what students are tested on) as identified through state and national academic standards do not deviate significantly one from another. This alignment includes four components:

(A) Content match — topical coverage, or comprehensiveness and level of detail

(B) Depth match — level of difficulty, or cognitive complexity

(C) Emphasis match — the relative duration of the instruction about each topic/standard within a subject

(D) Performance match — the type of performance required to demonstrate proficiency of the standard

(b) "Data-driven" means the use of information available from a high quality data system to focus decisions regarding curriculum, instruction,

staff assignment, and staff development to promote student achievement through a planned, systemic program improvement effort.

(c) "Family and community engagement" means a system of shared responsibility in which schools and other community agencies and organizations are committed to engaging families in meaningful and culturally respectful ways while families are committed to actively supporting their children's learning and development.

(d) "High quality data system" means a method by which teachers and administrators have access to data needed for instructional and administrative decision-making, one that makes available to the public appropriate data content and displays and provides for regular updates to the data, maintenance and upgrading of the system, and training for key personnel on use and maintenance. The collection and use of data in such a system would include district-, school-, and student-level data describing but not limited to:

(A) Instruction;

(B) Accountability;

(C) Demographics;

(D) Achievement; and

(E) Assessment.

(e) "High quality instructional programs" means that teachers teach knowledge and skills through the use of an appropriate variety of instructional strategies reflecting best practice and based on state/national standards and assessments that effectively measure what the standards require. Such instruction is not universal but is situational based on instructional context.

(f) "Long-term professional development plans" means teacher training reflecting best practice as defined by national standards related to content, process, and context. Such training supports:

(A) Continuing advancement of professional collaboration;

(B) Ongoing, job-embedded experiences,

(C) Standards-based instruction, and

(D) Continual, guided reflection on school/student data a part of professional learning.

(g) "Rigorous curriculum" means multiple courses of study any one of which will prepare students to successfully meet the Oregon diploma requirements. These courses are cognitively demanding and challenging to students as those students apply the fundamental concepts and skills from various disciplines to real world problems in complex and open ended situations.

(h) "Safe educational environment" means a healthy, positive school climate free of drug use, gangs, violence, intimidation, fear, and shaming, ensuring the physical and emotional well-being and academic and social growth of every student.

(i) "Service plans for students" means a system of planned services outlining student educational activities, supporting students in meeting expectations for one or more content areas and continuing to academically challenge students who have exceeded expectations in one or more content areas.

(j) "Short-term professional development plans" means a component of a long term professional development plan with a direct connection with one or more of the following–individual continuing professional development plans; board, district or school goals; state certification criteria; or other regulatory mandates. Such plans may be responsive to emerging needs not yet addressed in long-term professional development plans.

(k) "Staff leadership development" means practices, policies, and procedures that create shared leadership opportunities and empower teacher participation in setting and achieving school goals and policies.

(l) "Strong school library program" means a planned effort to ensure the instruction of students, school staff, and the broader learning community in library skills, information literacy, and educational technology; such a program promotes a rich array of literacy experiences supporting life-long reading; facilitates collaboration in lesson planning and instruction; ensures equitable access to library resources and licensed school librarians; and develops and manages current, plentiful, and diverse library collections of print and electronic resources that support classroom curricula and student interests.

(2) Each school district shall conduct self-evaluations in order to develop and update their local district continuous improvement plans once every three years. Except as provided in subsection (3) of this rule, the department may not require school districts or schools to conduct self-evaluations or to update their local district continuous improvement plans more frequently than biennially.

(3) Each school district shall:

(a) Submit its local district continuous improvement plan to the Department of Education once every three years unless there are substantial changes.

(b) Notify the Department and update its local district continuous improvement plan when there has been a substantial changes.

(c) Substantial change is defined as changes to:

(A) School or district improvement status under state or federal law;

(B) Student academic achievement;

(C) Student demographics (including changes in excess of 10% in identified subgroups);

(D) Instructional staffing (either counts of personnel or changes in individual staff);

(E) Financial resources available to the district; or

(F) The district's goals for student achievement.

(4) The self-evaluation process shall involve the public in the setting of local goals. The school district shall ensure that representatives from the demographic groups of their school population are invited to participate in the development of local district continuous improvement plans to achieve the goals.

(5) As part of setting local goals, school districts shall undertake a communications process that involves parents, students, teachers, school employees and community representatives to explain and discuss the local goals and their relationship to programs in the continuous improvement plan.

(6) At the request of the school district, department staff shall provide ongoing technical assistance in the development and implementation of the local district continuous improvement plan.

(7) The local district continuous improvement plan shall include:

(a) A rigorous curriculum aligned with state standards;

(b) High-quality instructional programs;

(c) Short-term and long-term professional development plans;

(d) Programs and policies to achieve a safe educational environment;

(e) A plan for family and community engagement;

(f) Staff leadership development;

(g) High-quality data systems;

(h) Improvement planning that is data-driven;

(i) Education service plans for students who have or have not exceeded all of the academic content standards;

(j) A strong school library program;

(k) A review of demographics, student performance, staff characteristics and student access to, and use of, educational opportunities; and

(l) District efforts to achieve local efficiencies and efforts to make better use of resources.

(8) Each school district shall annually review and report test results and progress on the district improvement plan to the community.

(9) Each school district shall maintain copies of the school and district improvement plans as a public record.

(10) Each school district shall submit the district improvement plan to the Department of Education when requested.

Stat. Auth.: ORS 326.051 & 329.095

Stats. Implemented: ORS 326.051 & 329.095

Hist.: 1EB 19-1980, f. 6-17-80, ef. as follows: Section (1) 9-1-80; Sections (2), (4), (5) 9-1-81; Section (3) 7-1-80; 1EB 26-1980, f. 11-7-80, ef. as follows: Sections (1) and (3) 9-1-81; Sections (2), (4) and (5) 9-1-82; 1EB 21-1986, f. & ef. 7-2-86; EB 38-1990, f. & cert. ef. 7-10-90; EB 15-1996, f. & cert. ef. 9-26-96; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 38-2013, f. & cert. ef. 12-18-13

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Rule Caption: Modifies rules relating to eligibility for regional educational services for children with disabilities.
Adm. Order No.: ODE 39-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Amended: 581-015-2540, 581-015-2550, 581-015-2555
Subject: Allows more children with orthopedic impairments to be eligible for regional education services by removing requirement that child must be severely orthopedically impaired.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-015-2540
Definitions for Regional Programs

The following definitions apply to OAR 581-015-2545 through 581-015-2565 unless otherwise indicated by the context.

(1) "Administrative Unit" means the school district or ESD within each region chosen to operate the regional program through contract with the Department of Education.

(2) "Consultation services" means technical assistance to or conferring with the local education agency and staff or early intervention/early childhood special education providers and staff or families to assist them to provide services to eligible children.

(3) "Department" means the Oregon Department of Education.

(4) "Direct services" means services provided to the child by regional specialists.

(5) "Eligible children" means children with low-incidence, high need disabilities who need the services of the regional program.

(6) "Low incidence, high need disabilities" means one or more of the following categories under OAR 581-015-2130 through 581-015-2180: autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, and vision impairment.

(7) "Regional program" means direct or consultative services funded through the Department provided on a single or multi-county basis that assist school districts and early intervention/ early childhood special education providers in meeting the unique needs of eligible children.

(8) "Services" means early intervention services, early childhood special education and/or related services, and special education and/or related services, as defined in OAR 581-015-2700 and 581-015-2000, respectively.

(9) "Superintendent" means the State Superintendent of Public Instruction.

Stat. Auth.: ORS 343.236
Stats. Implemented: ORS 343.236
Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0291, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 39-2013, f. & cert. ef. 12-18-13

581-015-2550
Eligibility for Regional Services

(1) The determination of a child's eligibility for services as a child with autism spectrum disorder, deafblindness, hearing impairment, traumatic brain injury, orthopedic impairment, or vision impairment is the responsibility of:

(a) The resident school district for children who are at the age of eligibility for kindergarten through age 21 in accordance with OAR 581-015-2130 through 581-015-2180; or

(b) The designated referral and evaluation agency for children who are at the age of eligibility for:

(A) Early intervention, from birth until the age of three in accordance with OAR 581-015-2780; and

(B) Early childhood special education, from the age of three until eligible for kindergarten in accordance with OAR 581-015-2795.

(2) Regional programs may assist the local district or designated referral and evaluation agency in evaluating and/or determining eligibility when the local district or the designated referral and evaluation agency does not have a person trained and experienced in the area of the suspected disability(ies).

(3) A child who is found eligible for services as a child with autism spectrum disorder, deafblindness, hearing impairment, traumatic brain injury, or vision impairment may be eligible for regional services if the child needs regional program services.

(4) A child who is found eligible for services as a child with orthopedic impairment may be eligible for regional services if the child is determined to be orthopedically impaired by his/her eligibility team based on eligibility tool(s) approved by the Department, and needs regional program services.

Stat. Auth.: ORS 343.236
Stats. Implemented: ORS 343.236
Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0293, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 39-2013, f. & cert. ef. 12-18-13

581-015-2555
Referral for Regional Services

In referring a child to the regional program, the district or early intervention/early childhood special education program must provide the regional coordinator with the following information:

(1) A request for regional services;

(2) A statement of a child's eligibility in one of the following categories, if previously determined: autism spectrum disorder; deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, vision impairment, and;

(3) Additional information as the regional coordinator or other regional program representative may request.

Stat. Auth.: ORS 343.236
Stats. Implemented: ORS 343.236
Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0294, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 39-2013, f. & cert. ef. 12-18-13

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Oregon Department of Education, Early Learning Division
Chapter 414

Rule Caption: Procedural Rules for Early Learning Council
Adm. Order No.: ELD 1-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14
Notice Publication Date: 11-1-2013
Rules Adopted: 414-002-0005, 414-002-0010
Subject: The rules adopt the Attorney General's model rules of procedure to govern future rule adoption processes by the Early Learning Council. The rules also establish the notice requirements for adoption of rules for the ELC.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-002-0005
Notice of Proposed Rule

(1) Before permanently adopting, amending or repealing any rule, the Early Learning Council shall give notice of the proposed adoption, amendment or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule to be adopted;

(b) By mailing or e-mailing, at least 28 days before the effective date of the rule, a copy of the notice to persons on the Council's mailing list established pursuant to ORS 183.335(8);

(c) By mailing or e-mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective day of the rule; and,

(d) By mailing or e-mailing a copy of the notice to persons, organizations and publications identified by the Council and established educational, student and parent organizations that have submitted mailing or e-mailing addresses to the Council.

(2) Persons who wish to be placed on the Council's mailing or e-mailing list may request in writing or by e-mail that the Council send to the person copies of its notice of proposed rulemaking.

(3) The Council may update the mailing and e-mailing lists described in this rule annually by requesting persons to confirm that they wish to remain on the lists. If a person does not respond to a request for confirmation within 28 days of the date the Council sends the request, the Council will remove the person from the mailing and e-mailing lists. Any person removed from the mailing or e-mailing lists will be returned to the mailing or e-mailing list upon request, provided that the person provides a mailing address or e-mailing address to which notice may be sent.

Stat. Auth.: ORS 183.335 & 183.341(4)
Stats. Implemented: ORS 183.335
Hist.: ELD 2-2013(Temp), f. & cert. ef. 8-16-13 thru 2-12-14; ELD 3-2013(Temp), f. & cert. ef. 9-9-13 thru 3-5-14; ELD 1-2014, f. & cert. ef. 1-15-14

414-002-0010
Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Early Learning Council adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2012.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Oregon Education Investment Council.]
Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.34
Hist.: ELD 2-2013(Temp), f. & cert. ef. 8-16-13 thru 2-12-14; ELD 3-2013(Temp), f. & cert. ef. 9-9-13 thru 3-5-14; ELD 1-2014, f. & cert. ef. 1-15-14

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Rule Caption: Formation of Early Learning Hubs.
Adm. Order No.: ELD 2-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14
Notice Publication Date: 11-1-2013
Rules Adopted: 414-900-0005, 414-900-0010, 414-900-0015, 414-900-0020
Subject: Establish Early Learning Hubs to coordinate services for children ages 0–6 in specific geographic areas or communities of interest.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-900-0005

Applicability of Rules

(1) OAR 414-900-0005 through 414-900-0020 set forth the purpose and functions of Early Learning Hubs (Hubs).

(2) OAR 414-900-0005 through 414-900-0020 set forth the criteria used by the Early Learning Council (ELC) to select Hubs.

Stat. Auth.: ORS 417.728 & 417.827
Stat. Implemented: 2013 OL Ch. 728, Sec. 16 (Enrolled HB 2013)
Hist.: ELD 1-2013(Temp), f. & cert. ef. 8-16-13 thru 2-12-14; ELD 4-2013(Temp), f. & cert. ef. 9-9-13 thru 3-5-14; ELD 2-2014, f. & cert. ef. 1-15-14

414-900-0010

Definitions

(1) "Administrative Overhead" means any dollar that is not spent directly on services for children or on preparing and evaluating services for children. This is the cost of operating administrative functions within the Hub and its subcontractors and may include staff duties such as payroll processing and data entry and non-program related costs including space, supplies and phones.

(2) "At Poverty Level" means at 100% of federal poverty guidelines as adopted by the United States Department of Health and Human Service.

(3) "At Risk" means a child who is at risk of not entering school ready to learn due to factors including but not limited to:

(a) Living in a household that is at or near poverty, as determined under federal poverty guidelines;

(b) Living in inadequate or unsafe housing; having inadequate nutrition;

(c) Living in a household where there is significant or documented domestic conflict, disruption or violence;

(d) Having a parent who suffers from mental illness, who engages in substance abuse or who experiences a developmental disability or an intellectual disability;

(e) Living in circumstances under which there is neglectful or abusive care-giving; or

(f) Having unmet health care and medical treatment needs and having a racial or ethnic minority status that is historically consistent with disproportionate overrepresentation in academic achievement gaps or in the systems of child welfare, foster care or juvenile or adult corrections.

(4) "Community of interest" means a special population not constrained by geography.

(5) "Early Childhood Services" means programs and services for children ages 0 through 6 years of age that address language and literacy development, cognition and general knowledge and learning approaches, physical health and well-being, motor development and social and emotional development.

(6) "Early Learning Hub" means an existing or newly created entity designated by regional partners to coordinate early learning services designed to produce better outcomes for children: increase kindergarten readiness for at-risk children, to increase the stable and attached families and to ensure system coordination and efficiency in order to attain Oregon's 40-40-20 Educational Goal. Regional partners may include counties, cities, school districts, education service districts, community colleges, public universities, private educational institutions, faith based organizations, nonprofit service providers, and tribes.

Stat. Auth.: ORS 417.728 & 417.827
Stat. Implemented: 2013 OL Ch. 728, Sec. 16 (Enrolled HB 2013)
Hist.: ELD 1-2013(Temp), f. & cert. ef. 8-16-13 thru 2-12-14; ELD 4-2013(Temp), f. & cert. ef. 9-9-13 thru 3-5-14; ELD 2-2014, f. & cert. ef. 1-15-14

414-900-0015

Early Learning Hubs Purpose and Functions

Hubs are established to coordinate services to children ages 0 through 6 in a specific geographic area or community of interest, i.e., a special population not constrained by geography in order to produce better outcomes for children. Hubs are vested with the authority to distribute state and federal funds, coordinate services for children and purchase services for children and families. Hubs can leverage public and private funds in their efforts to attain results. Because Hubs are established to coordinate services with current service providers and, or purchase new services to support specific child centered outcomes, including kindergarten readiness, a Hub that provides direct services must meet additional criteria set forth in OAR 414-900-0020(1)(g)(F).

(1) Hubs must:

(a) Account for outcomes that benefit children within the Hub geographic area or community of interest by:

(A) Aligning service delivery focused on outcomes across five functional sectors and be able to prove that entities that represent the following five functional sectors are participating in the Hub:

(i) Health care services,

(ii) Human and social services,

(iii) Education services,

(iv) Early childhood services, and

(v) Business.

(B) Ensuring that service providers which the Hub coordinates and contracts with are also accountable to the Hub for client-level outcomes supporting Oregon's 40-40-20 Educational Goal.

(b) Complete a community readiness assessment to determine the readiness to effectively coordinate services to achieve outcomes by:

(A) Working with providers the Hub plans to contract with to ensure readiness to provider efficient, outcome focused services, and

(B) Using the community readiness assessment to connect services to outcomes and resources.

(c) Map and coordinate funding to maximize the return of the investment by:

(A) Creating a comprehensive children's budget for the Hub territory modeled on the state level comprehensive children's budget,

(B) Mapping all local, state, federal and philanthropic dollars currently available or committed to the proposed service area and ensuring funders are willing to collaborate toward a set of shared outcomes advancing Oregon's 40-40-20 Educational Goal,

(C) Ensuring that contracted service providers are accountable for providing services in a cost efficient manner, and

(D) Ensuring that no more than 15% of the total funds received from the ELC go toward administrative overhead by the end of the contract period.

(d) If individuals spend more than 15% of their time on administrative functions, their salaries and expenses must be prorated between program and administrative overhead.

(e) Reporting to the ELC on making progress towards the following outcomes:

(A) Kindergarten readiness, in support of Oregon's 40-40-20 Educational Goal,

(B) Stable and attached families, and

(C) System coordination and efficiency.

(2) Reports shall be submitted by the Hub to appropriate interim legislative committee and the ELC by January 1, 2014.

Stat. Auth.: ORS 417.728 & 417.827
Stat. Implemented: 2013 OL Ch. 728, Sec. 16 (Enrolled HB 2013)
Hist.: ELD 1-2013(Temp), f. & cert. ef. 8-16-13 thru 2-12-14; ELD 4-2013(Temp), f. & cert. ef. 9-9-13 thru 3-5-14; ELD 2-2014, f. & cert. ef. 1-15-14

414-900-0020

Selection Criteria for Hub Contracts

The Early Learning Council may fund no more than seven Hub Demonstration Projects in fiscal year 2013-2014. The ELC will release a request for applications for Hubs in August 2013. A Hub may provide services to a geographic area or a community of interest. The ELC and Hubs, through either communities of geography or communities of interest, will serve no fewer than 50,000 at risk children in year one.

(1) The ELC will award Hub Demonstration Project contracts based on the degree to which any individual Hub demonstrates the following application criteria:

(a) Representation of the five functional sectors: health care services, human and social services, education services, early childhood services, and business in its governance

(b) A defined service area and cross-sector coordination, including identifying a target population and high quality services for at-risk children and their families,

(c) Accountability for outcomes and return on investment, including improving the results for at-risk children by the ability to identify, evaluate and implement coordinated strategies for ensuring that a child is ready to succeed at school,

(d) Ability to coordinate the provision of early learning services across five functional sectors to the community served by the Hub through a governance model or community advisory body that was transparently selected and includes:

(A) Formal partnership agreements from the following sectors: early childhood education, K-12 education, coordinated care organizations and other public health entities, human services, the private sector and local governments within the proposed service area.

(B) Ability of governance body to initiate audits, recommend terms of contracts for service providers and provide outcome reports to the public and to the ELC.

(e) Ability to demonstrate that parents of at-risk children have meaningfully participated in the creation of Hub strategies and plans and will serve an ongoing role as part of the entity's governing structure and will be the foundation of Hub service design, reflecting the principle that children are best raised and supported in families.

(f) Commitment and ability to serve at least 40% of the population of at-risk children in the entity's proposed service area by the end of year 2.

(g) Commitment to collect and track system and client level data using a unique identifier for each child served.

(h) Demonstration of business acumen and operational stability, including:

(A) Use of coordinated and transparent budgeting for all providers funded directly by the Hub,

(B) Documentation of previous financial audits and cash reserves, as well as liability insurance as required by state law,

(C) Ability to provide a match of 25% of funds distributed to the entity by the ELC,

(D) Ability to keep administrative overhead at or below 15% across the Early Learning System, and

(E) Ability to provide monthly financial reports to Early Learning Division staff.

(F) Ability to identify with which federal, state or other funding streams if the lead applicant provides direct services to children covered by the Hub.

(i) Identify any financial, role or function conflict of interest

(ii) Provide a plan for how those conflicts will be managed

(iii) Provide evidence of financial and functional separation and risk independence of the lead applicant's direct service delivery function from the Hub function.

(2) Any application that does not meet the criteria is not eligible for the award of a Hub contract.

Stat. Auth.: ORS 417.728 & 417.827
Stat. Implemented: 2013 OL Ch. 728, Sec. 16 (Enrolled HB 2013)
Hist.: ELD 1-2013(Temp), f. & cert. ef. 8-16-13 thru 2-12-14; ELD 4-2013(Temp), f. & cert. ef. 9-9-13 thru 3-5-14; ELD 2-2014, f. & cert. ef. 1-15-14

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Rule Caption: Oregon Early Reading Program Strategic Investment Early Literacy Grant Program
Adm. Order No.: ELD 3-2014(Temp)
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14 thru 7-13-14
Notice Publication Date:
Rules Adopted: 414-800-0005, 414-800-0010, 414-800-0015, 414-800-0020, 414-800-0025, 414-800-0030
Subject: The purpose of the Early Literacy Grant is to improve the readiness of children preparing to enter kindergarten; improve the reading proficiency of students by the time students complete the third grade; encourage early reading by involving parents, child care providers, and the community; expand the amount of time spent reading, adult support of reading, the availability of reading materials, cultural relevance and promote the level of enjoyment that literacy brings; and create materials and curriculum that promote early literacy.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-800-0005
Definitions

The following definitions apply to OAR 414-800-0005 to 414-0800-0030:

(1) "Achievement gap" means the research-based gap in achievement that often exists between students who are economically disadvantaged, students learning English as a second language and students who are African American, Hispanic or Native American and their peers.

(2) "At Risk" means a child who is at risk of not entering school ready to learn due to factors including but not limited to:

(a) Living in a household that is at or near poverty, as determined under federal poverty guidelines;

(b) Living in inadequate or unsafe housing; having inadequate nutrition;

(c) Living in a household where there is significant or documented domestic conflict, disruption or violence;

(d) Having a parent who suffers from mental illness, who engages in substance abuse or who experiences a developmental disability or an intellectual disability;

(e) Living in circumstances under which there is neglectful or abusive care-giving; or

(f) Having unmet health care and medical treatment needs and having a racial or ethnic minority status that is historically consistent with disproportionate overrepresentation in academic achievement gaps or in the systems of child welfare, foster care or juvenile or adult corrections.

(3) "Early childhood services" means programs and services for children ages birth through six years of age that address language and literacy development, cognition and general knowledge and learning approaches, physical health and well-being, motor development and social and emotional development. Providers of early childhood services include Early Learning Hubs, relief nurseries, home visiting programs, child care providers, preschools, Head Start, Oregon Pre–K, and others who provide programs and services for children ages birth through six.

(4) "Early Learning Hub" means an existing or newly created entity designated by regional partners to coordinate early learning services designed to produce better outcomes for children: increase kindergarten readiness for at-risk children, to increase the stable and attached families and to ensure system coordination and efficiency in order to attain Oregon's 40-40-20 Educational Goal. Regional partners may include counties, cities, school districts, education service districts, community colleges, public universities, private educational institutions, faith based organizations, nonprofit service providers, and tribes.

(5) "English Language Learners" means children whose native language is other than English or who speak a language other than English in their home.

(6) "Non-profit organization" means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

(b) Qualifies as an exempt organization under section 501 (c)(3) of the Internal Revenue Code as defined in ORS 314.011.

Stat. Auth.: ORS 327.810
Stat. Implemented: ORS 327.810
Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0010
Establishment and Purpose

(1) The early literacy grant is established as part of the Oregon Early Reading Program Strategic Investment.

(2) The purpose of the early literacy grant is to:

(a) Improve the readiness of children preparing to enter kindergarten;

(b) Improve the reading proficiency of students by the time students complete the third grade;

(c) Encourage early reading by involving parents, child care providers, and the community to ensure that children have an early start in reading;

(d) Expand the amount of time spent reading, adult support of reading, the availability of reading materials, cultural relevance and promote the level of enjoyment that literacy brings; and

(e) Create materials and curriculum that promote early literacy.

Stat. Auth.: ORS 327.810
Stat. Implemented: ORS 327.810
Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0015
Eligibility

(1) The following types of organizations may apply for funding:

(a) 501(c)(3) non-profit organizations.

(b) Public libraries.

(c) Public schools or school districts.

(d) Providers of early childhood services.

(2) The Early Learning Division shall give preference to receive funding to providers of early childhood services that are Early Learning Hubs.

(3) A single grant proposal may include more than one eligible provider but the fiscal agent must be one of the eligible applicants identified in subsections (1) or (2) of this rule.

Stat. Auth.: ORS 327.810
Stat. Implemented: ORS 327.810
Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0020
Criteria

(1) The Early Learning Division shall establish a request for application with a solicitation and approval process to be conducted each biennium for which early literacy grant funds under the Oregon Early Reading

Program are available. The Division shall notify eligible applicants of the proposal process and due dates, and make available necessary guidelines and application forms.

(2) Grants shall be awarded based on the following generally applicable criteria:

(a) The extent to which the applicant demonstrates its ability to lead the implementation of the early literacy program, foster collaboration with other community partners, and leverage the early literacy program as a key strategy for promoting alignment between early learning and K–3.

(b) The extent to which the grant application addresses equity and strategies for targeting specific sub-populations of children, including those who are economically disadvantaged, students learning English as a second language, and students who are African American, Hispanic or Native American; those who are not currently enrolled in formal Pre-K or child care programs, including those participating in license exempt and relative care; and/or those who meet criteria for being at risk of entering kindergarten with limited literacy skills.

(c) The extent to which the application identifies clear strategies for building the capacity of adults to engage in high quality reading experiences with children, expanding reading opportunities for children, increasing the frequency with which children are read to in the home, and expanding access to books, libraries, and/or materials and curriculum that promote early literacy.

(d) The extent to which the project budget is appropriate for the number of children and adults that are proposed to be reached through the proposed early literacy program.

(e) The extent to which the application demonstrates how outcomes will be measured and sustainability will be achieved.

(3) The Early Learning Division shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Geographic location of applicants to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Preference to entities that have demonstrated success in improving outcomes for children and families.

Stat. Auth.: ORS 327.810
Stat. Implemented: ORS 327.810
Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0025
Funding

(1) The Early Learning Division shall determine for each fiscal year the portion of the funds available for the early literacy grant.

(2) Funds received under this section must be separately accounted for and may be used only to provide funding for the purposes described in the application of the grant recipient.

Stat. Auth.: ORS 327.810
Stat. Implemented: ORS 327.810
Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0030
Reporting

Recipients of early literacy grant funds must report on their grant funded program outcomes and expenditures to the Early Learning Council on an annual basis through a written report to the Early Learning Division. The report must include:

(1) Description of outputs and activities resulting from the early literacy partnership strategy, including, but not limited to trainings delivered to parents and/or providers or early learning services, books or other materials provided to families and/or providers of early learning services, and number of adults and children reached.

(2) Impact on changes in adult behavior related to reading to children, including but not limited to frequency and quality of reading.

(3) Impact on changes in child behavior related to reading with adults, including but not limited to frequency and quality of reading.

(4) Impact on adult and child attitudes toward reading, including, but not limited to, self-reports related to increased enjoyment of reading.

(5) Impact on closing early literacy opportunity gaps for children who are economically disadvantaged, English language learners, African American, Hispanic, or Native American.

Stat. Auth.: ORS 327.810
Stat. Implemented: ORS 327.810
Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

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Rule Caption: Kindergarten Readiness Partnership and Innovation Program
Adm. Order No.: ELD 4-2014(Temp)
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14 thru 7-13-14
Notice Publication Date:
Rules Adopted: 414-800-0105, 414-800-0110, 414-800-0115, 414-800-0120, 414-800-0125, 414-800-0130
Subject: This program creates the opportunity to increase the connection between early learning and K-12 by investing in innovative and promising models for early learning/K-12 integration across the state and to build a body of evidence that Oregon can use to create stronger alignment between its early learning and K-12 education systems. The goal of this program is to promote community and school partnerships and innovations that result in measurable increase in children's readiness for kindergarten.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-800-0105
Definitions

The following definitions apply to OAR 414-800-0105 to 414-800-0130:

(1) "Achievement gap" means the research-based gap in achievement that often exists between students who are economically disadvantaged, students learning English as a second language and students who are African American, Hispanic or Native American and their peers.

(2) "At Risk" means a child who is at risk of not entering school ready to learn due to factors including but not limited to:

(a) Living in a household that is at or near poverty, as determined under federal poverty guidelines;

(b) Living in inadequate or unsafe housing; having inadequate nutrition;

(c) Living in a household where there is significant or documented domestic conflict, disruption or violence;

(d) Having a parent who suffers from mental illness, who engages in substance abuse or who experiences a developmental disability or an intellectual disability;

(e) Living in circumstances under which there is neglectful or abusive care-giving; or

(f) Having unmet health care and medical treatment needs and having a racial or ethnic minority status that is historically consistent with disproportionate overrepresentation in academic achievement gaps or in the systems of child welfare, foster care or juvenile or adult corrections.

(3) "Early childhood services" means programs and services for children ages 0 through 6 years of age that address language and literacy development, cognition and general knowledge and learning approaches, physical health and well-being, motor development and social and emotional development. Providers of early childhood services include Early Learning Hubs, relief nurseries, home visiting programs, child care providers, preschools, Head Start, Oregon Pre–K, and others who provide programs and services for children ages 0–6.

(4) "Early Learning Hub" means an existing or newly created entity designated by regional partners to coordinate early learning services designed to produce better outcomes for children: increase kindergarten readiness for at-risk children, to increase the stable and attached families and to ensure system coordination and efficiency in order to attain Oregon's 40-40-20 Educational Goal. Regional partners may include counties, cities, school districts, education service districts, community colleges, public universities, private educational institutions, faith based organizations, nonprofit service providers, and tribes.

(5) "Elementary school" means any public school that has at least kindergarten, first, second, or third grade classes.

(6) "English Language Learners" means children whose native language is other than English or who speak a language other than English in their home.

(7) "Non-profit organization" means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

(b) Qualifies as an exempt organization under section 501 (c)(3) of the Internal Revenue Code as defined in ORS 314.011.

(8) "Postsecondary Institution" means a:

(a) A community college operated under ORS chapter 341.

(b) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.
(D) Oregon Institute of Technology.
(E) Western Oregon University.
(F) Southern Oregon University.
(G) Eastern Oregon University.
(c) Oregon Health and Science University.
(d) An Oregon-based, generally accredited, not-for-profit institution of higher education.
Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0110
Establishment, Delegation and Purpose

(1) The Early Learning Kindergarten Readiness Partnership and Innovation Program is established as provided under section 26, chapter 728, Oregon Laws 2013 (Enrolled House Bill 2013). The Early Learning Council delegates to the Early Learning Division all administrative functions necessary or reasonable in order to administer the program.

(2) This program creates the opportunity to increase the connection between early learning and K–12 by investing in innovative and promising models for early learning/K–12 integration across the state and to build a body of evidence that Oregon can use to create stronger alignment between its early learning and K–12 education systems. The goal of this program to promote community and school partnerships and innovations that result in measurable increase in children's readiness for kindergarten.
Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0115
Eligibility

The following types of organizations may apply for funding:
(1) Early Learning Hubs
(2) Education Service Districts;
(3) K–12 school districts;
(4) Non-profit organizations;
(5) Post-Secondary institutions; or
(6) A collaboration of any of the above.
Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0120
Criteria

(1) Applicants for grant funds must meet one or more of the following criteria:

(a) Form a partnership with at least one provider of early learning services, licensed childcare provider or elementary school;

(b) Form partnerships with community-based providers of early childhood services to provide preschool and other early-learning strategies;

(c) Establish ambitious but meaningful targets for kindergarten readiness;

(d) Invest resources in serving a significant number of children in communities with high concentration of poverty, underserved racial groups, non-native English speakers, or rural and remote communities;

(e) Align with and supplement federal programs to provide moneys for educational purposes;

(f) Agree to report to, and partner with all Early Learning Hubs serving the region.

(2) Applicants must demonstrate:

(a) A proven track record of ability to achieve developmental outcomes for children.

(b) A clear commitment to equity.

(c) The proposed plan is likely to:

(A) Result in a demonstrable connection between early learning providers and schools; and

(B) Improve kindergarten readiness as measured by the Oregon Kindergarten Assessment.

(3) Priority for funding will be given to applicants that:

(a) Assist children in becoming ready for kindergarten or being successful in kindergarten;

(b) Share professional developments strategies and resources with providers of early learning services, child care providers and kindergarten teachers;

(c) Demonstrate a commitment to family engagement and three-way partnerships among early childhood programs, school, and parents and families; or

(d) Demonstrate the grant funds will serve a significant number of children in communities with high concentration of poverty, underserved racial or ethnic groups, non-native English speakers, or rural and remote communities.
Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0125
Funding

(1) The Early Learning Council shall determine for each fiscal year the portion of the funds available for the early learning kindergarten readiness partnership and innovation fund.

(2) Funds received under this section must be separately accounted for and may be used only to provide funding for the purposes described in the application of the grant recipient.

(3) Funds may not be used for capital expenses, such as facilities, or to supplant existing federal or state funds. Capital expenses do not include operating supplies such as books, curriculum, materials, manipulatives, or furniture that is developmentally appropriate for young children.
Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

414-800-0130
Reporting

Recipients of these funds must report on the grant to the Early Learning Council via the Early Learning Division at the end of the grant period. The report must include at least:

(1) Description of outputs and activities related to implementation of the early learning/K–12 partnership strategy.

(2) Impact on kindergarten readiness, as measured by the Oregon Kindergarten Assessment.

(3) Impact on the attitudes, behaviors, and instructional practices of early childhood educators and kindergarten teachers.

(4) Impact on the attitudes, behaviors, and practices of children's families.
Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)
Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14

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Oregon Health Authority, Addictions and Mental Health Division: Addiction Services
Chapter 415

Rule Caption: Temporary amendments to OAR 415-012-0000, entitled Approval/Licensure of Alcohol and Other Drug Abuse Programs.
Adm. Order No.: ADS 8-2013(Temp)
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 12-20-13 thru 6-18-14
Notice Publication Date:
Rules Adopted: 415-012-0057, 415-012-0058
Subject: These rules establish procedures for approval of certain substance use disorder service providers, as detailed in 415-012-0000.
Rules Coordinator: Nola Russell—(503) 945-7652

415-012-0057
Organizational Provider Assessment Information

In addition to the review procedures outlined in Section 415-012-0057, the Division will ensure that the following minimum information will be obtained during the site reviews;

(1) A current program description that reflects the type and scope of behavioral health services provided by the applicant;

(2) Provider policies regarding credentialing practices of individual practitioners. The policies must reflect current credentialing standards as defined by nationally accepted accrediting bodies such as The Joint Commission, the National Committee for Quality Assurance, and/or URAC;

(3) Copies of the provider's liability insurance coverage;

(4) Copies of the provider's policies and procedures regarding seclusion and restraint practices; and

(5) Copies of the provider's Code of Conduct.
Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500
Hist.: ADS 8-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

415-012-0058
Availability of Information to Coordinated Care Organizations and Other Health Plans

Upon completion of the site review process and the issuance of a Certificate of Approval for Mental Health Services, the Division shall make copies of the following information available to Coordinated Care Organizations and other health plans for the purpose of credentialing a provider:

(1) A current program description that reflects the type and scope of behavioral health services provided by the applicant;

(2) Provider policies and procedures regarding the provider's credentialing practices of individual clinicians;

(3) Statements of provider's liability insurance coverage;

(4) An attestation from the Authority verifying that the provider has passed a screening and meets the minimum requirements to Medicaid provider;

(5) Reports detailing the findings of the Division's site review of the provider;

(6) The provider's Medicaid Vendor Identification Number issued by the Authority;

(7) Copies of the provider's policies and procedures regarding seclusion and restraint practices; and

(8) Copies of the provider's Code of Conduct.

Stat. Auth.: ORS 413.042 & 430.256
Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500
Hist.: ADS 8-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

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

Rule Caption: Temporary amendments to OAR 309-039 entitled Providers of Non-Inpatient Mental Health Treatment Services.
Adm. Order No.: MHS 13-2013(Temp)
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 12-20-13 thru 6-18-14
Notice Publication Date:
Rules Amended: 309-039-0500, 309-039-0510, 309-039-0520, 309-039-0530, 309-039-0540, 309-039-0570
Subject: These rules apply to the non-inpatient certifications to provider organizations rendering mental health treatment services. The certifications exist solely for the purpose of qualifying for insurance reimbursement. Agencies that contract with OHA, subcontract with OHA, or contract with a Community Mental Health Program are not eligible for the "non-inpatient" certification.
Rules Coordinator: Nola Russell—(503) 945-7652

309-039-0500
Purpose and Scope

These rules apply to the non-inpatient certifications to provider organizations rendering mental health treatment services. The certifications exist solely for the purpose of qualifying for insurance reimbursement. Agencies that contract with OHA, subcontract with OHA, or contract with a Community Mental Health Program are not eligible for the "non-inpatient" certification.

Stat. Auth.: ORS 413.042 & 743A.168
Stats. Implemented: ORS 743A.160 & 743.168
Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-039-0510
Definitions

As used in these rules:

(1) "Community Mental Health Program" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(2) "Certificate of Approval" means a Certificate of Approval as defined in OAR 309-012-0130 through 309-012-0220.

(3) "Day Treatment" or "Partial Hospitalization Program" means a non-residential program which provides an organized part-day program of mental health services to persons who spend only part of a 24 hour period in the facility. Services provided in a day treatment program are substantially similar to those provided in a partial hospitalization program.

(4) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(5) "DSM" means the current edition of the "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association.

(6) "Facility" means a corporate or other entity which provides services for the treatment of mental health conditions.

(7) "Non-Related Adult" means any person over 18 years of age who is not related by blood, marriage or living situation. Foster parents and adults co-habitating with a child may be considered to be related adults.

(8) "Outpatient Program" means a program that provides evaluation, treatment and rehabilitation on a regularly scheduled basis or in response to crisis in a setting outside an inpatient program, residential program, day treatment or partial hospitalization program.

(9) "Program" means a particular type or level of service that is organizationally distinct within a facility.

(10) "Provider" means a program operated by either a licensed business or a corporation that provides mental health services.

(11) "Qualified Mental Health Associate" means any person delivering services in a mental health program, under the direct supervision of a qualified mental health professional. The qualified mental health associate shall meet one of the following:

(a) Has a bachelor's degree in a mental health related field;

(b) Has a combination of one year's work experience and two years education, training or work experience in mental health.

(12) "Qualified Mental Health Professional" means any person, providing treatment services in a mental health program, supervised by a qualified supervisor. The qualified mental health professional shall have one of the following:

(a) A license to practice medicine in the State of Oregon;

(b) A graduate degree in Psychology;

(c) A graduate degree in Social Work;

(d) A graduate degree in Psychiatric Nursing and licensed in the State of Oregon; or

(e) A graduate degree in another mental health-related field.

(13) "Qualified Supervisor" means any person meeting the following qualifications:

(a) A medical or osteopathic physician licensed by the Board of Medical Examiners for the State of Oregon and who is board eligible for the practice of psychiatry;

(b) A psychologist licensed by the State Board of Psychologist Examiners;

(c) A registered nurse certified as a psychiatric nurse practitioner by the Oregon State Board of Nursing; or

(d) A clinical social worker licensed by the State Board of Clinical Social Workers.

(14) "Residential Program" means a program that provides room, board, and an organized full-day program of mental health services in a facility for six or more persons who do not require 24-hour nursing care.

Stat. Auth.: ORS 413.042 & 743A.168
Stats. Implemented: ORS 743A.160 & 743.168
Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-039-0520
Eligible Providers

(1) Agencies that currently hold a Certificate of Approval for the provision of mental health services as a contractor of OHA, a subcontractor of OHA, or a contractor of a Community Mental Health Program, or a license to provide residential or adult foster care services, are not eligible for the "non-inpatient" certification.

(2) Certification as a non-inpatient mental health provider is not a substitute for the certification and Medicaid provider enrollment processes that are required for agencies to render services to individuals who are enrolled in the Oregon Health Plan, or individuals whose services are otherwise funded by the State.

(3) Only providers as defined in OAR 309-039-0510(10) are eligible for approval under OAR 309-039-0500 through 309-039-0580. An eligible provider must:

(a) Control the office space, such as by owning, renting or leasing it;

(b) Control the intake to the program and determine which therapist provides assessment and treatment;

(c) Control all clinical records, including storage;

(d) Do all the billing and collect all fees, including deductibles and co-payments;

(e) Pay staff for clinical services provided; and

(f) Display the provider name on the premises so as to be clearly visible to clients.

(4) An individual operating as a private practitioner, whether or not a licensed business or corporation, is not eligible for approval under these rules.

Stat. Auth.: ORS 413.042 & 743A.168
Stats. Implemented: ORS 743A.160 & 743.168
Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-039-0530
Approval Process

(1) Request for approval or renewal shall be submitted to the Division with an application form, materials specified in the application instructions and a check or money order in the amount of $600.00 payable to the Division. This application fee shall be non-refundable irrespective of whether the provider is issued a Certificate of Approval.

(a) Any provider submitting an application for approval or renewal after the effective date of this rule shall pay the application and certification fees;

(b) The fees shall be increased biennially at the same rate as approved by the Legislative Assembly or the Emergency Board for other services and programs of the Division.

(2) A Certificate of Approval, valid for up to three years, shall be issued to the provider when the administrative and certification reviews of the program by the Division indicate the provider is in compliance with the applicable parts of OAR 309-039-0500 through 309-039-0580. The Certificate may be for a period of time shorter than three years if the provider is not in full compliance with these rules.

(3) A Certificate of Approval is not transferable or applicable to any location, facility, or management other than that indicated on the Certificate of Approval.

(4) The award, renewal, and duration of Certificates of Approval as well as periodic and interim reviews, establishment of conditions, denial, revocation and hearings shall comply with OAR 309-012-0130 through 309-012-0220 (Certificate of Approval rule).

Stat. Auth.: ORS 413.042 & 743A.168
Stats. Implemented: ORS 743A.160 & 743.168
Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-039-0540
General Standards

Each provider is required to meet the following administrative standards:

(1) Organization. There shall be an up-to-date organization chart showing the lines of authority and responsibility for management of the organization and clinical supervision of treatment staff.

(2) Policy and Procedures. There shall be written statements of policies and procedures as are necessary and useful to enable the program to accomplish its service objectives and to meet the requirements of these rules and other applicable standards and rules.

(3) Staff Qualifications. Providers shall use only qualified supervisors, qualified mental health professionals and qualified mental health associates who meet OAR 309-039-0510(11) through (13):

(a) Only qualified supervisors and qualified mental health professionals shall provide individual, group and family therapy;

(b) Qualified mental health associates shall only provide skill training, socialization and case management services. Qualified mental health associates may participate in the provision of group therapy if a qualified supervisor or a qualified mental health professional is present.

(4) Client Eligibility for Service. Each provider shall have a written policy regarding client eligibility for service which includes the following:

(a) Mental health services shall not be denied any person on the basis of race, color, creed, sex, handicap, national origin or duration of residence;

(b) No person shall be denied services or be discriminated against on the basis of age unless predetermined clinical or program criteria for service restrict the service to specific age groups.

(5) Client Rights. Each provider shall have written policies and procedures to assure the following:

(a) Protection of client privacy and dignity;

(b) Confidentiality of records consistent with state and federal law as described in the Addictions and Mental Health Division's "Handbook on Confidentiality";

(c) The earliest possible involvement of the client in planning the service through the provision of information, presented in terms easily understandable to the client, which explain the following:

(A) The training or treatment to be undertaken;

(B) Alternative training or treatment methods available, if any; and

(C) Risks that may be involved in the training or treatment, if any.

(d) The client's or guardian's right to refuse service unless otherwise ordered by a court; and

(e) That the client is provided with written information concerning the agency fee policies at the earliest possible time and in terms easily understandable to the client.

(6) Treatment and Assessment Services. Each provider shall provide for each client admitted:

(a) Preliminary planning that includes:

(A) An initial assessment of client condition that justifies a diagnostic impression of mental health condition completed within seven working days of admission; and

(B) A preliminary treatment plan completed within seven working days of admission, that describes the services to be delivered to the client while a complete psychosocial assessment and treatment plan are being developed.

(b) A psychosocial assessment, including a problem list, completed within 15 days of admission, or if a residential program within seven days of admission, resulting in a DSM diagnosis which confirms or denies a mental health condition; and

(c) A treatment plan developed from the problem list, within 15 days of admission, that is agreed to and is signed by the client and includes an individualized regimen of treatment services which addresses the mental health condition.

(7) Client Records. A record shall be maintained for each client admitted. The record shall contain the following:

(a) Client identification;

(b) Client consent to treatment;

(c) A preliminary plan, as described in subsection (6)(a) of this rule;

(d) A psychosocial assessment as described in subsection (6)(b) of this rule which includes:

(A) Presenting problems and current psychiatric history;

(B) Alcohol/drug use problems history;

(C) History of psychological problems and past psychiatric history;

(D) Family and interpersonal history;

(E) Education, employment, and vocational history;

(F) Legal history;

(G) Medical history and information;

(H) Problem list;

(I) DSM diagnoses and summary of the justification for each diagnosis; and

(J) Treatment recommendations.

(e) A treatment plan as described in subsection (6)(c) of this rule that addresses the treatment of the mental health conditions and which includes measurable objectives for each of the Axis I diagnoses, type of intervention activities and target dates for meeting objectives;

(f) Progress notes relating to specific problems addressed in the treatment plan;

(g) Client consent for releases of information when appropriate; and

(h) For discharged clients, a discharge/transfer summary which includes an aftercare plan.

(8) Retention of Records. Client records shall be retained for a minimum of seven years.

(9) Personnel Records. Each provider shall maintain a personnel file for each employee or contractor providing treatment services or clinical supervision. The personnel file shall contain a written job description, copies of degrees and licenses, and a current resume that demonstrates qualifications to perform job duties.

(10) Financial Records. Each provider shall maintain financial records that demonstrate payments for service are made to the provider and not to an individual.

(11) Quality Assurance. Each provider shall have policies and procedures for the operation of a routine quality assurance program designed to monitor and evaluate objectively and systematically the quality and appro-

priateness of client treatment services, pursue opportunities to improve client treatment services, and resolve identified problems. Each provider shall:

(a) Have a written plan for the quality assurance program that describes a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services provided by the provider; and

(b) Conduct utilization reviews of client treatment services and aftercare plans that address client progress in the resolution of the mental or nervous condition, medical issues pertinent to the treatment of the mental or nervous condition, and functioning in the community following discharge from treatment.

(12) Treatment of Children and Adolescents. If a provider offers services to children or adolescents, then in addition to the requirements of OAR 309-039-0500 through 309-039-0580, the provider must meet the following standards:

(a) Minors 14 years of age or older may consent to outpatient services if provided by a physician licensed in the State of Oregon, licensed psychologist, certified nurse practitioner, or licensed social worker as provided for in ORS 109.675. Minors 15 years or older may consent to residential, partial hospitalization or day treatment services if provided by a physician licensed in the State of Oregon as provided by 109.640. Providers shall provide for the earliest feasible involvement of the parents or guardians in the treatment plan consistent with the clinical requirement of the minor as provided under 109.695;

(b) Children and adolescents are prohibited from receiving services conjointly with unrelated adults. Providers that offer services to both children and adolescents, and adults shall provide services to children and adolescents in areas within the facility, separate from areas in which adults are treated;

(c) As evidenced by previous work experience, academic background, and in-service or other training, the qualified supervisor, qualified mental health professional, and qualified mental health associates shall demonstrate a working knowledge of the following:

(A) The normal process of child and adolescent growth and development;

(B) Dysfunctional families and family systems counseling; and

(C) Mental and nervous conditions of childhood and adolescence.

(d) Treatment plans, in addition to the requirements of OAR 309-039-0540(7)(e), shall:

(A) Be developed in cooperation with the child or adolescent and the family, and other

involved professionals as appropriate; and

(B) Include the involvement of the child's or adolescent's "significant others" in treatment; i.e., individuals, schools, agencies, etc.

(13) Grievance Procedure. Each provider shall have a written policy and procedure regarding client grievances. Each client shall be given a copy of the grievance policy and procedure at the time of admission or the grievance policy and procedure shall be posted in all waiting rooms.

Stat. Auth.: ORS 413.042 & 743A.168
Stats. Implemented: ORS 743A.160 & 743.168
Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-039-0570

Standards for Mental Health Residential Programs

In addition to meeting OAR 309-039-0500 through 309-039-0540 each provider operating a mental health residential program shall meet the following standards:

(1) Facility standards. Each provider shall meet OAR 309-035-0100 through 309-035-0190.

(2) Treatment standards. Each provider shall provide eight hours of structured services out of every 12 hours from 8 a.m. to 8 p.m. which, each week, includes:

(a) Daily group therapy which addresses the mental health condition;

(b) Individual counseling which addresses the mental health condition with a primary therapist two times per week;

(c) Family therapy, as appropriate to the individual needs of the client;

(d) Psychotropic medication management or monitoring, as appropriate to the individual needs of the client;

(e) One hour per day of structured recreational/physical fitness activities; and

(f) Structured skills training, vocational training, or socialization activities.

(3) Treatment standards for children and adolescents:

(a) Each provider shall comply with OAR 309-035-0100 through 309-035-0190;

(b) Each residential facility serving children or adolescents shall meet the standards described by OAR 413-210-0100 through 413-210-0250, Standards for reviewing, inspecting and licensing those private child caring agencies which are for residential care and treatment services for children and which are subject to the provisions of ORS Chapter 418, for licensure by the Children's Services Division.

(4) Staffing standards. Each provider shall:

(a) Provide staff coverage 24 hours-a-day, seven days-a-week;

(b) Employ sufficient qualified mental health professionals to maintain a maximum caseload if no more than eight clients;

(c) Have a mental health associate on site, and awake, from 8 p.m. to 8 a.m.; and

(d) Have available a mental health professional on-call from 8 p.m. to 8 a.m.

Stat. Auth.: ORS 413.042 & 743A.168
Stats. Implemented: ORS 743A.160 & 743.168
Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

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Rule Caption: Temporary amendments to OAR 309-012 entitled Certificates of Approval for Mental Health Services.
Adm. Order No.: MHS 14-2013(Temp)
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 12-20-13 thru 6-18-14
Notice Publication Date:
Rules Adopted: 309-012-0230
Rules Amended: 309-012-0130, 309-012-0150, 309-012-0180, 309-012-0190
Subject: These rules establish procedures for the certification of mental health providers, as specified in OAR 309-012.
Rules Coordinator: Nola Russell—(503) 945-7652

309-012-0130

Purpose and Scope

(1) Purpose. These rules establish procedures for approval of the following kinds of organizations:

(a) Any mental health service provider which is, or seeks to be, contractually affiliated with the Division or community mental health authority for the purpose of providing services described in ORS 430.630(3);

(b) Performing providers under OAR 309-016-0070;

(c) Organizations seeking Division approval of insurance reimbursement as provided in ORS 743A.168; and

(d) Holding facilities.

(2) These rules do not establish procedures for residential licensure under ORS 443.410 and 443.725.

(3) These rules do not establish procedures for regulating behavioral health care practitioners that are otherwise licensed to render behavioral healthcare services in accordance with applicable statutes.

(4) These rules do not establish procedures for regulating practices exclusively comprised of behavioral healthcare practitioners that are otherwise licensed to render behavioral healthcare services in accordance with applicable statutes.

Stat. Auth.: ORS 179.040, 430.640, 743.556 & 743A.168
Stats. Implemented: ORS 179.505, 430.010 & 430.620
Hist.: MHD 4-1992, f. & cert. ef. 8-14-92; MHS 14-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-012-0150

Applicability of Certificates of Approval

Certificates of Approval are awarded to mental health services providers and non-inpatient providers that are found to be in substantial compliance with applicable administrative rules:

(1) Mental health services providers are required to maintain Certificates of Approval as follows:

(a) Each community mental health program or provider operating under an Intergovernmental Agreement or a direct contract with the Division must maintain a Certificate of Approval as set forth in these rules;

(b) Each local mental health service provider operating under subcontract with a CMHP must maintain a Certificate of Approval as set forth in these rules in order to receive funds administered by the Division through the local subcontract relationship.

(2) Hospitals and other facilities which operate as holding facilities in providing care, custody, and treatment of allegedly mentally ill persons under the emergency provisions of ORS 426.070 & 426.140 must maintain a Certificate of Approval as set forth in these rules.

(3) A provider not described above which offers services that may be reimbursable under group health coverage as set forth in ORS 743A.168 for mental or emotional conditions may seek to obtain a Division Certificate of Approval in order to establish reimbursement eligibility.

(4) Certificates of Approval are not awarded as a substitute for a license such as those required in ORS 443.410 and 443.725 for residential facilities. However, the Division may require such licensed providers to obtain a Certificate of Approval if services exceeding those required for licensure are provided in return for Division financial support as set forth in section (1) of this rule.

(5) These rules do not establish procedures for regulating behavioral health care practitioners that are otherwise licensed to render behavioral healthcare services in accordance with applicable statutes.

(6) These rules do not establish procedures for regulating practices exclusively comprised of behavioral healthcare practitioners that are otherwise licensed to render behavioral healthcare services in accordance with applicable statutes.

Stat. Auth.: ORS 179.040, 179.505, 426.175, 430.010, 430.640 & 743.556
Stats. Implemented: 430.620
Hist.: MHD 4-1992, f. & cert. ef. 8-14-92; MHS 14-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-012-0180
Duration and Renewal of Certificates of Approval

(1) Mental health services providers. Unless revoked pursuant to OAR 309-012-0210 or unless otherwise specified on the Certificate, Certificates of Approval for mental health services providers are valid for three years.

(2) Non-inpatient providers. Certificates of Approval for providers described in ORS 743.556(3) are valid for up to three years or as otherwise specified on the Certificate. When a non-inpatient provider seeks a Certificate of Approval to be in effect at the expiration date of a Letter of Approval or a prior Certificate of Approval, an application conforming to the instructions of the Division must be received no later than 90 days prior to the expiration of the earlier Letter of Approval or Certificate.

Stat. Auth.: ORS 430.041, 430.640(l) & 430.640(h)
Stats. Implemented:
Hist.: MHD 4-1992, f. & cert. ef. 8-14-92; MHS 14-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-012-0190
Conduct of Periodic and Interim Reviews

(1) Review Schedules:

(a) Periodic reviews of mental health service providers will be routinely conducted every three years;

(b) Periodic reviews of non-inpatient providers approved under ORS 743.556 will be conducted following the provider's submission of an application for recertification as set forth in OAR 309-012-0180;

(c) Interim reviews of any provider holding a Certificate of Approval may be conducted at any time at the discretion of the Division, or in the case of a subcontractor of a CMHP, at the discretion of either Division or the CMHP.

(2) Notification of Review. Notification that a review will be conducted, along with all instructions and requests for information from the provider, will be made in writing by the designee of the Assistant Administrator of the Division. For reviews of subcontractors initiated by the CMHP, notification and instructions will be made by the designee of the director of the CMHP.

(3) Initiation of Reviews:

(a) Reviews of new applicants, and periodic reviews will be scheduled with at least one month's notice from the Division to the CMHP, direct contractor, or non-inpatient provider. Subcontractors will be notified by the CMHP;

(b) The Division and, in the case of a subcontractor, the CMHP may conduct an interim review without prior notification when there is reason to believe any of the following conditions have occurred or may occur:

(A) Operations of the service provider threaten the health or safety of any person;

(B) The provider may act to alter records or make them unavailable for inspections.

(c) Interim reviews other than those specified in subsection (b) of this section will be initiated with at least two week's notice by the Division to the CMHP or direct contractor.

(4) Review Procedures. The Division, and in the case of reviewing a subcontractor, the CMHP, may employ review procedures which it deems adequate to determine compliance with applicable administrative rules. These procedures may include but are not limited to:

(a) Entry and inspection of any facility used in the delivery of approved services;

(b) A request for the submission to the Division or CMHP, of a copy of any document required by applicable administrative rules or needed to verify compliance with such rules, or access to such documents for on-site review. Such documentation could include, for example, records of utilization and quality assurance reviews, copies of portions of selected consumer records, and copies of staff academic degrees or professional licenses;

(c) The completion by the provider of self-assessment checklists reporting compliance or non-compliance with specific rule requirements; and

(d) Conduct of interviews with, and administration of questionnaires to persons knowledgeable of service operations, including, for example, staff and management of a provider, governing and advisory board members, allied agencies, service consumers, their family members, and significant others;

(e) In the case of subcontracts and reviews initiated by the county, the county may request Division assistance in conducting the reviews.

(5) Organizational Provider Assessment Information

(a) In addition to the review procedures outlined in Section 309-012-0057, the Division will ensure that the following minimum information will be obtained during the site reviews;

(b) A current program description that reflects the type and scope of behavioral health services provided by the applicant;

(c) Provider policies regarding credentialing practices of individual practitioners. The policies must reflect current credentialing standards as defined by nationally accepted accrediting bodies such as The Joint Commission, the National Committee for Quality Assurance, and/or URAC;

(d) Copies of the provider's liability insurance coverage;

(e) Copies of the provider's policies and procedures regarding seclusion and restraint practices; and

(f) Copies of the provider's Code of Conduct.(6) Reports of Review Findings:

(A) Completion Deadlines. The Division will issue a completed report of review findings, a Certificate of Approval, and any conditions to approval, or denial of approval within 60 days of the completion of an on-site review, or within 60 days of the date of submission of all review materials which have been requested for the purpose of conducting the review, whichever is later;

(B) Content and scope of reports. Reports of reviews will include the following:

(i) A description of the review findings regarding program operations relative to applicable administrative rules, and contract or agreement provisions;

(ii) A specification of any conditions set as described in OAR 309-012-0200, which the provider must meet, and the time permitted to meet the conditions;

(iii) A statement clarifying the provider's approval status; and

(iv) An appendix containing any report of findings or observations clearly qualified as unrelated to the provider's approval status which may be useful as information and recommendations to the service provider or the CMHP.

(C) Transmittal of Reports. Each report shall be issued along with a document of transmission signed by the Assistant Administrator of the Division, and any Certificates of Approval being awarded;

(D) Report Distribution. The Division will address and issue reports as follows:

(i) Reports of reviews of a directly operated or subcontracted portion of a community mental health program will be issued to the local mental health authority;

(ii) Reports of reviews of direct contractors of the Division will be issued to the signator(s) of the direct contract; and, the Chairperson of the Board of Directors of the contractor;

(iii) Reports of reviews of holding facilities which are not subcontractors of a community mental health program, and reviews of non-inpatient providers will be issued to the provider's officer or employer requesting the review.

Stat. Auth.: ORS 179.040, 179.505, 426.175, 430.010, 430.640 & 743.556
Stats. Implemented: 430.620
Hist.: MHD 4-1992, f. & cert. ef. 8-14-92; MHS 14-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

309-012-0230

Availability of Information to Coordinated Care Organizations and Other Health Plans

Upon completion of the site review process and the issuance of a Certificate of Approval for Mental Health Services, the Division shall make copies of the following information available to Coordinated Care Organizations and other health plans for the purpose of credentialing a provider:

(1) A current program description that reflects the type and scope of behavioral health services provided by the applicant;

(2) Provider policies and procedures regarding the provider's credentialing practices of individual clinicians;

(3) Statements of provider's liability insurance coverage;

(4) An attestation from the Authority verifying that the provider has passed a screening and meets the minimum requirements to Medicaid provider;

(5) Reports detailing the findings of the Division's site review of the provider;

(6) The provider's Medicaid Vendor Identification Number issued by the Authority;

(7) Copies of the provider's policies and procedures regarding seclusion and restraint practices; and

(8) Copies of the provider's Code of Conduct.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

Hist.: MHS 14-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14

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Oregon Health Authority, Division of Medical Assistance Programs
Chapter 410

Rule Caption: Extends deadline for Coordinated Care Organizations to start non-emergent medical transportation; makes technical changes.

Adm. Order No.: DMAP 69-2013(Temp)

Filed with Sec. of State: 12-24-2013

Certified to be Effective: 1-1-14 thru 6-30-14

Notice Publication Date:

Rules Amended: 410-136-3000, 410-136-3020, 410-136-3060, 410-136-3140, 410-136-3220, 410-136-3240

Subject: Amendments also fix numbering issues; remove Standard as a designation of OHP clients who are not eligible for the NEMT benefit to respond to Oregon Health Plan changes effective on January 1, 2014; extend the time clients have to return reimbursement paperwork from 30 to 45 days in response to constituent requests; and clarify that an overpayment includes reimbursements made to a client and a service provider for the same service.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-136-3000

Responsibility for Providing Non-emergent Medical Transportation

(1) The Authority shall provide non-emergent medical transportation (NEMT) for eligible clients who receive their OHP covered medical services on a fee-for-service basis or are members enrolled in prepaid health plans (PHP) or coordinated care organizations (CCO). The Authority shall cease providing this service to CCO enrollees when CCOs provide the service to their enrollees pursuant to sections (2) and (3) of this rule.

(2) From July 1, 2013 to July 1, 2014, the Authority may allow some CCOs to pilot providing NEMT services for their enrollees.

(3) All CCOs shall provide NEMT services for their enrollees by July 1, 2014. When a CCO begins providing this service, the Authority shall provide NEMT services in the CCO's service area only to clients not enrolled in a CCO for health care services.

(a) The Authority may not pay for services covered by a CCO; reimbursement is a matter between the CCO and its transportation subcontractor.

(b) For clients enrolled in a CCO responsible for NEMT, the transportation provider must coordinate all transportation services with the client's transportation brokerage or CCO prior to providing services.

(4) The requirements in OAR 410-136-3000 – 410-136-3360 apply to NEMT services for which the Authority is responsible pursuant to this rule.

(5) A brokerage may request that the Authority delay responsibility for reimbursement to clients pursuant to OAR 410-136-3240, Client Reimbursed Mileage, Meals and Lodging, until a CCO in the brokerage's service area assumes NEMT services for the CCO's enrollees. The delay of the brokerage's responsibility also includes reimbursing clients in the fee-for-service delivery system.

(6) OAR 410-136-3040,Vehicle Equipment and Subcontractor Standards, and 410-136-3120, Secured Transports, do not apply to ambulance providers, ambulance vehicles or ambulance personnel that are licensed and regulated by ORS Chapter 682 and OAR chapter 333, divisions 250, 255, 260 and 265, whether providing ambulance or stretcher transports.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13; DMAP 69-2013(Temp), f. 12-24-13, cert. ef. 1-1-14 thru 6-30-14

410-136-3020

General Requirements for NEMT

(1) The Authority may enroll governmental transportation brokerages (local units of government) or other entities to arrange rides and pay subcontractors for NEMT services. The Authority may limit the enrollment with brokerages to units of local government.

(2) For purposes of the rules (OAR 410-136-3000 through 410-136-3360), "subcontractor" means the individual or entity with which the brokerage subcontracts or employs to drive the client to and from OHP covered medical services.

(3) The brokerage shall:

(a) Prior authorize and pay subcontractors for the least costly but most appropriate mode of transport for the client's medical needs to and from an OHP covered medical service. The most appropriate and least costly ride may include requiring the client to share the ride with other clients;

(b) Verify that the client is obtaining OHP covered medical services in the client's local area. "Local area" means an area within the accepted community standard and includes the client's metropolitan area, city or town of residence;

(c) Verify the client's OHP eligibility and that the client's benefit package includes NEMT services. The brokerage shall verify this through electronic eligibility information;

(d) Assess the client's access to other means of transportation, such as driving their own car or getting a ride from a family member or neighbor;

(e) Verify the client's attendance for continuing requests for rides if the medical provider could not affirm an appointment for a previous ride;

(f) Schedule a ride with an alternate subcontractor if the subcontractor originally assigned is unable to provide the ride; and

(g) Assign rides based on an evaluation of several factors, including but not limited to:

(A) Cost;

(B) The client's need for appropriate equipment and transportation;

(C) Any factors related to a subcontractor's capabilities, availability and past performance; and

(D) Any factors related to the brokerage's need to maintain sufficient service capacity to meet client needs.

(4) Pursuant to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System, clients receiving the following benefit packages are not eligible for NEMT:

(a) Citizen Alien Waived Emergency Medical (CWM)l; and

(b) Qualified Medicare Beneficiary (QMB) only.

(5) The brokerage shall maintain records of the reasons for authorizing a ride:

(a) That is not cost effective or not based on the factors specified in section (3);

(b) With more than two attendants for an ambulance or stretcher car; or

(c) With more than one attendant for a wheelchair van.

(6) The brokerage shall provide a ride to a client to fill prescription medication only in the following situation:

(a) The client needs to stop on the way home to fill or pick up prescribed medication related to the medical service for which the brokerage provided the ride;

(b) It is medically necessary to fill or pick up the medication immediately; and

(c) The pharmacy is located on the return route or is the closest pharmacy to the return route.

(7) The brokerage may provide a ride to a client to fill prescribed medication under the following situations:

(a) The brokerage asks the client if the prescription service is available through the Authority's contracted postal prescription service, and the client responds that it is not available through that source;

(b) The client has an urgent need to fill or pick up prescribed medication because the postal prescription service mailed the wrong medication, or the client has an unexpected problem caused by the medication; or

(c) The client is transient or without regular access to a mailbox. In this situation, the brokerage may evaluate the need on a case-by-case basis.

(8) The brokerage shall provide rides outside the brokerage's service area, as described in Table 136-3380, under the following circumstances:

(a) The client is receiving an OHP covered medical service that is not available in the service or local area but is available in another area of the state;

(b) The client is receiving a covered service in California, Idaho or Washington where the service location is no more than 75 miles from the Oregon border; or

(c) No local medical provider or facility will provide OHP covered medical services for the client.

(9) Brokerages may coordinate to provide a return ride to a client who receives medical services outside the client's local area.

(10) Brokerages shall retroactively authorize and pay for NEMT services that have already occurred only when the brokerage could not prior authorize the service because the brokerage was closed and the request for authorization is within 30 days of the date of service. The brokerage also must confirm that one of the following circumstances supported the ride:

(a) The eligible client needed urgent medical care;

(b) The eligible client required secured transport pursuant to OAR 410-136-3120, Secured Transports; or

(c) The client was in a hospital, and the hospital discharged or transferred the client.

(11) Notwithstanding section (10), a brokerage shall retroactively authorize NEMT services for ambulance transports when:

(a) An ambulance provider responds to an emergency call, but the client's medical condition does not warrant an emergency transport;

(b) The ambulance provider transports the client as a NEMT service; and

(c) The ambulance provider requests retroactive authorization within 30 days of the NEMT service.

(12) Brokerages shall not authorize or pay for rides outside their service areas based only on client preference or convenience.

(13) Brokerages shall provide toll-free call centers for clients to request rides. The following pertain to the brokerage's call center and scheduling of rides:

(a) The call center shall operate at a minimum Monday through Friday from 9:00 a.m. to 5:00 p.m., but the brokerage may close the call center on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving and Christmas. The Authority may approve, in writing, additional days of closure if the brokerage requests the closure at least 30 days in advance.

(b) Brokerages shall make all reasonable efforts for clients to have access to available NEMT services 24 hours a day. When the call center is closed, the brokerages shall provide a recording or answering service to refer the client directly to a subcontractor. If no subcontractor is available, the brokerage must provide clients with recorded information about service hours and how to reach emergency services by calling 911;

(c) The brokerage shall allow a client to schedule rides at least 30 days in advance of the medical service; and

(d) The brokerage shall allow a client to request multiple ride requests at one time.

(e) The brokerage shall develop procedures and make reasonable efforts to arrange a ride requested on the day of the medical service when the medical service is:

(A) For an urgent medical condition; and

(B) Due to the urgency of the medical condition, the client scheduled an immediate medical appointment.

(14) The brokerage is not responsible for providing emergency medical transportation services. However, brokerages shall have procedures for referring clients requesting emergency medical transportation services to the appropriate emergency transportation resources and procedures for subcontractors per OAR 410-136-3040, Vehicle Equipment and Subcontractor Standards.

(15) The Authority shall collaborate with brokerages and CCOs to develop and conduct a statewide client satisfaction survey at least once every two years. The Authority may contract with one or more brokerages to conduct the survey. The Authority shall use the results of the survey to identify and address potential operational deficiencies and to identify and share successes in the NEMT program.

(16) Brokerages shall establish regional advisory groups consisting of representatives from the Authority, DHS, Area Agencies on Aging, consumers, representatives of client advocacy groups from within the service or local area, brokerage subcontractors and providers of NEMT ambulance services. The role of the group includes, but is not limited to:

(a) Assisting in monitoring and evaluating the NEMT program; and

(b) Recommending potential policy or procedure changes and program improvements to brokerages and the Authority and assisting in prioritizing those changes and improvements.

(17) Brokerages shall have the discretion to use or not use DHS-approved volunteers. DHS shall provide brokerages with a list of approved and trained volunteers. DHS shall supervise the volunteers and assumes all liability for each volunteer as provided by law.

(18) Brokerages or their subcontractors shall not bill eligible clients for any transports to and from OHP covered medical services or any transports where the Authority denied reimbursement.

(19) On a minimum of five percent of the ride requests, brokerages shall contact medical providers to verify appointments and that the appointments are for OHP covered medical services.

(20) Brokerages may purchase tickets for common carrier transportation, such as inter- or intra-city bus, train or commercial airline when deemed cost effective and safe for the client.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13; DMAP 69-2013(Temp), f. 12-24-13, cert. ef. 1-1-14 thru 6-30-14

410-136-3060
Insurance Requirements

(1) Brokerages must obtain and maintain general and automobile liability coverage for personal injury and death in accordance with ORS 30.271, Limitations on Liability of State for Personal Injury and Death.

(2) Brokerages must obtain and maintain general and automobile liability coverage for property damage and destruction in accordance with ORS 30.273, Limitations on Liability of Public Bodies for Property Damage or Destruction.

(3) The liability coverage required by sections (1) and (2) of this rule shall include the State of Oregon, Oregon Health Authority and its divisions, officers, employees and agents as additional insureds but only as related to the brokerages' NEMT services.

(4) In lieu of purchasing liability coverage under sections (1) and (2) of this rule, the Authority may authorize a brokerage to establish and maintain a Self-Insurance Reserve Fund. The following apply to requirements of the fund:

(a) The Authority shall establish the fund at $1,000,000 through the fixed rate for rides established in OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport;

(b) The fund shall comply with OMB Circular 87;

(c) If the brokerage subsequently terminates its enrollment with the state as a Medicaid provider, the brokerage shall refund the Authority the balance of any monies in the fund within two years from the termination of its enrollment or at the conclusion of any claim or litigation related to the brokerage's NEMT services for eligible clients;

(d) Once funded, the fund shall be maintained at an amount not less than $1,000,000 through the fixed rate for rides established in OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport;

(e) The Authority shall reconcile the fund amount during the annual cost settlement process pursuant to OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport, and shall increase or decrease the fixed rate for ride to maintain the $1,000,000 fund amount; and

(f) The brokerage shall maintain a separate account for the fund.

(5) Brokerages and their subcontractors that employ workers as defined in ORS 656.027 shall comply with 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under 656.126 (2). Brokerages shall require each of their subcontractors to comply with this requirement.

(6) In lieu of purchasing workers' compensation insurance coverage as required by section (5), a brokerage may self-insure for all of its subject workers. The Authority shall not fund this reserve and shall only reimburse the brokerage for costs of self-insurance in the event of a claim arising from the brokerage's NEMT services to eligible clients.

(7) Brokerages and their subcontractors shall furnish proof of liability coverage and insurance to the Authority upon request.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13; DMAP 69-2013(Temp), f. 12-24-13, cert. ef. 1-1-14 thru 6-30-14

410-136-3140

Transports of Clients Changing Hospitals or Other Facilities

(1) Brokerages shall arrange and pay for transporting an eligible client who has had a change in condition, noted in the client's DHS care plan, resulting in a need for a new service setting with a lower or higher level of care. This includes clients who are changing levels of care between their community-based care settings or between institutional and community-based settings. The client's DHS worker must request the ride.

(2) Brokerages shall not arrange or pay for:

(a) The transport or return of an inpatient client from an admitting hospital to another hospital (or facility) for diagnostic or other short-term services when the patient will return to the admitting hospital within the first 24-hours of admission. The subcontractor shall bill the admitting hospital directly for these transports;

(b) The transport of a client receiving long-term care service in their home or residing in a long-term care facility for the sole purpose of shopping for another long-term care facility, even if the client is looking for a new facility to receive a lower or higher level of care;

(c) The transport of a client moving from one type of facility to a facility of the same type, such as from an adult foster home to another adult foster home; and

(d) The transport of a client who is relocating to another state, unless the transport is to receive an OHP covered medical service pursuant to OAR 410-136-3080, Out-of-State Transportation.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13; DMAP 69-2013(Temp), f. 12-24-13, cert. ef. 1-1-14 thru 6-30-14

410-136-3220

Brokerage Reimbursements to Subcontractors

(1) Brokerages shall reimburse their NEMT subcontractors for the most cost-effective route from point of origin to point of destination that most benefits the client's condition.

(2) Brokerages shall establish a base rate with its subcontractors. "Base rate" for all modes of transportation except ground and air ambulance means the rate the brokerage and its subcontractors agree on for each mode of transportation.

(3) If a subcontractor uses an ambulance as a stretcher car or van, the brokerage shall reimburse the subcontractor using the base rate for stretcher cars or vans.

(4) Notwithstanding section (3), brokerages shall pay ambulance subcontractors at the ambulance rate instead of the stretcher car or van rate when the transport exceeds two hours, necessitating a health care professional to care for the client during the ride.

(5) Brokerages shall not reimburse their subcontractors for waiting for clients to get to the vehicle or for assisting clients to get in or out of a vehicle.

(6) Brokerages may reimburse their subcontractors for waiting time:

(a) In special situations, such as when the subcontractor has to wait for a client who is using the subcontractor's gurney and cannot transfer to a gurney at a medical facility; or

(b) Because of a medical issue during the ride, such as:

(A) The client is nauseous or is vomiting after dialysis or chemotherapy; or

(B) The client needs to stop to get prescription medication or medical supplies related to the medical service.

(7) Brokerages shall reimburse their subcontractors at the base rate for ambulatory vehicles if the subcontractor provides a ride to an ambulatory client in a non-ambulatory vehicle.

(8) Brokerages may authorize a subcontractor to transport a non-ambulatory client in an ambulatory vehicle if the vehicle can accommodate and transport the client and if allowed by local ordinance. The brokerage shall reimburse its subcontractor at the non-ambulatory vehicle rate.

(9) The wheelchair base rate applies to the transport of a client with a reclining wheelchair; wheelchairs do not qualify as stretchers or gurneys.

(10) The following applies to reimbursement for deceased clients:

(a) If a client dies before the subcontractor arrives at the scene, the brokerage shall not reimburse its subcontractors; or

(b) If a client dies after the transport begins but before reaching the destination, the brokerage's payment is limited to the base rate for the mode of transportation and mileage. For ambulance transports, the payment also would include costs for an extra attendant, if applicable.

(11) Brokerages may authorize shared-ride transports of two or more clients at the same time when the shared-ride transports are allowable under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(12) Brokerages shall reimburse subcontractors:

(a) At the full base rate for the first client and one-half the base rate for each additional client when all of these clients need the same mode of transportation, such as by wheelchair van; or

(b) At the full base rate for the client with the need for the highest mode of transportation and one-half the base rate of the appropriate mode of transportation for each additional client. This applies when the additional client needs a less costly mode of transportation than the first client. For example, the first client needs an ambulance, but the additional client needs a less costly wheelchair van.

(13) When transporting two or more clients at the same time, brokerages shall pay subcontractors only from the first pickup point to the final destination under the following circumstances:

(a) The clients have a single pick up point but different destinations;

(b) The clients have different pick up points but a single destination; or

(c) The clients have different pick up points and different destinations.

(14) Brokerages shall reimburse subcontractors only for actual miles traveled, regardless of the number of clients transported.

(15) A brokerage shall not reimburse a subcontractor if:

(a) A county or city ordinance prohibits any charging for services identified in the medical transportation services administrative rules; or

(b) The subcontractor does not charge the public for such services.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13; DMAP 69-2013(Temp), f. 12-24-13, cert. ef. 1-1-14 thru 6-30-14

410-136-3240

Client Reimbursed Mileage, Meals and Lodging

(1) The brokerage must prior authorize a client's mileage, meals and lodging to an OHP covered medical service in order for the client to qualify for reimbursement. If the brokerage prior authorized the travel costs, a client may request reimbursement up to 45 days after the travel.

(2) The client must return any documentation the brokerage requires before receiving reimbursement. Documentation required shall include a receipt for lodging.

(3) The brokerage may hold reimbursements under the amount of $10 until the client's reimbursement reaches $10.

(4) Brokerages shall reimburse clients for meals when a client, with or without an attendant, travels a minimum of four hours round-trip out of their local area. The travel, however, must span the following meal times:

(a) For a breakfast allowance, the travel must begin before 6 a.m.;

(b) For a lunch allowance, the travel must span the entire period from 11:30 a.m. through 1:30 p.m.; and

(c) For a dinner allowance, the travel must end after 6:30 p.m.

(5) Brokerages shall reimburse for meals at the Authority's allowable rate.

(6) Brokerages shall not reimburse clients for meals that a hospital or other medical facility provides.

(7) Brokerages shall reimburse clients for lodging when:

(a) A client would otherwise be required to begin travel before 5 a.m. in order to reach a scheduled appointment;

(b) Travel from a scheduled appointment would end after 9 p.m.; or

(c) The client's health care provider documents a medical need.

(8) Brokerages shall reimburse for lodging at the Authority's allowable rate or the actual cost of the lodging, whichever is less.

(9) Brokerages shall reimburse for meals or lodging for only one attendant, which may be a parent, to accompany the client if medically necessary, but only if:

(a) The client is a minor child and unable to travel without an attendant;

(b) The client's attending physician provides a signed statement indicating the reason an attendant must travel with the client;

(c) The client is mentally or physically unable to reach his or her medical appointment without assistance; or

(d) The client is or would be unable to return home without assistance after the treatment or service.

(10) The brokerage shall not reimburse for the attendant's time or services.

(11) If a client's health care provider admits the client for inpatient care, an attendant is no longer medically necessary because the facility provides all necessary services for the client. Therefore, the attendant is no longer eligible for lodging and travel expenses. The brokerage shall reimburse for meals and lodging for the attendant's transportation home. However, the brokerage may pay for the attendant's meals and lodging if it

is more cost effective for the attendant to remain near the client to accompany the client on the return trip as allowed by section (12).

(12) Upon the client's release from inpatient care, if the attendant is medically necessary based on one of the conditions or circumstances listed in section (9), the brokerage shall reimburse for the attendant to return to the inpatient facility to accompany the client on the return trip. This only applies if the brokerage prior authorizes the attendant's travel.

(13) Brokerages shall not reimburse for mileage, meals and lodging for an attendant visiting an inpatient client, unless the physician provides a signed statement of the medical need. This exclusion includes, but is not limited to, parents of minors, breastfeeding mothers and spouses.

(14) The state shall recover overpayments made to a client. Overpayments occur when the brokerage paid the client:

(a) For mileage, meals and lodging, and another resource also paid:

(A) The client or;

(B) The ride, meal or lodging provider directly;

(b) Directly to travel to medical appointments, and the client did not use the money for that purpose, did not attend the appointment or shared the ride with another client whom the brokerage also directly paid;

(c) For common carrier or public transportation tickets or passes, and the client sold or otherwise transferred the tickets or passes to another person.

(15) If a person or entity other than the client or the minor client's parent or legal guardian provides the ride, the brokerage may reimburse the person or entity that provided the ride. However, the client or the minor client's parent or legal guardian must approve in writing of the reimbursement.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13; DMAP 69-2013(Temp), f. 12-24-13, cert. ef. 1-1-14 thru 6-30-14

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Rule Caption: Add arbitration language for HCE and CCO Contracting Disputes
Adm. Order No.: DMAP 70-2013(Temp)
Filed with Sec. of State: 12-24-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Amended: 410-141-3268
Subject: The Medical Assistance Program needs to amend this rule to incorporate arbitration language for when a dispute involves a Health Care Entity (HCE) who chooses not to contract with a Coordinated Care Organization (CCO). Changes have been made for clarity of rule language, legislative intent and program requirements. This rule revision is needed immediately to assist the CCOs who currently have or will be seeking contractual relationships with a Health Care Entity.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3268
Process for Resolving Disputes on Formation of CCO

(1) The dispute resolution process described in this rule applies only when, under ORS 414.635:

(a) An entity is applying to the Authority for certification as a CCO (applicant);

(b) A Health Care Entity (HCE) and the applicant (together, the "parties" for purposes of this rule) have failed to agree upon terms for a contract; and

(c) One or more of the following occurs:

(A) The applicant states that the HCE is necessary for the applicant to qualify as a CCO;

(B) An HCE states that its inclusion is necessary for the applicant to be certified as a CCO; or

(C) In reviewing the applicant's information, the Authority identifies the HCE as necessary for the applicant to qualify as a CCO.

(2) If an applicant and HCE disagree about whether the HCE is necessary for the applicant's certification as a CCO, the applicant or HCE may request the Authority to review the issue.

(3) If the Authority determines the HCE is not necessary for the applicant's certification, the process described in this rule does not apply.

(4) If the Authority determines or the parties agree the HCE is necessary for the applicant's certification, the following applies:

(a) The HCE and the applicant shall participate in good faith contract negotiations. The parties must take the following actions in an attempt to reach a good faith resolution:

(A) The applicant must provide a written offer of terms and conditions to the HCE. The HCE must explain the area of disagreement to the applicant;

(B) The applicant's or HCE's chief financial officer, chief executive officer, or an individual authorized to make decisions on behalf of the HCE or applicant must have at least one face-to-face meeting in a good faith effort to resolve the disagreement.

(b) The applicant or HCE may request the Authority to provide technical assistance. The Authority also may offer technical assistance, with or without a request. The Authority's technical assistance is limited to clarifying the CCO certification process, criteria, and other program requirements.

(5) Pursuant to 2013 Engrossed SB 568 and 2013 Oregon Laws chapter 27, if the applicant and HCE cannot reach agreement on contract terms within ten (10) calendar days of the face-to-face meeting, either party may request arbitration. The requesting party must notify the other party in writing to initiate a referral to an independent third party arbitrator; for a HCE's refusal to contract with the CCO or the termination, extension or renewal of a HCE's contract with a CCO. The party initiating the referral must provide a copy of the notification to the Authority.

(6) After notification that one party initiated arbitration, the parties shall attempt to agree upon the selection of the arbitrator and complete the paperwork required to secure the arbitrator's services. If the parties are unable to agree, each party shall appoint an arbitrator, and these arbitrators shall select the final arbitrator.

(7) The parties shall pay for all arbitration costs. In consideration of potentially varied financial resources between the parties, which may pose a barrier to the use of this process, the parties may ask the arbitrator to allocate costs between the parties based on ability to pay.

(8) Within ten (10) calendar days of a referral to an arbitrator, the applicant and HCE must submit to each other and to the arbitrator:

(a) The most reasonable contract offer; or

(b) The HCE's statement that a contract is not desirable and an explanation of why this is reasonable.

(9) Within ten (10) calendar days of receiving the other party's offer or the HCE's statement that a contract is not desirable, each party must submit to the arbitrator and the other party the advocacy briefs regarding whether the HCE is reasonably or unreasonably refusing to contract with the applicant.

(10) The arbitrator shall apply the following standards when making a determination about whether an HCE reasonably or unreasonably refused to contract with the applicant:

(a) An HCE may reasonably refuse to contract when an applicant's reimbursement to an HCE for a health service is below the reasonable cost to provide the service. The arbitrator shall apply federal or state statutes or regulations that establish specific reimbursements, such as payments to federally qualified health centers, rural health centers and tribal health centers; and

(b) An HCE may reasonably refuse to contract if that refusal is justified in fact or by circumstances, taking into consideration the Health Services Transformation (HST) legislative policies. Facts or circumstances outlining what is a reasonable or unreasonable refusal to contract include, but are not limited to:

(A) Whether contracting with the applicant would impose demands that the HCE, taking into consideration the legislative policies described in the HST laws, cannot reasonably meet without significant negative impact on HCE costs, obligations or structure, in the context of the proposed reimbursement arrangement or other CCO requirements, including, but not limited to, the use of electronic health records, service delivery requirements or quality or performance requirements;

(B) Whether the HCE's refusal affects access to covered services in the applicant's community. This factor alone cannot result in a finding that the refusal to contract is unreasonable; however, the HCE and applicant should make a good faith effort to work out differences in order to achieve beneficial community objectives and HST policy objectives;

(C) Whether the HCE has entered into a binding obligation to participate in the network of a different CCO or applicant, and that participation significantly reduces the HCE's capacity to contract with the applicant.

(11) The following outlines the arbitrator determination and the parties' final opportunity to settle:

(a) The arbitrator must evaluate the final offers or statement of refusal to contract and the advocacy briefs from each party and issue a determination within 15 calendar days of the receipt of the parties' information;

(b) The arbitrator shall provide the determination to the parties. The arbitrator and the parties may not disclose the determination to the Authority for ten (10) calendar days to allow the parties an opportunity to resolve the issue themselves. If the parties resolve the issue no later than the end of the tenth day, the arbitrator may not release the determination to the Authority;

(c) If the parties have not reached an agreement after ten (10) calendar days, the arbitrator must provide its decision to the Authority. After submission to the Authority, the arbitrator's determination becomes a public record, subject to protection of trade secret information if identified by one of the parties prior to the arbitrator's submission of the determination.

(12) If the parties cannot agree, the Authority shall evaluate the arbitrator's determination and may take the following actions:

(a) The Authority may certify an applicant if the arbitrator determined the applicant made a reasonable attempt to contract with the HCE or the HCE's refusal to contract was unreasonable;

(b) The Authority may refuse to certify, recertify or continue to certify an applicant when the arbitrator determined the applicant did not reasonably attempt to contract with the HCE or the HCE's refusal to contract was reasonable, and the Authority determines that participation from the HCE remains necessary for certification of applicant as a CCO;

(c) The Authority may not pay fee-for-service reimbursements to an HCE if the arbitrator determined the HCE unreasonably refused to contract with the applicant; this applies to health services available through a CCO;

(d) In any circumstance within the scope of this rule when the parties have failed to agree, the current statutes regarding reimbursement to non-participating providers shall apply to certified CCOs and the HCE, consistent with ORS 414.743 for hospitals, and consistent with Authority rules for other providers.

(13) To be qualified to resolve disputes under this rule, the arbitrator must:

(a) Be a knowledgeable and experienced arbitrator;

(b) Be familiar with health care provider contracting matters;

(c) Be familiar with HST; and

(d) Follow the terms and conditions specified in this rule for the arbitration process.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 70-2013(Temp), f. 12-24-13, cert. ef. 1-1-14 thru 6-30-14

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Rule Caption: Add definitions, Change chemical dependency to substance use disorder, detox services available in other settings
Adm. Order No.: DMAP 71-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-27-13
Notice Publication Date: 12-1-2013
Rules Amended: 410-120-0000, 410-120-0045, 410-120-1160, 410-120-1200, 410-120-1210, 410-120-1855
Rules Repealed: 410-120-0000(T), 410-120-0045(T), 410-120-1160(T), 410-120-1200(T), 410-120-1210(T), 410-120-1855(T)
Subject: The Authority needs to amend these rules to replace "Chemical Dependency" with "Substance Use Disorder" as it is considered to be the standard terminology in the industry and to reflect that detox services is not restricted to a particular setting.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-0000
Acronyms and Definitions

Identification of acronyms and definitions within this rule specifically pertain to their use within the Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) or the Addictions and Mental health Division (AMH) administrative rules applicable to the medical assistance program. This rule does not include an exhaustive list of Division acronyms and definitions. For more information, see Oregon Health Plan (OHP) program OAR 410-141-0000, Acronyms and Definitions, OAR 410-141-0300, and any appropriate governing acronyms and definitions in the Department of Human Services (Department) chapter 407 administrative rules, or contact the Division.

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Authority, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Authority.

(2) "Acupuncturist" means a person licensed to practice acupuncture by the relevant state licensing board.

(3) "Acupuncture Services" means services provided by a licensed acupuncturist within the scope of practice as defined under state law.

(4) "Acute" means a condition, diagnosis or illness with a sudden onset and that is of short duration.

(5) "Acquisition Cost" means unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(6) "Addiction and Mental Health Division (AMH)" means a division within the Authority that administers mental health and addiction programs and services.

(7) "Adequate Record Keeping" means documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual provider rules.

(8) "Administrative Medical Examinations and Reports" mean examinations, evaluations, and reports, including copies of medical records, requested on the DMAP 729 form through the local Department branch office or requested or approved by the Authority to establish client eligibility for a medical assistance program or for casework planning.

(9) "Advance Directive" means an individual's instructions to an appointed individual specifying actions to take in the event that the individual is no longer able to make decisions due to illness or incapacity.

(10) "Adverse Event" means an undesirable and unintentional, though not unnecessarily unexpected, result of medical treatment.

(11) "Aging and People with Disabilities (APD)" means the division in the Department of Human Services (DHS) that administers programs for seniors and people with disabilities. This division was formerly named "Seniors and People with Disabilities (SPD)".

(12) "All-Inclusive Rate" or "Bundled rate" means the nursing facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the Division's Pharmaceutical Services program administrative rules and the Home Enteral/Parenteral Nutrition and IV Services program administrative rules, except as specified in OAR 410-120-1340, Payment.

(13) "Allied Agency" means local and regional governmental agency and regional authority that contracts with the Authority or Department to provide the delivery of services to covered individual. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(14) "Alternative Care Settings" mean sites or groups of practitioners that provide care to members under contract with a PHP or CCO, including urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, long-term care facilities and outpatient surgical centers.

(15) "Ambulance" means a specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of the Authority or the licensing standards of the state in which the ambulance provider is located.

(16) "Ambulatory Payment Classification" means a reimbursement method that categorizes outpatient visits into groups according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed. The groups are called Ambulatory Payment Classifications (APCs).

(17) "Ambulatory Surgical Center (ASC)" means a facility licensed as an ASC by the Authority.

(18) "American Indian/Alaska Native (AI/AN)" means a member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(19) "American Indian/Alaska Native (AI/AN) Clinic" means a clinic recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(20) "Ancillary Services" mean services supportive of or necessary for providing a primary service, such as, anesthesiology, which is an ancillary service necessary for a surgical procedure.

(21) "Anesthesia Services" mean administration of anesthetic agents to cause loss of sensation to the body or body part.

(22) "Area Agency on Aging (AAA)" means the designated entity with which the Department contracts to meet the requirements of the Older

Americans Act and ORS Chapter 410 in planning and providing services to the elderly or elderly and disabled population.

(23) "Atypical Provider" means entity able to enroll as a billing provider (BP) or rendering provider for medical assistance programs related non-health care services but which does not meet the definition of health care provider for National Provider Identification (NPI) purposes.

(24) "Audiologist" means a person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(25) "Audiology" means the application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(26) "Automated Voice Response (AVR)" means a computer system that provides information on clients' current eligibility status from the Division by computerized phone or Web-based response.

(27) "Benefit Package" means the package of covered health care services for which the client is eligible.

(28) "Billing Agent or Billing Service" means third party or organization that contracts with a provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the provider.

(29) "Billing Provider (BP)" means a person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from the Division on behalf of a rendering provider and has been delegated the authority to obligate or act on behalf of the rendering provider.

(30) "Buying Up" means the practice of obtaining client payment in addition to the Division or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up).

(31) "By Report (BR): means services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(32) "Case Management Services" mean services provided to ensure that CCO members obtain health services necessary to maintain physical, mental and emotional development and oral health. Case management services include a comprehensive, ongoing assessment of medical, mental health, substance use disorder and/or dental needs plus the development and implementation of a plan to obtain or make referrals for needed medical, mental, chemical dependency or dental services, referring members to community services and supports which may include referrals to Allied Agencies. (33) "Children, Adults and Families Division (CAF)" means a division within the Department, responsible for administering self-sufficiency and child-protective programs.

(34) "Children's Health Insurance Program (CHIP)" means a federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Authority.

(35) "Chiropractor" means a person licensed to practice chiropractic by the relevant state licensing board.

(36) "Chiropractic Services" mean services provided by a licensed chiropractor within the scope of practice, as defined under state law and Federal regulation.

(37) "Citizen/Alien-Waived Emergency Medical (CAWEM)" means aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency services for CAWEM are defined in OAR 410-120-1210 (3) (f).

(38) "Claimant" means a person who has requested a hearing.

(39) "Client" means an individual found eligible to receive OHP health services. "Client" is inclusive of members enrolled in PHPs, PCMs and CCOs.

(40) "Clinical Nurse Specialist" means a registered nurse who has been approved and certified by the Board of Nursing to provide health care in an expanded specialty role.

(41) "Clinical Social Worker" means a person licensed to practice clinical social work pursuant to State law.

(42) "Clinical Record" means the medical, dental or mental health records of a client or member.

(43) "Comfort Care" means medical services or items that give comfort or pain relief to an individual who has a terminal Illness, including the combination of medical and related services designed to make it possible for an individual with terminal Illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness.

(44) "Contested Case Hearing" means a proceeding before the Authority under the Administrative Procedures Act when any of the following contests an action:

(a) A client or member or their representative;

(b) A PHP or CCO member's provider; or

(c) A PHP or CCO.

(45) "Contiguous Area" means the area up to 75 miles outside the border of the State of Oregon.

(46) "Contiguous Area Provider" means a provider practicing in a contiguous area.

(47) "Continuing Treatment Benefit" means a benefit for clients who meet criteria for having services covered that were either in a course of treatment or scheduled for treatment the day immediately before the date the client's benefit package changed to one that does not cover the treatment.

(48) "Co-Payments" mean the portion of a claim or medical, dental or pharmaceutical expense that a client must pay out of their own pocket to a provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment).

(49) "Cost Effective" means the lowest cost health service or item that, in the judgment of Authority staff or its contracted agencies, meets the medical needs of the client.

(50) "Cover Oregon" means the state's health insurance exchange that will help individuals find out if they qualify for Medicaid, CHIP or health insurance coverage for themselves, their families and their employees.

(51) "Covered Services" means medically appropriate health services described in ORS Chapter 414 and applicable administrative rules that the Legislature funds, based on the Prioritized List of Health Services.

(52) "Current Dental Terminology (CDT)" means a listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(53) "Current Procedural Terminology (CPT)" means the physicians' CPT is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(54) "Date of Receipt of a Claim" means the date on which the Authority receives a claim, as indicated by the Internal Control Number (ICN) assigned to a claim. Date of receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(55) "Date of Service" means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules. For items that are mailed or shipped by the provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(56 "Dental Emergency Services" mean dental services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(57) "Dental Services" mean services provided within the scope of practice as defined under state law by or under the supervision of a dentist or dental hygienist.

(58) "Dentist" means a person licensed to practice dentistry pursuant to state law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(59) "Denturist" means a person licensed to practice denture technology pursuant to State law.

(60) "Denturist Services" mean services provided, within the scope of practice as defined under State law, by or under the personal supervision of a denturist.

(61) "Dental Hygienist" means a person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(62) "Dental Hygienist with an Expanded Practice Permit" means a person licensed to practice dental hygiene services as authorized by the Board of Dentistry with an Expanded Practice Dental Hygienist Permit (EPDHP) pursuant to State law.

(63) "Dentally Appropriate" means services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the client or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a client.

(64) "Department of Human Services (Department or DHS)" means the agency established in ORS Chapter 409, including such divisions, programs and offices as may be established therein.

(65) "Department Representative" means a person who represents the Department and presents the position of the Department in a hearing.

(66) "Diagnosis Code" means as identified in the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM), the primary diagnosis code is shown in all billing claims, unless specifically excluded in individual provider rule(s). Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(67) "Diagnosis Related Group (DRG)" means a system of classification of diagnoses and procedures based on the ICD-9-CM.

(68) "Division of Medical Assistance Programs (Division)" means a division within the Authority; the Division is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP -Title XXI), and several other programs.

(69) "Durable Medical Equipment, Prosthetics, Orthotics and Medical Supplies (DMEPOS)" mean equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(70) "Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (aka, Medicheck)" mean the Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Authority clients and their parents or guardians effectively use them.

(71) "Electronic Data Interchange (EDI)" means the exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Authority designates for EDI transactions. For purposes of rules 407-120-0100 through 407-120-0200, EDI does not include electronic transmission by web portal.

(72) "EDI Submitter" means an individual or an entity authorized to establish an electronic media connection with the Authority to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(73) "Electronic Verification System (EVS)" means eligibility information that has met the legal and technical specifications of the Authority in order to offer eligibility information to enrolled providers of the Division.

(74) "Emergency Department" means the part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(75) "Emergency Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An emergency medical condition is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210(3) (f) (B)).

(76) "Emergency Medical Transportation" means transportation necessary for a client with an emergency medical condition, as defined in this rule, and requires a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a hospital, where appropriate emergency medical service is available.

(77) "Emergency Services" means health services from a qualified provider necessary to evaluate or stabilize an emergency medical condition, including inpatient and outpatient treatment that may be necessary to assure within reasonable medical probability that the patient's condition is not likely to materially deteriorate from or during a client's discharge from a facility or transfer to another facility.

(78) "Evidence-Based Medicine" means the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients. The practice of evidence based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice. Increased expertise is reflected in many ways, but especially in more effective and efficient diagnosis and in the more thoughtful identification and compassionate use of individual patients' predicaments, rights, and preferences in making clinical decisions about their care. By best available external clinical evidence we mean clinically relevant research, often from the basic sciences of medicine, but especially from patient centered clinical research into the accuracy and precision of diagnostic tests (including the clinical examination), the power of prognostic markers, and the efficacy and safety of therapeutic, rehabilitative, and preventive regimens. External clinical evidence both invalidates previously accepted diagnostic tests and treatments and replaces them with new ones that are more powerful, more accurate, more efficacious, and safer. (Source: BMJ 1996; 312:71-72 (13 January)).

(79) "False Claim" means a claim that a provider knowingly submits or causes to be submitted that contains inaccurate, misleading or omitted information and such inaccurate, misleading or omitted information would result, or has resulted, in an overpayment.

(80) "Family Health Insurance Assistance Program (FHIAP)" means a program in which the State subsidizes premiums in the commercial insurance market for uninsured individuals and families with income below 185% of the Federal Poverty Level.

(81) "Family Planning Services" mean services for clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(82) "Federally Qualified Health Center (FQHC)" means a federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as an FQHC by Centers for Medicare and Medicaid (CMS) upon recommendation of the U.S. Public Health Service.

(83) "Fee-for-Service Provider" means a health care provider who is not reimbursed under the terms of an Authority contract with a Coordinated Care Organization or Prepaid Health Plan (PHP). A medical provider participating in a PHP or a CCO may be considered a fee-for-service provider when treating clients who are not enrolled in a PHP or a CCO.

(84) "Flexible Service" means a service that is an alternative or addition to a service that is as likely or more likely to effectively treat the mental condition, substance use disorder condition, or physical condition as documented in the Member's Clinical Record. Flexible Services may include, but are not limited to: Respite Care, Partial Hospitalization, Subacute Psychiatric Care, Family Support Services, Parent Psychosocial Skills Development, Peer Services, and other non-Traditional Services identified.

(85) "Flexible Service Approach" means the delivery of any Coordinated Care Service in a manner or place different from the traditional manner or place of service delivery. A Flexible Service Approach may include delivering Coordinated Care Services at alternative sites such as schools, residential facilities, nursing facilities, Members' homes, emergency rooms, offices of DHS, OHA, other community settings; offering flexible clinic hours; offering Coordinated Care Services through outreach or a home-based approach; and using peers, paraprofessionals, Community Health Workers, Peer Wellness Specialists, or Personal Health Navigators who are Culturally Competent to engage difficult-to-reach Members.

(86) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(87) "Fully Dual Eligible" means for the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by the Department for full medical assistance coverage.

(88) "General Assistance (GA)" means medical assistance administered and funded 100% with State of Oregon funds through OHP.

(89) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level 1 — American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. The Division uses HCPCS codes; however, Division uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(90) "Health Care Professionals" mean individuals with current and appropriate licensure, certification or accreditation in a medical, mental health or dental profession who provide health services, assessments and screenings for clients within their scope of practice, licensure or certification.

(91) "Health Evidence Review Commission" means a commission that, among other duties, develops and maintains a list of health services ranked by priority, from the most to the least important, representing the comparative benefits of each service to the population served.

(92) "Health Insurance Portability and Accountability Act (HIPAA) of 1996 (HIPAA)" means the federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(93) "Health Maintenance Organization (HMO)" means a public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(94) "Health Plan New/noncategorical client (HPN)" means an individual who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program and who must meet all eligibility requirements to become an OHP client.

(95) "Hearing Aid Dealer" means a person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(96) "Home Enteral Nutrition" means services provided in the client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services program provider rules.

(97) "Home Health Agency" means a public or private agency or organization which has been certified by Medicare as a Medicare home health agency and which is licensed by the Authority as a home health agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(98) "Home Health Services" mean part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the client's home.

(99) "Home Intravenous Services" mean services provided in the client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydrational fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(100) "Home Parenteral Nutrition" means services provided in the client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(101) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, and is certified by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting current standards for Medicare and Medicaid reimbursement and Medicare Conditions of Participation; and currently licensed by the Oregon Health Authority (Authority), Public Health Division.

(102) "Hospital" means a facility licensed by the Office of Public Health Systems as a general hospital which meets requirements for participation in OHP under Title XVIII of the Social Security Act. The Division does not consider facilities certified by CMS as long-term care hospitals, long-term acute care hospitals or religious non-medical facilities as hospitals for reimbursement purposes. Out-of-state hospitals will be considered hospitals for reimbursement purposes if they are licensed as a short term acute care or general hospital by the appropriate licensing authority within that state, and if they are enrolled as a provider of hospital services with the Medicaid agency within that state.

(103) "Hospital-Based Professional Services" mean professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (Division 42) report for the Division.

(104) "Hospital Dentistry" means dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR chapter 410 division 123) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(105) "Hospital Laboratory" means a laboratory providing professional technical laboratory services as outlined under laboratory services, in a hospital setting, as either an inpatient or outpatient hospital service whose costs are reported on the hospital's cost report to Medicare and to the Division.

(106) "Indian Health Care Provider" means an Indian health program or an urban Indian organization.

(107) "Indian Health Program" means any Indian Health Service (IHS) facility, any Federally recognized Tribe or Tribal organization, or any FQHC with a 638 designation.

(108) "Indian Health Service (IHS)" means an operating division (OPDIV) within the U.S. Department of Health and Human Services (HHS) responsible for providing medical and public health services to members of federally recognized Tribes and Alaska Natives.

(109) "Indigent" means for the purposes of access to the Intoxicated Driver Program Fund (ORS 813.602) indigent has the meaning: Individuals without health insurance coverage, public or private and meet standards for indigence adopted by the federal government as defined in ORS 813.602(5).

(110) "Individual Adjustment Request Form (DMAP 1036)" means form used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(111) "Inpatient Hospital Services" mean services that are furnished in a hospital for the care and treatment of an inpatient. (See Division Hospital Services program administrative rules in chapter 410, division 125 for inpatient covered services.)

(112) "Institutional Level of Income Standards (ILIS)" mean three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a nursing facility, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under Seniors and People with Disabilities' (SPD) Home and Community Based Waiver.

(113) "Institutionalized" means a patient admitted to a nursing facility or hospital for the purpose of receiving nursing and/or hospital care for a period of 30 days or more.

(114) "International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) (including volumes 1, 2, and 3, as revised annually)" mean a book of diagnosis codes used for billing purposes when treating and requesting reimbursement for treatment of diseases.

(115) "Laboratory" means a facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare, to provide laboratory services (as defined in this rule) within or apart from a hospital. An entity is considered to be a laboratory if the entity derives materials from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one laboratory test, including waived tests for these purposes, it is considered to be a laboratory, under the Clinical Laboratory Improvement Act (CLIA).

(116) "Laboratory Services" mean those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent laboratory.

(117) "Licensed Direct Entry Midwife" means a practitioner who has acquired the requisite qualifications to be registered and/or legally licensed to practice midwifery by the Public Health Division.

(118) "Liability Insurance" means insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability insurance, uninsured and underinsured motorist insurance, homeowner's liability insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insur-

ance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(119) "Managed Care Organization (MCO)" means contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(120) "Maternity Case Management" means a program available to pregnant clients. The purpose of Maternity Case Management is to extend prenatal services to include non-medical services, which address social, economic and nutritional factors. For more information refer to the Division's Medical-Surgical Services Program administrative rules.

(121) "Medicaid" means a federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by the Authority.

(122 "Medical Assistance Eligibility Confirmation" means verification through the Electronic Verification System (EVS), AVR, Secure Web site or Electronic Data Interchange (EDI), or an authorized Department or Authority representative.

(123) "Medical Assistance Program" means a program for payment of health services provided to eligible Oregonians, including Medicaid and CHIP services under the OHP Medicaid Demonstration Project, and Medicaid and CHIP services under the State Plan.

(124) "Medical Care Identification" means the card commonly called the "medical card" or medical ID issued to clients (called the Oregon Health ID starting Aug. 1, 2012).

(125) "Medical Services" mean care and treatment provided by a licensed medical provider directed at preventing, diagnosing, treating or correcting a medical problem.

(126) "Medical Transportation" means transportation to or from covered medical services.

(127) "Medically Appropriate" means services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies which can be safely provided to a Division client or Primary Care Manager (PCM) Member in the PHP's or PCM's judgment.

(128) "Medicare" means a federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for Inpatient services in a hospital or skilled nursing facility, home health care, and hospice care; and

(b) Medical Insurance (Part B) for physicians' services, outpatient hospital services, home health care, end-stage renal dialysis, and other medical services and supplies;

(c) Prescription drug coverage (Part D) means covered Part D drugs include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act; also includes medical supplies associated with the injection of insulin; Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). For limitations, see the Division's Pharmaceutical Services program administrative rules in chapter 410, division 121.

(129) "Medicare Advantage" means an organization approved by CMS to offer Medicare health benefits plans to Medicare beneficiaries.

(130) "Medicheck for Children and Teens" mean services also known as Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services. The Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Authority clients and their parents or guardians effectively use them.

(131) "Member" means an OHP client enrolled with a pre-paid health plan or coordinated care organization.

(132) "Mental Health Case Management" means services provided to CCO members who require assistance to ensure access to mental health benefits and services from local, regional or state allied agencies or other service providers. Services provided may include: advocating for the CCO member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring CCO members to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services.

(133) " National Correct Coding Initiative (NCCI)" means the Centers for Medicare and Medicaid Services (CMS) developed the National Correct Coding Initiative (NCCI) to promote national correct coding methodologies and to control improper coding leading to inappropriate payment.

(134) "National Drug Code or (NDC)" means a universal number that identifies a drug. The NDC number consists of 11 digits in a 5-4-2 format. The Food and Drug Administration assigns the first five digits to identify the manufacturer of the drug. The manufacturer assigns the remaining digits to identify the specific product and package size. Some packages will display less than 11 digits, but the number assumes leading zeroes.

(135) "National Provider Identification (NPI)" means federally directed provider number mandated for use on HIPAA covered transactions; individuals, provider organizations and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(136) "Naturopathic physician" means a person licensed to practice naturopathic medicine by the Oregon Board of Naturopathic Medicine.

(137) "Naturopathic Services" means services provided within the scope of practice as defined under State law and by rules of the Oregon Board of Naturopathic Medicine..

(138) "Non-covered Services" mean services or items for which the Authority is not responsible for payment or reimbursement. Non-covered services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations; and

(b) 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) 410-141-0480, OHP Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) Any other applicable Division administrative rules.

(139) "Non-Emergent Medical Transportation Services (NEMT) "means transportation to or from a source of covered service, which does not involve a sudden, unexpected occurrence that creates a medical crisis requiring emergency medical services, as defined in OAR 410-120-0000(49), and requiring immediate transportation to a site, usually a hospital, where appropriate emergency medical care is available.

(140) "Non-Paid Provider" means a provider who is issued a provider number for purposes of data collection or non-claims-use of the Provider Web Portal (e.g., eligibility verification).

(141) "Nurse Anesthetist, C.R.N.A." means a registered nurse licensed in the State of Oregon as a CRNA who is currently certified by the National Board of Certification and Recertification for Nurse Anesthetists.

(142) "Nurse Practitioner" means a person licensed as a registered nurse and certified by the Board of Nursing to practice as a Nurse Practitioner pursuant to State law.

(143) "Nurse Practitioner Services" mean services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(144) "Nursing Facility" means a facility licensed and certified by the Department SPD and defined in OAR 411-070-0005.

(145) "Nursing Services" mean health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(146) "Nutritional Counseling" means counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(147) "Occupational Therapist" means a person licensed by the State Board of Examiners for Occupational Therapy.

(148) "Occupational Therapy" means the functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes task-oriented activities to prevent or correct physical and emotion-

al difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(149) "Ombudsman Services" mean advocacy services provided by the Authority to clients whenever the client is reasonably concerned about access to, quality of or limitations on the health services provided.

(150) "Oregon Health ID" means a card the size of a business card that lists the client name, client ID (prime number) and the date it was issued.

(151) "Oregon Health Plan (OHP)" means the Medicaid and Children's Health Insurance (CHIP) Demonstration Project which expands Medicaid and CHIP eligibility beyond populations traditionally eligible for Medicaid to other low-income populations, and Medicaid and CHIP services under the State Plan

(152) "Optometric Services" mean services provided, within the scope of practice of optometrists as defined under State law.

(153) "Optometrist" means a person licensed to practice optometry pursuant to State law.

(154) "Oregon Health Authority (Authority or OHA)" means the agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules, the agencies under the authority of the OHA are the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs.

(155) "Oregon Youth Authority (OYA)" means the state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(156) "Out-of-State Providers" mean any provider located outside the borders of the State of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of the State of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of the State of Oregon.

(157) "Outpatient Hospital Services" mean services that are furnished in a hospital for the care and treatment of an outpatient. For information on outpatient-covered services, see the Division's Hospital Services administrative rules found in chapter 410, division 125.

(158) "Overdue Claim" means a valid claim that is not paid within 45 days of the date it was received.

(159) "Overpayment" means payment(s) made by Authority to a provider in excess of the correct Authority payment amount for a service. Overpayments are subject to repayment to the Authority.

(160) "Overuse" means use of medical goods or services at levels determined by Authority medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(161) "Paid Provider" means a provider who is issued a provider number for purposes of submitting medical assistance program claims for payment by the Authority.

(162) "Panel" means the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(163) "Payment Authorization" means authorization granted by the responsible agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(164) "Peer Review Organization (PRO)" means an entity of health care practitioners of services contracted by the State to review services ordered or furnished by other practitioners in the same professional field.

(165) "Pharmaceutical Services" mean services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(166) "Pharmacist" means a person licensed to practice pharmacy pursuant to state law.

(167) "Physical Capacity Evaluation" means an objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(168) "Physical Therapist" means a person licensed by the relevant State licensing authority to practice Physical Therapy.

(169) "Physical Therapy" means treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(170) "Physician" means a person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government. A physician may be an individual licensed under ORS 677 or ORS 685.

(171) "Physician Assistant" means a person licensed as a physician assistant in accordance with ORS 677. Physician assistants provide medical services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(172) "Physician Services" mean services provided, within the scope of practice as defined under state law, by or under the personal supervision of a physician.

(173) "Podiatric Services" mean services provided within the scope of practice of podiatrists as defined under state law.

(174) "Podiatrist" means a person licensed to practice podiatric medicine pursuant to state law.

(175) "Post-Payment Review" means review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(176) "Practitioner" means a person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(177) "Premium Sponsorship" means premium donations made for the benefit of one or more specified Division clients (See 410-120-1390).

(178) "Prepaid Health Plan (PHP)" means a managed health, dental, chemical dependency, or mental health organization that contracts with the Authority on a case managed, prepaid, capitated basis under OHP. PHPs may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO)

(179) "Primary Care Dentist (PCD)" means a dental practitioner who is responsible for supervising and coordinating initial and primary dental care within their scope of practice for their members.

(180) "Primary Care Provider (PCP)" means any enrolled medical assistance provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified clients. PCPs initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of medically appropriate client care. A Federally qualified PCP means a physician with a specialty or subspecialty in family medicine, general internal medicine, or pediatric medicine as defined in OAR 410-130-0005. (181) "Prior Authorization (PA)" means payment authorization for specified medical services or items given by Authority staff, or its contracted agencies prior to provision of the service. A physician referral is not a PA.

(181) "Prioritized List of Health Services" means the listing of conditions and treatment pairs developed by the Health Evidence Review Commission for the purpose of administering OHP.

(182) "Private Duty Nursing Services" mean nursing services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's physician to an individual who is not in a health care facility.

(183) "Provider" means an individual, facility, institution, corporate entity, or other organization that supplies health services or items, also termed a rendering provider, or bills, obligates and receives reimbursement on behalf of a rendering provider of services, also termed a billing provider (BP). The term provider refers to both rendering providers and BP(s) unless otherwise specified.

(184) "Provider Organization" means a group practice, facility, or organization that is:

(a) An employer of a provider, if the provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility or organization;

(e) If such entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent. (See Subparts of Provider Organization).

(185) "Public Health Clinic" means a clinic operated by a county government.

(186) "Public Rates" mean the charge for services and items that providers, including Hospitals and nursing facilities, made to the general public for the same service on the same date as that provided to Authority clients.

(187) "Qualified Medicare Beneficiary (QMB)" means a Medicare beneficiary, as defined by the Social Security Act and its amendments.

(188) "Qualified Medicare and Medicaid Beneficiary (QMM)" means a Medicare beneficiary who is also eligible for Division coverage.

(189) "Quality Improvement" means the efforts to improve the level of performance of a key process or processes in health services or health care.

(190) "Quality Improvement Organization (QIO)" means an entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a Peer Review Organization.

(191) "Radiological Services" mean those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a physician or other licensed practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, Hospital, or independent radiological facility.

(192) "Recipient" means a person who is currently eligible for medical assistance (also known as a client).

(193) "Recreational Therapy" means recreational or other activities that are diversional in nature (includes, but is not limited to, social or recreational activities or outlets).

(194) "Recoupment" means an accounts receivable system that collects money owed by the provider to the Authority by withholding all or a portion of a provider's future payments.

(195) "Referral" means the transfer of total or specified care of a client from one provider to another. As used by the Authority, the term referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a referral is required before non-emergency care is covered by the PHP or the Authority.

(196) "Remittance Advice (RA)" means the automated notice a provider receives explaining payments or other claim actions. It is the only notice sent to providers regarding claim actions.

(197) "Request for Hearing" means a clear expression, in writing, by an individual or representative that the person wishes to appeal a Department or Authority decision or action and wishes to have the decision considered by a higher authority.

(198) "Representative" means an individual who can make OHP-related decisions for a client who is not able to make such decisions themselves.

(199) "Retroactive Medical Eligibility" means eligibility for medical assistance granted to a client retroactive to a date prior to the client's application for medical assistance.

(200) "Ride" means non-emergent medical transportation services for a client either to or from a location where covered services are provided. "Ride" does not include client-reimbursed medical transportation or emergency medical transportation in an ambulance

(201) "Rural" means a geographic area that is 10 or more map miles from a population center of 30,000 people or less.

(202) "Sanction" means an action against providers taken by the Authority in cases of fraud, misuse or abuse of Division requirements.

(203) "School Based Health Service" means a health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a physician or other licensed practitioner.

(204) "Service Agreement" means an agreement between the Authority and a specified provider to provide identified services for a specified rate. Service agreements may be limited to services required for the special needs of an identified client. Service agreements do not preclude the requirement for a provider to enroll as a provider.

(205) "Sliding Fee Schedule" means a fee schedule with varying rates established by a provider of health care to make services available to indigent and low-income individuals. The sliding-fee schedule is based on ability to pay.

(206) "Social Worker" means a person licensed by the Board of Clinical Social Workers to practice clinical social work.

(207) "Speech-Language Pathologist" means a person licensed by the Oregon Board of Examiners for Speech Pathology.

(208) "Speech-Language Pathology Services" mean the application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(209) "State Facility" means a Hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(210) "Subparts (of a Provider Organization)" mean for NPI application, subparts of a health care provider organization would meet the definition of health care provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically, or has an entity do so on its behalf, could be components of an organization or separate physical locations of an organization.

(211) "Subrogation" means Right of the State to stand in place of the client in the collection of third party resources (TPR).

(212) "Supplemental Security Income (SSI)" means a program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(213) "Surgical Assistant" means a person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(214) "Suspension" means a sanction prohibiting a provider's participation in the medical assistance programs by deactivation of the provider's Authority-assigned billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed.

(215) "Targeted Case Management (TCM)" means activities that will assist the client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services are often provided by Allied Agency providers.

(216) "Termination" means a sanction prohibiting a provider's participation in the Division's programs by canceling the provider's Authority-assigned billing number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by the Authority at the time of termination.

(217) "Third Party Liability (TPL), Third Party Resource (TPR) or Third party payer" means a medical or financial resource which, under law, is available and applicable to pay for medical services and items for a Authority client.

(218) "Transportation" means Medical Transportation.

(219) "Type A Hospital" means a hospital identified by the Office of Rural Health as a Type A hospital.

(220) "Type B AAA" means an AAA administered by a unit or combination of units of general purpose local government for overseeing Medicaid, financial and adult protective services and regulatory programs for the elderly or the elderly and disabled.

(221) "Type B AAA Unit" means a Type B AAA funded by Oregon Project Independence (OPI), Title III — Older Americans Act, and Title XIX of the Social Security Act.

(222) "Type B Hospital" means a hospital identified by the Office of Rural Health as a Type B hospital.

(223) "Urban" means a geographic area that is less than 10 map miles from a population center of 30,000 people or more.

(224) "Urgent Care Services" mean health services that are medically appropriate and immediately required to prevent serious deterioration of a client's health that are a result of unforeseen illness or injury.

(225) "Usual Charge (UC)" means the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individ-

uals and families are not considered in determining the usual charge. Any amounts charged to third party resources (TPR) are to be considered.

(226) "Utilization Review (UR)" means the process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(227) "Valid Claim" means an invoice received by the Division or the appropriate Authority/Department office for payment of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(228) "Vision Services" mean provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

(229) "Volunteer" (for the purposes of NEMT) means an individual selected, trained and under the supervision of DHS who is providing services on behalf of DHS in a non-paid capacity except for incidental expense reimbursement under the DHS Volunteer Program authorized by ORS 409.360.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007 f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 11-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 37-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-24-13; DMAP 71-2013, f. & cert. ef. 12-27-13

410-120-0045

Applications for Medical Assistance at Provider locations

(1) The Oregon Health Authority (Authority) allows Division enrolled providers the opportunity to assist patients applying for public and private health coverage offered through OHA and Cover Oregon at the provider's practice site. Once the provider is determined eligible by the Authority, providers will receive an approval letter, unique assister identification number, training requirements and other information.

(2) For purposes of this rule, the provider's practice will be referred to as a site. Sites can be, but are not limited, to the following:

(a) Hospitals;

(b) Federally qualified health centers/rural health clinics (FQHC/RHCs);

(c) County health departments;

(d) Substance Use Disorder adult and adolescent treatment and recovery centers;

(e) Tribal health clinics;

(f) Family Planning clinics;

(g) Other primary care clinics as approved by the Authority.

(3) The site shall send all employees that will be assisting to a mandatory Authority training session for application assistance certification. Employees must pass a test provided at that training session before initiating application assistance service. At least one trained employee must be a permanent employee of the site. Sites shall ensure that individuals performing application assistance are recertified at appropriate times as set forth by the Authority. For purposes of this rule, certified staff will be referred to as "application assisters."

(4) Application assisters will log in to the Cover Oregon portal to provide enrollment assistance. In the event that the client needs require the use of a paper application, the Application assister will write the date the application was started and the assister's assigned assister identification number in the appropriate space on the application. Assistance will support patients potentially eligible for public and private health coverage offered through OHA and Cover Oregon. Sites are not under an obligation to provide medical program or Cover Oregon application assistance to individuals other than those they are providing care to. The application assister shall establish a date of request for applicants by logging into the Cover Oregon portal or writing the assister's identification number on the paper application in the appropriate place with the date the applicant requests an application. Once written on the application, the date can never be changed, altered or backdated. The inscription must include the provider's assigned application assister site code number, in addition to the date.

(5) The application assister shall encourage applicants to provide accurate and truthful information, assist in completing the application and enrollment process and shall assure that the information contained on the application is complete. The application assister shall not attempt to predetermine applicant eligibility or make any assurances regarding the eligibility for public or private health coverage offered through OHA and Cover Oregon.

(6) The application assister shall provide information to applicants about public medical programs and Cover Oregon private insurance products so applicant can make an informed choice when enrolling into a health insurance product. Language (including sign language) translators must be available if requested by applicants.

(a) The information given to the applicant shall, at a minimum, include an explanation of the significance of the date of request on the hard copy application, review of public medical programs and Cover Oregon private insurance products that are available, provide unbiased health coverage choices using filters embedded in the online application and information provided by OHA or Cover Oregon during enrollment process,, answer questions and assist in filling out online or paper application forms. The information provided at these sessions may include, but is not limited to the following:

(A) General eligibility criteria for public and private coverage accessible through OHA and Cover Oregon;

(B) Health plan choices, criteria and how to enroll in public medical programs or Cover Oregon private insurance product choices.

(b) The application assister must make copies of the original eligibility verification documentation required to accompany the application, but not uploaded to the Cover Oregon portal.

(7) The site shall log into Cover Oregon portal to track applications with which they have assisted. If site uses a hard copy application, site will use reporting process provided by Authority.

(8) Providers, staff, contracted employees and volunteers are subject to all applicable provisions under General Rules OAR chapter 410, division 120.

(a) The application assister shall treat all information they obtain for public medical programs and Cover Oregon private insurance as confidential and privileged communications. The application assister shall not disclose such information without the written consent of the individual, his or her delegated authority, attorney, or responsible parent of a minor child or child's guardian. Nothing prohibits the disclosure of information in summaries, statistical or other form, which does not identify particular individuals;

(b) The Authority and sites will share information as necessary to effectively serve public medical programs and Cover Oregon eligible or potentially eligible individuals;

(c) Personally identifiable health information about applicants and recipients will be subject to the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA) and the administrative rules there under. Sites will cooperate with the Authority in the adoption of policies and procedures for maintaining the privacy and security of records and for conducting transactions pursuant to HIPAA requirements.

(9) The Authority will be responsible for the following:

(a) The Authority will provide training to application assisters on public medical programs and Cover Oregon private insurance products, eligibility and enrollment, application procedures and documentation requirements. The Authority will set dates and times for these additional training classes as needed, following changes in policy or procedure;

(b) The Authority will make available public medical programs and Cover Oregon application forms online and in hard copy (in English, translated languages and alternative formats), health insurance coverage options, assister identification number instructions, reporting guidance and other necessary forms;

(c) The Authority and Cover Oregon will process all applications in accordance with Authority and Cover Oregon standards;

(d) The Authority and Cover Oregon will process completed applications, which have satisfactory verification information, within the time requirements set forth in Authority and Cover Oregon policy. In the event of a change in policy, the time for completion of processing shall be changed to the new time requirements.

(10) The Authority and Cover Oregon will provide all necessary forms and applications as referenced above at no cost to the site. There are no monetary provisions in this rule for any payment for the performance of work by the site, except for those costs provided under OAR 410-147-0400 and 410-146-0460. However, the parties acknowledge the exchange and receipt of other valuable considerations in the spirit of cooperation to the benefit of all by collaborating and authorizing the performance of the work. The Authority does not guarantee a particular volume of business under these rules.

(11) The provider may terminate enrollment at any time as outlined in OAR 410-120-1260(14).

Stat. Auth.: 4413.042
Statutes Implemented: 414.041
Hist.: DMAP 12-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 48-2013, f. & cert. ef. 9-12-13; DMAP 71-2013, f. & cert. ef. 12-27-13

410-120-1160
Medical Assistance Benefits and Provider Rules

(1) Providers enrolled with and seeking reimbursement for services through the Division of Medical Assistance Programs (Division) are responsible for compliance with current federal and state laws and regulations governing Medicaid services and reimbursement, including familiarity with periodic law and rule changes. The Division's administrative rules are posted on the Oregon Health Authority (Authority) Web page for the division and its medical assistance programs. It is the provider's responsibility to become familiar with, and abide by, these rules.

(2) The following services are covered to the extent included in the Division client's benefit package of health care services, when medically or dentally appropriate and within the limitations established by the Division and set forth in the Oregon Administrative Rules (OARs) for each category of Medical Services:

(a) Acupuncture services, as described in the Medical-Surgical Services Program provider rules (OAR chapter 410, division 130);

(b) Administrative examinations, as described in the Administrative Examinations and Billing Services Program provider rules (OAR chapter 410, division 150);

(c) Substance Use Disorder treatment services:

(A) The Division covers substance use disorder inpatient treatment services for medically managed intensive inpatient detoxification when provided in an acute care hospital and when hospitalization is considered medically appropriate. The Division covers Medically Monitored detoxification and Clinically Managed detoxification provided in a free standing detoxification center or an appropriately licensed SUDs residential treatment facility when considered medically appropriate;

(B) The Division covers non-hospital substance use disorder treatment and recovery services on a residential or outpatient basis. For information to access these services, contact the client's PHP or CCO if enrolled, the community mental health program (CMHP), an outpatient substance use disorder treatment provider, the residential treatment program or the Addictions and Mental Health Division AMH;

(C) The Division does not cover residential level of care provided in an inpatient hospital setting for substance use disorder treatment and recovery;

(d) Ambulatory surgical center services, as described in the Medical-Surgical Services Program provider rules (OAR 410 division 130);

(e) Anesthesia services, as described in the Medical-Surgical Services Program provider rules (OAR chapter 410, division 130);

(f) Audiology services, as described in the Speech-Language Pathology, Audiology and Hearing Aid Services Program provider rules (OAR chapter 410, division 129);

(g) Chiropractic services, as described in the Medical-Surgical Services Program provider rules (OAR chapter 410, division 130);

(h) Dental services, as described in the Dental/Denturist Services Program provider rules (OAR chapter 410, division 123);

(i) Early and periodic screening, diagnosis and treatment services (EPSDT, Medicheck for children and teens), are covered for individuals under 21 years of age as set forth in the individual program provider rules. The Division may authorize services in excess of limitations established in the OARs when it is medically appropriate to treat a condition that is identified as the result of an EPSDT screening;

(j) Family planning services, as described in the Medical-Surgical Services Program provider rules (OAR chapter 410, division 130);

(k) Federally qualified health centers and rural health clinics, as described in the Federally Qualified Health Center and Rural Health Clinic Program provider rules (OAR chapter 410, division 147);

(l) Home and community-based waiver services, as described in the Authority and the Department's OARs of Children, Adults and Families Division (CAF), Addictions and Mental Health Division (AMH), and Seniors and People with Disabilities Division (SPD);

(m) Home enteral/parenteral nutrition and IV services, as described in the Home Enteral/Parenteral Nutrition and IV Services Program rules (OAR chapter 410, division 148), and related Durable Medical Equipment. Prosthetics, Orthotics and Supplies Program rules (OAR chapter 410, division 122) and Pharmaceutical Services Program rules (OAR chapter 410, division 121);

(n) Home health services, as described in the Home Health Services Program rules (OAR chapter 410, division 127);

(o) Hospice services, as described in the Hospice Services Program rules (OAR chapter 410, division 142);

(p) Indian health services or tribal facility, as described in The Indian Health Care Improvement Act and its Amendments (Public Law 102-573), and the Division's American Indian/Alaska Native Program rules (OAR chapter 410, division 146);

(q) Inpatient hospital services, as described in the Hospital Services Program rules (OAR chapter 410, division 125);

(r) Laboratory services, as described in the Hospital Services Program rules (OAR chapter 410, division 125) and the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(s) Licensed direct- entry midwife services, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(t) Maternity case management, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(u) Medical equipment and supplies, as described in the Hospital Services Program, Medical-Surgical Services Program, DMEPOS Program, Home Health Care Services Program, Home Enteral/Parenteral Nutrition and IV Services Program and other rules;

(v) When a client's Benefit Package includes mental health, the mental health services provided will be based on the Oregon Health Services Commission's Prioritized List of Health Services.;

(w) Naturopathic services, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(x) Nutritional counseling as described in the Medical/Surgical Services Program rules (OAR chapter 410, division 130);

(y) Occupational therapy, as described in the Physical and Occupational Therapy Services Program rules (OAR chapter 410, division 131);

(z) Organ transplant services, as described in the Transplant Services Program rules (OAR chapter 410, division 124);

(aa) Outpatient hospital services, including clinic services, emergency department services, physical and occupational therapy services, and any other outpatient hospital services provided by and in a hospital, as described in the Hospital Services Program rules (OAR chapter 410, division 125);

(bb) Physician, podiatrist, nurse Practitioner and licensed physician assistant services, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130);

(cc) Physical therapy, as described in the Physical and Occupational Therapy and the Hospital Services Program rules (OAR chapter 410, division 131);

(dd) Post-hospital extended care benefit, as described in OAR chapter 410, division 120 and 141 and Seniors and People with Disabilities (SPD) program rules;

(ee) Prescription drugs, including home enteral and parenteral nutritional services and home intravenous services, as described in the Pharmaceutical Services Program (OAR chapter 410, division 121), the Home Enteral/Parenteral Nutrition and IV Services Program (OAR chapter 410, division 148) and the Hospital Services Program rules (OAR chapter 410, division 125);

(ff) Preventive services, as described in the Medical-Surgical Services (OAR chapter 410, division 130) and the Dental/Denturist Services Program rules (OAR chapter 410, division 123) and prevention guidelines associated with the Health Service Commission's Prioritized List of Health Services (OAR 410-141-0520);

(gg) Private duty nursing, as described in the Private Duty Nursing Services Program rules (OAR chapter 410, division 132);

(hh) Radiology and imaging services, as described in the Medical-Surgical Services Program rules (OAR chapter 410, division 130), the Hospital Services Program rules (OAR chapter 410, division 125), and Dental Services Program rules (OAR chapter 410, division 123);

(ii) Rural health clinic services, as described in the Federally Qualified Health Center and Rural Health Clinic Program rules (OAR chapter 410, division 147);

(jj) School-based health services, as described in the School-Based Health Services Program rules (OAR chapter 410, division 133);

(kk) Speech and language therapy as described in the Speech-Language Pathology, Audiology and Hearing Aid Services Program rules (OAR chapter 410, division 129) and Hospital Services Program rules (OAR chapter 410, division 125);

(ll) Transportation necessary to access a covered medical service or item, as described in the Medical Transportation Program rules (OAR chapter 410, division 136);

(mm) Vision services as described in the Visual Services Program rules (OAR chapter 410, division 140).

(3) Other Authority or Department Divisions, units or Offices, including Vocational Rehabilitation, AMH, and SPD may offer services to Medicaid eligible clients, which are not reimbursed by or available through the Division of Medical Assistance Programs.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025, 414.065 & 414.705
Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 14-1979, f. 6-29-79, ef. 7-1-79; AFS 73-1980(Temp), f. & ef. 10-1-80; AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 71-1981, f. 9-30-81, ef. 10-1-81; Renumbered from 461-013-0000, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 94-1982(Temp), f. & ef. 10-18-82; AFS 103-1982, f. & ef. 11-1-82; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 62-1983, f. 12-19-83, ef. 1-1-84; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 25-1984, f. 6-8-84, ef. 7-1-84; AFS 14-1985, f. 3-14-85, ef. 4-1-85; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 67-1986(Temp), f. 9-26-86, ef. 10-1-86; AFS 76-1986(Temp), f. & ef. 12-8-86; AFS 16-1987(Temp), f. & ef. 4-1-87; AFS 17-1987, f. 5-4-87, ef. 6-1-87; AFS 32-1987, f. 7-22-87, ef. 8-1-87; AFS 6-1988, f. & cert. ef. 2-1-88; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 69-1988, f. & cert. ef. 12-5-88; AFS 70-1988, f. & cert. ef. 12-7-88; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 8-1989(Temp), f. 2-24-89, cert. ef. 3-1-89; AFS 14-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 47-1989, f. & cert. ef. 8-24-89; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0102; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 27-1992(Temp), f. & cert. ef. 9-1-92; HR 33-1992, f. 10-30-92, cert. ef. 11-1-92; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0440; HR 2-1994, f. & cert. ef. 2-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 37-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-24-13; DMAP 71-2013, f. & cert. ef. 12-27-13

410-120-1200
Excluded Services and Limitations

(1) Certain services or items are not covered under any program or for any group of (1) Certain services or items are not covered under any program or for any group of eligible clients. If the client accepts financial responsibility for a non-covered service, payment is a matter between the provider and the client subject to the requirements of OAR 410-120-1280.

(2) The Division of Medical Assistance Programs (Division) shall make no payment for any expense incurred for any of the following services or items that are:

(a) Not expected to significantly improve the basic health status of the client as determined by Division staff, or its contracted entities, for example, the Division's Medical Director, medical consultants, dental consultants or Quality Improvement Organizations (QIO);

(b) Not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury;

(c) Determined not medically or dentally appropriate by Division staff or authorized representatives, including Acumentra or any contracted utilization review organization;

(d) Not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his or her scope of practice or licensure;

(e) For routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabilitation of the client. Examples include exams for employment or insurance purposes;

(f) Provided by friends or relatives of eligible clients or members of his or her household, except when the friend, relative or household member:

(A) Is a health professional, acting in a professional capacity; or

(B) Is directly employed by the client under the Department of Human Services (Department) Seniors and People with Disabilities Division (SPD) Home and Community Based Waiver or the SPD administrative rules, OAR 411-034-000 through 411-034-0090, governing Personal Care Services covered by the State Plan; or

(C) Is directly employed by the client under the Children, Adults and Families Division (CAF) administrative rules, OAR 413-090-0100 through 413-090-0220, for services to children in the care and custody of the Department who have special needs inconsistent with their ages. A family member of a minor client (under the age of 18) must not be legally responsible for the client in order to be a provider of personal care services;

(g) For services or items provided to a client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under the Division's administrative rules;

(h) Needed for purchase, repair or replacement of materials or equipment caused by adverse actions of clients to personally owned goods or equipment or to items or equipment that the Division rented or purchased;

(i) Related to a non-covered service; some exceptions are identified in the individual provider rules. If the Division determines the provision of a service related to a non-covered service is cost-effective, the related medical service may, at the discretion of the Division and with Division prior authorization (PA), be covered;

(j) Considered experimental or investigational, including clinical trials and demonstration projects, or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy;

(k) Identified in the appropriate program rules including the Division's Hospital Services Program administrative rules, Revenue Codes Section, as non- covered services.

(l) Requested by or for a client whom the Division has determined to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services;

(m) For copying or preparing records or documents that except those Administrative Medical Reports requested by the branch offices or the Division for casework planning or eligibility determinations;

(n) Whose primary intent is to improve appearances;

(o) Similar or identical to services or items that will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the client will be essentially the same;

(p) For the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence,

(q) Items or services which are for the convenience of the client and are not medically or dentally appropriate;

(r) The collection, processing and storage of autologous blood or blood from selected donors unless a physician certifies that the use of autologous blood or blood from a selected donor is medically appropriate and surgery is scheduled;

(s) Educational or training classes that are not medically appropriate (Lamaze classes, for example);

(t) Outpatient social services except maternity case management services and other social services described as covered in the individual provider rules;

(u) Plasma infusions for treatment of Multiple Sclerosis;

(v) Post-mortem exams or burial costs, or other services subsequent to the death of a client;

(w) Radial keratotomies;

(x) Recreational therapy;

(y) Telephone calls, except for:

(A) Tobacco cessation counseling, as described in OAR 410-130-0190;

(B) Maternity case management as described in OAR 410-130-0595;

(C) Telemedicine as described in OAR 410-130-0610; and

(D) Services specifically identified as allowable for telephonic delivery when appropriate in the mental health and substance use disorder procedure code and reimbursement rates published by the Addiction and Mental Health Division;

(z) Transsexual surgery or any related services or items;

(aa) Weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs. Food supplements will not be authorized for use in weight loss;

(bb) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered;

(cc) Immunizations prescribed for foreign travel;

(dd) Services that are requested or ordered but not provided (i.e., an appointment which the client fails to keep or an item of equipment which has not been provided to the client);

(ee) Transportation to meet a client's personal choice of a provider;

(ff) Pain center evaluation and treatment for unfunded condition/treatment pairs on the Oregon Health Services Commission's Prioritized List of Health Services;

(gg) Alcoholics Anonymous (AA) and other self-help programs;

(hh) Medicare Part D covered prescription drugs or classes of drugs, and any cost sharing for those drugs, for Medicare-Medicaid Fully Dual Eligible clients, even if the Fully Dual Eligible client is not enrolled in a Medicare Part D plan. See OAR 410-120-1210 for benefit package.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065, 414.025

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76, Renumbered from 461-013-0030; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991 (Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 15-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 37-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-24-13; DMAP 71-2013, f. & cert. ef. 12-27-13

410-120-1210

Medical Assistance Benefit Packages and Delivery System

(1) The services clients are eligible to receive are based upon the benefit package for which they are eligible. Not all packages receive the same benefits.

(2) The Division of Medical Assistance Programs (Division) benefit package description, codes, eligibility criteria, coverage, limitations and exclusions are identified in these rules.

(3) The limitations and exclusions listed here are in addition to those described in OAR 410-120-1200 and in each of the Division chapter 410 OARs.

(4) Benefit package descriptions:

(a) Oregon Health Plan (OHP) Plus:

(A) Benefit package identifier: BMH

(B) Eligibility criteria: As defined in federal regulations and in the 1115 OHP waiver demonstration, a client is categorically eligible for medical assistance if he or she is eligible under a federally defined mandatory, selected, optional Medicaid program or the Children's Health Insurance Program (CHIP) and also meets Oregon Health Authority (Authority) adopted income and other eligibility criteria.

(C) Coverage includes:

(i) Services above the funding line on the Health Services Commission's (HSC) Prioritized List of Health Services, (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Substance use disorder treatment and recovery services provided through local substance use disorder treatment and recovery providers;

(iv) Mental health services based on the HSC Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post-hospital extended care benefit, up to a 20-day stay in a nursing facility for non-Medicare Division clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires prior authorization by pre-admission screening (OAR 411-070-0043), or by the Fully Capitated Health Plan (FCHP) for clients enrolled in an FCHP;

(vii) Cost sharing (e.g., copayments) may apply to some covered services;

(B) Limitations: The following services have limited coverage for non-pregnant adults age 21 and older. (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410, division 123);

(ii) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(b) OHP Standard:

(A) Benefit Package identifier code: KIT;

(B) Eligibility criteria: Adults and childless couples who are eligible through the 1115 Medicaid expansion waiver and meet Authority-adopted income and other eligibility criteria; the Department identifies these clients through the program acronym, OHP-OPU;

(C) Coverage includes:

(i) Services above the funding line on the HSC Prioritized List, (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Outpatient substance use disorder treatment and recovery services provided through local substance use disorder treatment and recovery providers;

(iv) Outpatient mental health services based on the HSC Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post-hospital extended care benefit, up to a 20-day stay in a nursing facility for non-Medicare Division clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires prior authorization by pre-admission screening (OAR 411-070-0043) or by the Fully Capitated Health Plan (FCHP) for clients enrolled in an FCHP.

(B) Limitations: The following services have limited coverage (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410, division 123);

(ii) Selected durable medical equipment and medical supplies (OAR chapter 410, division 122 and 130);

(iii) Selected home enteral/parenteral services (OAR chapter 410, division 148);

(iv) Other limitations as identified in individual Division program administrative rules.

(C) Exclusions: The following services are not covered. Refer to the cited OAR chapters and divisions for details:

(i) Acupuncture services, except when provided for substance use disorder treatment and recovery services (OAR chapter 410, division 130);

(ii) Chiropractic and osteopathic manipulation services (OAR chapter 410, division 130);

(iii) Hearing aids and related services (i.e., exams for the sole purpose of determining the need for or the type of hearing aid), (OAR chapter 410, division 129);

(iv) Home health services (OAR chapter 410, division 127), except when related to limited EPIV services (OAR chapter 410, division 148);

(v) Non-emergency medical transportation (OAR chapter 410, division 136);

(vi) Occupational therapy services (OAR chapter 410, division 131);

(vii) Physical therapy services (OAR chapter 410, division 131);

(viii) Private duty nursing services (OAR chapter 410, division 132), except when related to limited EPIV services;

(ix) Speech and language therapy services (OAR chapter 410, division 129);

(x) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(xi) Other limitations as identified in individual Division program administrative rules, chapter 410.

(c) OHP with Limited Drug:

(A) Benefit Package identifier: BMM, BMD;

(B) Eligibility criteria: Eligible clients are eligible for Medicare and Medicaid benefits;

(C) Coverage includes:

(i) Services covered by Medicare and OHP Plus as described in section (4) of these rules;

(D) Limitations:

(i) The same as OHP Plus, as described in section (4) of these rules;

(ii) Drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to applicable limitations for covered prescription drugs (Refer to OAR chapter 410, division 121 for specific limitations). These drugs include but are not limited to:

(I) Over-the-counter (OTC) drugs;

(II) Barbiturates(except for dual eligible individuals when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications).

(E) Exclusions: Drugs or classes of drugs covered by Medicare Part D Prescription Drug.

(F) Payment for services is limited to the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible;

(G) Cost sharing may apply to some covered services; however, cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the benefit package;

(d) Qualified Medicare Beneficiary (QMB)-Only:

(A) Benefit Package identifier code MED:

(B) Eligibility criteria: Eligible clients are Medicare Part A and B beneficiaries who have limited income but do not meet the income standard for full medical assistance coverage.

(C) Coverage: Is limited to the co-insurance or deductible for the Medicare service. Payment is based on the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, but no more than the Medicare allowable;

(D) Providers may not bill QMB-only clients for the deductible and coinsurance amounts due for services that are covered by Medicare.

(e) Citizen/Alien-Waived Emergency Medical (CAWEM):

(A) Benefit Package identifier CWM:

(B) Eligibility criteria: Eligible clients are non-qualified aliens that are not eligible for other Medicaid programs pursuant to Oregon Administrative Rules (OAR) 461-135-1070;

(C) Coverage is limited to:

(i) Emergency medical services as defined by 42 CFR 440.255. Sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part (the "prudent layperson standard" does not apply to the CAWEM emergency definition);

(ii) Labor and Delivery.

(D) Exclusions: The following services are not covered, even if they are sought as emergency services:

(i) Prenatal or postpartum care;

(ii) Sterilization;

(iii) Family Planning;

(iv) Preventive care;

(v) Organ transplants and transplant-related services;

(vi) Chemotherapy;

(vii) Hospice;

(viii) Home health;

(ix) Private duty nursing;

(x) Dialysis;

(xi) Dental services provided outside of an emergency department hospital setting;

(xii) Outpatient drugs or over-the-counter products;

(xiii) Non-emergency medical transportation;

(xiv) Therapy services;

(xv) Durable medical equipment and medical supplies;

(xvi) Rehabilitation services.

(f) CAWEM Plus-CHIP Prenatal coverage for CAWEM (benefit code CWX) - refer to OAR 410-120-0030 for coverage.

(4) Division clients are enrolled for covered health services to be delivered through one of the following means:

(a) Coordinated Care Organization (CCO):

(A) These clients are enrolled in a CCO that provides integrated and coordinated health care;

(B) CCO services are obtained from the CCO or by referral from the CCO that is responsible for the provision and reimbursement for physical health, substance use disorder treatment and recovery, mental health services or dental care.

(b) Prepaid Health Plan (PHP):

(A) These clients are enrolled in a PHP for their medical, dental or mental health care;

(B) Most non-emergency services are obtained from the PHP or require a referral from the PHP that is responsible for the provision and reimbursement for the medical, dental or mental health service;

(c) Physician Care Organization (PCO):

(A) These clients are enrolled in a PCO for their medical care;

(B) Inpatient hospital services are not the responsibility of the PCO and are governed by the Fee-for-Service Hospital Services Program rule (OAR 410 Division 125).

(d) Primary Care Managers (PCM):

(A) These clients are enrolled with a PCM for their medical care;

(B) Most non-emergency services provided to clients enrolled with a PCM require referral from the PCM.

(c) Fee-for-service (FFS):

(A) These clients are not enrolled in a CCO, PHP, PCO or assigned to a PCM;

(B) Subject to limitations and restrictions in individual program rules, the client can receive health care from any Division-enrolled provider that accepts FFS clients. The provider will bill the Division directly for any covered service and will receive a fee for the service provided.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.065, 414.329, 414.705, 414.706, 414.707, 414.708, 414.710

Hist.: OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 63-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 31-2013, f. & cert. ef. 6-27-13; DMAP 37-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-24-13; DMAP 71-2013, f. & cert. ef. 12-27-13

410-120-1855

Client's Rights and Responsibilities

(1) Division of Medical Assistance Programs (Division) clients shall have the following rights:

(a) To be treated with dignity and respect;

(b) To be treated by providers the same as other people seeking health care benefits to which they are entitled;

(c) To refer oneself directly to mental health, substance use disorder or family planning services without getting a referral from a Primary Care Practitioner (PCP) or other provider;

(d) To have a friend, family member, or advocate present during appointments and at other times as needed within clinical guidelines;

(e) To be actively involved in the development of his/her treatment plan;

(f) To be given information about his/her condition and covered and non-covered services to allow an informed decision about proposed treatment(s);

(g) To consent to treatment or refuse services, and be told the consequences of that decision, except for court ordered services;

(h) To receive written materials describing rights, responsibilities, benefits available, how to access services, and what to do in an emergency;

(i) To have written materials explained in a manner that is understandable to the Division client;

(j) To receive necessary and reasonable services to diagnose the presenting condition;

(k) To receive Division covered services that meet generally accepted standards of practice and are medically appropriate;

(l) To obtain covered preventive services;

(m) To receive a referral to specialty providers for medically appropriate covered services;

(n) To have a clinical record maintained which documents conditions, services received, and referrals made;

(o) To have access to one's own clinical record, unless restricted by statute;

(p) To transfer of a copy of his/her clinical record to another provider;

(q) To execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, substance use disorder or mental health treatment and the right to execute directives and powers of attorney for health care established under ORS 127 as amended by the Oregon

Legislative Assembly 1993 and the OBRA 1990 -- Patient Self-Determination Act;

(r) To receive written notices before a denial of, or change in, a benefit or service level is made, unless such notice is not required by federal or state regulations;

(s) To know how to make a Complaint, Grievance or Appeal with the Division and receive a response as defined in OAR 410-120-1860 and 410120-1865;

(t) To request an Administrative Hearing with the Oregon Health Authority (Authority);

(u) To receive a notice of an appointment cancellation in a timely manner;

(v) To receive adequate notice of Authority privacy practices.

(2) Division clients shall have the following responsibilities:

(a) To treat the providers and clinic's staff with respect;

(b) To be on time for appointments made with providers and to call in advance either to cancel if unable to keep the appointment or if he/she expects to be late;

(c) To seek periodic health exams and preventive services from his/her PCP or clinic;

(d) To use his/her PCP or clinic for diagnostic and other care except in an Emergency;

(e) To obtain a referral to a specialist from the PCP or clinic before seeking care from a specialist unless self-referral to the specialist is allowed;

(f) To use emergency services appropriately;

(g) To give accurate information for inclusion in the clinical record;

(h) To help the provider or clinic obtain clinical records from other providers which may include signing an authorization for release of information;

(i) To ask questions about conditions, treatments and other issues related to his/her care that is not understood;

(j) To use information to make informed decisions about treatment before it is given;

(k) To help in the creation of a treatment plan with the provider;

(l) To follow prescribed agreed upon treatment plans;

(m) To tell the provider that his or her health care is covered with the Division before services are received and, if requested, to show the provider the OMAP Medical Care Identification form;

(n) To tell the Department worker of a change of address or phone number;

(o) To tell the Department worker if the Division client becomes pregnant and to notify the Department worker of the birth of the Division client's child;

(p) To tell the Department worker if any family members move in or out of the household;

(q) To tell the Department worker and provider(s) if there is any other insurance available, changes of insurance coverage including Private Health Insurance (PHI) according to OAR 410-120-1960, and to complete required periodic documentation of such insurance coverage in a timely manner;

(r) To pay for non-Covered Services under the provisions described in OAR 410-120-1200 and 410-120-1280;

(s) To pay the monthly OHP premium on time if so required;

(t) To assist the Division in pursuing any TPR available and to pay the Division the amount of benefits it paid for an injury from any recovery received from that injury;

(u) To bring issues, or Complaints or Grievances to the attention of the Division; and

(v) To sign an authorization for release of medical information so that the Authority can get information which is pertinent and needed to respond to an Administrative Hearing request in an effective and efficient manner.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 37-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-24-13; DMAP 71-2013, f. & cert. ef. 12-27-13

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Rule Caption: Annual Relative Value Unit (RVU) weight update
Adm. Order No.: DMAP 72-2013(Temp)
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 12-30-13 thru 6-28-14
Notice Publication Date:
Rules Amended: 410-120-1340

Subject: The Division of Medical Assistance Programs (Division) General Rules, administrative rules govern payments for services provided to certain eligible clients. The Division temporarily amends 410-120-1340 to implement the annual update to the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-1340

Payment

(1) The Division of Medical Assistance Programs (Division) shall make payment only to the enrolled provider (see OAR 410-120-1260) who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients.

(2) Division reimbursement for services may be subject to review prior to reimbursement.

(3) The Division that is administering the program under which the billed services or items are provided sets fee-for-service (FFS) payment rates.

(4) The Division uses FFS payment rates in effect on the date of service that are the lesser of:

(a) The amount billed;

(b) The Division maximum allowable amount or;

(c) Reimbursement specified in the individual program provider rules:

(5) Amount billed may not exceed the provider's "usual charge" (see definitions);

(6) The Division's maximum allowable rate setting process uses the following methodology for:

(a) Relative Value Unit (RVU) weight-based rates: For all CPT/HCPCS codes assigned an RVU weight, the 2014 Total RVU weights published in the Federal Register, Vol. 78, December 10, 2013 to be effective for dates of services on or after January 1, 2014.

(A) For professional services not typically performed in a facility, the Non-Facility Total RVU weight;

(B) For professional services typically performed in a facility, the Facility Total RVU weight;

(C) The Division applies the following conversion factors:

(i) $40.79 for labor and delivery codes (59400-59622);

(ii) $36.0666 for Federally Qualified primary care codes billed by providers meeting the criteria in OAR 410-130-0005;

(iii) $27.82 for other Oregon primary care providers and services not specified in (ii). A current list of primary care CPT, HCPCs and provider specialty codes is available at http://www.oregon.gov/OHA/healthplan/data_pubs/feeschedule/main.shtml

(iv) $25.48 for all remaining RVU weight based CPT/HCPCS codes.

(D) Rate calculation: Effective January 1, 2014, the Division will calculate rates for each RVU weight-based code using statewide Geographic Practice Cost Indices (GPCIs) as follows:

(i) Work RVU) X (Work GPCI of .986) + (Practice Expense RVU) X (Practice GPCI of 0.972) + (Malpractice RVU) X (Malpractice GPCI of 0.667);

(ii) Sum in (D)(i) multiplied by the applicable conversion factor in section C.

(b) Non RVU based rates:

(A) $20.78 is the base rate for anesthesia service codes 00100-01996. The rate is based on per unit of service;

(B) Clinical lab codes are priced at 70 percent of the 2014 Medicare clinical lab fee schedule;

(C) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80 percent of the 2013 Medicare fee schedule;

(D) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed the rate shall be based upon the Wholesale Acquisition Price (WAC) plus 6.25 percent. If no WAC is available, then the rate shall be reimbursed at Acquisition Cost. Pricing information for WAC is provided by First Data Bank. These rates may change periodically based on drug costs;

(E) All procedures used for vision materials and supplies are based on contracted rates that include acquisition cost plus shipping and handling.

(F) Individual provider rules may specify reimbursement rates for particular services or items.

(7) The rates in (6) are updated periodically and posted on the Authority web site at http://www.oregon.gov/OHA/healthplan/data_pubs/feeschedule/main.shtml.

(8) The Division reimburses inpatient hospital service under the DRG methodology, unless specified otherwise in the Division's Hospital Services Program administrative rules (chapter 410, division 125). Reimbursement for services, including claims paid at DRG rates, shall not exceed any upper limits established by federal regulation.

(9) The Division reimburses all out-of-state hospital services at Oregon DRG or FFS rates as published in the Hospital Services Program rules (OAR chapter 410, division 125) unless the hospital has a contract or service agreement with the Division to provide highly specialized services.

(10) Payment rates for in-home services provided through Department of Human Services (Department) Aging and People with Disabilities (APD) will not exceed the costs of nursing facility services unless the criteria in OAR 411-027-0020 have been met.

(11) The Division sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities, psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by APD for out-of-state nursing facilities.

(12) The Division shall not make payment on claims that have been assigned, sold, or otherwise transferred or when the billing provider, billing agent or billing service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

(13) The Division shall not make a separate payment or copayment to a nursing facility or other provider for services included in the nursing facility's all-inclusive rate. The following services are not included in the all-inclusive rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services Program administrative rules (chapter 410, division 121) and Home Enteral/Parenteral Nutrition and IV Services Program administrative rules, (chapter 410, division 148);

(b) Physical therapy, speech therapy, and occupational therapy provided by a non-employee of the nursing facility within the appropriate program administrative rules (chapter 410, division 129 and 131);

(c) Continuous oxygen which exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules, (chapter 410, division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services Program administrative rules, (chapter 410, division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services Program administrative rules, (chapter 410, division 130);

(f) Medical services provided by a physician or other provider of medical services, such as radiology and laboratory, as outlined in the Medical-Surgical Services Program rules, (chapter 410, division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules, (chapter 410, division 122).

(14) The Division reimburses hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment will not be made for services included in the core package of services as outlined in OAR chapter 410, division 142.

(15) Payment for Division clients with Medicare and full Medicaid:

(a) The Division limits payment to the Medicaid allowed amount, less the Medicare payment, up to the Medicare co-insurance and deductible, whichever is less. The Division's payment cannot exceed the co-insurance and deductible amounts due;

(b) The Division pays the Division allowable rate for Division covered services that are not covered by Medicare.

(16) For clients with third-party resources (TPR), the Division pays the Division allowed rate less the TPR payment but not to exceed the billed amount.

(17) The Division payments, including contracted PHP or CCO payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division, such payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual provider rules.

(18) Payment by the Division does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit a claim before or after the payment. Claim payment may be denied or subject to recovery if medical review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.705, 414.727, 414.728, 414.742 & 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 41-2012(Temp), f. 8-22-12, cert. ef. 9-1-12 thru 2-28-13; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 14-2013(Temp), f. & cert. ef. 3-29-13 thru 9-25-13; DMAP 49-2013, f. & cert. ef. 9-25-13; DMAP 72-2013(Temp), f. & cert. ef. 12-30-13 thru 6-28-14

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Rule Caption: Payment process for doula services provided at the time of labor and delivery
Adm. Order No.: DMAP 73-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Adopted: 410-130-0015
Subject: House Bill 3650, passed during the 2011 legislative session, mandates that members enrolled in Medicaid have access to Traditional Health Workers (THWs) to facilitate culturally and linguistically appropriate care. The Traditional Health Worker Steering Committee under the Office of Equity and Inclusion identified doulas as Traditional Health Care workers. The Authority adopted OAR 410-180-0300 through 0380 establishing the process for training, certification, and registry enrollment of doulas and other traditional healthcare workers. This rule sets forth the requirement for reimbursing doula services provided to eligible members.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-130-0015
Doula Services

(1) The primary purpose of providing concurrent doula services with the services of a licensed obstetrical practitioner is to optimize birth outcomes, including reduced Caesarian sections, epidural use, reduced assisted vaginal deliveries, and reduce the number of neonatal care unit admissions. These face-to-face services are provided only during the labor and delivery phase of the client's pregnancy. The following are expected to benefit most from doula services:

(a) A woman with a racially or ethnically diverse background including, Black/African American, Asian, Pacific Islander, Native American, Latino or multiracial;

(b) A homeless woman;

(c) A woman who speaks limited to no English;

(d) A woman who has limited to no family or partner support; or

(e) A woman who is under the age of 21;

(2) Doula services may be provided only at the request of the licensed obstetrical practitioner. The doula and licensed obstetrical practitioner must work concurrently. The licensed obstetrical practitioner must be a physician or advance practice nurse.

(3) Doulas must be certified and registered with the Authority pursuant to OAR 410-180-0325 through 0327. Certification must be effective

at the time doula services are provided. Doulas must provide proof of certification to the practitioner.

(4) Doula services are covered for any woman whose benefit package covers labor and delivery.

(5) The provision of doula services during labor and delivery must be documented in the client's medical record by the licensed obstetrical practitioner.

(6) Payment for doula's services

(a) The licensed obstetrical practitioner may be eligible for an additional payment, as remuneration for the attending doula providing the doula services;

(b) Doulas may not receive direct payment from the Division;

(c) To be considered for the additional payment, the professional claim for the delivery services must include the unique Medicaid modifier of U9 appended to the appropriate obstetrical code billed at the time of delivery;

(d) This modifier may only be billed once per pregnancy. Multiples (i.e., twins, triplets) are not eligible for additional payment for the doula's services;

(e) Only one additional payment shall be made for doula services regardless of the number of doulas providing the services;

(f) Only providers with a provider type designation of 34 or 42 may bill the U9 modifier.

(7) Doula services at the time of delivery are the only services eligible for payment under this rule. Services provided during the prenatal and postnatal period are governed by OAR 410-130-0595 (Maternity Case Management).

Stat. Authority: ORS 413.042 and 414.065
Stat. Implemented: ORS 414.065
Hist.: DMAP 73-2013, f. 12-31-13, cert. ef. 1-1-14

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Rule Caption: OHP standard benefit plan is eliminated effective January 1, 2014
Adm. Order No.: DMAP 74-2013
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Adopted: 410-120-0003
Subject: The current OHP Standard benefit package is eliminated effective January 1, 2014. Those clients receiving this benefit package will be eligible under a new Medicaid eligibility expansion under the Affordable Care Act. The OHA will offer a single benefit package for full benefit Medicaid eligible, pending approval by the Centers for Medicare and Medicaid services (CMS).
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-0003
OHP Standard Benefit Package

The OHP Standard benefit package is eliminated effective January 1, 2014. Although references to OHP Standard exist elsewhere in rule, the benefit package currently is not funded and is not offered as a benefit. Those enrolled in OHP Standard are enrolled in other existing benefit packages.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.706
Hist.: DAMP 74-2013, f. 12-31-13, cert. ef. 1-1-14

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Rule Caption: Elimination of Oregon Health Plan standard benefit plan effective January 1, 2014
Adm. Order No.: DMAP 75-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Amended: 410-120-0030, 410-120-1210, 410-120-1230, 410-123-1060, 410-123-1200, 410-123-1260, 410-123-1540, 410-125-0020, 410-125-0080, 410-125-0085, 410-130-0240, 410-131-0120, 410-138-0000, 410-138-0007, 410-138-0009, 410-141-0860, 410-142-0040
Rules Suspended: 410-122-0055, 410-123-1670, 410-125-0047, 410-127-0050, 410-129-0195, 410-130-0163, 410-132-0055, 410-146-0022, 410-146-0380, 410-147-0125, 410-148-0090
Subject: The Affordable Care Act (ACA) set forth a series of changes for Medicaid and CHIP eligibility including the expansion to the new adult category. This adult group includes the adults that were known as the OHP standard population. Effective January 1, 2014, the current OHP Standard benefit package will be eliminated, and those clients receiving this benefit package will receive the OHP Plus benefit. Additionally, the ACA added new exemptions to copayments; all changes are pending approval by the Centers for Medicare and Medicaid services (CMS). The Authority needs to amend and repeal these rules to be in compliance with the ACA. Other non-substantive changes include moving the CAWEM Plus benefit description from OAR 410-120-0030 to 410-120-1210, correcting or clarifying grammatical or wording revisions, acronyms and OAR references.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-0030
Children's Health Insurance Program

(1) The Children's Health Insurance Program (CHIP) is a federal non-entitlement program. The Oregon Health Authority (Authority), Division of Medical Assistance Program (Division) administers two programs funded under CHIP in accordance with the Oregon Health Plan (OHP) waiver and the CHIP state plan.

(a) CHIP: Provides health coverage for uninsured, low-income children who are ineligible for Medicaid;

(b) CHIP Pre-natal care expansion program.

(2) The General Rules Program (OAR 410-120-0000 et. seq.) and the OHP Program rules (OAR 410-141-0000 et. seq.) applicable to the Medicaid program are also applicable to the Authority's CHIP program.

(3) Children under 19 years of age, who meet the income limits, citizenship requirements and eligibility criteria for medical assistance established in OAR chapter 410 through the program acronym OHP-CHP, receive the OHP benefit package (for benefits refer to OAR 410-120-1210).

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025 & 414.065
Hist.: DMAP 7-2008(Temp), f. 3-17-08 & cert. ef. 4-1-08 thru 9-15-08; DMAP 14-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 29-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-25-10; DMAP 37-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 18-2010, f. 6-23-10, cert. ef. 7-1-10; DMAP 23-2010, f. & cert. ef. 9-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 19-2012, f. 3-30-12, cert. ef. 4-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 67-2013, f. & cert. ef. 12-3-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-120-1210
Medical Assistance Benefit Packages and Delivery System

(1) The services clients are eligible to receive are based on their benefit package. Not all packages receive the same benefits.

(2) The Division of Medical Assistance Programs (Division) benefit package description, codes, eligibility criteria, coverage, limitations and exclusions are identified in these rules.

(3) The limitations and exclusions listed here are in addition to those described in OAR 410-120-1200 and in any Division chapter 410 OARs.

(4) Benefit package descriptions:

(a) Oregon Health Plan (OHP) Plus:

(A) Benefit package identifier: BMH

(B) Eligibility criteria: As defined in federal regulations and in the 1115 OHP waiver demonstration, a client is categorically eligible for medical assistance if he or she is eligible under a federally defined mandatory, selected, optional Medicaid program or the Children's Health Insurance Program (CHIP) and also meets Oregon Health Authority (Authority) adopted income and other eligibility criteria.

(C) Coverage includes:

(i) Services above the funding line on the Health Evidence Review Commission (HERC) Prioritized List of Health Services (Prioritized List), (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Substance use disorder treatment and recovery services provided through local substance use disorder treatment and recovery providers;

(iv) Mental health services based on the Prioritized List to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post-hospital extended care benefit, up to a 20-day stay in a nursing facility for non-Medicare Division clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires prior authorization by pre-admission screening (OAR 411-070-0043), or by the Fully Capitated Health Plan (FCHP) for clients enrolled in an FCHP;

(vii) Cost sharing (e.g., copayments) may apply to some covered services;

(D) Limitations: The following services have limited coverage for non-pregnant adults age 21 and older. (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410 division 123);

(ii) Vision services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(b) OHP with Limited Drug:

(A) Benefit Package identifier: BMM, BMD;

(B) Eligibility criteria: Eligible clients are eligible for Medicare and Medicaid benefits;

(C) Coverage includes:

(i) Services covered by Medicare and OHP Plus as described in this rule;

(D) Limitations:

(i) The same as OHP Plus, as described in this rule;

(ii) Drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to applicable limitations for covered prescription drugs (Refer to OAR chapter 410, division 121 for specific limitations). These drugs include but are not limited to:

(I) Over-the-counter (OTC) drugs;

(II) Barbiturates (except for dual eligible individuals when used in the treatment of epilepsy, cancer or a chronic mental health disorder as Part D will cover those indications).

(E) Exclusions: Drugs or classes of drugs covered by Medicare Part D Prescription Drug.

(F) Payment for services is limited to the Medicaid-allowed payment less the Medicare payment up to the amount of co-insurance and deductible;

(G) Cost sharing may apply to some covered services; however cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the benefit package;

(c) Qualified Medicare Beneficiary (QMB)-Only:

(A) Benefit Package identifier code MED:

(B) Eligibility criteria: Eligible clients are Medicare Part A and B beneficiaries who have limited income but do not meet the income standard for full medical assistance coverage.

(C) Coverage is limited to the co-insurance or deductible for the Medicare service. Payment is based on the Medicaid-allowed payment less the Medicare payment up to the amount of co-insurance and deductible, but no more than the Medicare allowable;

(D) Providers may not bill QMB-only clients for the deductible and coinsurance amounts due for services that are covered by Medicare.

(d) Citizen/Alien-Waived Emergency Medical (CAWEM):

(A) Benefit Package identifier CWM:

(B) Eligibility criteria: Eligible clients are non-qualified aliens that are not eligible for other Medicaid programs pursuant to OAR 461-135-1070;

(C) Coverage is limited to:

(i) Emergency medical services as defined by 42 CFR 440.255. Sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part (the "prudent layperson standard" does not apply to the CAWEM emergency definition);

(ii) Labor and Delivery.

(D) Exclusions: The following services are not covered, even if they are sought as emergency services:

(i) Prenatal or postpartum care;

(ii) Sterilization;

(iii) Family Planning;

(iv) Preventive care;

(v) Organ transplants and transplant-related services;

(vi) Chemotherapy;

(vii) Hospice;

(viii) Home health;

(ix) Private duty nursing;

(x) Dialysis;

(xi) Dental services provided outside of an emergency department hospital setting;

(xii) Outpatient drugs or over-the-counter products;

(xiii) Non-emergency medical transportation;

(xiv) Therapy services;

(xv) Durable medical equipment and medical supplies;

(xvi) Rehabilitation services.

(e) CAWEM Plus:

(A) Benefit Package identifier code CWX:

(B) Eligibility criteria: As defined in federal regulations and in the Children's Health Insurance Program (CHIP) state plan eligible clients are CAWEM pregnant women not eligible for Medicaid at or below 185 percent of the Federal Poverty Level (FPL).

(C) Coverage includes:

(i) Services covered by OHP Plus as described above;

(D) Exclusions: The following services are not covered for CAWEM Plus:

(i) Postpartum care, except when provided and billed as part of a global obstetric package code that includes the delivery procedure;

(ii) Sterilization;

(iii) Abortion;

(iv) Death with dignity services;

(v) Hospice.

(E) The day after pregnancy ends, eligibility for medical services shall be based on eligibility categories established in OAR chapter 461;

(5) Division clients are enrolled for covered health services to be delivered through one of the following means:

(a) Coordinated Care Organization (CCO):

(A) These clients are enrolled in a CCO that provides integrated and coordinated health care;

(B) CCO services are obtained from the CCO or by referral from the CCO that is responsible for the provision and reimbursement for physical health, substance use disorder treatment and recovery, mental health services or dental care.

(b) Prepaid Health Plan (PHP):

(A) These clients are enrolled in a PHP for their medical, dental or mental health care;

(B) Most non-emergency services are obtained from the PHP or require a referral from the PHP that is responsible for the provision and reimbursement for the medical, dental or mental health service;

(c) Physician Care Organization (PCO):

(A) These clients are enrolled in a PCO for their medical care;

(B) Inpatient hospital services are not the responsibility of the PCO and are governed by the Division's Hospital Services Program rule (OAR chapter 410, Division 125).

(d) Fee-for-service (FFS):

(A) These clients are not enrolled in a CCO, PHP, or PCO;

(B) Subject to limitations and restrictions in the Division's individual program rules, the client may receive health care from any Division-enrolled provider that accepts FFS clients. The provider shall bill the Division directly for any covered service and shall receive a fee for the service provided.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.065, 414.329, 414.705, 414.706, 414.707, 414.708, 414.710

Hist.: OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 63-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 31-2013, f. & cert. ef. 6-27-13; DMAP 37-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-24-13; DMAP 71-2013, f. & cert. ef. 12-27-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-120-1230

Client Co-payment

(1) Oregon Health Plan (OHP) Plus clients shall be responsible for paying a co-payment for some services. This co-payment shall be paid directly to the provider. A co-payment applies regardless of location of services rendered, i.e., provider's office or client's residence.

(2) The following services are exempt from co-payment:

(a) Emergency medical services, as defined in OAR 410-120-0000;

(b) Family planning services and supplies; and

(c) Prescription drug products for nicotine replacement therapy (NRT);

(d) Prescription drugs ordered through the Division's Mail Order Pharmacy program;

(e) Services to treat "health care-acquired conditions" (HCAC) and "other provider preventable conditions" (OPPC) services as defined in OAR 410-125-0450.

(3) The following clients are exempt from co-payments:

(a) Pregnant women;

(b) Children under age 19;

(c) Young adults in Substitute Care and in the Former Foster Care Youth Medical Program;

(d) Clients receiving services under the home and community based waiver and developmental disability waiver;

(e) Inpatients in a hospital, nursing facility, or Intermediate Care Facility for the Mentally Retarded (ICF/MR);

(f) American Indian/Alaska Native (AI/AN) clients who are members of a federally recognized Indian tribe or receive services through Indian Health Services (IHS), tribal organization or services provided at an Urban Tribal Health Clinic as provided under Public Law 93-638;(g) Individuals receiving hospice care;

(h) Individuals eligible for the Breast and Cervical Cancer Program.

(4) Co-payment for services is due and payable at the time the service is provided unless exempted in sections (2) and (3) above. Services to a client may not be denied solely because of an inability to pay an applicable co-payment. This does not relieve the client of the responsibility to pay the co-payment, nor does it prevent the provider from attempting to collect any applicable co-payments from the client; the co-payment is a legal debt, and is due and payable to the provider of service.

(5) Except for prescription drugs, one co-payment is assessed per provider, per visit, per day unless otherwise specified in other Division program administrative rules.

(6) Fee-for-service co-payment requirements:

(a) The provider may not deduct the co-payment amount from the usual and customary billed amount submitted on the claim. Except as provided in section (2) and (3) of this rule, the Division shall deduct the co-payment from the amount the Division pays to the provider (whether or not provider collects the co-payment from the client);

(b) If the Division's payment is less than the required co-payment, then the co-payment amount is equal to the Division's lesser required payment, unless the client or services are exempt according to exclusions listed in sections (2) and (3) above. The client's co-payment shall constitute payment-in-full;

(c) Unless specified otherwise in individual program rules, and to the extent permitted under 42 CFR 1001.951 – 1001.952, the Division does not require providers to bill or collect a co-payment from the Medicaid client. The provider may choose not to bill or collect a co-payment from a Medicaid client; however, the Division shall still deduct the co-payment amount from the Medicaid reimbursement made to the provider.

(7) CCO, PHP, or PCO co-payment requirements:

(a) Unless specified otherwise in individual program rules, and to the extent permitted under 42 CFR 447.58 and 447.60, the Division does not require CCOs, PHP or PCOs to bill or collect a co-payment from the Medicaid client. The CCO, PHP or PCO may choose not to bill or collect a co-payment from a Medicaid client; however, the Division shall still deduct the co-payment amount from the Medicaid reimbursement made to the CCO, PHP or PCO;

(b) When a CCO, PHP or PCO is operating within the scope of the safe harbor regulation outlined in 42 CFR 1001.952(l), a CCO, PHP, or PCO may elect to assess a co-payment on some of the services outlined in table 120-1230-1 but not all. The CCO, PHP, or PCO must assure they are working within the provisions of 42 CFR 1003.102(b) (13).

(8) Services that require co-payments are listed in Table 120-1230-1:

(9) Table 120-1230-1

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

Stat. Auth.: ORS 413.042

Stat. Implemented: ORS 414.025, 414.065

Hist.: OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 73-2003, f. & cert. ef. 10-1-03; OMAP 39-2004(Temp), f. 6-14-04 cert. ef. 6-19-04 thru 11-30-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 5-2008, f. 2-28-08, cert. ef. 3-1-08; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-122-0055

OHP Standard Benefit Package Limitations

(1) The Division of Medical Assistance Programs (Division) limits coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) for the Oregon Health Plan (OHP) Standard benefit package to the codes referenced in Table 122-0055 below. Coverage requirements and limitations, as specified in chapter 410, division 122, apply. For more information about the OHP Standard benefit package, see the Division's General Rules (chapter 410, division 120).

(2) **Table 122-0055**.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 13-2010, f. 6-10-10, cert. ef. 7-1-10; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-123-1060

Definition of Terms

(1) Anesthesia — The following depicts the Division of Medical Assistance Programs' (Division) usage of certain anesthesia terms; however, for further details refer also to the Oregon Board of Dentistry administrative rules (OAR chapter 818, division 026):

(a) Conscious Sedation:

(A) Deep Sedation — A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance maintaining a patient airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained;

(B) Minimal sedation — A minimally depressed level of consciousness, produced by non-intravenous pharmacological methods, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. When the intent is minimal sedation for adults, the appropriate initial dosing of a single non-intravenous pharmacological method is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. Nitrous oxide/oxygen may be used in combination with a single non-intravenous pharmacological method in minimal sedation;

(C) Moderate sedation — A drug-induced depression of consciousness during which the patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained;

(b) General Anesthesia — A drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patient airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired;

(c) Local anesthesia — The elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;

(d) Nitrous Oxide Sedation — An induced controlled state of minimal sedation, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(2) Citizen/Alien-Waived Emergency Medical (CAWEM) — Refer to OAR 410-120-0000 for definition of clients who are eligible for limited emergency services under the CAWEM benefit package. The definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package.

(3) Covered Services — Services on the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List) that have been funded by the Legislature and identified in specific program rules. Services are limited as directed by General Rules — Excluded Services and Limitations (OAR 410-120-1200), the Division's Dental Services Program rules (chapter 410, division 123) and the Prioritized List. Services that are not considered emergency dental services as defined by OAR 410-123-1060(12) are considered routine services.

(4) Dental Hygienist — A person licensed to practice dental hygiene pursuant to State law.

(5) Dental Hygienist with Expanded Practice Dental Hygiene Permit (EPDH) — A person licensed to practice dental hygiene with an EPDH permit issued by the Board of Dentistry and within the scope of an EPDH permit pursuant to State law.

(6) Dental Practitioner — A person licensed pursuant to State law to engage in the provision of dental services within the scope of the practitioner's license and/or certification.

(7) Dental Services — Services provided within the scope of practice as defined under State law by or under the supervision of a dentist or dental hygienist, or denture services provided within the scope of practice as defined under State law by a denturist.

(8) Dental Services Documentation — Must meet the requirements of the Oregon Dental Practice Act statutes; administrative rules for client records and requirements of OAR 410-120-1360, "Requirements for

Financial, Clinical and Other Records;" and any other documentation requirements as outlined in the Dental rules.

(9) Dentally Appropriate — In accordance with OAR 410-141-0000, services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of a OHP member or a provider of the service; and

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a Division member.

(10) Dentist — A person licensed to practice dentistry pursuant to State law.

(11) Denturist — A person licensed to practice denture technology pursuant to State law.

(12) Direct Pulp Cap — The procedure in which the exposed pulp is covered with a dressing or cement that protects the pulp and promotes healing and repair.

(13) Emergency Services:

(a) Refer to OAR 410-120-0000 for the complete definition of emergency services. (This definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package);

(b) Covered services for an emergency dental condition manifesting itself by acute symptoms of sufficient severity requiring immediate treatment. This includes services to treat the following conditions:

(A) Acute infection;

(B) Acute abscesses;

(C) Severe tooth pain;

(D) Unusual swelling of the face or gums; or

(E) A tooth that has been avulsed (knocked out);

(c) The treatment of an emergency dental condition is limited only to covered services. The Division recognizes that some non-covered services may meet the criteria of treatment for the emergency condition; however, this rule does not extend to those non-covered services. Routine dental treatment or treatment of incipient decay does not constitute emergency care;

(14) Hospital Dentistry — Dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR 410-123-1490) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(15) Medical Practitioner — A person licensed pursuant to State law to engage in the provision of medical services within the scope of the practitioner's license and/or certification.

(16) Procedure Codes — The procedure codes in the Dental Services rulebook (OAR chapter 410, division 123) refer to Current Dental Terminology (CDT), unless otherwise noted. Codes listed in this rulebook and other documents incorporated in rule by reference are subject to change by the American Dental Association (ADA) without notification.

(17) Standard of Care — What reasonable and prudent practitioners would do in the same or similar circumstances.

Stat. Auth.: ORS 413.042, 414.065 & 414.707
Stats. Implemented: ORS 414.065 & 414.707
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-123-1200
Services Not To Be Billed Separately

(1) Services that are not to be billed separately may be included in the Current Dental Terminology (CDT) codebook and may not be listed as combined with another procedure, however they are considered to be either minimal, included in the examination, part of another service, or included in routine post-op or follow-up care.

(2) The following services do not warrant an additional fee:

(a) Alveolectomy/Alveoloplasty in conjunction with extractions;

(b) Cardiac and other monitoring;

(c) Curettage and root planing — per tooth;

(d) Diagnostic casts;

(e) Dietary counseling;

(f) Direct pulp cap:

(g) Discing;

(h) Dressing change;

(i) Electrosurgery;

(j) Equilibration;

(k) Gingival curettage — per tooth;

(l) Gingivectomy or gingivoplasty to allow for access for restorative procedure, per tooth;

(m) Indirect pulp cap;

(n) Local anesthesia;

(o) Medicated pulp chambers;

(p) Occlusal adjustments;

(q) Occlusal analysis;

(r) Odontoplasty;

(s) Oral hygiene instruction;

(t) Periodontal charting, probing;

(u) Post removal;

(v) Polishing fillings;

(w) Post extraction treatment for alveolaritis (dry socket treatment) if done by the provider of the extraction;

(x) Pulp vitality tests;

(y) Smooth broken tooth;

(z) Special infection control procedures;

(aa) Surgical procedure for isolation of tooth with rubber dam;

(bb) Surgical splint;

(cc) Surgical stent; and

(dd) Suture removal.

Stat. Auth.: ORS 413.042, 414.065 & 414.707
Stats. Implemented: ORS 414.065 & 414.707
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-123-1260
OHP Plus Dental Benefits

(1) General:

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR chapter 410, division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services includes, but are not limited to:

(i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment which is indicated by screening, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health;

(B) Providers must provide EPSDT services for eligible Division clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Evidence Review Commission Prioritized List of Health Services (Prioritized List); and

(ii) The "Oregon Health Plan (OHP) — Recommended Dental Periodicity Schedule," dated January 1, 2010, incorporated by reference and posted on the Division Web site in the Dental Services Provider Guide document at www.oha.state.or.us/policy/healthplan/guides/dental/main.html;

(b) Restorative, periodontal and prosthetic treatments:

(A) Treatments must be consistent with the prevailing standard of care, documentation must be included in the client's charts to support the treatment, and may be limited as follows:

(i) When prognosis is unfavorable;

(ii) When treatment is impractical;

(iii) A lesser-cost procedure would achieve the same ultimate result; or

(iv) The treatment has specific limitations outlined in this rule;

(B) Prosthetic treatment, including porcelain fused to metal crowns, are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

(2) Diagnostic Services:

(a) Exams:

(A) For children under 19 years of age:

(i) The Division shall reimburse exams (billed as D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

(III) D0180: once every 12 months;

(ii) The Division shall reimburse D0160 only once every 12 months when performed by the same practitioner;

(B) For adults 19 years of age and older, the Division shall reimburse exams (billed as D0120, D0150, D0160, or D0180) once every 12 months;

(C) For problem focused exams (urgent or emergent problems), the Division shall reimburse D0140 for the initial exam. The Division shall reimburse D0170 for related problem focused follow-up exams. Providers should not bill D0140 and D0170 for routine dental visits;

(D) The Division only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, the Division may not reimburse dental exams when furnished by a dental hygienist (with or without an expanded practice permit);

(b) Assessments of a patient (D0191):

(A) When performed by a dental practitioner, the Division shall reimburse:

(i) If performed by a dentist outside of a dental office;

(ii) If performed by a dental hygienist with an expanded practice dental hygiene permit;

(iii) Only if an exam (D0120-D0180) is not performed on the same date of service. An oral assessment is included in the exam;

(iii) For children under 19 years of age, a maximum of twice every 12 months; and

(iv) For adults age 19 and older, a maximum of once every 12 months;

(B) When performed by a medical practitioner, the Division shall cover:

(i) Only for children under 7 years of age; and

(ii) A maximum of once a year;

(C) Medical practitioners performing D0191 shall bill the client's medical coverage for reimbursement (Coordinated Care Organization (CCO) or Prepaid Health Plan (PHP) if the member is enrolled, or the Division if fee-for-service clients);

(D) The maximum limits for this procedure for dental practitioners do not affect the maximum limits for medical providers, and vice versa; and

(E) An assessment does not take the place of the need for oral evaluations/exams;

(c) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220 — once;

(ii) D0230 — a maximum of five times;

(iii) D0270 — a maximum of twice, or D0272 once;

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients must be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11- a minimum of 10 periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older - a minimum of 10 periapicals and four bitewings for a total of 14 films;

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Division shall reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If the Division determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(K) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

(3) Preventive Services:

(a) Prophylaxis:

(A) For children under 19 years of age — Limited to twice per 12 months;

(B) For adults 19 years of age and older — Limited to once per 12 months;

(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis — Adult) — Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis — Child) — Use for clients under 14 years of age;

(b) Topical fluoride treatment:

(A) For adults 19 years of age and older — Limited to once every 12 months;

(B) For children under 19 years of age — Limited to twice every 12 months;

(C) For children under 7 years of age, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill the Division directly regardless of whether the client is FFS or enrolled in a CCO or a PHP;

(ii) Bill using a professional claim format with the appropriate CDT code (D1206 — Topical Fluoride Varnish);

(D) Additional topical fluoride treatments may be available, up to a total of four treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(ii) Are pregnant;

(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven year old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc;

(E) Flouride limits include any combination of fluoride varnish (D1206) or other topical fluoride (D1208);

(c) Sealants (D1351):

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;

(d) Tobacco cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco and a strong personalized message to seek help; and

(iii) Refer patients who are ready to quit, utilizing internal and external resources to complete the remaining three A's (assess, assist, arrange) of the standard intervention protocol for tobacco;

(B) The Division allows a maximum of 10 services within a three-month period;

(C) For tobacco cessation services provided during a medical visit follow criteria outlined in OAR 410-130-0190;

(e) Space management:

(A) The Division shall cover fixed and removable space maintainers (D1510, D1515, D1520, and D1525) only for clients under 19 years of age;

(B) The Division may not reimburse for replacement of lost or damaged removable space maintainers.

(4) Restorative Services:

(a) Restorations — amalgam and composite:

(A) The Division shall cover resin-based composite restorations only for anterior teeth (D2330-D2390) and one surface posterior teeth (D2391);

(B) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(C) The Division reimburses posterior composite restorations at the same rate as amalgam restorations;

(D) The Division limits payment for replacement of posterior composite restorations to once every five years;

(D) The Division limits payment of covered restorations to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) CDT codebook for definitions of restorative procedures;

(E) Providers must combine and bill multiple surface restorations as one line per tooth using the appropriate code. Providers may not bill multiple surface restorations performed on a single tooth on the same day on separate lines. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);

(F) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(G) The Division reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;

(H) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(b) Crowns and related services:

(A) General payment policies:

(i) The fee for the crown includes payment for preparation of the gingival tissue;

(ii) The Division shall cover crowns only when:

(I) There is significant loss of clinical crown and no other restoration will restore function; and

(II) The crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(iii) The Division shall cover core buildup (D2950) only when necessary to retain a cast restoration due to extensive loss of tooth structure from caries or a fracture and only when done in conjunction with a crown. Less than 50% of the tooth structure must be remaining for coverage of the core buildup.

(iv) Reimbursement of retention pins (D2951) is per tooth, not per pin;

(B) The Division shall not cover the following services:

(i) Endodontic therapy alone (with or without a post);

(ii) Aesthetics (cosmetics);

(iii) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(C) The Division shall cover acrylic heat or light cured crowns (D2970 temporary crown, fractured tooth) — allowed only for anterior permanent teeth;

(D) The Division shall cover the following only for clients under 21 years of age or who are pregnant:

(i) Prefabricated plastic crowns (D2932) are allowed only for anterior teeth, permanent or primary;

(ii) Stainless steel crowns (D2930/D2931) are allowed only for anterior primary teeth and posterior permanent or primary teeth;

(iii) Prefabricated stainless steel crowns with resin window (D2933) are allowed only for anterior teeth, permanent or primary;

(iv) Prefabricated post and core in addition to crowns (D2954/D2957);

(v) Permanent crowns (resin-based composite — D2710 and D2712, and porcelain fused to metal (PFM) — D2751 and D2752) as follows:

(I) Limited to teeth numbers 6–11, 22 and 27 only, if dentally appropriate;

(II) Limited to four in a seven-year period. This limitation includes any replacement crowns allowed according to (E)(i) of this rule;

(III) Only for clients at least 16 years of age; and

(IV) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(vi) PFM crowns (D2751 and D2752) must also meet the following additional criteria:

(I) The dental practitioner has attempted all other dentally appropriate restoration options, and documented failure of those options;

(II) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(III) The dental practitioner submits radiographs to the Division for review; history, diagnosis, and treatment plan may be requested. (See OAR 410-123-1100 Services Reviewed by the Division) ;

(IV) The client has documented stable periodontal status with pocket depths within 1–3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long term prognosis;

(V) The crown has a favorable long-term prognosis; and

(VI) If tooth to be crowned is clasp/abutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;

(E) Crown replacement:

(i) Permanent crown replacement limited to once every seven years;

(ii) All other crown replacement limited to once every five years; and

(iii) The Division may make exceptions to crown replacement limitations due to acute trauma, based on the following factors:

(I) Extent of crown damage;

(II) Extent of damage to other teeth or crowns;

(III) Extent of impaired mastication;

(IV) Tooth is restorable without other surgical procedures; and

(V) If loss of tooth would result in coverage of removable prosthetic;

(F) Crown repair (D2980) is limited to only anterior teeth.

(5) Endodontic Services:

(a) Endodontic therapy:

(A) Pulpal therapy on primary teeth (D3230 and D3240) is covered only for clients under 21 years of age;

(B) For permanent teeth:

(i) Anterior and bicuspid endodontic therapy (D3310 and D3320) is covered for all OHP Plus clients; and

(ii) Molar endodontic therapy (D3330):

(I) For clients through age 20, is covered only for first and second molars; and

(II) For clients age 21 and older who are pregnant, is covered only for first molars;

(C) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(b) Endodontic retreatment and apicoectomy/periradicular surgery:

(A) The Division does not cover retreatment of a previous root canal or apicoectomy/periradicular surgery for bicuspid or molars;

(B) The Division limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth;

(c) The Division does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(d) The Division covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(e) Apexification/recalcification and pulpal regeneration procedures:

(A) The Division limits payment for apexification to a maximum of five treatments on permanent teeth only;

(B) Apexification/recalcification and pulpal regeneration procedures are covered only for clients under 21 years of age or who are pregnant.

(6) Periodontic Services:

(a) Surgical periodontal services:

(A) Gingivectomy/Gingivoplasty (D4210 and D4211) — limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia; and

(B) Includes six months routine postoperative care;

(C) The Division shall consider gingivectomy or gingivolplasty to allow for access for restorative procedure, per tooth (D4212) as part of the restoration and will not provide a separate reimbursement for this procedure;

(b) Non-surgical periodontal services:

(A) Periodontal scaling and root planing (D4341 and D4342):

(i) For clients through age 20, allowed once every two years;

(ii) For clients age 21 and over, allowed once every three years;

(iii) A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances;

(iv) Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater:

(I) D4341 is allowed for quadrants with at least four or more teeth with pockets 5 mm or greater;

(II) D4342 is allowed for quadrants with at least two teeth with pocket depths of 5 mm or greater;

(v) Prior authorization for more frequent scaling and root planing may be requested when:

(I) Medically/dentally necessary due to periodontal disease as defined above is found during pregnancy; and

(II) Client's medical record is submitted that supports the need for increased scaling and root planing;

(B) Full mouth debridement (D4355):

(i) For clients through age 20, allowed only once every two years;

(ii) For clients age 21 and older, allowed once every three years;

(c) Periodontal maintenance (D4910):

(A) For clients through age 20, allowed once every six months;

(B) For clients age 21 and older:

(i) Limited to following periodontal therapy (surgical or non-surgical) that is documented to have occurred within the past three years;

(ii) Allowed once every twelve months;

(iii) Prior authorization for more frequent periodontal maintenance may be requested when:

(I) Medically/dentally necessary, such as due to presence of periodontal disease during pregnancy; and

(II) Client's medical record is submitted that supports the need for increase periodontal maintenance (chart notes, pocket depths and radiographs);

(d) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) The Division may not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis — adult);

(B) D1120 (Prophylaxis — child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4341 (Periodontal scaling and root planning — four or more teeth per quadrant);

(F) D4342 (Periodontal scaling and root planning — one to three teeth per quadrant);

(G) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(H) D4910 (Periodontal maintenance).

(7) Removable Prosthodontic Services:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211-D5212) and full dentures (complete or immediate, D5110-D5140);

(b) The Division limits full dentures for clients age 21 and older to only those clients who are recently edentulous:

(A) For the purposes of this rule:

(i) "Edentulous" means all teeth removed from the jaw for which the denture is being provided; and

(ii) "Recently edentulous" means the most recent extractions from that jaw occurred within six months of the delivery of the final denture (or, for fabricated prosthetics, the final impression) for that jaw;

(B) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) For clients through age 20, the client must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) For clients age 21 and older, the client must have one or more missing anterior teeth or six or more missing posterior teeth per arch with documentation by the provider of resulting space causing serious impairment to mastification. Third molars are not a consideration when counting missing teeth;

(D) The dental practitioner must note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA);

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years and under 21 years of age - the Division shall replace full or partial dentures once every ten years, only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every ten years, but only when dentally appropriate;

(B) For clients 21 years of age and older - the Division may not cover replacement of full dentures, but shall cover replacement of partial dentures once every 10 years only if dentally appropriate;

(C) The ten year limitations apply to the client regardless of the client's OHP or Dental Care Organization (DCO)./Coordinated Care Organization (CCO) enrollment status at the time client's last denture or partial was received. For example: a client receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 1, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO, CCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO, CCO or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant replacement;

(f) The Division limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for clients 21 years of age and older:

(A) A maximum of four times per year for:

(i) Adjusting complete and partial dentures, per arch (D5410-D5422);

(ii) Replacing missing or broken teeth on a complete denture – each tooth (D5520);

(iii) Replacing broken tooth on a partial denture – each tooth (D5640);

(iv) Adding tooth to existing partial denture (D5650);

(B) A maximum of two times per year for:

(i) Repairing broken complete denture base (D5510);

(ii) Repairing partial resin denture base (D5610);

(iii) Repairing partial cast framework (D5620);

(iv) Repairing or replacing broken clasp (D5630);

(v) Adding clasp to existing partial denture (D5660);

(g) Replacement of all teeth and acrylic on cast metal framework (D5670D5671):

(A) Is covered for clients age 16 and older a maximum of once every 10 years, per arch;

(B) Ten years or more must have passed since the original partial denture was delivered;

(C) Is considered replacement of the partial so a new partial denture may not be reimbursed for another ten years; and

(D) Requires prior authorization as it is considered a replacement partial denture;

(h) Denture rebase procedures:

(A) The Division shall cover rebases only if a reline may not adequately solve the problem;

(B) For clients through age 20, the Division limits payment for rebase to once every three years;

(C) For clients age 21 and older:

(i) There must be documentation of a current reline which has been done and failed; and

(ii) The Division limits payment for rebase to once every five years;

(D) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing;

(i) Denture reline procedures:

(A) For clients through age 20, the Division limits payment for reline of complete or partial dentures to once every three years;

(B) For clients age 21 and older, the Division limits payment for reline of complete or partial dentures to once every five years;

(C) The Division may make exceptions to this limitation under the same conditions warranting replacement;

(D) Laboratory relines:

(i) Are not payable prior to six months after placement of an immediate denture; and

(ii) For clients through age 20, are limited to once every three years;

(iii) For clients age 21 and older, are limited to once every five years;

(j) Interim partial dentures (D5820-D5821, also referred to as "flippers"):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) The Division shall reimburse for replacement of interim partial dentures once every five years, but only when dentally appropriate;

(k) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

(8) Maxillofacial Prosthetic Services:

(a) Fluoride gel carrier (D5986) is limited to those patients whose severity of oral disease causes the increased cleaning and fluoride treatments allowed in rule to be insufficient. The dental practitioner must document failure of those options prior to use of the fluoride gel carrier;

(b) All other maxillofacial prosthetics (D5900-D5999) are medical services. Refer to the "Covered and Non-Covered Dental Services" document and OAR 410-123-1220:

(A) Bill for medical maxillofacial prosthetics using the professional (CMS1500, DMAP 505 or 837P) claim format:

(B) For clients receiving services through a CCO or PHP, bill medical maxillofacial prosthetics to the CCO or PHP;

(C) For clients receiving medical services through FFS, bill the Division.

(9) Oral Surgery Services:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical, including such procedures performed in an ambulatory surgical center (ASC) or an inpatient or outpatient hospital setting;

(B) Services performed in a dental office setting or an oral surgeon's office:

(i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures;

(b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD9 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the "Covered and Non-Covered Dental Services" document to see a list of CDT procedure codes on the Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as "medical" on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO or CCO responsible for dental services, the DCO, CCO shall pay for those services in the dental plan package;

(e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting:

(A) Require PA;

(B) For clients enrolled in a CCO or FCHP, the CCO or FCHP shall pay for the facility charge and anesthesia services. For clients enrolled in a Physician Care Organization (PCO), the PCO shall pay for the outpatient facility charge (including ASCs) and anesthesia.. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410, division 130 for more information;

(C) If a client is enrolled in a CCO or PHP, the provider must contact the CCO or PHP for any required authorization before the service is rendered;

(f) All codes listed as "by report" require an operative report;

(g) The Division covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;

(h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(i) The Division does not cover surgical excisions of soft tissue lesions (D7410-D7415);

(j) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(k) Surgical extractions:

(A) Include local anesthesia and routine post-operative care;

(B) The Division limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(C) The Division does not cover alveoloplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;

(D) The Division covers alveoplasty not in conjunction with extractions (D7320-D7321) only for clients under 21 years of age or who are pregnant;

(l) Frenulectomy/frenulotomy (D7960) and frenuloplasty (D7963):

(A) The Division covers either frenulectomy or frenuloplasty once per lifetime per arch only for clients under age 21;

(B) The Division covers maxillary labial frenulectomy only for clients age 12 through 20;

(C) The Division shall cover frenulectomy/frenuloplasty in the following situations:

(i) When the client has ankyloglossia;

(ii) When the condition is deemed to cause gingival recession; or

(iii) When the condition is deemed to cause movement of the gingival margin when the frenum is placed under tension;

(m) The Division covers excision of pericoronal gingival (D7971) only for clients under age 21 or who are pregnant.

(10) Orthodontia Services:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate or cleft lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). The Division shall reimburse each phase separately;

(f) The Division shall pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to the Division any unused amount of payment, after applying the following formula: Total payment minus $300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) The Division shall use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, the Division may not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8690 — PA required.

(11) Adjunctive General and Other Services:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) The Division reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers must submit a copy of their permit to administer anesthesia, analgesia and sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication;

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(d) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(B) Bill the Division, CCO or the PHP for these codes using the professional claim format.

Stat. Auth.: ORS 413.042, 414.065 & 414.707
Stats. Implemented: ORS 414.065 & 414.707
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 28-2013(Temp), f. 6-26-13, cert. ef. 7-1-13 thru 12-28-13; DMAP 68-2013, f. 12-5-13, cert. ef. 12-23-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-123-1540
Citizen/Alien-Waived Emergency Medical (CAWEM)

(1) CAWEM clients who are not pregnant (benefit package identifier CWM) have a limited benefit package. Dental coverage is limited to dental services provided in an emergency department hospital setting. (Refer to OAR 410-120-1210(4)(e)).

(2) CAWEM clients who are pregnant (benefit package identifier CWX) receive the OHP Plus dental benefit package as described in OAR 410-123-1260.

(3) All CAWEM clients are exempt from enrollment in a Dental Care Organization (DCO) or Coordinated Care Organization (CCO). Providers must bill the Division directly for any allowable services provided.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-123-1670
OHP Standard Limited Emergency Dental Benefit

(1) The Oregon Health Plan (OHP) Standard Limited Emergency Dental benefit is intended to provide services requiring immediate treatment and is not intended to restore teeth.

(2) Refer to the "Covered and Non-Covered Dental Services" document. See OAR 410-123-1220. Procedures listed as "Yes" for the OHP Standard Benefit Package in the Covered and Non-Covered Dental Services document are covered but are limited to treatment for conditions such as:

(a) Acute infection;

(b) Acute abscesses;

(c) Severe tooth pain;

(d) Tooth re-implantation when clinically appropriate; and

(e) Extraction of teeth, limited only to those teeth that are symptomatic.

(3) Hospital Dentistry is not a covered benefit for the OHP Standard population, with the following exceptions:

(a) Clients who have a developmental disability or other severe cognitive impairment, with acute situational anxiety and extreme uncooperative behavior that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate); or

(b) Clients who have a developmental disability or other severe cognitive impairments and have a physically compromising condition that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate).

(4) Any limitations or prior authorization requirements on services listed in OAR 410-123-1260 or 410-123-1160 will also apply to services in the OHP Standard benefit.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-125-0020
Retroactive Eligibility

(1) The Division of Medical Assistance Programs (Division) may pay for services provided to an individual who does not have Medicaid coverage at the time services are provided if the individual is made retroactively eligible for medical assistance and eligibility is extended back to the date services were provided. Contact the local branch concerning possible retroactive eligibility. In some cases, the date of branch contact may be considered the date of application for eligibility.

(2) Authorization for payment may be given after the service is provided under limited circumstances. For prior authorization information see OAR 410-125-0124 (Hospital Services Program).

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist.: AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0160, 461-015-0230 & 461-015-0370; HR 42-1991, f. & cert. ef. 10-1-91, Renumbered from 410-125-0160 & 410-125-0440; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-125-0047
Limited Hospital Benefit for the OHP Standard Population

(1) The Oregon Health Plan (OHP) Standard population has a limited hospital benefit for urgent or emergent inpatient and outpatient services. Inpatient and outpatient hospital services are limited to the International Classification of Diseases 9th revision Clinical Modification (ICD-9 CM) Diagnoses codes listed on the 'Standard Population Limited Hospital Benefit Code List.'

(2) The limited hospital benefit includes the ICD-9 CM codes listed in the OHP Standard Population — Limited Hospital Benefit Code List. This rule incorporates by reference the OHP Standard Population – Limited Hospital Benefit Code List. This list includes diagnoses requiring prior authorization indicated by the letters for prior authorization (PA) next to the code number. The archived and the current list is available on the web site (www.dhs.state.or.us/policy/healthplan/guides/hospital), or contact the Division of Medical Assistance Programs (Division) for a hardcopy. The document dated:

(a) August 1, 2004, is effective for dates of service August 1, 2004 through August 31, 2004;

(b) September 1, 2004, is effective for dates of service September 30, 2004 through June 30, 2008; and

(c) July 1, 2008 is effective for dates of service July 1, 2008 forward;

(d) On or after January 1, 2012 the limited hospital benefit for the OHP Standard population will be enhanced to the OHP plus hospital benefit and will not be operative until the Division determines all necessary federal approvals have been obtained.

(3) The Division shall reimburse hospitals for inpatient (diagnostic and treatment) services, outpatient (diagnostic and treatment services) and emergency room (diagnostic and treatment) based on the following:

(a) For treatment, the diagnosis must be listed in the OHP Standard Population – Limited Hospital Benefit Code List;

(b) For treatment the diagnosis must be above the funding line on The Health Services Commission Prioritized List of Health Services (OAR 410-141-0520);

(c) The diagnosis (ICD-9) must pair with the treatment (CPT code); and

(d) Prior authorization (PA) must be obtained for codes indicated in the OHP Standard Population — Limited Hospital Benefit Code List. PA request should be directed to the Division and will follow the present (current) PA process. PAs must be processed as expeditiously as the client's health condition requires;

(e) Medically appropriate services required to make a definitive diagnosis are a covered benefit.

(4) Some non-diagnostic outpatient hospital services (e.g. speech, physical or occupational therapy, etc.) are not covered benefits for the OHP Standard population (see the individual program for coverage) in the hospital setting.

(5) For benefit implementation process and PA requirements for the client enrolled in a Fully Capitated Health Plan (FCHP) and/or Mental Health Organization (MHO), contact the client's FCHP or MHO. The FCHP and/or MHO may have different requirements than the Division.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 52-2004(Temp), f. & cert. ef. 9-1-04 thru 2-15-05; OMAP 84-2004, f. & cert. ef. 11-1-04; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-125-0080
Inpatient Services

(1) Elective (not urgent or emergent) hospital admission:

(a) Coordinated Care Organization (CCO), Fully-Capitated Health Plan (FCHP), and Mental Health Organization (MHO) clients: Contact the client's CCO, FCHP, or MHO. The health plan may have different prior authorization (PA) requirements than the Division of Medical Assistance Programs (Division);

(b) Medicare clients: The Division does not require PA for inpatient services provided to clients with Medicare Part A or B coverage;

(c) Division clients: Oregon Health Plan (OHP) clients covered by the OHP Plus Benefit Package:

(A) For a list of medical and surgical procedures that require PA, see the Division's Medical-Surgical Services Program, rules OAR chapter 410, division 130, specifically OAR 410-130-0200, table 130-0200-1, unless they are urgent or emergent defined in OAR 410-125-0401.

(B) For PA, contact the Division unless otherwise indicated in the Medical-Surgical Service Program rules, specifically OAR 410-130-0200, Table 130-0200-1.

(2) Transplant services:

(a) Complete rules for transplant services are in the Division's Transplant Services Program rules, OAR chapter 410, division 124;

(b) Clients are eligible for transplants covered by the Oregon Health Evidence Review Commission's Prioritized List of Health Services (Prioritized List). See the Transplant Services Program administrative rules for criteria. For clients enrolled in a FCHP, contact the plan for authorization. Clients not enrolled in a FCHP, contact the Division's Medical Director's office.

(3) Out-of-State non-contiguous hospitals:

(a) All non-emergent and non-urgent services provided by hospitals more than 75 miles from the Oregon border require PA;

(b) Contact the Division's Medical Director's office for authorization for clients not enrolled in a Prepaid Health Plan (PHP). For clients enrolled in a PHP, contact the plan.

(4) Out-of-State contiguous hospitals: The Division prior authorizes services provided by contiguous-area hospitals, less than 75 miles from the Oregon border, following the same rules and procedures governing in-State providers.

(5) Transfers to another hospital:

(a) Transfers for the purpose of providing a service listed in the Medical-Surgical Service Program rules, specifically OAR 410-130-0200, Table 130-0200-1, e.g., inpatient physical rehabilitation care, require PA. Contact the Division-contracted Quality Improvement Organization (QIO);

(b) For transfers to a long-term, acute-care hospital, skilled nursing facility, intermediate care facility or swing bed, contact Aging and People with Disabilities (APD). APD reimburses nursing facilities and swing beds through contracts with the facilities. For CCO and FCHP clients, transfers require authorization and payment (for first 20 days) from the CCO or FCHP;

(c) For transfers for the same or lesser level inpatient care to a general acute-care hospital, the Division shall cover transfers, including back transfers that are primarily for the purpose of locating the patient closer to home and family, when the transfer is expected to result in significant social or psychological benefit to the patient:

(A) The assessment of significant benefit shall be based on the amount of continued care the patient is expected to need (at least seven days) and the extent to which the transfer locates the patient closer to familial support;

(B) Payment for transfers not meeting these guidelines may be denied on the basis of post-payment review;

(d) Exceptions:

(A) Emergency transfers do not require PA;

(B) In-State or contiguous non-emergency transfers for the purpose of providing care that is unavailable in the transferring hospital do not require PA unless the planned service is listed in the Medical-Surgical Service Program rules, specifically OAR 410-130-0200, Table 130-0200-1;

(C) All non-urgent transfers to out-of-State, non-contiguous hospitals require PA.

(6) Dental procedures provided in a hospital setting:

(a) For prior authorization requirements, see the Division's Dental Services Program rules, specifically OAR 410-123-1260 and 410-123-1490;

(b) Emergency dental services do not require PA;

(c) For prior authorization for fee-for-service clients, contact the Division's Dental Services Program analyst. (See the Division's Dental Services Program Supplemental information, online);

(d) For clients enrolled in a CCO or FCHP, contact the client's health plan.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 11-1983, f. 3-8-83, ef. 4-1-83; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 22-1985, f. 4-23-85, ef. 6-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 45-1989, f. & cert. ef. 8-21-89; HR 9-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0190; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 7-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 9-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 17-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-125-0085
Outpatient Services

(1) Outpatient services that may require prior authorization (PA) include (see the individual program in the Division's Oregon administrative rules):

(a) Physical Therapy (chapter 410, division 131);

(b) Occupational Therapy (chapter 410, division 131);

(c) Speech Therapy (chapter 410, division 129);

(d) Audiology (chapter 410, division 129);

(e) Hearing Aids (chapter 410, division 129);

(f) Dental Procedures (chapter 410, division 123);

(g) Drugs (chapter 410, division 121);

(h) Apnea monitors, services, and supplies (chapter 410, division 131);

(i) Home Parenteral/Enteral Therapy (chapter 410, division 148);

(j) Durable Medical Equipment and Medical supplies (chapter 410, division 122);

(k) Certain hospital services.

(2) The National Drug Code (NDC) must be included on the electronic (837I) and paper (UB 04) claims for physician administered drug codes required by the Deficit Reduction Act of 2005.

(3) Outpatient surgical procedures:

(a) Coordinated Care Organization (CCO) and Fully-Capitated Health Plan (FCHP) clients: Contact the client's health plan. The health plan may have different PA requirements than the Division. Some services are not covered under FCHP contracts and require PA from the Division, or the Division's Dental Program analyst;

(b) Medicare clients enrolled in a CCO or FCHP: These services must be authorized by the plan even if Medicare is the primary payer. Without this authorization, the provider shall not be paid beyond any Medicare payments (see also OAR 410-125-0103);

(c) For Division clients on the OHP Plus benefit package: (A) Surgical procedures listed in OAR 410-125-0080 require PA when performed in an outpatient or day surgery setting, unless they are urgent or emergent;

(B) Contact the Division for PA (unless indicated otherwise in OAR 410-125-0080);

(d) Out-of-State services — Outpatient services provided by hospitals located less than 75 miles from the border of Oregon do not require prior authorization unless specified in the Division's Hospital Services Program rules. All non-urgent or non-emergent services provided by hospitals located more than 75 miles from the border of Oregon require PA. For clients enrolled in a CCO or FCHP, contact the health plan for authorization. For clients not enrolled in a health plan, contact the Division's Medical Unit.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist.: HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 32-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 37-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-127-0050
Client Copayments

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

Stat. Auth.: ORS 409.040 & 413.042
Stats. Implemented: ORS 414.065
Hist.: OMAP 79-2002, f. 12-24-02, cert. ef. 1-1-03; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-129-0195
Standard Benefit Package

(1) Hearing aids, hearing aid repairs, and examinations and audiological diagnostic services only performed to determine the need for or the appropriate type of hearing aid(s) are not covered under the Standard Benefit Package.

(2) Diagnostic testing, including hearing and balance assessment services, performed by an audiologist is covered under the Standard Benefit Package when a physician orders testing to obtain information as part of the physician's diagnostic evaluation, or to determine the appropriate medical or surgical treatment of a hearing deficit or related medical problem. Audiological diagnostic services are not covered under the Standard Benefit Package when the diagnostic information required to determine the appropriate medical or surgical treatment is already known to the physician, or the diagnostic services are performed only to determine the need for or the appropriate type of hearing aid.

(3) Speech-language pathology services are not covered under the Standard Benefit Package.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025 & 414.065
Hist.: OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-130-0163
Standard Benefit Package

(1) The Division does not cover some services under the Standard Benefit Package. Refer to General Rule 410-120-1210 for restrictions in other programs.

(2) The Division covers medical supplies and equipment only when applied by the practitioner in the office setting for treatment of the acute medical condition. Durable medical equipment (DME) and medical supplies dispensed by DME providers are limited. Refer to DMEPOS rule 410-122-0055 for specific information on coverage.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025 & 414.065
Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-130-0240
Medical Services

(1) Coverage of medical and surgical services is subject to the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List). Medical and surgical services requiring prior authorization (PA) are listed in Oregon administrative rule (OAR or rule) 410-130-0200, PA Table 130-0200-1, and medical and surgical services that are Not Covered/Bundled services are listed in OAR 410-130-0220, Table 130-0220-1.

(2) Coverage for acupuncture services by an enrolled acupuncture provider are subject to the HERC Prioritized List and the client's benefit plan.

(3) Coverage for chiropractic services provided by an enrolled chiropractor is subject to the HERC Prioritized List, and benefit plan for:

(a) Diagnostic visits, including evaluation and management services;

(b) Chiropractic manipulative treatment;

(c) Laboratory and radiology services.

(4) Maternity care and delivery:

(a) The Division may consider payment for delivery within a clinic, birthing center or home setting;

(b) Within the home setting the Division may consider payment for appropriate supplies in addition to delivery payment. The additional payment for supplies includes all supplies, equipment, staff assistance, newborn screening cards, and local or topical anesthetics;

(c) The Division may consider payment for physician-administered medications associated with delivery except for local or topical anesthetics;

(d) When labor management conducted by a licensed direct entry midwife (LDEM) does not result in a delivery and the client is appropriately transferred the provider shall code for labor management only. Bill code 59899 and attach a report;

(e) For multiple births, use the appropriate CPT code for the first vaginal or cesarean delivery that includes antepartum and postpartum care, and the subsequent births under the respective delivery only code. For example, for total obstetrical care with cesarean delivery of twins, bill code 59510 for the first delivery and code 59514 for the second delivery.

(5) Neonatal Intensive Care Unit (NICU) procedures:

(a) Are reimbursed only to neonatologists and pediatric intensivists for services provided to infants when admitted to a Neonatal or Pediatric Intensive Care Unit (NICU/PICU). All other pediatricians must use other CPT codes when billing for services provided to neonates and infants;

(b) Neonatal intensive care codes are not payable for infants on Extracorporeal Membrane Oxygenation (ECMO). Use appropriate CPT ECMO codes.

(6) Neurology/Neuromuscular — Payment for polysomnograms and multiple sleep latency tests (MSLT) are each limited to two in a 12-month period.

(7) Oral health services provided by medical practitioners may include an oral assessment and application of topical fluoride varnish during a medical visit to children under the age of seven years. Refer to OAR 410-123-1260 (Dental Services Program).

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025 & 414.065
Hist.: PWC 839(Temp), f. & ef. 4-28-77; PWC 849, f. 7-15-77, ef. 8-1-77; PWC 868, f. 12-30-77, ef. 2-1-78; AFS 14-1978(Temp), f. 4-14-78, ef. 4-15-78; AFS 31-1978, f. & ef. 8-1-78; AFS 26-1980, f. 5-21-80, ef. 6-1-80, AFS 56-1980(Temp), f. 8-29-80, ef. 9-1-80; AFS 2-1981, f. 1-9-81, ef. 2-1-81; AFS 36-1981, f. 6-29-81, ef. 7-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 38-1983, f. & ef. 8-1-83; AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0021 & 461-014-0056; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0650, 461-014-0690 & 461-014-0700; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 18-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 2-1992, f. & cert. ef. 1-2-92; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 18-1992, f. & cert. ef. 7-1-92; HR 36-1992, f. & cert. ef. 12-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 16-1993, f. & cert. ef. 7-2-93; HR 6-1994, f. & cert. ef. 2-1-94, Renumbered from 410-130-0320, 410-130-0340, 410-130-0360 & 410-130-0740; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 88-2004, f. 11-24-04, cert. ef. 12-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 58-2012(Temp), f. 12-27-12, cert. ef. 12-28-12 thru 6-25-13; DMAP 27-2013, f. & cert. ef. 6-25-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-131-0120
Limitations of Coverage and Payment

(1) Oregon Health Plan (OHP) Plus clients shall be responsible for paying a co-payment for some services. This co-payment shall be paid directly to the provider. See OAR 410-120-1230, Client Co-payment, and Table 120-1230-1 for specific details.

(2) The provision of PT/OT evaluations and therapy services require a prescribing practitioner referral, and services must be supported by a ther-

apy plan of care signed and dated by the prescribing practitioner (see OAR 410-131-0080).

(3) PT/OT initial evaluations and re-evaluations do not require Prior Authorization (PA), but are limited to:

(a) Up to two initial evaluations in any 12-month period; and

(b) Up to four re-evaluation services in any 12-month period;

(4) Reimbursement is limited to the initial evaluation when both the initial evaluation and a re-evaluation are provided on the same day.

(5) All other occupational and physical therapy treatments require PA. See also OAR 410-131-0160 and Table 131-0160-1.

(6) A licensed occupational or physical therapist, or a licensed occupational or physical therapy assistant under the supervision of a therapist, must be in constant attendance while therapy treatments are performed:

(a) Duration - Therapy treatments may not exceed one hour per day each for occupational and physical therapy;

(b) Modalities;

(A) Require PA;

(B) Up to two modalities may be authorized per day of treatment;

(C) Need to be billed in conjunction with a therapeutic procedure code; and

(D) Each individual supervised modality code may be reported only once for each client encounter. See Table 131-0160-1.

(c) Massage therapy is limited to two units per day of treatment, and shall only be authorized in conjunction with another therapeutic procedure or modality;

(7) Supplies and materials for the fabrication of splints must be billed at the acquisition cost, and reimbursement may not exceed the Division's maximum allowable in accordance with the physician fee schedule. Acquisition cost is purchase price plus shipping. Off-the-shelf splints, even when modified, are not included in this service;

(8) The following services are not covered:

(a) Services not medically appropriate;

(b) Services that are not paired with a funded diagnosis on the Health Services Commission's Prioritized List of Health Services pursuant to OAR 410-141-0520;

(c) Work hardening;

(d) Back school/back education classes;

(e) Hippotherapy (e.g. horse or equine-assisted therapy);

(f) Services included in OAR 410-120-1200 Excluded Services Limitations;

(g) Durable medical equipment and medical supplies other than those splint supplies listed in Table 131-0120-1, OAR 410-131-0280; and

(h) Maintenance therapy (see OAR 410-131-0100).

(9) Physical capacity examinations are not a part of the PT/OT program, but may be reimbursed as administrative examinations when ordered by the local branch office. See the Division's OARs 410, division 150 for information on administrative examinations and report billing.

(10) Table 131-0120-1

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065 & 688.135

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; HR 28-1993, f. & cert. ef. 10-1-93; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; HR 2-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 8-1998, f. & cert. ef. 3-2-98; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 64-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 59-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 15-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-132-0055
OHP Standard Benefit Package

(1) Private duty nursing services are not covered for clients receiving the Standard Benefit Package. See OAR 410-120-1210 for additional information.

(2) The Oregon Health Plan (OHP) Standard Benefit Package includes limited home enteral/parenteral services and intravenous services (see OAR 410-148-0090).

Stat. Auth.: ORS 409.040 & 413.042

Stats. Implemented: ORS 414.065

Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-138-0000
Targeted Case Management Definitions

The following definitions apply to OAR 410-138-0000 through 410-138-0420:

(1) Assessment means the act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager shall gather information from family members, medical providers, social workers, and educators, if necessary.

(2) Care Plan means a Targeted Case Management (TCM) Care Plan that is a multidisciplinary plan that contains a set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) Case Management means services furnished by a case manager to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18. See also definition for Targeted Case Management.

(4) Centers for Medicare and Medicaid Services (CMS) means the federal agency under the U.S. Department of Health and Human Services that provides the federal funding for Medicaid and Children's Health Insurance Program (CHIP).

(5) Department means the Department of Human Services (Department).

(6) Division means the Division of Medical Assistance Programs.

(7) Duplicate payments mean payments if more than one payment is made for the same services to meet the same need for the same client at the same point in time.

(8) Early intervention (EI) means services for preschool children with disabilities from birth until three years of age, including Indian children and children who are homeless and their families.

(9) Early childhood special education (ECSE) means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.

(10) Early Intervention/Early Childhood Special Education (EI/ECSE) services means services provided to a preschool child with disabilities, eligible under the Individuals with Disabilities Education Act (IDEA), from birth until they are eligible to attend public school, pursuant to the eligible child's Individualized Family Service Plan (IFSP).

(11) EI/ECSE Case manager (i.e., service coordinator) means an employee of the EI/ECSE contracting or subcontracting agency meeting the personnel standards requirements in OAR 581-015-2900. The EI/ECSE case manager serves as a single point-of-contact and is responsible for coordinating all services across agency lines for the purpose of assisting an eligible client to obtain needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) identified in the eligible client's care plan in coordination with the client's IFSP.

(12) EI/ECSE TCM Program means a service under the State plan, and includes case management services furnished to eligible EI/ECSE preschool children age 0-5 with disabilities, assisting them to gain access to needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) in coordination with their IFSP. EI/ECSE TCM providers must meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for State reimbursement under OAR 581-015-2710 EI/ECSE; and must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be subcontractors with such a contractor. Medicaid reimbursement for EI/ECSE TCM services is available only to eligible clients in the target group and does not restrict an eligible client's free choice of providers.

(13) Eligible client means an individual who is found eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Oregon Health Authority (Authority) and eligible for case management services (including TCM services) as defined in the Medicaid State plan, at the time the services are furnished.

(14) Federal Financial Participation (FFP) means the portion paid by the federal government to states for their share of expenditures for providing Medicaid services. FFP was created as part of the Title XIX, Social Security Act of 1965. There are two objectives that permit claims under FFP. They are:

(a) To assist individuals eligible for Medicaid to enroll in the Medicaid program; and

(b) To assist individuals on Medicaid to access Medicaid providers and services. The second objective involves TCM.

(15) Federal Medical Assistance Percentage (FMAP) means the percentage of federal matching dollars available to a state to provide Medicaid

services. The FMAP is calculated annually based on a three-year average of state per capita personal income compared to the national average. The formula is designed to provide a higher federal matching rate to states with lower per capital income. No state receives less than 50 percent or more than 83 percent.

(16) Individualized Family Service Plan (IFSP) means a written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services. (See OAR 581-015-2700 to 581-015-2910, Early Intervention and Early Childhood Special Education Programs.)

(17) Medical Assistance Program means a program administered by the Division that provides and pays for health services for eligible Oregonians. The Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children's Health Insurance Program (CHIP) Title XXI.

(18) Monitoring means ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client's health care decision makers, family members, providers or other entities or individuals when the purpose of the contact is directly related to managing the eligible client's care to ensure the care plan is effectively implemented.

(19) Oregon Health Plan (OHP) means the Medicaid program in Oregon that is known as the OHP, and governed by a series of laws passed by the Oregon Legislature with the intention of providing universal access to healthcare to Oregonians. OHP is also governed by many federal laws.

(20) Reassessment means periodically re-evaluating the eligible client to determine whether or not medical, social, educational, or other services continue to be adequate to meet the goals and objectives identified in the care plan. Reassessment decisions include those to continue, change, or terminate TCM services. A reassessment must be conducted at least annually or more frequently if changes occur in an eligible client's condition; or when resources are inadequate or the service delivery system is nonresponsive to meet the client's identified service needs.

(21) Referrals mean performing activities such as scheduling appointments that link the eligible client with medical, social, or educational providers, or other programs and services, and follow-up and documentation of services obtained.

(22) Targeted Case Management (TCM) Services means case management services furnished to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation).

(23) Unit of Government means a city, a county, a special purpose district, or other governmental unit in the State.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-138-0007

Targeted Case Management — Covered Services

(1) Targeted case management (TCM) services shall be furnished only to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18(2) TCM services billed to Medicaid must be for allowable activities and include one or more of the following components:

(a) Assessment of an eligible client in the target group to determine the need for medical, educational, social, or other services as follows:

(A) Taking client history;

(B) Identifying the needs of the client, and completing related documentation;

(C) Gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible client;

(D) Periodically reassessing a client to determine if the client's needs or preferences have changed. A reassessment must be conducted at least annually or more frequently if changes occur in an individual's condition;

(b) Development of a care plan based on the information collected through the assessment or periodic reassessment, specifying the goals and actions to address the medical, social, educational, and other services needed by the eligible client. This may include:

(A) Active participation of the eligible client in the target group; or

(B) Working with the eligible client or the eligible client's authorized health care decision maker and others to develop goals and identify a course of action to respond to the assessed needs of the eligible client;

(c) Referral, linking and coordination of services and related activities including but not limited to:

(A) Scheduling appointments for the eligible client in the target group to obtain needed services; and

(B) Activities that help link the eligible client with medical, social, or educational providers, or other programs and services (e.g., food vouchers, transportation, child care, or housing assistance) that address identified needs and achieve goals specified in the care plan. The case management referral activity is completed once the referral and linkage have been made;

(C) Reminding and motivating the client to adhere to the treatment and services schedules established by providers;

(d) Monitoring or ongoing face-to-face or other contact;

(A) Monitoring and follow-up activities include activities and contacts:

(i) To ensure the care plan is effectively implemented;

(ii) To help determine if the services are being furnished in accordance with the eligible client's care plan;

(iii) To determine whether the care plan adequately addresses the needs of the eligible client in the target group;

(iv) To adjust the care plan to meet changes in the needs or status of the eligible client;

(B) Monitoring activities may include contacts with:

(i) The participating eligible client in the target group;

(ii) The eligible client's healthcare decision makers, family members, providers, or other entities or individuals when the purpose of the contact is directly related to the management of the eligible client's care.

(3) TCM services billed to Medicaid must be documented in individual case records for all individuals receiving case management. The documentation must include:

(a) The name of the individual;

(b) The dates of the case management services;

(c) The name of the provider agency (if relevant) and the person providing the case management service;

(d) The nature, content, units of the case management services received and whether goals specified in the care plan have been achieved;

(e) Whether the individual has declined services in the care plan;

(f) The need for, and occurrences of, coordination with other case managers;

(g) A timeline for obtaining needed services;

(h) A timeline for reevaluation of the plan.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-138-0009

Targeted Case Management — Services Not Covered

Targeted Case Management (TCM) services do not cover:

(1) Direct delivery of an underlying medical, educational, social, or other service, to which the eligible client has been referred;

(2) Providing transportation to a service to which an eligible client is referred;

(3) Escorting an eligible client to a service;

(4) Providing child care so that an eligible client may access a service;

(5) Contacts with individuals who are not categorically eligible for Medicaid, or who are categorically eligible for Medicaid but not included in the eligible target population when those contacts relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care.

(6) Assisting an individual, who has not yet been determined eligible for Medicaid, to apply for or obtain eligibility;

(7) TCM services provided to an individual if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or State funded parole and probation, or juvenile justice programs;

(8) Activities for which third parties are liable to pay.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-141-0860

Oregon Health Plan Primary Care Manager and Patient Centered Primary Care Home Provider Qualification and Enrollment

(1) Definitions:

(a) ACA-qualified conditions shall be posted on the agency website. The types of conditions include a mental health condition, substance use disorders, asthma, diabetes, heart disease, BMI over 25 or for patients under the age of 20, the equivalent measure would be BMI equal or greater than 85 percentile, HIV/AIDS, hepatitis, chronic kidney disease and cancer;

(b) An ACA-qualified patient is a patient who meets the criteria described in these rules as authorized by Section 2703 of the Patient Protection and Affordable Care Act.

(c) ACA-qualified patients are individuals with:

(A) A serious mental health condition; or

(B) At least two chronic conditions proposed by the state and approved by CMS; or

(C) One chronic condition and at risk of another qualifying condition as described above;

(i) Providers and plans must use information published by the US Preventive Services Task Force, Bright Futures, and HRSA Women's Preventive Services when making decisions about the particular risk factors for an additional chronic condition that may lead a patient with one chronic condition to meet the criteria of one chronic condition and at risk of another.

(ii) The conditions and risk factors shall be documented in the patient's medical record.

(d) Core services are defined as:

(A) Comprehensive Care Management is identifying patients with high risk environmental or medical factors, including patients with special health care needs, who will benefit from additional care planning. Care management activities may include but are not limited to population panel management, defining and following self-management goals, developing goals for preventive and chronic illness care, developing action plans for exacerbations of chronic illnesses, and developing end- of-life care plans when appropriate.

(B) Care coordination is an integral part of the PCPCH. Care coordination functions will include the use of the person centered plan to manage such referrals and monitor follow up as necessary. The Division shall assign clients to a provider, clinic, or team to increase continuity of care and ensure responsibility for individual client care coordination functions, including but not limited to:

(i) Tracking ordered tests and notifying all appropriate care-givers and clients of results;

(ii) Tracking referrals ordered by its clinicians, including referral status and whether consultation results have been communicated to clients and clinicians; and

(iii) Directly collaborating or co-managing clients with specialty mental health and substance abuse, and providers of services and supports to people with developmental disabilities and people receiving long- term care services and supports. (The Division strongly encourages co-location of behavioral health and primary care services.);

(C) Health promotion is demonstrated when a PCPCH provider supports continuity of care and good health through the development of a treatment relationship with the client, other primary care team members and community providers. The PCPCH provider shall promote the use of evidence-based, culturally sensitive wellness and prevention by linking the client with resources for smoking cessation, diabetes, asthma, self-help resources and other services based on individual needs and preferences. The PCPCH shall use health promotion activities to promote patient and family education and self-management of their ACA-qualifying conditions;

(D) Comprehensive transitional care is demonstrated when a PCPCH emphasizes transitional care with either a written agreement or procedures in place with its usual hospital providers, local practitioners, health facilities and community-based services to ensure notification and coordinated, safe transitions, as well as improve the percentage of patients seen or contacted within one (1) week of facility discharges;

(E) Individual and family support services are demonstrated when a PCPCH has processes in place for:

(i) Patient and family education;

(ii) Health promotion and prevention;

(iii) Self-management supports; and

(iv) Information and assistance to obtain available non-health care community resources, services and supports.

(F) Referral to community and social support services is demonstrated through the PCPCH's processes and capacity for referral to community and social support services, such as patient and family education, health promotion and prevention, and self-management support efforts, including available community resources.

(e) Patient Centered Primary Care Home (PCPCH) pursuant to OAR 409-055-0010(7) is defined as a health care team or clinic as defined in ORS 414.655, meets the standards pursuant to OAR 409-055-0040, and has been recognized through the process pursuant to 409-055-0040.

(f) A PCPCH "team" is interdisciplinary and inter-professional and must include non-physician health care professionals, such as a nurse care coordinator, nutritionist, social worker, behavioral health professional, community health workers, personal health navigators and peer wellness specialists authorized through State plan or waiver authorities. (*Community health workers, personal health navigators and peer wellness specialists are individuals who meet criteria established by the Oregon Health Authority, have passed criminal history background check, and in the judgment of the Authority, hiring agency, and licensed health professional approving the patient centered plan, have the knowledge, skills, and abilities to safely and adequately provide the services authorized). These PCPCH professionals may operate in a variety of ways, such as free standing, virtual, or based at any of the clinics and facilities.(f) Person-centered plan is defined as the plan that shall be developed by the PCPCH and reflect the client and family/caregiver preferences for education, recovery and self-management as well as management of care coordination functions. Peer supports, support groups and self-care programs shall be utilized to increase the client and caregivers knowledge about the client's health and health-care needs. The person-centered plan shall be based on the needs and desires of the client including at least the following elements:

(A) Options for accessing care;

(B) Information on care planning and care coordination;

(C) Names of other primary care team members when applicable; and

(D) Information on ways the team member participates in this care coordination;

(g) Primary Care Managers (PCM) must be trained and certified or licensed, as applicable under Oregon statutes and administrative rules, in one of the following disciplines:

(A) Doctors of medicine;

(B) Doctors of osteopathy;

(C) Naturopathic physicians;

(D) Nurse Practitioners;

(E) Physician assistants.

(F) Naturopaths who have a written agreement with a physician sufficient to support the provision of primary care, including prescription drugs, and the necessary referrals for hospital care.

(2) Enrollment requirements:

(a) To enroll as a PCM, all applicants must:

(A) Be enrolled as a Division provider;

(B) Make arrangements to ensure provision of the full range of PCM Managed Services, including prescription drugs and hospital admissions;

(C) Complete and sign the PCM Application (DMAP 3030 (7/11).

(D) If the Division determines that the PCM or an applicant for enrollment as a PCM does not comply with the OHP administrative rules pertaining to the PCM program or the Division's General Rules, or if the Division determines that the health or welfare of Division clients may be adversely affected or in jeopardy by the PCM the Division may:

(i) Deny the application for enrollment as a PCM;

(ii) Close enrollment with an existing PCM; or

(iii) Transfer the care of those PCM clients enrolled with that PCM until such time as the Division determines that the PCM is in compliance.

(E) The Division may terminate their agreement without prejudice to any obligations or liabilities of either party already accrued prior to termination, except when the obligations or liabilities result from the PCM's failure to terminate care for those PCM members. The PCM shall be solely responsible for its obligations or liabilities after the termination date when the obligations or liabilities result from the PCM's failure to terminate care for those PCM members.

(b) To enroll as a PCPCH with the Division, all applicants must:

(A) Apply to and be "recognized" as a PCPCH by the Oregon Health Authority (Authority) as organized in accordance with relevant Oregon Office of Health Policy and Research (OHPR) administrative rules (OAR 409-055-0000 to 409-055-0090), the Division administrative rules (chapter 410, division 141), and OHPRs Oregon Patient Centered Primary Care Home Model, dated October 2011 and found at www.primarycarehome.oregon.gov. The Authority grants PCPCH recognition only when a practice,

site, clinic, or individual provider is successful in the application process with the Authority;

(i) The type of practice, site, clinic or individual provider that may apply to become a PCPCH, include physicians (family practice, general practice, pediatricians, gynecologists, obstetricians, Internal Medicine), Certified Nurse Practitioner and Physician Assistants, clinical practices or clinical group practices; FQHCs; RHCs; Tribal clinics; Community health centers; Community Mental Health Programs and Drug and Alcohol Treatment Programs with integrated Primary Care Providers.

(ii) PCPCH services will occur under the direction of licensed health professionals, physicians, physician assistants, nurse practitioners, nurses, social workers, or professional counselors.

(B) PCPCH providers must complete the enrollment process in order to receive reimbursement (OAR 410-120-1260), except as otherwise stated in OAR 410-120-1295. The Provider Enrollment Attachment (attachment to the Provider Enrollment Agreement) sets forth the relationship between the Division and the PCPCH site (recognized clinic or provider) to receive payment for providing PCPCH services under OHP OAR 410-141-0860.

(C) New PCPCH enrollment shall be effective on or after October 1, 2011 or the date established by the Division upon receipt of required information. (Note: PCPCH tier enrollment changes shall be effective the first of the next month or a date approved by the Division).

(D) The PCPCH enrollment process requires the PCPCH submit a list of fee-for-service (FFS) clients to the Division in a format approved by the Division. The PCPCH must identify current OHP clients being treated within their practice. The PCPCH shall identify that patients are ACA qualified or not as defined in these rules.

(E) PCPCHs serving clients enrolled in a managed care organization (MCO, FCHP or PCO) must consult the MCO on the procedures for developing an OHP client list. The MCO shall submit the list of their identified clients to the Division. Identified client lists are submitted to the Division so that the Division can assign the appropriate clients to the PCPCH and begin making payments for services rendered, all in accordance with relevant OARs.

(F) Termination of PCPCH enrollment shall be the date established by the Authority. All providers shall comply with Provider Sanctions as outlined in OAR 410-120-1400.

(3) The Division shall make per member per month (PMPM) payments based on the PCPCH clinic's recognized tier and on the patient's ACA status.

(a) PCPCH payments are made as follows:

(A) For fee-for-service (FFS) ACA-qualified patients, the amount of the PMPM shall be based on the PCPCH tier:

(i) $ 10 for tier 1;

(ii) $15 for tier 2 and;

(iii) $24 for tier 3.

(B) For FFS non-ACA-qualified patients, the amount of the PMPM shall be based on the PCPCH tier:

(i) $2 for tier 1;

(ii) $4 for tier 2 and;

(iii) $6 for tier 3.

(b) For MCO enrolled ACA-qualified members MCO's are responsible for payment to PCPCH providers assigned to the PCPCH. MCOs shall make payments to PCPCH clinics in accordance with OAR 409-055-0030. If an MCO retains any portion of the PCPCH payment, that portion shall be used to carry out functions related to PCPCH and is subject to approval and oversight by the Division.

(c) MCOs that wish to use PCPCH payment methodology or amount different than Division must receive Division approval

(d) The Division shall not provide additional PMPM payment to the MCOs for non-ACA-qualified members. For MCO enrolled non-ACA-qualified members PCPCH payment responsibility will be integrated into MCOs capitation payments and covered services at the next opportunity to revise capitation rates expected on or near July 1, 2012.

(e) MCOs must use an alternative payment methodology that supports the Division's goal of improving the efficiency and quality of health services for primary care homes by decreasing the use of FFS reimbursement models. PMPM payment is an alternative methodology.

(f) It is the Division's intention that the PCPCH Program will not duplicate other similar services or programs such as PCM and medical case management, and the Authority shall not make PCPCH payments for patients who participate in these programs. The Division may review on a program to program basis if care coordination programs are complimentary with PCPCH.

(4) Client Assignment:

(a) OHP clients' participation with PCPCH is voluntary. OHP clients can opt-out at any time from a PCPCH.

(b) The Division will provide client notice of PCPCH assignment including information about benefits of PCPCH and how to notify the Division if they wish to opt out.

(c) The Division shall remove PCPCH assignment from clients who choose not to participate in a PCPCH Program.

(d) Upon completion of PCPCH enrollment process and approval from CMS, the Division will implement PMPM payments for non-ACA patients who are not enrolled in an FCHP or PCO. The Division shall integrate this service into rate setting and managed care responsibilities at the first available opportunity. This provision only affects the startup phase of the program and is acknowledgment of a more gradual implementation than was originally intended;

(e) Clients assigned must have full medical eligibility with either Oregon Health Plan (OHP) Plus (BMH, BMP, BMM or BMD) benefit plans, this excludes CAWEM Plus (CWX) and QMB (MED) only.

(5) Documentation Requirements:

(a) The PCPCH must coordinate the care of all assigned clients who do not choose to opt out of the PCPCH Program, to ensure they have a "person-centered plan" that has been developed with the client or the client's caregiver. The PCPCH must provide an assigned client with at least one of the six "core" services as defined in Oregon State Medicaid Plan, each quarter and document the service(s) in the medical record in order to be eligible for payment.

(b) PCPCHs shall assure that the patient's engagement, education and agreement to participate in the PCPCH program are documented within six months of initial participation;

(c) PCPCHs shall assure that for each patient, providers are working with the patient to develop a person-centered plan within six months of initial participation and revise as needed;

(d) For ACA-qualified patients, PCPCH clinics shall provide one of the six core services or an activity that is defined in the service definition at least quarterly. Documentation of the services provided must be kept in the patient's medical record;

(e) PCPCHs shall assure that they notify the Division when a patient moves out of the service area, terminates care, or no longer receives primary care from the PCPCH clinic as stated in OAR 410-141-0080 and 410-141-0120. Patient assignment shall be terminated at the end of the month for which PCPCH services terminated, unless a move to another PCPCH provider begins primary care before the end of the month. In this situation, the disenrollment and payment will be prorated;

(f) PCPCH clinics and MCOs must report to the Division a complete list of their Medicaid PCPCH patients, no less than quarterly. The Division will not make payments for patients that are not reported on these quarterly reports or for patients where documentation requirements are not met; PCPCH clinics and MCOs may provide the Division information on new member assignment or termination member assignment on a more frequent basis if they desire;

(g) PCPCH clinics must log on to the PCPCH provider portal, which will be available at www.primarycarehome.oregon.gov, no less than quarterly. In conjunction with submission of the quarterly patient list, logging on to the PCPCH provider portal serves as evidence that the clinic has complied with the service and documentation requirements. Clinics will have the opportunity to track quality measures through the portal and use this as a panel management tool;

(h) PCPCH clinics that have their own information technology system can use their own system as an alternative to the PCPCH provider portal. To do this, PCPCH clinics must:

(A) Be able to document quarterly usage of the system for panel management purposes; and

(B) Submit a request in writing to the Division to utilize their system as an alternative. The Division will respond to each request in writing.

(i) No later than the 15th of January, April, July and October, MCO's shall provide the Division with the following information for the preceding quarter:

(A) Number of clinics or sites that meet PCPCH standards;

(B) Number of Primary Care Providers in those service delivery sites;

(C) Number of patients receiving primary care in those sites; and

(D) Number of ACA-qualified patients receiving primary care at those sites

(j) PCPCH shall provide their Division PCPCH clinic number when referring a patient to another provider to ensure it is added to the claim as a referring provider. The PCPCH will also need to document the referral in the patient's medical record.

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

Stat. Auth.: ORS 413.042, 414.065;
Stats. Implemented: ORS 414.065
Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2011, f. 9-30-11, cert. ef. 10-1-11; DMAP 14-2012, f. & cert. ef. 3-22-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-142-0040
Eligibility for the Hospice Services

(1) Hospice services are covered for clients who have:

(a) Been certified as terminally ill in accordance with OAR 410-142-0060, and;

(b) Oregon Health Plan (OHP) Plus benefit package coverage.

(2) Providers must bill Medicare for hospice services for clients with Medicare Part A coverage. Medicare's payment is considered payment in full.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.065
Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 16-1995, f. & cert. ef. 8-1-95; OMAP 43-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 40-2011, f. 12-15-11, cert. ef. 1-1-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-146-0022
OHP Standard Benefit for AI/AN Clients

Once the Division of Medical Assistance Programs (Division) receives authorization to implement SB 878 from the Centers for Medicare and Medicaid Services, OHP Standard AI/AN clients have the following benefits:

(1) AI/AN clients eligible for the OHP Standard Benefit are allowed by the authority of SB 878 to receive all services allowed under the OHP Plus Benefit that are reimbursed by CMS at 100% FPL;

(2) AI/AN clients eligible for the OHP Standard Benefit do not change eligibility group unless allowed by OAR. For example OHP Standard female client becomes pregnant and moves into OHP Plus during pregnancy;

(3) Excluded services: Transportation.

Stat. Auth.: ORS 413.042, 414.065 & 430.010
Stats. Implemented: ORS 414.065 & 414.428
Hist.: OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-146-0380
Oregon Health Plan Standard Emergency Dental Benefit

(1) Clients with the OHP Standard benefit package have a limited dental benefit. The intent of the OHP Standard emergency dental benefit is to provide services requiring immediate treatment and is not intended to restore teeth. Services are limited to the treatment of conditions listed in Oregon administrative rule (OAR) 410-123-1670(2) OHP Standard Limited Emergency Dental Benefit.

(2) Hospital dentistry is not a covered benefit for the OHP Standard population, except for clients specified in OAR 410-123-1670(3),

(3) Dental services for the OHP standard population are limited to those procedures listed in the covered and non-covered dental services document. Refer to the document in effect for the date the dental service was furnished, found at website http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html — Refer to OAR 410-123-1670.

(4) Any limitations or prior authorization requirements for services listed in OARs 410-123-1160 and 410-123-1260 will also apply to services in the OHP Standard benefit when provided by an AI/AN provider.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 24-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 21-2009, f. 6-12-09, cert. ef. 7-1-09; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-147-0125
OHP Standard Emergency Dental Benefit

(1) Clients with the Oregon Health Plan (OHP) Standard benefit package have a limited dental benefit. The intent of the OHP Standard Emergency Dental benefit is to provide services requiring immediate treatment and is not intended to restore teeth. Services are limited to the treatment of conditions listed in Oregon Administrative Rule (OAR) 410-123-1670(2).

(2) Hospital Dentistry is not a covered benefit for the OHP Standard population, except for clients specified in OAR 410-123-1670(3).

(3) Dental services for the OHP standard population are limited to those procedures listed in the Covered and Non-Covered Dental Services document. Refer to the document in effect for the date the dental service was furnished, found at website http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html Refer to OAR 410-123-1670(2).

(4) Any limitations or prior authorization requirements for services listed in OARs 410-123-1160 and 410-123-1260 will also apply to services in the OHP Standard benefit when provided by an FQHC or RHC.

Stat. Auth.: ORS 409.050 & 414.065, 42 USC 1396a(bb), Title 42 Public Health of the CFR
Stats. Implemented: ORS 414.065
Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 22-2009, f. 6-12-09, cert. ef. 7-1-09; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-148-0090
Standard Benefit Package

(1) Some procedure codes/services are not covered for the Standard Benefit Package population. See General Rules 410-120-1210 for additional information.

(2) The Oregon Health Plan (OHP) Standard benefit package includes limited home enteral/parenteral and IV services:

(a) Drugs that are usually self-administered by the patient such as oral pill form or self-injected medications, are not covered;

(b) Oral nutrition services and supplies are not covered, except when the nutritional supplement meets the criteria specified in 410-148-0260, and is the sole source of nutrition for the client;

(c) Nursing assessment and nursing visits must be directly related to administration of the home enteral/parenteral nutrition and intravenous services pursuant to Oregon's Nurse Practices Act (OAR 851-001-0000). Home health and private duty nursing are not covered services under the Standard benefit package (General Rules 410-120-1210), except nursing assessment and nursing visits under this limited Home Enteral/Parenteral and IV benefit are covered.

Stat. Auth.: ORS 413.042
Stat. Implemented: ORS 414.065
Hist.: OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 17-2005, f. 3-11-05, cert. ef. 4-1-05; Suspended by DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

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Rule Caption: Amending Preferred Drug List and Prior Authorization Guide 5/23, 7/25, and 9/26 2013 DUR/P&T Action
Adm. Order No.: DMAP 76-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Amended: 410-121-0030, 410-121-0040
Subject: The Authority needs to implement changes to the Preferred Drug List and Prior Authorization Guide to ensure the safe and appropriate use of cost effective prescription drugs for the Oregon Health Plan's fee-for-service recipients. All changes will be implemented on OHA Pharmacy web page at www.orpdl.org and http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0030
Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool that the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000 (cc) consists of prescription drugs that the Division, in consultation with the Drug Use Review (DUR) / Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drug(s) available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T, that result from an evidence-based evaluation process, as the basis for selecting the most effective drug(s);

(b) The Division shall determine the drugs selected in (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drug(s) in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate selected drug(s) for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information which makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all changes or revisions to the PDL, using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision;

(5) Pharmacy providers shall dispense prescriptions in the generic form, unless:

(a) The practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner, in their professional judgment, wishes to prescribe a physical health drug not on the PDL, they may request an exception, subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL dated January 1, 2014 is incorporated in rule by reference and is found on our Web page at www.orpdl.org.

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

Stat. Auth.: ORS 409.025, 409.040, 409.110, 414.065, 413.042 and 414.325

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by Oregon Health Plan (OHP) in a manner consistent with the Oregon Health Services Commission's Prioritized List of Health Services (OAR 410141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication shall not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited;

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Oregon Health Authority (Authority) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the OHP Fee-For-Service Pharmacy PA Criteria Guide (PA Criteria Guide) dated January 1, 2014, incorporated in rule by reference and found on our Web page at: http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First DataBank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant must be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA is required for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP or;

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, & 414.330 - 414.414

Stats. Implemented: 414.065, 414.325, 414.334, 414.361, 414.369 & 414.371

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995,

f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

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Rule Caption: Amending Preferred Drug List per the Supplemental Rebate Contracts for 2014
Adm. Order No.: DMAP 1-2014(Temp)
Filed with Sec. of State: 1-10-2014
Certified to be Effective: 1-10-14 thru 7-9-14
Notice Publication Date:
Rules Amended: 410-121-0030
Rules Suspended: 410-121-0030(T)
Subject: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division temporarily amends 410-121-0030 to comply with the Supplemental Rebate Contracts effective January 1, 2014 with placement on the Preferred Drug List (PDL) and the removal of specific brand names that have not been contracted. The Authority implements changes to the Preferred Drug List to ensure the safe and appropriate use of cost effective prescription drugs for the Oregon Health Plan's fee-for-service recipients. The Division amends rules as follows:

Preferred:
Atomoxetine HCL (Strattera®)
Non-Preferred:
Insulin Lispro (Humalog®)
Insulin NPL / Insulin Lispro (Humalog Mix 50/50®)
Insulin NPL / Insulin Lispro (Humalog Mix 75-25®)

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0030
Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research) make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool that the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000 (cc) consists of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined the most effective drug(s) available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T, that result from an evidence-based evaluation process, as the basis for selecting the most effective drug(s);

(b) The Division shall determine the drugs selected in (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drug(s) in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate selected drug(s) for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information which makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all changes or revisions to the PDL, using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision;

(5) Pharmacy providers shall dispense prescriptions in the generic form, unless:

(a) The practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner, in their professional judgment, wishes to prescribe a physical health drug not on the PDL, they may request an exception, subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL dated January 10, 2014 is incorporated in rule by reference and is found on our Web page at www.orpdl.org.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.025, 409.040, 409.110, 414.065, 413.042 & 414.325
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 1-2014(Temp), f. & cert. ef. 1-10-14 thru 7-9-14

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Rule Caption: Rebasing Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) reimbursement levels
Adm. Order No.: DMAP 2-2014(Temp)
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 2-1-14 thru 7-31-14

Notice Publication Date:
Rules Amended: 410-122-0186
Subject: The rule provides the percentages of Medicare fee schedule that DMAP will pay for each category of service. DMEPOS rates are currently calculated as a percentage of 2010 Medicare fee schedule and vary depending on category of service. The amendment will change the percentages and are based on a more current version of Medicare (2012). The new percentages keep rates essentially the same to maintain budget neutrality.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-122-0186
Payment Methodology

(1) The Division of Medical Assistance Programs (Division) utilizes a payment methodology for covered durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) which is generally based on the 2012 Medicare fee schedule.

(a) The Division fee schedule amount is 82.6 percent of 2012 Medicare Fee Schedule for items covered by Medicare and the Division except for:

(A) Ostomy supplies fee schedule amounts are 93.3 percent of 2012 Medicare Fee Schedule (See Table 122-0186-1 for list of codes subject to this pricing); and

(B) Prosthetic and Orthotic fee schedule amounts (L-codes) are 82.6 percent of 2012Medicare Fee Schedule; and

(C) Complex Rehabilitation items and services, other than power wheelchairs, fee schedule amounts are 88 percent of 2012 Medicare Fee Schedule (See Table 122-0186-2 for a list of codes subject to this pricing); and

(D) Group 1 power wheelchairs (K0813-K0816) and Group 2 power wheelchairs with no added power option (K0820-K0829) fee schedule amounts are 55 percent of 2012 Medicare Fee Schedule; and

(E) Group 3 power wheelchairs (K0835-K0864) fee schedule amounts are 58.7 percent of 2012 Medicare Fee Schedule;

(b) For items that are not covered by Medicare but covered by the Division, the fee schedule amount shall be 99 percent of DMAP's published rate effective 7/31/11.

(c) For new codes added by the Center for Medicare and Medicaid Services (CMS), payment will be based on the most current Medicare fee schedule and will follow the same payment methodology as stated in (1)(a) and (b).

(2) Payment is calculated using the lesser of the following:

(a) The Division fee schedule amount using the above methodology in (1)(a) and (b); or

(b) The manufacturer's suggested retail price (MSRP); or

(c) The actual charge submitted.

(3) The Division reimburses for the lowest level of service that meets medical appropriateness. See OAR 410-120-1280 Billing and 410-120-1340 Payment.

(4) The Division shall reimburse miscellaneous codes E1399 (durable medical equipment, miscellaneous) and K0108 (wheelchair component or accessory, not otherwise specified), and any code that requires manual pricing, using the lesser of the following:

(a) Seventy-five percent (75) of Manufacturer's Suggested Retail Price (MSRP) verifiable with quote, invoice or bill from the manufacturer which clearly states the amount indicated is MSRP; or

(b) If MSRP is not available then reimbursement shall be acquisition cost plus 20 percent, verifiable with quote, invoice, or bill from the manufacturer which clearly states the amount indicated is acquisition cost; or

(c) Actual charge submitted by the provider.

(5) Reimbursement on miscellaneous codes E1399 and K0108 shall be capped at $3,200.00.

(6) Prior authorization (PA) is required for miscellaneous codes E1399, K0108 and A4649 (surgical supply; miscellaneous) when the cost is greater than $150, and the DMEPOS provider must submit the following documentation:

(a) A copy of the items from (4) (a) or (b) that will be used to bill; and

(b) Name of the manufacturer, description of the item, including product name/model name and number, serial number when applicable, and technical specifications;

(c) A picture of the item upon request by the Division.

(7) The DMEPOS provider must submit verification for items billed with miscellaneous codes A4649, E1399, and K0108 when no specific Healthcare Common Procedure Coding System (HCPCS) code is available. Providers are allowed to submit verification from an organization such as the Medicare Pricing, Data Analysis and Coding (PDAC) contractor.

(8) The Division may review items that exceed the maximum allowable or cap on a case-by-case basis and may request the provider submit the following documentation for reimbursement:

(a) Documentation which supports that the client meets all of the coverage criteria for the less costly alternative; and,

(b) A comprehensive evaluation by a licensed clinician (who is not an employee of or otherwise paid by a provider) that clearly explains why the less costly alternative is not sufficient to meet the client's medical needs, and;

(c) The expected hours of usage per day, and;

(d) The expected outcome or change in the client's condition.

(9) For codes A4649, E1399 and K0108 when the cost is $150.00 or less per each unit:

(a) Only items that have received an official product review coding decision from an organization such as PDAC with codes A4649, E1399 or K0108 shall be billed to the Division. These products may be listed in the PDAC Durable Medical Equipment Coding System Guide (DMECS) DMEPOS Product Classification Lists;

(b) Subject to service limitations of the Division's rules;

(c) PA is not required;

(d) The amount billed to the Division must not exceed 75 percent of Manufacturer's Suggested Retail Price (MSRP). The provider is required to retain documentation of the quote, invoice or bill to allow the Division to verify through audit procedures.

(10) For rented equipment, the equipment is considered paid for and owned by the client when the Division fee schedule allowable is met or the actual charge from the provider is met, whichever is lowest. The provider must transfer title of the equipment to the client.

(11) Table 122-1086-1: Ostomy Codes, Table 122-0186-2: Complex Rehabilitation Codes.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 42-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 31-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-27-12; DMAP 57-2012, f. & cert. ef 12-27-12; DMAP 2-2014(Temp), f. 1-15-14, cert. ef. 2-1-14 thru 7-31-14

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Rule Caption: Traditional Health Worker Certification and Registry Application and Renewal Process and Background Check Requirements
Adm. Order No.: DMAP 3-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14
Notice Publication Date: 12-1-2013
Rules Adopted: 410-180-0325, 410-180-0326
Rules Repealed: 410-180-0325(T)
Subject: House Bill 3650, passed during the 2011 legislative session, mandates that members enrolled in Oregon's Coordinated Care Organizations (CCOs) have access to Traditional Health Workers (THWs) to facilitate culturally and linguistically appropriate care. THWs include community health workers, personal health navigators, peer wellness specialists and other health care workers who are not currently regulated or certified by this state, including birth doulas. The Authority needs to adopt these rules which establish a new application and renewal process for THW certification and registry enrollment. These rules also set forth the THW background check requirements, which THWs must pass before being certified, enrolled on the Authority's registry and to be eligible for Medicaid reimbursement for their services.

The Authority needs to adopt these to ensure the full engagement and utilization of THWs in Oregon's Integrated and Coordinated Healthcare System to ensure quality healthcare for its clients.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-180-0325
Application and Renewal Process for Traditional Health Worker (THW) Certification and Registry Enrollment

(1) Individuals seeking THW certification and registry enrollment must:

(a) Be at least 18 years of age;

(b) Not be listed on the Medicaid provider exclusion list;

(c) Have successfully completed all training requirements for certification pursuant to these rules; and

(d) Submit to the Authority all required documentation and a completed application on an Authority prescribed form.

(2) Peer support specialists as defined in OAR 410-180-0305(13)(b), (c) who choose to have their background check completed by an outside entity pursuant to 410-180-0326 may be certified by that entity.

(a) The entity's certification requirements must include all peer support specialists certification requirements set forth in these rules.

(b) Peer support specialists must have either:

(A) The outside entity submit the certification and background check information to the Authority; or

(B) Submit to the Authority all required documentation and a completed application on an authority prescribed form.

(2) Individuals seeking THW certification and registry enrollment as a grandfathered community health worker, peer wellness specialist, personal health navigator, or peer support specialist must:

(a) Be at least 18 years of age;

(b) Not be listed on the Medicaid provider exclusion list;

(c) Submit to the Authority all required documentation and a completed application on an Authority prescribed form;

(d) Submit a minimum of one letter of recommendation and competency evaluation on an Authority prescribed form from any previous employer for whom THW services have been provided from January 1, 2004 to June 30, 2014;

(e) Except for peer support specialists, all THW's must submit verifiable evidence of working or volunteering in the capacity of a community health worker, peer wellness specialist or personal health navigator for at least 3000 hours from January 1, 2004 to June 30, 2014;

(f) Peer support specialists must submit verifiable evidence of working or volunteering in the capacity of a peer support specialist for at least 2000 hours from January 1, 2004 to June 30, 2014;

(g) Verifiable evidence may include but is not limited to pay statement, services contract, student practicum, or volunteer time log.

(3) Applications are available on the THW program webpage or a paper copy may be obtained upon request to the Oregon Health Authority Office of Equity and Inclusion.

(4) Applicants may withdraw from the process at any time by submitting written notification to the Authority.

(5) Applicants who complete a training program after August 2, 2013 must apply for certification within three years of program completion.

(6) Applicants who have completed a training program more than three years prior to application for certification shall be denied certification. If the Authority denies certification, the applicant may file an appeal with the Authority for an exemption.

(7) If the Authority determines that an applicant has met all certification requirements, the Authority shall notify the applicant in writing granting the individual certification as a THW and add the individual to the registry.

(8) Certification is valid for 36 months from the date of certification.

(9) A THW seeking certification renewal must:

(a) Submit a completed renewal application on an Authority prescribed form; and

(b) Provide written verification indicating the certificate holder has met the applicable requirements for continuing education set forth in OAR 410-180-0320.

(10) Renewal applications must be submitted to the Authority no less than 30 days prior to the expiration of the current certification period.

(11) The Authority shall remove a THW from the registry if the THW fails to renew certification within the renewal period.

(12) THWs who have been removed from the registry following certification expiration shall be denied renewal unless they file an appeal with the Authority and are granted an exemption.

Stat. Auth.: ORS 413.042, 414.635 & 414.665
Stats. Implemented: ORS 414.635 & 414.665
Hist.: DMAP 42-2013(Temp), f. & cert. ef. 8-2-13 thru 1-29-14; DMAP 66-2013, f. & cert. ef. 12-3-13; DMAP 3-2014, f. & cert. ef. 1-15-14

410-180-0326
Background Check Requirements

(1) All individuals seeking certification and registry enrollment as a community health worker, peer wellness specialist, birth doula, peer support specialist as defined in OAR 410-180-0305(13)(a) and (d), or personal health navigator must have a background check conducted by the Authority in accordance with 943-007-0010 through 0501 specifically incorporating and limited to 407-007-0200 to 407-007-0250, and 407-007-0280 to 407-007-0325, and 407-007-0340 to 407-007-0370 and expressly not incorporating 407-007-0275 (Disqualifying Convictions Under ORS 443.004 for Aging and People with Disabilities Programs) and 407-007-0277 (Disqualifying Convictions under 443.004 for Mental Health or Alcohol and Drug Programs). The Authority may deny certification to a new or renewal applicant based on a fitness determination applying a weighing test for potentially disqualifying convictions or conditions.

(2) To be certified, enrolled on the registry, and eligible for reimbursement under Medicaid, peer support specialists as defined in OAR 410-180-0305(13)(b) and (c) must pass a background check. The background check may be conducted by the Authority or an entity with a contract with the Authority to provide background checks.

(a) If the Authority conducts the background check, the Authority's fitness determination shall comply with the provision of section (1) and shall include the application of a weighing test for potentially disqualifying convictions or conditions, or if otherwise excluded from participation in the medical assistance program.

(b) If the contracting entity conducts the background check, the provisions of 407-007-0277(Disqualifying Convictions under ORS 443.004 for Mental Health or Alcohol and Drug Programs) shall apply.

(c) Peer support specialists described in section (2) may determine which entity shall conduct the background check.

(3) Individuals seeking certification who are excluded from participating in the medical assistance program shall be denied certification and registry enrollment. The Authority shall consult with the Office of the Inspector General to determine if the applicant is excluded from participation.

Stat. Auth.: ORS 413.042, 414.635 & 414.665
Stats. Implemented: ORS 181.537, 414.635 & 414.665
Hist.: DMAP 3-2014, f. & cert. ef. 1-15-14

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Rule Caption: Eligibility requirements for the Authority's Office of Client and Community Services Medical Program
Adm. Order No.: DMAP 4-2014(Temp)
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14 thru 3-30-14
Notice Publication Date:
Rules Adopted: 410-200-0010, 410-200-0015, 410-200-0100, 410-200-0105, 410-200-0110, 410-200-0111, 410-200-0115, 410-200-0120, 410-200-0125, 410-200-0130, 410-200-0135, 410-200-0140, 410-200-0145, 410-200-0146, 410-200-0200, 410-200-0205, 410-200-0210, 410-200-0215, 410-200-0220, 410-200-0225, 410-200-0230, 410-200-0235, 410-200-0240, 410-200-0305, 410-200-0310, 410-200-0315, 410-200-0400, 410-200-0405, 410-200-0410, 410-200-0415, 410-200-0420, 410-200-0425, 410-200-0435, 410-200-0440, 410-200-0500, 410-200-0505, 410-200-0510
Rules Suspended: 410-200-0010(T), 410-200-0015(T), 410-200-0100(T), 410-200-0105(T), 410-200-0110(T), 410-200-0111(T), 410-200-0115(T), 410-200-0120(T), 410-200-0125(T), 410-200-0130(T), 410-200-0135(T), 410-200-0140(T), 410-200-0145(T), 410-200-0146(T), 410-200-0200(T), 410-200-0205(T), 410-200-0210(T), 410-200-0215(T), 410-200-0220(T), 410-200-0225(T), 410-200-0230(T), 410-200-0235(T), 410-200-0240(T), 410-200-0305(T), 410-200-0310(T), 410-200-0315(T), 410-200-0400(T), 410-200-0405(T), 410-200-0406(T), 410-200-0410(T), 410-200-0415(T), 410-200-0420(T), 410-200-0425(T), 410-200-0435(T), 410-200-0440(T), 410-200-0500(T), 410-200-0505(T), 410-200-0510(T), 410-200-0515(T)
Subject: With passage of the Affordable Care Act (ACA), Medicaid and CHIP eligibility methodologies are mandated to be changed January 1, 2014 to use of Modified Adjusted Gross Income (MAGI) income and methodologies. Oregon was approved for early implementation of the MAGI income and eligibility methodologies, an option provided by CMS to the states. These rules must be adopted to support the implementation of MAGI income and eligibility methodologies. These rules provide the eligibility criteria that became effective January 1, 2014. These rules explain the new household groups, whose income must be counted, what income is considered in determining medical eligibility, time frames for deter-

mining medical eligibility, hearing processes, and processes for coordination with Cover Oregon when an individual must be referred.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-200-0010
Overview

(1) These rules, OAR 410-200-0010 through 0510 describe eligibility requirements for OCCS Medical Programs.

(2) Rule text in italics indicates the term can be found in the definitions rule OAR 410-200-0015.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0015
General Definitions

(1) "Action" means a termination, suspension, or reduction of Medicaid or CHIP eligibility or covered services.

(2) "Address Confidentiality Program (ACP)" means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(3) "AEN" means Assumed Eligible Newborn (see OAR 410-200-0115).

(4) "Affordable Care Act" means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub. L. 112–56).

(5) "Agency" means the Oregon Health Authority, Department of Human Services, and Cover Oregon.

(6) "American Indian and Alaska Native exceptions" means:

(a) Distributions from Alaska Native Corporations and Settlement Trusts;

(b) Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;

(c) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:

(A) Rights of ownership or possession in any lands described in section (b) of this part; or

(B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources.

(d) Distributions resulting from real property ownership interests related to natural resources and improvements:

(A) Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or

(B) Resulting from the exercise of federally-protected rights relating to such real property ownership interests.

(e) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom;

(f) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(7) "Applicant" means an individual who is seeking an eligibility determination themselves or someone for whom they are applying through an application submission or a transfer from another agency or insurance affordability program.

(8) "Application" means:

(a) The single streamlined application for all insurance affordability programs developed by Cover Oregon and the Authority; or

(b) For individuals applying, or who may be eligible, for assistance on a basis other than the applicable MAGI standard, an application designed specifically to determine eligibility on a basis other than the applicable MAGI standard, submitted by or on behalf of the individual.

(9) "APTC" means Advance payments of the premium tax credit, which means payment of the tax credits specified in section 36B of the Internal Revenue Code (as added by section 1401 of the Affordable Care Act) which are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with sections 1402 and 1412 of the Affordable Care Act.

(10) "Assumed eligibility" means an individual is deemed to be eligible for a period of time based on receipt of another program benefits or because of another individual's eligibility.

(11) "Appeal Request "means a clear expression, oral or written, by an individual or the individual's representative that the individual wishes to appeal an Authority decision or action.

(12) "Authorized Representative" means an individual or organization that acts on behalf of an applicant or beneficiary in assisting with the individual's application and renewal of eligibility and other ongoing communications with the Agency. (See OAR 410-200-0111 Authorized Representatives.)

(13) "Beneficiary" means an individual who has been determined eligible and is currently receiving OCCS Medical Program benefits.

(14) "BRS" means Behavioral Residential Services.

(15) "Budget Month" means the calendar month from which financial and nonfinancial information is used to determine eligibility.

(16) "Caretaker" means a parent, caretaker relative, or non-related caretaker who assumes primary responsibility for a child's care.

(17) "Caretaker Relative" means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, which may, but is not required to, be indicated by claiming the child as a tax dependent for Federal income tax purposes, and who is one of the following:

(a) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(b) The spouse of the parent or relative, even after the marriage is terminated by death or divorce.

(c) An individual described in this section who is a relative of the child based on blood, including those of half-blood, adoption, or marriage.

(18) "CAWEM" means Citizen/Alien-Waived Emergent Medical which is Medicaid coverage for emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements. See OAR 410-200-0240

(19) "CAWEM Prenatal" means medical services for pregnant CAWEM clients.

(20) "Child" means an individual, including minor parent, under the age of 19. Child does not include an unborn. Child includes a natural or biological, adopted or step child.

(21) "Citizenship" includes status as a "national of the United States" defined in 8 U.S.C. 1101(a)(22) that includes both citizens of the United States and non-citizen nationals of the United States.

(22) "Claim" means a legal action or a demand by, or on behalf of, an applicant or beneficiary for damages for or arising out of a personal injury which is against any person, public body, agency, or commission other than the State Accident Insurance Fund Corporation or Worker's Compensation Board.

(23) "Claimant" means an individual who has requested an appeal.

(24) "Code" means Internal Revenue Code of 1986, as amended.

(25) "Combined eligibility notice" means an eligibility notice that informs an individual, or multiple family members of a household when feasible, of eligibility for each of the insurance affordability programs and enrollment in a qualified health plan through Cover Oregon, for which a determination or denial was made by Cover Oregon or the Authority.

(26) "Community partner" means all external entities (non-agents) who partner with Cover Oregon and enter in formal agreement with the Authority to conduct outreach or enrollment assistance, whether or not they are funded or compensated by Cover Oregon.

(27) "Coordinated content" means information included in eligibility notice regarding the transfer of the individual's or households' electronic account to another insurance affordability program for a determination of eligibility.

(28) "Cover Oregon" means the Oregon Health Insurance Exchange Corporation.

(29) "Custodial Parent" means the parent with whom the child spends more than half of their nights.

(30) "Date of Request" means the earlier of:

(a) The date the request for medical benefits is received; or

(b) The date the applicant received a medical service, if the request for medical benefits is received by midnight of the following business day.

(31) "Decision notice" means a written notice of a decision made regarding eligibility for an OCCS medical program benefit. A decision notice may be:

(a) "Basic decision notice" — Mailed no later than the date of action given in the notice.

(b) "Combined Decision notice" — Informs an individual, or multiple family members of a household when feasible, of the eligibility decision made for each of the MAGI insurance affordability programs.

(c) "Timely continuing benefit decision notice" — Informs the client of the right to continued benefits and is mailed no later than 15 calendar days prior to the effective date of the change for clients in the Address Confidentiality Program and 10 calendar days prior to the effective date of the change for all other clients.

(32) "Department "means the Department of Human Services.

(33) "Dependent child" means a child who is under the age of 18, or age 18 and a full-time student in a secondary school, or equivalent vocational or technical training, if before attaining age 19 the child may reasonably be expected to complete the school or training.

(34) "ELA" (Express Lane Agency) means the Department of Human Services making determinations regarding one or more eligibility requirements for the OHP-OPC or OHP-CHP programs.

(35) "ELE" (Express Lane Eligibility) means the Oregon Health Authority's option to rely on a determination, made within a reasonable period, by an ELA finding that a child satisfies the requirements for OHP-CHP, OHP-OPC, MAGI Child, or MAGI CHIP program eligibility. ELE qualifies a child for medical assistance benefits based on a finding from another public agency, even when the other Agency's eligibility methodology differs from that ordinarily used by the Department of Human Services to determine OHP-CHP, and OHP-OPC program eligibility.

(36) "Electronic account" means an electronic file that includes all information collected and generated by the Agency regarding each individual's Medicaid or CHIP eligibility and enrollment, including all required documentation and including any information collected or generated as part of a fair hearing process conducted by the Authority or through Cover Oregon appeals process.

(37) "Electronic application" means an application electronically signed and submitted through the internet

(38) "Eligibility determination" means an approval or denial of eligibility and a renewal or termination of eligibility.

(39) "Expedited appeal "means a hearing held within five working days of the Authority's receipt of an appeal request, unless the claimant requests more time.

(40) "Family size" means the number of individuals used to compare to the income standards chart for the applicable program. The family size consists of all members of the Household group and each unborn child of any pregnant members of the Household group.

(41) "Federal data services hub" means an electronic service established by the Secretary through which all insurance affordability programs can access specified data from pertinent federal agencies needed to verify eligibility, including SSA, the Department of Treasury, and the Department of Homeland Security.

(42) "Federal poverty level (FPL) " means the Federal poverty level updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as in effect for the applicable budget period used to determine an individual's eligibility in accordance with 42 CFR 435.603(h).

(43) "Household group" consists of every individual whose income is considered for determining each medical applicant's eligibility, as defined in OAR 410-200-0310.

(44) "Inmate" means:

(a) An individual living in a public institution that is:

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including being held involuntarily in a detention center awaiting trial or serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a public institution.

(b) An individual is not considered an inmate when:

(A) The individual is released on parole, probation, or post-prison supervision;

(B) The individual is on home or work-release, unless the individual is required to report to a public institution for an overnight stay;

(C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or

(D) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.

(45) "Insurance affordability program" means a program that is one of the following:

(a) Medicaid

(b) CHIP

(c) A program that makes coverage available in a qualified health plan through Cover Oregon with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals.

(d) A program that makes coverage available in a qualified health plan through Cover Oregon with cost-sharing reductions established under section 1402 of the Affordable Care Act.

(46) "Lawfully present" means an individual:

(a) Is a qualified non-citizen, as defined in this section;

(b) Has valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17));

(c) Is paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings; or

(d) Belongs to one of the following classes:

(A) Granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a, respectively;

(B) Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a, and individuals with pending applications for TPS who have been granted employment authorization;

(C) Granted employment authorization under 8 CFR 274a.12(c);

(D) Family Unity beneficiaries in accordance with section 301 of Public Law 101–649, as amended;

(E) Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;

(F) Granted Deferred Action status;

(G) Granted an administrative stay of removal under 8 CFR part 241; (viii) Beneficiary of approved visa petition that has a pending application for adjustment of status.

(e) Is an individual with a pending application for asylum under 8 U.S.C. 158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who:

(A) Has been granted employment authorization; or

(B) Is under the age of 14 and has had an application pending for at least 180 days.

(f) Has been granted withholding of removal under the Convention Against Torture;

(g) Is a child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);

(h) Is lawfully present in American Samoa under the immigration laws of American Samoa;

(i) Is a victim of a severe form of trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, as amended (22 U.S.C. 7105(b)); or

(j) Exception. An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered to be lawfully present with respect to any of the above categories in sections (a) through (i) of this rule.

(47) "Legal Argument" has the meaning given that term in OAR 137-003-0008(c).

(48) "Medicaid or Oregon Health Plan (OHP)" means Oregon's Medicaid program under title XIX of the Social Security Act.

(49) "MAGI" means Modified Adjusted Gross Income and has the meaning provided at IRC 36B(d)(2)(B) and generally means federally taxable income with the following exceptions:

(a) The income of the following individuals is excluded when they are not expected to be required to file a tax return for the tax year in which eligibility is being determined. This subsection applies whether or not the child or tax dependent actually files a tax return:

(A) Children, regardless of age, who are included in the household of a parent;

(B) Tax dependents.

(b) In applying subsection (a) of this section, IRC § 6012(a)(1) is used to determine who is required to file a tax return.

(50) "MAGI-based income" means income calculated using the same financial methodologies used to determine MAGI as defined in section 36B(d)(2)(B) of the Code, with the following exceptions:

(a) American Indian and Alaska Native exceptions;
(b) Child support;
(c) Life insurance proceeds;
(d) Non-taxable Veterans' benefits;
(e) Non-taxable workers' compensation benefits;
(f) Scholarships, awards, or fellowship grants used for educational expenses;
(g) Supplemental Security Income (SSI);
(h) An amount received as a lump sum is counted as income only in the month received. Lump sum income includes but is not limited to:
(A) Winnings;
(B) Countable educational income;
(C) Capital gains;
(D) Dividends, interest, royalties.
(i) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses;
(j) Self-employment and business entity income is determined by adding gross receipts and other business income and subtracting deductions described in Internal Revenue Code (IRC) § 161 through 249. Items not deductible are described in IRC § 261 through 280 include, but are not limited to, most capital expenditures, such as business start-up costs, buildings, and furniture, and payments or deductions for personal, living, or family use. Business structures are determined by state statutes and are dependent on elections made by business owners. Each state may use different regulations for business structures. Salaries and wages paid to employees, including those who are owners or stockholders, are countable income to the employees. Business income is countable to owners and stockholders as described below:
(A) Sole proprietors, independent contractors, and Limited Liability Companies (LLC) who choose to file Federal taxes as a sole proprietor: The necessary and ordinary costs of producing income are subtracted from gross receipts and other business income to determine countable income. Expenses related to costs for both business and personal use are prorated according to the proportions used for each purpose. Costs are limited to those described in IRC §161 through 199 and Treasury Regulations § Sec. 1.162 through 1.263.
(B) Partnerships that are not publicly traded and LLCs who choose to file Federal taxes as a partnership: Owners' income is determined as follows:
(i) The distributive share of income, gain and loss is determined proportionately according to the partnership agreement or the LLC agreement.
(ii) Income from other partnerships, estates and trusts is added to the amount in paragraph (A) of this subsection.
(iii) The costs of producing income described in subsection (4)(a), except for oil and gas depletion and costs listed below are proportionately subtracted from gross receipts to determine each partner's countable income:
(II) Bad debts;
(II) Guaranteed payments to partners;
(III) Losses from other partnerships, farms, estates and trusts;
(IV) Retirement plans.
(C) S Corporations and LLCs who choose to file Federal taxes as an S Corporation: Shareholders' income is determined as follows:
(i) The distributive share of profits, gain and loss are determined proportionately on the basis of the stockholders' shares of stock.
(ii) The costs of producing income described in subsection (a) are proportionately subtracted from gross receipts to determine each stockholder's countable income.
(iii) The distributive share of profits is countable income to the shareholders whether or not it is actually distributed to the shareholders.
(D) C Corporations and LLCs who choose to file taxes as C Corporations: Shareholders' income is countable when it is distributed to them through dividends.
(51) "MAGI income standard" means the monthly income standard for the relevant program and family size, described in OAR 410-200-0315.
(52) "Minimum essential coverage" means medical coverage under:
(a) A government-sponsored plan, including Medicare part A, Medicaid, CHIP, TRICARE, the veterans' health care program, and the Peace Corps program;
(b) Employer-sponsored plans, with respect to an employee, including coverage offered by an employer, which is a government plan, any other plan or coverage offered in the small or large group market within the state, and any plan established by an Indian tribal government;
(c) Plans in the individual market;
(d) Grandfathered health plans; and
(e) Any other health benefits coverage, such as a state health benefits risk pool, as recognized by the HHS secretary in coordination with the Treasury Secretary.
(53) "Non-applicant" means an individual not seeking an eligibility determination for him or herself and is included in an applicant's or beneficiary's household to determine eligibility for the applicant or beneficiary.
(54) "Non-citizen" has the meaning given the term "alien," as defined in section 101(a)(3) of the Immigration and Nationality Act (INA), (8 U.S.C. 1101(a)(3)) and includes any individual who is not a citizen or national of the United States, defined at 8 U.S.C. 1101(a)(22).
(55) "OCCS" means the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority.
(56) "OCCS Medical Programs" means all programs under the Authority, OCCS including:
(a) "CEC" means Continuous Eligibility for OHP-CHP pregnant women. Title XXI medical assistance for a pregnant non-CAWEM child found eligible for the OHP-CHP program who, for a reason other than moving out of state or becoming a recipient of private major medical health insurance, otherwise would lose her eligibility.
(b) "CEM" means Continuous Eligibility for Medicaid. Title XIX medical assistance for a non-CAWEM child found eligible for Medicaid who loses his or her eligibility for a reason other than turning 19 years of age or moving out of state.
(c) "MAA" means Medical Assistance Assumed.
(d) "MAF" means Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.
(e) "EXT" means Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or Pre-TANF program due to an increase in their child support or earned income.
(f) "OHP" means Oregon Health Plan. The Oregon Health Plan program provides medical assistance to many low-income individuals and families. The program includes five categories of individuals who may qualify for benefits. The acronyms for these categories are:
(A) "OHP-CHP"; Persons Under 19. OHP coverage for persons under 19 years of age who qualify at or below the 300 percent income standard.
(B) "OHP-OPC"; Children. OHP coverage for children who qualify under the 100 percent income standard.
(C) "OHP-OPP"; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.
(D) "OHP-OPU"; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/non-categorical (HPN) client.
(E) "OHP-OP6"; Children under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard. " means.
(g) "SAC" means Medical Coverage for Children in Substitute or Adoptive Care.
(h) "BCCTP" means Breast and Cervical Cancer Treatment Program.
(i) "MAGI Medicaid/CHIP "means OCCS Medical Programs for which eligibility is based on MAGI, including:
(A) MAGI Child;
(B) MAGI Parent or Other Caretaker Relative;
(C) MAGI Pregnant Woman;
(D) MAGI Children's Health Insurance Program (CHIP);
(E) MAGI Adult.
(57) "OCWP" means Office of Child Welfare Programs.
(58) "OSIPM" means Oregon Supplemental Income Program Medical. OSIPM is a medical program administered by the Department of Human Services, Aging and People with Disabilities and Developmental Disabilities for:
(a) Individuals who receive Supplemental Security Income (SSI); or
(b) Individuals who receive home or community based services, or when the individual resides in a nursing facility or state institution.
(59) "Parent "means a natural or biological, adopted or step parent.
(60) "Personal Injury" means a physical or emotional injury to an individual including but not limited to assault, battery, or medical malpractice arising from the physical or emotional injury.
(61) "Post-eligibility pend period" means the period of time provided to a beneficiary or an individual of the beneficiary's to ensure all verification and non-financial eligibility requirements are met.

(a) Begins on, and must extend 90 days from, the date on which notice is received by the individual.

(b) The date on which the notice is received is considered to be 5 days after the date on the notice, unless the individual shows that he or she did not receive the notice within the 5-day period.

(62) "Pregnant woman" means a woman during pregnancy and the postpartum period, which begins on the date the pregnancy ends, extends 60 days, and ends on the last day of the month in which the 60-day period ends.

(63) "Primary person" means the primary person the Agency will communicate with, and:

(a) Is listed as the case name; or

(b) Is the individual named as the primary contact on the Cover Oregon/Oregon Health Authority medical application.

(64) "Private major medical health insurance" means a comprehensive major medical insurance plan that, at a minimum, provides physician services; inpatient and outpatient hospitalization; outpatient lab, x-ray, immunizations; and prescription drug coverage. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program but does include policies that are purchased privately or are employer-sponsored.

(65) "PRTF" means Psychiatric Residential Treatment Facility.

(66) "Public institution" means any of the following:

(a) A state hospital (see ORS 162.135).

(b) A local correctional facility (see ORS 169.005) a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.

(c) A Department of Corrections institution (see ORS 421.005), a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(d) A youth correction facility (see ORS 162.135):

(A) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(e) As used in this rule, the term public institution does not include:

(A) A medical institution as defined in 42 CFR 435.1010 including the Secure Adolescent Inpatient Program (SAIP) and the Secure Children's Inpatient Program (SCIP);

(B) An intermediate care facility as defined in 42 CFR 440.140 and 440.150; or

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 CFR 435.1009.

(67) "Qualified Hospital" means a hospital that:

(a) Participates as an enrolled Oregon Medicaid provider;

(b) Notifies the Authority of their decision to make presumptive eligibility determinations;

(c) Agrees to make determinations consistent with Authority policies and procedures;

(d) Informs applicants for presumptive eligibility of their responsibility and available assistance to complete and submit the full Medicaid application and to understand any documentation requirements; and

(e) Are not disqualified by the Authority for violations related to standards established for the presumptive eligibility program under 42 CFR § 435.1110(d).

(68) "Qualified non-citizen" means an individual that is any of the following:

(a) A non-citizen lawfully admitted for permanent residence under the INA (8 U.S.C. 1101 et seq);

(b) A refugee admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year;

(f) A non-citizen granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a Cuban and Haitian entrant (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(h) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under section 101(a)(27) of the INA; or

(i) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(69) "Reasonable opportunity period":

(a) May be used to obtain necessary verification or resolve discrepancy regarding US citizenship or non-citizen status, or discrepancies between self-attested information and electronic data match.

(b) Begins on, and must extend 90 days from, the date on which notice is received by the individual. The date on which the notice is received is considered to be 5 days after the date on the notice, unless the individual shows that he or she did not receive the notice within the 5-day period.

(c) May be extended beyond 90 days if the individual is making a good faith effort to resolve any inconsistencies or obtain any necessary documentation or the Agency needs more time to complete the verification process.

(70) "Redetermination" means a review of eligibility outside of regularly scheduled renewals. Redeterminations which result in the assignment of a new renewal date or a change in program are considered renewals.

(71) "Renewal" means a regularly scheduled periodic review of eligibility resulting in a renewal or change of program benefits, including the assignment of a new renewal date, or a change in eligibility status.

(72) "Required documentation" means:

(a) Facts to support the Agency's decision on the application; and

(b) Either:

(A) A finding of eligibility or ineligibility; or

(B) An entry in the case record that the applicant voluntarily withdrew the application and the Agency sent a notice confirming the decision, that the applicant has died, or that the applicant cannot be located.

(73) "Secure electronic interface" means an interface which allows for the exchange of data between Medicaid or CHIP and other insurance affordability programs and adheres to the requirements in 42 CFR part 433, subpart C.

(74) "Shared eligibility service" means a common or shared eligibility system or service used by a State to determine individuals' eligibility for insurance affordability programs.

(75) "Sibling" means natural or biological, adopted, or half or step sibling.

(76) "Spouse" means an individual who is legally married to another individual under:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which two individuals previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which two individuals previously resided while meeting the requirements for legal marriage in that country.

(77) "SSA" means Social Security Administration.

(78) "Tax dependent" has meaning given the term "dependent" under section 152 of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under section 151 of the Internal Revenue Code for a taxable year.

(79) "Title IV-E" means Title IV-E of the Social Security Act (42 U.S.C. §§ 671-679b).

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038, 414.025, 414.534

Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536, 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0100

Coordinated Eligibility and Enrollment Process with the Department of Human Services and Cover Oregon

(1) This rule describes Oregon Health Authority's (Authority) coordination of eligibility and enrollment with the Department of Human Services (Department) and Cover Oregon (Exchange). The Authority shall:

(a) Minimize the burden on individuals seeking to obtain or renew eligibility, or to appeal a determination of eligibility for insurance affordability programs;

(b) Ensure determinations of eligibility and enrollment in the appropriate program without undue delay, consistent with timeliness standards described in OAR 410-200-0110 based on the application date;

(c) Provide coordinated content for those household members whose eligibility status is not yet determined; and

(d) Screen every applicant or beneficiary who submits an application or renewal form, or whose eligibility is being renewed under a change in circumstance, for criteria that identify individuals for whom MAGI-based income methods do not apply.

(2) For individuals undergoing eligibility determination based on MAGI-based methodology and standards, the Authority, consistent with the timeliness standards described in OAR 410-200-0110, must:

(a) Determine eligibility for MAGI Medicaid/CHIP on the basis of having household income at or below the applicable MAGI-based standard, or

(b) If ineligible under section (a), screen for APTC and refer to Cover Oregon.

(3) If ineligible for MAGI Medicaid/CHIP, for individuals undergoing a Medicaid eligibility determination on a basis other than MAGI-based standards, the Authority must, consistent with the timeliness standards described in OAR 410-200-0110:

(a) Screen for eligibility for Medicaid on a basis other than MAGI-based standards, as indicated by information provided on the application or renewal form.

(b) Transfer via secure electronic interface the individual's electronic account information to the Department, as appropriate, and provide timely notice to the Department that the individual is not eligible for OCCS medical programs, but that a final determination of Medicaid eligibility on other bases is still pending.

(c) Provide notice to the individual that:

(A) The Authority has determined the individual ineligible for OCCS medical programs;

(B) The Department is continuing to evaluate Medicaid eligibility on one or more other bases, including a plain language explanation of the other bases being considered.

(C) The notice must include coordinated content relating to the transfer of the individual's electronic account to the Department, as appropriate; and

(D) There is a right to a hearing to challenge the eligibility decision.

(d) Provide, or assure that the Department has provided, the individual with notice of the final determination of eligibility on one or more other bases.

(4) For beneficiaries found ineligible for ongoing OCCS medical program benefits, the Authority shall maintain OCCS medical program benefits while eligibility is being determined by the Department or Cover Oregon, and may not take action to close benefits until determination of eligibility for other insurance affordability programs is complete.

(5) Coordination among agencies:

(a) The Authority shall maintain a secure electronic interface through which the Authority can receive an individual's electronic account, including any information provided by the individual as part of an appeal to any Agency, from the Department and Cover Oregon;

(b) The Authority may not request information or documentation from the individual included in the individual's electronic account or provided to the Agency; and

(c) If information is available through electronic data match, and is useful and related to eligibility for OCCS Medical Programs, the Authority must obtain the information through electronic data match.

(6) Cover Oregon may perform any obligation of the Authority under these rules pertaining to MAGI Medicaid/CHIP, except for hospital presumptive eligibility. Each Agency must either complete the processing of any application or redetermination for medical benefits or transfer the application to another Agency for completion.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0105
Hospital Presumptive Eligibility

This rule sets out when an individual is presumptively eligible for MAGI Medicaid/CHIP based on the determination of a qualified hospital.

(1) The qualified hospital will determine eligibility for Hospital Presumptive Eligibility based on the following information declared by the individual:

(a) Family size;

(b) Household income;

(c) Receipt of other health coverage;

(d) US citizenship, US national, or non-citizen status.

(2) To be eligible for Hospital Presumptive Eligibility, an individual must be a US citizen, US National, or qualified non-citizen, and:

(a) A child under the age of 19 with income at or below 300 percent of the federal poverty level;

(b) A parent or caretaker relative of a dependent child with income at or below the MAGI Parent or Other Caretaker Relative income standard for the appropriate family size in OAR 410-200-0315;

(c) A pregnant woman age 19 and above with income at or below 185 percent of the federal poverty level;

(d) An adult between the ages of 19 through 64 with income at or below 138 percent of the federal poverty level; or

(e) A woman under the age of 65 who has been determined eligible for the Breast and Cervical Cancer Treatment Program (OAR 410-200-0400).

(3) To be eligible for the Hospital Presumptive Eligibility, an individual must not:

(a) Be receiving SSI benefits;

(b) Be eligible for Medicare;

(c) Be receiving Medicaid through another program;

(d) Have minimum essential coverage, unless the coverage is provided through Indian Health Services;

(e) Be age 65 or above; or

(f) Have received Hospital Presumptive Eligibility for any portion of the full year (365 days) preceding a new Hospital Presumptive Eligibility period.

(4) The Hospital Presumptive Eligibility period begins on the date the qualified hospital determines the individual's eligibility based on the applicant's self-attestation that the household group's income does not exceed the applicable income level for the MAGI medical program on that date and the individual is otherwise eligible.

(5) The Hospital Presumptive Eligibility period ends with and includes, the earlier of:

(a) In the case of an individual on whose behalf a Medicaid application has been filed, the day on which the state makes an eligibility determination for MAGI Medicaid/CHIP and sends basic decision notice; or

(b) If subsection (a) is not completed, the last day of the month following the month during which the hospital makes the presumptive determination.

(6) A Hospital Presumptive Eligibility decision does not qualify a beneficiary for 12-months of continuous eligibility, or for protected postpartum eligibility.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0110
Application and Renewal Processing and Timeliness Standards

(1) General information as it relates to application processing is as follows:

(a) An individual may apply for one or more medical programs administered by the Authority, the Department, or Cover Oregon, using a single streamlined application. An application may be submitted via the Internet, by telephone, via mail, in person, or through other commonly available electronic means. An application and any required verification may be submitted by the applicant, an adult who is in the applicant's household or family, the applicant's authorized representative or, if the applicant is a minor or incapacitated, someone acting on behalf of the applicant.

(b) The Agency must ensure that an application form is readily available to anyone requesting one, and that community partners are available to assist applicants who are unable to complete the application form or to gather information necessary to verify eligibility.

(c) If the Agency requires additional information to determine eligibility, the Agency must send the applicant or beneficiary written notice that includes a statement of the specific information needed to determine eligibility and the date by which the applicant or beneficiary must provide the required information in accordance with section (6) of this rule.

(d) If an application is filed containing the applicant or beneficiary's name and address, the Agency must send the applicant or beneficiary a decision notice within the time frame established in section (6) of this rule.

(e) An application is complete if all of the following requirements are met:

(A) All information necessary to determine the individual's eligibility and benefit amount is provided on the application for each individual in the household group.

(B) The applicant, even if homeless, provides an address where they can receive postal mail.

(C) The application is signed in accordance with section (5) of this rule.

(D) The application is received by the Agency.

(f) To complete the application process, the applicant must:

(A) With the exception of sections (4) and (5) of this rule, complete and sign an application, and

(B) Provide necessary information to the Agency within the time frame established in section (6) of this rule.

(2) General information as it relates to renewal and redetermination processing is as follows:

(a) The Authority must redetermine eligibility at assigned intervals and whenever a beneficiary's eligibility becomes questionable.

(b) When renewing or redetermining medical benefits, the Agency must, to the extent feasible, determine eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency.

(c) If the Agency is unable to determine a beneficiary's eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency, then the Agency must provide a pre-populated renewal form to the beneficiary containing information known to the Agency, statement of the additional information needed to renew eligibility, and the date by which the beneficiary must provide the required information in accordance with section (6) of this rule.

(d) The Agency must assist applicants who are unable to complete the pre-populated renewal form or gather information necessary to renew eligibility.

(e) The pre-populated renewal form is complete if it meets the requirements identified in section (1)(e) of this rule.

(f) If the Agency provides the individual with a pre-populated renewal form, to complete the renewal process, the individual must:

(A) Complete and sign the form in accordance with section (5) of this rule.

(B) Submit the form via the Internet, by telephone, via mail, in person, and through other commonly available electronic means, and

(C) Provide necessary information to the Agency within the time frame established in section (6) of this rule.

(g) A beneficiary may withdraw a pre-populated renewal form at any time.

(3) A new application is required when:

(a) An individual requests medical benefits and no member of the household group currently receives medical benefits.

(b) A child turns age 19, is no longer claimed as a tax dependent, and wishes to retain medical benefits.

(4) A new application is not required when:

(a) The Agency determines an applicant is ineligible in the month of application and is determining if the applicant is eligible the following month.

(b) The Agency determines a new applicant is ineligible for medical in the months of October, November, or December 2013 for a reason other than failure to complete the application requirements as identified in sections (1) and (5) of this rule, and the Agency is redetermining the applicant's eligibility for the new medical programs effective January 1, 2014.

(c) Eligibility for OCCS medical programs is determined using the individual's Supplemental Nutrition Assistance Program (SNAP) eligibility pursuant to OAR 410-200-0505.

(d) Benefits are closed and reopened during the same calendar month.

(e) A beneficiary's medical benefits are suspended because the beneficiary is an inmate who lives in a public institution and who meets the requirements of OAR 410-200-0140.

(f) An assumed eligible newborn (AEN) is added to a household group receiving medical program benefits.

(g) An individual not receiving medical program benefits is added to an ongoing household group receiving medical program benefits and eligibility can be determined using information found in the individual or beneficiary's electronic account and electronic data available to the Agency.

(h) Redetermining or renewing eligibility for beneficiaries and the Agency has sufficient evidence to redetermine or renew eligibility for the same or new program.

(i) At renewal, the beneficiary fails to submit additional information requested by the Agency within 30 days, but provides the requested information within 90 days after the date medical benefits were terminated.

(5) Signature requirements are as follows:

(a) The applicant must sign an application, except as follows:

(A) At least one caretaker relative or parent in the household group, or the primary person when there is no parent in the household group, or an authorized representative must sign the initial application for benefits.

(B) An individual required but unable to sign the application may sign with a mark, witnessed by an Agency employee, community partner, insurance broker, or insurance agent.

(C) When renewing eligibility, the Agency successfully determines eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency.

(D) When the Agency successfully renews eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency, sends an approval notice to the beneficiary on the basis of eligibility, and the beneficiary contacts the Agency providing information that differs from the information used to renew eligibility.

(E) When the application is one for presumptive eligibility only (see OAR 410-200-0105), as determined by a qualified hospital.

(b) When renewing eligibility, if the Agency is unable to determine eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency, a signature is required on the pre-populated renewal form sent to the beneficiary for additional information.

(c) Signatures may be submitted and must be accepted by the Agency via internet, mail, telephone, in person, or other electronic means.

(d) An electronic application must be submitted to and received by the Authority with an electronic signature.

(6) Application and renewal processing timeliness standards are as follows:

(a) At initial eligibility determination, the Agency shall inform the individual of timeliness standards and determine eligibility and send a decision notice not later than the 45th calendar day after the Date of Request if:

(A) All information necessary to determine eligibility is present; or

(B) The application is not completed by the applicant within 45 days after the Date of Request.

(b) At initial eligibility determination, the Agency may extend the 45-day period described in section (a) if there is an administrative or other emergency beyond the control of the Agency. The Agency must document the emergency.

(c) Except for periodic renewals of eligibility described in section (d), the Agency provides the reasonable opportunity period to verify information after eligibility has been determined.

(d) At periodic renewal of eligibility, if additional information beyond data available to the Agency on the beneficiary's electronic account or electronic data is required, the Authority must provide the beneficiary at least 45 days from the date of the renewal form to respond and provide necessary information.

(7) Medical program eligibility for October, November, and December 2013 budget months shall be determined in the following order:

(a) For a child applicant, the order is as follows:

(A) Assumed eligibility for OCCS medical programs (see OAR 410-200-0135)

(B) MAA;

(C) EXT;

(D) Oregon Health Plan program categories in the following order:

(i) OHP-OPP;

(ii) OHP-OPC;

(iii) OHP-OP6;

(E) Substitute Care when the child is in Behavioral Rehabilitation Services (BRS) or in Psychiatric Residential Treatment Facility (PRTF) as identified in OAR 410-200-0405;

(F) BCCTP as identified in 410-200-0400;

(G) Continuous Eligibility as identified in OAR 410-200-0135;

(H) MAGI CHIP;

(b) For an adult applicant, the order is as follows:

(A) Assumed eligibility for OCCS medical programs (see OAR 410-200-0135);

(B) MAA;

(C) EXT;

(D) OHP-OPP;

(E) Substitute Care;

(F) BCCTP

(G) OHP-OPU

(8) Medical program eligibility for January 2014 budget month and later is determined in the following order:

(a) For a child applicant, the order is as follows:

(A) Assumed eligibility for OCCS medical programs (see OAR 410-200-0135);

(B) Substitute Care, when the child is in Behavioral Rehabilitation Services (BRS) or in Psychiatric Residential Treatment Facility (PRTF) as identified in OAR 410-200-0405;

(C) MAGI Parent or Other Caretaker Relative Program as identified in OAR 410-200-0420;

(D) Pregnant Woman program as identified in OAR 410-200-0425;

(E) MAGI Child program as identified in OAR 410-200-0415;

(F) EXT as identified in 410-200-0440;

(G) Continuous Eligibility as identified in OAR 410-200-0135;

(H) MAGI CHIP as identified in OAR 410-200-0410;

(I) BCCTP as identified in 410-200-0400

(b) For an adult applicant, the order is as follows:

(A) Assumed eligibility for OCCS medical programs (see OAR 410-200-0135);

(B) Substitute Care as identified 410-200-0405;

(C) MAGI Parent or Other Caretaker Relative Program as identified in OAR 410-200-0420;

(D) EXT;

(E) MAGI Pregnant Woman Program as identified in OAR 410-200-0425

(F) MAGI Adult Program as identified in OAR 410-200-0435;

(G) BCCTP as identified in OAR 410-200-0400.

NOTE: This rule replaces and amends information previously found in OAR 461-115-0010; 461-115-0020; 461-115-0050; 461-115-0071; 461-115-0090, 461-195-0305, 461-195-0310, 461-195-0321.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0111

Authorized Representatives

(1) The following individuals may designate an authorized representative:

(a) A caretaker;

(b) The primary person, when there is no caretaker in the household group;

(c) An adult in the household group; or

(d) The Agency, if an authorized representative is needed but has not been designated by the individual.

(2) The Agency may accept an applicant or beneficiary's designation of an authorized representative via any of the following methods, and must include either a handwritten or electronic signature of both the applicant or beneficiary and designated authorized representative:

(a) The Internet;

(b) E-mail;

(c) Mail;

(d) Telephonic recording;

(e) In person; or

(f) Other electronic means.

(3) Applicants and beneficiaries may authorize their authorized representative to:

(a) Sign an application on the applicant's behalf;

(b) Complete and submit a renewal form;

(c) Receive copies of the applicant or beneficiary's notices and other communications from the Agency; or

(d) Act on behalf of the applicant or beneficiary in any or all other matters with the Agency.

(4) The authorized representative must:

(a) Fulfill all responsibilities encompassed within the scope of the authorized representation as identified in section (4) to the same extent as the individual represented; and

(b) Maintain the confidentiality of any information regarding the applicant or beneficiary provided by the Authority.

(5) In addition to authorized representatives as designated in sections (1) through (5) above, an individual is treated as an authorized representative if the individual has been given authority under state law. Such authority includes but is not limited to:

(a) A court order establishing legal guardianship;

(b) A health care representative, when the individual is unable to make their own decisions; or

(c) A court order establishing power of attorney.

(6) As a condition of serving as an authorized representative, a provider or staff member or volunteer of an organization with a service-providing relationship to the beneficiary must affirm that he or she will adhere to the regulations in 45 CFR 431, subpart F and at 45 CFR 155.260(f) and at 45 CFR 447.10, as well as other relevant State and Federal laws concerning conflicts of interest and confidentiality of information.

(7) The power to act as an authorized representative is valid until the Agency is notified via any of the methods described in section (3) of any of the following:

(a) The applicant or beneficiary modifies the authorization or notifies the Agency that the representative is no longer authorized to act on his or her behalf;

(b) The authorized representative informs the Agency that he or she no longer is acting in such capacity; or

(c) There is a change in the legal authority upon which the individual or organization's authority was based.

NOTE: This rule replaces and amends information previously found in OAR 461-115-0090.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0115

Effective Dates—OCCS Medical Programs

(1) Date of Request.

(a) For all OCCS medical programs the applicant or an individual authorized to act on behalf of the applicant must contact the Oregon Health Authority (Authority), the Department of Human Services (Department), or Cover Oregon (Exchange) to request medical benefits. The request may be via the internet, by telephone through a call center, by an Authority contracted outreach worker or community partner, by regular mail, by electronic communication or in person.

(b) The Date of Request is the earlier of the following:

(A) The date the request for medical benefits is received; or

(B) The date the applicant received a medical service, if the request for medical benefits is received by midnight of the following business day.

(c) For current beneficiaries of OCCS medical programs, the Date of Request is one of the following:

(A) The date the beneficiary reports a change requiring a redetermination of eligibility; or

(B) The date the Agency initiates a review, except that the automatic mailing of an application does not constitute a Date of Request.

(d) The Date of Request starts the application processing time frame.

(e) If the application is not received within 45 days after the Date of Request, or within the extended time that the Authority has allowed under OAR 410-200-0110 (Application Processing), the new Date of Request is the date the application is submitted to the Agency.

(2) For EXT, the effective date is determined according to OAR 410-200-0440.

(3) Except for CEM, CEC and EXT, the effective date of medical benefits for new applicants for OCCS medical programs is whichever comes first:

(a) The Date of Request, if the applicant is found eligible as of that date; or

(b) If ineligible on the Date of Request, the first day following the Date of Request on which the client is determined to be eligible, within the month of the Date of Request or the following month.

(c) January 1, 2014, if not eligible based on budget month income from the months of October through December 2013, but the budget month income is below the income standard for January 1, 2014.

(4) The effective date for retroactive medical benefits (see OAR 410-200-0130) for MAGI Medicaid/CHIP and BCCTP is the earliest date of eligibility during the three months preceding the Date of Request. The Authority reviews each month individually for retroactive medical eligibility.

(5) Establishing a renewal date.

(a) Except for CEM, CEC, EXT, and as provided in subsection (b), for all OCCS Medical Programs, eligibility must be renewed every 12 months. The renewal date is the last day of the month, determined as follows:

(A) For initial eligibility, the renewal date is determined by counting 12 full months following the initial month of eligibility.

(B) For renewals that are regularly scheduled, the new renewal date is determined by counting 12 full months following the current renewal month.

(C) For redeterminations that are the result of a reported change, the new renewal date is determined by counting 12 full months following the month the change occurred.

(b) Except for OHP-OP6, OHP-OPP, and individuals who are 18 turning 19 years of age, all OCCS Medical Program beneficiaries who have renewal dates between October 1, 2013 and March 31, 2014, the renewal date shall be extended by six calendar months, as follows:

(A) Renewal dates that fall in October 2013 shall be extended to April 2014.

(B) Renewal dates that fall in November 2013 shall be extended to May 2014.

(C) Renewal dates that fall in December 2013 shall be extended to June 2014.

(D) Renewal dates that fall in January 2014 shall be extended to July 2014.

(E) Renewal dates that fall in February 2014 shall l be extended to August 2014.

(F) Renewal dates that fall in March 2014 shall be extended to September 2014.

(6) Acting on Reported Changes (also see Changes That Must Be Reported OAR 410-200-0235)

(a) When the beneficiary reports a change in circumstances at any time other than the renewal month, eligibility must be redetermined for all household group members.

(b) Except for OHP-OPP and MAGI Pregnant Woman, based on the reported change, if the beneficiary is determined to be eligible for another OCCS Medical Program, the effective date for the change is the first of the month following the month in which the determination was made.

(c) For OHP-OPP and MAGI Pregnant Woman, the effective date is the Date of Request.

(d) For beneficiaries whose eligibility was determined prior to January 1, 2014, who report changes that may affect eligibility in January, February or March, 2014 the following apply:

(A) Eligibility shall be redetermined using the budgeting policies outlined in OARs 410-200-0310 and 410-200-0315.

(B) If ineligible for OCCS medical programs using information gained during the January, February or March redetermination, the effective date of the change shall be April 1, 2014, or the end of the month following timely notice, whichever is later.

(C) OCCS medical program benefits shall be maintained during the period of time between the loss of eligibility and the APTC or closure effective date of April 1, 2014.

(7) Assumed eligibility

(a) A pregnant woman eligible for and receiving Medicaid benefits the day the pregnancy ends or who was eligible for and receiving medical under any Medicaid program and becomes ineligible while pregnant is assumed eligible for continuous eligibility through the end of the calendar month in which the 60th following the last day of the pregnancy falls unless:

(A) She is no longer an Oregon resident; or

(B) She requests medical benefits to be closed.

(b) A child born to a mother eligible for and receiving Medicaid, OHP-CHP or MAGI CHIP benefits is an assumed eligible newborn (AEN) for medical benefits until the end of the month the child turns one year of age, unless:

(A) The child dies;

(B) The child is no longer an Oregon resident; or

(C) The child's representative requests a voluntary termination of the child's eligibility.

(8) Twelve Month Continuous Eligibility

(a) A child determined eligible for MAGI Medicaid/CHIP or BCCTP at initial eligibility or at the renewal period shall have a 12 month continuous enrollment period. The 12 month continuous enrollment period begins on the Date of Request or date the child is initially found eligible, whichever is later, and continues for the following 12 full months.

(b) For a child transitioning from another Medicaid program, the 12 month continuous enrollment period begins the first month following the month in which the other Medicaid program ends.

(9) Suspending or Closing Medical Benefits

(a) The effective date for closing all OCCS medical program benefits is the earliest of:

(A) The date of a beneficiary's death;

(B) The last day of the month in which the beneficiary becomes ineligible and a timely continuing benefit decision notice is sent;

(C) The day prior to the start date for Office of Child Welfare Programs or OSIPM for beneficiaries transitioning from an OCCS medical program;

(D) The date the program ends; or

(E) The last day of the month in which a timely continuing benefit decision notice is sent if ongoing eligibility cannot be determined because the beneficiary does not provide required information within 30 days.

(b) Prior to closing medical benefits, the Agency must determine eligibility for all other insurance affordability programs.

(c) For suspension of OCCS Medical Program eligibility of beneficiaries who become incarcerated, see 461-200-0140.

(10) Denial of Benefits. The effective date for denying OCCS Medical Program benefits is the earlier of the following:

(a) The date the decision is made that the applicant is not eligible; or

(b) The end of the application processing time frame, unless the time period has been extended to allow the applicant more time to provide required verification.

(11) Eligibility Following Closure.

(a) The Authority must reconsider in a timely manner (see OAR 410-200-0110 Application Processing) the eligibility of an individual who:

(A) Lost OCCS Medical Program eligibility because they did not return necessary required information or pursue an available asset; and

(B) Within 90 days of the medical closure date, submits the information necessary for the eligibility determination.

(b) If the individual is found to meet medical eligibility based on the completed redetermination, eligibility shall be restored back to the day after medical benefits ended.

NOTE: This rule replaces and amends information previously found in OAR 461-180-0010, 461-180-0050, 461-180-0060, 461-180-0085, 461-180-0090, 461-180-0100, 461-180-0120, and 461-180-0140.

Stat. Auth.: ORS, 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0120

Notices

(1) Except as provided in this rule, the Authority shall send:

(a) A basic decision notice whenever an application for OCCS Medical Program benefits is approved or denied.

(b) A timely continuing benefit decision notice whenever OCCS Medical Program benefits are reduced or closed.

(2) For a beneficiary who is placed in a public institution or a correctional facility the Authority shall send a basic decision notice to close, reduce or suspend OCCS Medical Program benefits.

(3) For a beneficiary who has been placed in skilled nursing care, intermediate care, or long-term hospitalization, the Authority shall send a basic decision notice to close, suspend or reduce OCCS Medical Program benefits.

(4) The Authority shall send a basic decision notice to close OCCS Medical Program benefits for a beneficiary who has received them for less than 30 days and who is ineligible for any insurance affordability program.

(5) When returned mail is received without a forwarding address, and the beneficiary's whereabouts are unknown, the Authority shall send a basic decision notice to end benefits if the mail was sent by regular mail. If the returned mail was sent electronically, the Authority shall resend by regular mail within three business days. The date on the notice shall be the date the notice is sent by regular mail.

(6) The Authority shall send one of the following notices when a beneficiary ceases to be an Oregon Resident:

(a) A timely continuing benefit notice; or

(b) A basic decision notice if the beneficiary is eligible for benefits in the other state.

(7) Except as provided in section (9) of this rule, to close medical program benefits based on a request made by the beneficiary, another adult member of the household group, or the authorized representative, the Authority shall send the following decisions notices:

(a) A timely continuing benefit decision notice when an oral request is made to close benefits.

(b) A basic decision notice when a signed, written request to withdraw, end, or reduce benefits is made.

(c) A basic decision notice when an oral request to withdraw an application for benefits is made.

(8) No other notice is required when an individual completes a voluntary agreement if all of the following are met:

(a) The Authority provides the individual with a copy of the completed agreement; and

(b) The Authority acts on the request by the date indicated on the form.

(9) No decision notice is required in the following situations:

(a) The only individual in the household group dies.

(b) A hearing was requested after a notice was received and either the hearing request is dismissed or a final order is issued.

(10) Decision notices must be written in plain language and be accessible to individuals who are limited English proficient and individuals with disabilities. In addition,

(a) All decision notices must include:

(A) A statement of the action taken.

(B) A clear statement listing the specific reasons why the decision was made and the effective date of the decision;

(C) Rules supporting the action;

(D) Information about the individual's right to request a hearing and the method and deadline to request a hearing; and

(E) Details about medical programs for which eligibility is not MAGI-based and information regarding how to request a determination for such programs.

(F) A statement indicating under what circumstances a default order may be taken.

(G) Information about the right to counsel at a hearing and the availability of free legal services.

(b) A decision notice approving OCCS Medical Program benefits, including retroactive medical, must include:

(A) The level of benefits and services approved;

(B) If applicable, information relating to premiums, enrollment fees and cost sharing; and

(C) The changes that must be reported and the process for reporting changes.

(c) A decision notice reducing, denying, or closing OCCS Medical Program benefits must include information about a beneficiary's right to continue receiving benefits.

(11) The Authority may amend:

(a) A decision notice with another decision notice; or

(b) A contested case notice.

(12) Except as the notice is amended, or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not made effective on the date stated on the notice.

(13) The Authority must provide individuals with a choice to receive decision notices and information referenced in this rule in an electronic format or by regular mail. If an individual chooses to receive notices and information electronically, and has established and online account with Cover Oregon, the Authority must:

(a) Send confirmation of this decision by regular mail;

(b) Post notices to the individual's electronic account within one business day of the date on the notice;

(c) Send an email or other electronic communication alerting the individual that a notice has been posted to their electronic account;

(d) At the request of the individual, send by regular mail any notice or information delivered electronically;

(e) Inform the individual of the right to stop receiving electronic notices and information and begin receiving these through regular mail; and

(f) If any electronic communication referenced above is undeliverable, send the notice by regular mail within three business days of the failed communication.

NOTE: This rule replaces and amends information previously found in OAR 461-175-0340, 461-175-0200, 461-175-0205, 461-175-0210, 461-175-0230, 461-175-0250.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0125

Acting on Reported Changes

(1) Redeterminations

(a) When an OCCS Medical Program beneficiary or authorized representative makes a timely report of a change in circumstances at any time between regular renewals of eligibility that may affect the beneficiary's eligibility, the Authority must promptly redetermine eligibility before reducing or ending medical benefits.

(b) The Authority must limit requests for information from the individual to information related to the reported change.

(c) If the Authority has enough information to determine eligibility, a new 12-month renewal period must be given after a redetermination.

(d) If the Authority has information about anticipated changes in a beneficiary's circumstances that may affect eligibility, it must redetermine eligibility at the appropriate time based on the changes.

(2) For beneficiaries whose eligibility was determined prior to October, 2013, changes reported in October, November or December, 2013, may result in loss of eligibility for the OCCS Medical Program using the policies outlined in OAR 410-200-0310. For these beneficiaries:

(a) Information used for the October, November or December 2013 redetermination shall be used to determine eligibility for January 1, 2014 in the MAGI Child, MAGI Parent or Other Caretaker Relative, MAGI Pregnant Woman, or MAGI Adult programs. If eligible, the effective date of eligibility for the program is January 1, 2014.

(b) If ineligible for MAGI Child, MAGI Parent or Other Caretaker Relative, MAGI Pregnant Woman, or MAGI Adult programs using information from the October, November or December 2013 redetermination, the applicant shall be referred to the appropriate Agency in accordance with OAR 410-200-0100.

(c) OCCS Medical Program benefits may not be maintained during the period of time between the loss of eligibility and the January 1, 2014, effective date, or the effective date determined by another Agency.

(3) For beneficiaries who were determined eligible for OCCS Medical Program benefits prior to January 1, 2014, without using MAGI-based methodology who report changes that may affect eligibility in January, February or March, 2014:

(a) Eligibility shall be redetermined using the budgeting policies outlined in OAR 410-200-0310.

(b) If eligible for MAGI Medicaid/CHIP, CEC, CEM, EXT or BCCTP, a new 12 month eligibility period shall be applied.

(c) If ineligible for MAGI Medicaid/CHIP, CEC, CEM, EXT or BCCTP, using information gained during the January, February or March 2014 redetermination:

(A) Eligibility shall be maintained until April 1, 2014, or the end of the timely continuing benefits notice period, whichever is later; and

(B) The beneficiary shall be referred to the appropriate Agency in accordance with OAR 410-200-0100.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0130

Retroactive Medical

(1) The Authority may evaluate the following for retroactive medical eligibility:

(a) Applicants requesting OCCS medical programs may be evaluated for retroactive medical benefits if they have unpaid medical bills or received donated medical services in Oregon in the three months preceding the Date of Request which would have been covered by Medicaid/CHIP benefits.

(b) Deceased individuals who would have been eligible for Medicaid covered services had they, or someone acting on their behalf, applied.

(2) If eligible for retroactive medical, the individual's eligibility may not start earlier than the date indicated by OAR 410-200-0115 Effective Dates.

(3) The Authority reviews each month individually for retroactive medical eligibility.

(4) The Authority shall evaluate requests for retroactive medical benefits submitted prior to Jan 1, 2014 using 2013 Medicaid/CHIP eligibility requirements as outlined in OAR 410-200-0510.

(5) Retroactive Medical eligibility shall not be determined on the basis of Hospital Presumptive Eligibility (OAR 410-200-0105).

NOTE: This rule replaces and amends information previously found in OAR 461-135-0875.

Stat. Auth.: ORS 411.402, 411.404 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 414.025, 414.231, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0135

Assumed Eligibility and Continuous Eligibility for Children and Pregnant Women

(1) Assumed Eligibility

(a) A child born to a mother eligible for and receiving Medicaid benefits is assumed eligible for the MAGI Child program until the end of the month in which the child turns one year of age, unless:

(A) The child dies;

(B) The child is no longer a resident of Oregon; or

(C) The child's representative requests a voluntary termination of the child's eligibility.

(b) An individual is assumed eligible for the Former Foster Care Youth if they meet the eligibility criteria outlined in OAR 410-200-0406.

(2) Continuous Eligibility

(a) Children under age 19 eligible for and receiving medical assistance under any Medicaid or CHIP program who lose eligibility for the medical program prior to the 12-month renewal date shall remain eligible until the end of the renewal month, regardless of any change in circumstances, except for the following:

(A) No longer an Oregon resident;

(B) Death;

(C) Turning age 19;

(D) For children in the CHIP program, receipt of minimum essential coverage; or

(E) When any adult in the household group requests the medical benefits are closed.

(b) Pregnant women eligible for and receiving medical assistance under any Medicaid program who lose eligibility for the medical program are eligible for continuous eligibility through the end of the calendar month in which the 60th day following the last day of the pregnancy falls, except in the following circumstances:

(A) She is no longer an Oregon resident;

(B) Death; or

(C) She requests medical benefits are closed.

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038, 414.025 & 414.534

Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0140

Eligibility for Inmates

(1) An inmate of a public institution is not eligible for OCCS Medical Programs.

(2) If an OCCS Medical Program beneficiary becomes an inmate of a public institution with an expected stay of no more than 12 months, medical benefits shall be suspended for up to 12 full calendar months during the incarceration period.

(3) Suspended benefits shall be restored to the first day the individual is no longer an inmate, without the need for a new application, when:

(a) The individual reports their release to the Agency within 10 days of the release date; or

(b) The individual reports their release to the Agency more than 10 days from the release date, and there is good cause for the late reporting.

(4) Benefits may be restored pursuant to section (3) if:

(a) The individual is still within their 12 month eligibility period, then the eligibility renewal date shall be retained; or

(b) The individual is no longer within their 12 month eligibility period, then the date that the individual reports their release shall be treated as the Date of Request for redetermination of eligibility.

NOTE: This rule replaces and amends information previously found in OAR 461-135-0950.

Stat. Auth.: ORS, 411.070, 411.404, 411.816, 412.014, 412.049 & 413.042

Stats. Implemented: ORS, 411.070, 411.404, 411.439, 411.443, 411.445, 411.816, 412.014, 412.049 & 414.426

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

420-200-0145

Contested Case Appeals

(1) For the purposes of this rule, timely means within 90 days of the date the notice of adverse action is received.

(2) This rule applies to contested case appeals for programs described in OAR chapter 410 division 200. Contested case appeals are conducted in accordance with the Attorney General's model rules at OAR 137-003-0501 and following, and ORS Ch. 183, except to the extent that Authority rules provide for different procedures

(3) The Authority's contested case appeals governed by this rule are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the parties' consent and applicable confidentiality laws.

(4) A claimant may request a contested case appeal upon the timely completion of an appeal request in medical assistance programs in the following situations:

(a) The Authority has not approved or denied an application within 45 days of the Date of Request for benefits, or the extended time the Authority has allowed for processing.

(b) The Authority acts to deny, reduce, close, or suspend medical assistance, including the denial of continued benefits pending the outcome of a contested case appeal.

(c) The Authority claims that an earlier medical assistance payment was an overpayment.

(d) A claimant claims that the Authority previously under issued medical assistance.

(e) A claimant disputes the current level of benefits.

(5) The claimant has the burden of proof.

(6) An officer or employee of the Authority or the Department of Human Services may appear on behalf of the Authority in medical assistance appeals described in this rule. The Authority's lay representative may not make legal argument on behalf of the Authority.

(7) The Authority representative is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at http://www.doj.state.or.us. An Authority representative appearing under this rule must read and be familiar with it.

(8) When an Authority representative is used, requests for admission and written interrogatories are not permitted.

(9) The Authority representative and the claimant may have an informal conference in order to:

(a) Provide an opportunity to settle the matter;

(b) Review the basis for the eligibility determination, including reviewing the rules and facts that serve as the basis or the decision;

(c) Exchange additional information that may correct any misunderstandings of the facts relevant to the eligibility determination; or

(d) Consider any other matters that may expedite the orderly disposition of the appeal.

(10) A client who is receiving medical assistance benefits and who is entitled to a continuing benefit decision notice may, at the option of the client, receive continuing benefits in the same manner and amount until a final order resolves the contested case. In order to receive continuing benefits, a client must request an appeal not later than the later of:

(a) The tenth day following the date the notice is received; and

(b) The effective date of the action proposed in the notice.

(11) The continuing benefits are subject to modification based on additional changes affecting the client's eligibility or level of benefits.

(12) When a claimant contests the denial of continuing benefits, the claimant shall receive an expedited appeal.

(13) In computing timeliness under sections (4) and (10) of this rule:

(a) Delay caused by good cause circumstances beyond the reasonable control of the claimant is not counted; and

(b) The notice is considered to be received on the fifth day after the notice is sent unless the claimant shows the notice was received later or was not received.

NOTE: This rule replaces and amends information previously found in OAR 461-025-0300, 461-025-0301, 461-025-0305, 461-025-0310, 461-025-0311, 461-025-0315, 461-025-0325 and 461-025-0350.

Stat. Auth.: ORS 411.404, 411.816, 412.014, 412.049 & 413.042

Stats. Implemented: ORS 183.452, 411.060, 411.404, 411.816, 412.014 & 412.049

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0146

Final Orders, Dismissals and Withdrawals

(1) When the Authority refers a contested case under chapter 410 division 200 to the Office of Administrative Hearings (OAH), the Authority must indicate on the referral:

(a) Whether the Authority is authorizing a proposed order, a proposed and final order, or a final order; and

(b) If the Authority establishes an earlier deadline for written exceptions and argument because the contested case is being referred for an expedited appeal.

(2) When the Authority authorizes either a proposed order or a proposed and final order:

(a) The claimant may file written exceptions and written argument to be considered by the Authority. The exceptions and argument must be received at the location indicated in the OAH order not later than the 20th day after service of the proposed order or proposed and final order, unless subsection (1)(b) of this rule applies.

(b) Proposed Orders. After OAH issues a proposed order, the Authority shall issue the final order, unless the Authority requests that OAH issue the final order pursuant to OAR 137-003-0655.

(c) Proposed and Final Orders. If the claimant does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the 21st day after service of the proposed and final order unless:

(A) The Authority has issued a revised order; or

(B) Has notified the claimant and OAH that the Authority shall issue the final order.

(d) When the Authority receives timely exceptions or argument, the Authority shall issue the final order, unless the Authority requests that OAH issue the final order.

(3) In a contested case appeal if the OAH is authorized to issue a final order on behalf of the Authority, the Authority may issue the final order in the case of default.

(4) A petition by a claimant for reconsideration or rehearing must be filed with the individual who signed the final order, unless stated otherwise on the final order.

(5) A final order is effective immediately upon being signed or as otherwise provided in the order. Delay due to a postponement or continuance granted at the claimant's request shall not be counted in computing time limits for a final order. A final order shall be issued or the case otherwise resolved no later than:

(a) 90 days following the date of the appeal for the standard appeal time frame.

(b) 3 working days after the date the OAH hears an expedited appeal.

(6) In the event a request for appeal is not timely or the claimant has no right to a contested case appeal on an issue, and there are no factual disputes about whether this division of rules provides a right to an appeal, the Authority may issue an order accordingly. The Authority may refer an untimely request to the OAH for an appeal on timeliness or on the question of whether the claimant has the right to a contested case appeal.

(7) When the Authority receives an appeal request that is not filed within 90 days of the date of the decision notice but is filed within 75 days after a decision notice has become a final order:

(a) The Authority may refer the appeal request to the OAH for a contested case appeal on the merits of the Authority's action described in the notice:

(A) If the Authority finds that the claimant and claimant's representative did not receive the decision notice and did not have actual knowledge of the notice; or

(B) If the Authority finds that the claimant did not meet the timeframe required by OAR 410-200-0145(5) due to excusable mistake or neglect, which may be due to significant cognitive or health issues, reasonable reliance on the statement of an Agency employee relating to procedural requirements, or due to misrepresentation or other misconduct of the Agency.

(b) The Authority may dismiss an appeal request if it finds it is untimely if the claimant does not qualify for an appeal under subsection (7)(a).

(8) When the Authority receives an appeal request more than 75 days after a decision notice became a final order:

(a) For an overpayment notice:

(A) The Authority shall verify whether its records indicate that the liable adult requesting the appeal was sent the overpayment notice to the address known to the Agency.

(B) If no overpayment notice was sent to the liable adult, the overpayment appeal request is timely. The Authority shall send the claimant a decision notice or a contested case notice.

(C) If the Authority determines that an overpayment notice was sent to the liable adult at the last address known to the Agency, there is no appeal right based on the issue of whether or not the appeal request was received timely.

(b) Any appeal request is treated as timely when required under the Servicemembers Civil Relief Act.

(c) The Authority may dismiss an appeal request as untimely if the claimant does not qualify for an appeal under subsections 8(a) and (b).

(9) A claimant may withdraw an appeal request at any time before a final order has been issued on the contested case. When a claimant withdraws an appeal request:

(a) The Authority shall send an order confirming the withdrawal to the claimant's last known address.

(b) The claimant may cancel the withdrawal in writing. The withdrawal must be received by the Authority hearing representative no later than the tenth working day following the date the Authority sent the order confirming the withdrawal.

(10) An appeal request is dismissed by order by default when neither the claimant nor the claimant's representative appears at the time and place specified for the appeal. The order is effective on the date scheduled for the appeal. The Authority shall cancel the dismissal order on request of the claimant on a showing that the claimant was unable to attend the appeal and unable to request a postponement for good cause reasons beyond his or her control.

NOTE: This rule replaces and amends information previously found in OAR 461-025-0310, 461-025-0350, 461-025-0356, 461-025-0371, 461-025-0375.

Stat. Auth.: ORS 183.341, 413.042, 411.060, 411.404, 411.408, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 183.341, 411.060, 411.404, 411.408, 411.816, 412.014 & 412.049

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0200

Residency Requirements

(1) To be eligible for OCCS Medical Programs, an individual must be a resident of Oregon.

(2) An individual is a resident of Oregon if the individual lives in Oregon, except:

(a) An individual 21 years of age or older who is placed in a medical facility in Oregon by another state is considered to be a resident of the state that makes the placement if:

(A) The individual is capable of indicating intent to reside; or

(B) The individual became incapable of indicating intent to reside after attaining 21 years of age (see section (6)).

(b) For an individual less than 21 years of age who is incapable of indicating intent to reside, or an individual of any age who became incapable of indicating that intent before attaining 21 years of age, the state of residence is one of the following:

(A) The state of residence of the individual's parent or legal guardian at the time of application.

(B) The state of residence of the party who applies for benefits on the individual's behalf if there is no living parent or the location of the parent is unknown, and there is no legal guardian.

(C) Oregon, if the individual has been receiving medical assistance in Oregon continuously since November 1, 1981, or is from a state with which Oregon has an interstate agreement that waives the residency requirement.

(D) When a state agency of another state places the individual, the individual is considered to be a resident of the state that makes the placement.

(3) There is no minimum amount of time an individual must live in Oregon to be a resident. The individual is a resident of Oregon if:

(a) The individual intends to remain in Oregon; or

(b) The individual entered Oregon with a job commitment or is looking for work.

(4) An individual is not a resident if the individual is in Oregon solely for a vacation.

(5) An individual continues to be a resident of Oregon during a temporary period of absence if he or she intends to return when the purpose of the absence is completed.

(6) An individual is presumed to be incapable of indicating intent to reside if the individual falls under one or more of the following:

(a) The individual is assessed with an IQ of 49 or less, based on a test acceptable to the Authority.

(b) The individual has a mental age of seven years or less, based on tests acceptable to the Authority.

(c) The individual is judged legally incompetent by a court of competent jurisdiction.

(d) The individual is found incapable of indicating intent to reside based on documentation provided by a physician, psychologist, or other professional licensed by the state of Oregon in the field of intellectual disabilities.

NOTE: This rule replaces and amends information previously found in OAR 461-120-0010.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0205
Concurrent and Duplicate Program Benefits

(1) An individual receiving OCCS Medical Program benefits may not receive the following medical benefits at the same time:

(a) Any other OCCS Medical Program;

(b) Office of Child Welfare Medical;

(c) Oregon Youth Authority Medical;

(d) Oregon Supplemental Income Program-Medical (OSIPM); or

(e) Refugee Medical Assistance (REFM).

(f) A subsidy through the Family Health Insurance Assistance Program (FHIAP) established by ORS 735.720 to 735.740, or receiving a subsidy through the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.826, 414.831, and 414.839.

(2) An individual may not receive OCCS Medical Program benefits and medical benefits from another state, unless the individual's provider refuses to submit a bill to the Medicaid/CHIP agency of the other state and the individual would not otherwise receive medical care.

NOTE: This rule replaces and amends information previously found in OAR 461-165-0030.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0210
Requirement to Provide Social Security Number

(1) The Agency may collect a Social Security Number (SSN) for the following purposes:

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets and to match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

(c) The operation of the program applied for or providing benefits.

(d) Conducting quality assessment and improvement activities.

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

(2) As a condition of eligibility, except as provided in section (5) below, each applicant (including children) requesting medical benefits must:

(a) Provide a valid SSN; or

(b) Apply for an SSN if the individual does not have one and provide the SSN when it is received.

(3) Except as provided in section (5) below, if an applicant does not recall their SSN or has not been issued an SSN, and the SSN is not available to the Agency, the Agency must:

(a) Obtain required evidence under SSA regulations to establish the age, the citizenship or alien status, and the true identity of the applicant; and

(b) Either assist the applicant in completing an application for an SSN or, if there is evidence that the applicant has previously been issued an SSN, request SSA to furnish the number.

(4) The Agency may request that non-applicants or individuals determined eligible for CAWEM or CAWEM Prenatal provide an SSN on a voluntary basis. The Agency shall use the SSN for the purposes outlined in section (1).

(5) An applicant is not required to apply for or provide an SSN if the individual:

(a) Is determined eligible for CAWEM or CAWEM Prenatal medical; or

(b) Does not have an SSN and the SSN may be issued only for a valid non-work reason; or

(c) Is a member of a religious sect or division of a religious sect that has continuously existed since December 31, 1950 and the individual adheres to its tenets or teachings that prohibit applying for or using an SSN; or

(d) Is a newborn that is assumed eligible based on the eligibility of the mother of the newborn and who is under one year of age.

NOTE: This rule replaces and amends information previously found in OAR 461-120-0210.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0215
Citizenship and Alien Status Requirements

(1) Except as provided in section (2) of this rule, to be a beneficiary of a medical program an individual must be:

(a) A citizen of the United States;

(b) A qualified non-citizen who meets the alien status requirements in section (3) of this rule;

(c) A citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands; or

(d) A national from American Samoa or Swains Islands

(2) To be eligible for CAWEM benefits, an individual must be ineligible for a Medicaid program solely because he or she does not meet citizenship or alien status requirements set forth in this rule.

(3) An individual is a qualified non-citizen if the individual is any of the following:

(a) A non-citizen lawfully admitted for permanent residence under the INA (8 U.S.C. 1101 et seq);

(b) A refugee admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year;

(f) A non-citizen granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a Cuban and Haitian entrant (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(h) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under section 101(a)(27) of the INA; or

(i) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(4) A qualified non-citizen meets the alien status requirements if the individual satisfies one of the following requirements:

(a) Effective October 1, 2009, is an individual under 19 years of age.

(b) Was a qualified non-citizen before August 22, 1996.

(c) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date qualified non-citizen status was obtained.

(d) Has been granted any of the following alien statuses:

(A) Refugee under section 207 of the INA.

(B) Asylum under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(e) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply.

(f) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(g) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(h) A member of the United States Armed Forces on active duty (other than active duty for training).

(i) The spouse or a dependent child of an individual described in subsection (f) or (g) of this section.

(5) A non-citizen meets the alien status requirements if the individual is under the age of 19 and is one of the following:

(a) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.

(b) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(A) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);

(B) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);

(C) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603 (8 USC 1255a), as amended;

(D) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649 (8 USC 1255a), as amended;

(E) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(F) An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or

(G) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.

(c) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).

(6) Except for individuals described in section (4) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible an OCCS Medical Program for five years beginning on the date the non-citizen received qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

NOTE: This rule replaces and amends information previously found in OAR 461-120-0110, 461-120-0125.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 414.025, 414.231, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0220

Requirement to Pursue Assets

(1) As a condition of ongoing eligibility an applicant or beneficiary must make a good faith effort to obtain an asset to which they have a legal right or claim, except an applicant or beneficiary is not required to:

(a) Apply for Supplemental Security Income (SSI) from the Social Security Administration.

(b) Borrow money.

(c) Make a good faith effort to obtain such asset if the individual can show good cause for not doing so (see section (4).

(2) Pursuable assets include but are not limited to:

(a) Claims related to an injury;

(b) Disability benefits;

(c) Healthcare coverage;

(d) Retirement benefits;

(e) Survivorship benefits;

(f) Unemployment compensation; and

(g) Veteran's compensation and pensions.

(3) Except for beneficiaries in the OHP-CHP or MAGI CHIP programs, caretakers must obtain available health insurance coverage and cash medical support for household group members receiving medical assistance.

(a) Each caretaker in the household group must assist the Agency and the Division of Child Support (DCS) in establishing paternity for each child receiving medical assistance and in obtaining an order directing the non-custodial parent of a child receiving benefits to provide cash medical support and health care coverage for that child.

(b) A parent receiving medical assistance who fails to meet the requirements of section (3)(a) is applied the penalty identified in section (3)(e) or section (3)(f) after providing the beneficiary with notice and opportunity to show the provisions of section (4) of this rule apply.

(c) Each applicant, including a parent for their child, must make a good faith effort to obtain available coverage under Medicare. The Authority may not penalize children for non-cooperation.

(d) With the exception of OHP-CHP, MAGI CHIP, and OHP-OPU, caretakers who are OCCS Medical Program beneficiaries must apply for, accept, and maintain cost-effective employer-sponsored health insurance as set forth in OAR 461-155-0360, unless they have good cause.

(e) For MAA, MAF, EXT, CEM, and SAC medical programs, a parent who fails to meet the requirements of section (3) is excluded from the family size.

(f) With the exception of OHP-CHP, MAGI-CHIP, and CEC, a parent of a child receiving OCCS Medical Program benefits who fails to meet the requirements of section (3) is ineligible for assistance.

(4) Section (3) of this rule does not apply to individuals when:

(a) The individual's compliance would result in emotional or physical harm to the dependent child or to the caretaker. The statement of the caretaker serves as prima facie evidence that harm would result;

(b) The child was conceived as a result of incest or rape and efforts to obtain support would be detrimental to the dependent child. The statement of the caretaker serves as prima facie evidence on the issues of conception and detrimental effect to the dependent child;

(c) Legal proceedings are pending for adoption of the child;

(d) The parent is being helped by a public or licensed private social agency to resolve the issue of whether to release the child for adoption;

(e) The individual is pregnant; or

(f) Other good cause reasons exist for noncooperation.

(5) An individual involved in a personal injury must pursue a claim for the personal injury. If the claim or action to enforce such claim was initiated prior to the application for medical assistance, the individual must notify the Agency during the eligibility verification process (see OAR 410-200-0230 Verification). The following information is required:

(a) The names and addresses of all parties against whom the action is brought or claim is made;

(b) A copy of each claim demand; and

(c) If an action is brought, the case number and the county where the action is filed.

(6) Unless specified otherwise in this rule, an individual who fails to comply with the requirements of this rule is ineligible for benefits until the individual meets the requirements of this rule.

NOTE: This rule replaces and amends information previously found in OAR 461-120-0330, 461-120-0345, 461-120-0350, 461-155-0360 (reference), 461-195-0303, 461-195-0310.

Stat. Auth.: ORS 411.402, 411.404 & 413.0042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, , 414.025, 414.231 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0225

Assignment of Rights

(1) The signature of the applicant or authorized representative on the application for assistance signifies the applicant's agreement to assign the rights to reimbursement for medical care costs to the Agency.

(2) As a condition of eligibility, each applicant must:

(a) Assign to the Agency any rights of each household group member receiving benefits to reimbursement for medical care costs to the Agency including any third party payments for medical care and any medical care support available under an order of a court or an administrative agency.

(b) Assign to the Agency any rights to payment for medical care from any third party and, once they receive assistance, to assist the Agency in pursuing any third party who may be liable for medical care or services paid by the Agency, including health services paid for pursuant to ORS 414.706 to 414.750 as set forth in OAR 410-200-0220, 461-195-0303 and 461-195-0310.

(c) Unless good cause exists as established in OAR 410-200-0220 (Requirement to Pursue Assets), failure to assign the right to reimbursement for medical care costs to the Agency shall result in ineligibility for the household group until the requirements of this rule are met.

(3) Except for the OHP-OPU, OHP-CHP, and MAGI CHIP programs:

(a) An applicant must assign to the state the right of any Medicaid-eligible individual in the household group to receive any cash medical support

that accrues while the individual receives assistance, not to exceed the total amount of assistance paid; and

(b) Cash medical support received by the Agency shall be retained as necessary to reimburse the Agency for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed.

NOTE: This rule replaces and amends information previously found in OAR 461-120-0315, 461-120-0310, 461-195-0303, 461-195-0310.
Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, , 414.025, 414.231 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0230
Verification

(1) Except as described in section (5) of this rule, applicants, beneficiaries, or individuals of applicant or beneficiary's choosing must attest to the following information:

(a) Age and date of birth;
(b) Application for other benefits;
(c) Caretaker relative status;
(d) Household composition;
(e) Legal name;
(f) Medicare;
(g) Pregnancy;
(h) Residency;
(i) Social Security number; and
(j) American Indian/Alaska Native status.

(2) Except as provided in section (2)(c), applicants, beneficiaries, or individuals of applicant or beneficiary's choosing must make a declaration of citizenship, national status, or non-citizen status.

(a) Self-attestation shall be accepted upon receipt and verified post-eligibility via the federal data services hub or by electronic data match available to the Agency; or

(b) In the event additional verification is needed, the Authority shall provide a reasonable opportunity period to verify citizenship and non-citizen status.

(c) The following are exempt from the requirement to verify citizenship status:

(A) Individuals who are assumed eligible (see OAR 410-200-0135);

(B) Individuals who are enrolled in Medicare;

(C) Individuals who are presumptively eligible for the BCCTP Program through the BCCTP screening program or through the Hospital Presumptive Medical process (see OAR 420-200-0400 and 410-200-0105);

(D) Individuals receiving Social Security Disability Income (SSDI); or

(E) Individuals whose citizen status was previously documented by the Agency. The Agency may not re-verify or require an individual to re-verify citizenship at a renewal of eligibility or subsequent application following a break in coverage.

(3) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing must make a declaration of income:

(a) For individuals whose eligibility is able to be verified using the federal data services hub, self-attestation shall be used to approve MAGI-based Medicaid/CHIP, and:

(A) Verified by documentary evidence through a match with available electronic data; or

(B) In the event that additional verification is needed, the Authority shall provide a post eligibility pend period to verify income information.

(b) Individuals whose eligibility is not able to be verified using the federal data services hub must have their income information verified prior to eligibility determination:

(A) Using electronic data match available to the Agency; or

(B) By providing verification of information to the Agency.

(c) In the event that verification is not available via the federal data services hub, electronic data match available to the Agency, or by any other method, the attested information will be accepted to determine eligibility.

(d) In the event that income verification via the federal data services hub or electronic data match available to the Agency is inconsistent with attested information:

(A) If the individual attests to income below the applicable standard, and the data source indicates income above the applicable standard, verification or reasonable explanation will be requested from the individual.

(B) If both the data source and attested information are below the applicable standard, the applicant is eligible for MAGI-based Medicaid/CHIP.

(C) If the individual's attested information is above the applicable standard, but the data source verification is below the standard, the Agency will accept the attestation, deny MAGI-based Medicaid/CHIP, and screen for potential APTC eligibility.

(4) Additional income verifications for MAGI-based Medicaid/CHIP program approvals will occur during a 90-day look-back process that will review income information used to determine eligibility using income data sources available to the Agency. After the 90-day look-back analysis, the results of a quarterly match against Employment Department wage data will be reviewed as it becomes available. If necessary, documentation may be required per section (5).

(5) The Authority may request that applicants and beneficiaries of medical assistance provide additional information, including documentation, to verify most eligibility criteria if data obtained electronically is not reasonably compatible with attested information.

NOTE: This rule replaces and amends information previously found in OAR 461-115-0610 and 461-115-0705.
Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0235
Changes That Must Be Reported

(1) Individuals must report the following changes in circumstances affecting eligibility for beneficiaries within 30 calendar days of its occurrence:

(a) The receipt or loss of health care coverage.
(b) A change in mailing address or residence.
(c) A change in legal name.
(d) A change in pregnancy status of a household group member.
(e) A claim for a personal injury. The following information must be reported :

(A) The names and addresses of all parties against whom the action is brought or claim is made;

(B) A copy of each claim demand; and

(C) If an action is brought, identification of the case number and the county where the action is filed.

(f) In addition to section (1)(a)–(e), in the EXT program, when a household group member receiving medical assistance is no longer a dependent child.

(g) In addition to section (1)(a)–(e), in the OHP, and MAGI CHIP programs, a change in availability of employer-sponsored health insurance.

(h) In addition to section (1)(a)–(e), adults in the MAA, MAF, SAC, EXT, BCCTP, MAGI Pregnant Woman, MAGI Parent or Other Caretaker Relative, and MAGI Adult programs:

(A) A change in source of income.
(B) A change in employment status.
(i) For a new job, the change occurs the first day of the new job.
(ii) For a job separation, the change occurs on the last day of employment.
(C) A change in earned income more than $100. The change occurs upon the receipt by the beneficiary of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.
(D) A change in unearned income more than $50. The change occurs the day the beneficiary receives the new or changed payment.
(E) A change in membership of the household group.
(F) A change in availability of employer-sponsored health insurance.

(i) In addition to section (1)(a)–(e), beneficiaries of the MAGI Child program:

(A) A change in membership of the household group.
(B) A change in availability of employer-sponsored health insurance.

(2) Beneficiaries, adult members of the household group, or authorized representatives may report changes via the Internet, by telephone, via mail, in person, and through other commonly available electronic means.

(3) A change is considered reported on the date the beneficiary, adult member of the household group, or authorized representative reports the information to the Agency.

(4) A change reported by the beneficiary, adult member of the household group, or authorized representative for one program is considered reported for all programs administered by the Agency in which the beneficiary participates.

(5) Beneficiaries, adult members of the household group, or authorized representatives are not required to report any of the following changes:

(a) Periodic cost-of-living adjustments to the federal Black Lung Program, SSB, SSDI, SSI, and veterans assistance under Title 38 of the United States Code.

(b) Changes in eligibility criteria based on legislative or regulatory actions.

NOTE: This rule replaces and amends information previously found in OAR 461-105-0020; 461-170-0010; 461-170-0011; 461-170-0200; 461-195-0305; 461-195-0310; 461-195-0321.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0240

Citizen/Alien Waived Emergent Medical

(1) To be eligible for CAWEM benefits, an individual must be ineligible for OCCS Medical Programs, solely because he or she does not meet the citizen or alien status requirements. A child who is ineligible for OHP-CHP, MAGI CHIP, CEM, or CEC solely because he or she does not meet the citizen or alien status requirements is not eligible for CAWEM benefits.

(2) To be eligible for the CAWEM Prenatal enhanced benefit package, a CAWEM recipient must be pregnant.

(3) The pregnant CAWEM client's enhanced medical benefits package ends when the pregnancy ends.

(4) The woman remains eligible for CAWEM emergent benefits through the end of the calendar month in which the 60th day following the last day of the pregnancy falls.

Stat. Auth.: ORS 411.402, 411.404, 413.042, 414.025 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440, 414.534, 414.536, 414.706 & 411.060

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0305

Household Group — Modified Adjusted Gross Income (MAGI) based Medicaid and CHIP

When establishing eligibility for MAGI-based Medicaid or MAGI CHIP, each applicant or beneficiary must have their own countable household group determined individually, based on the following household group rules:

(1) Tax Payer's Household group:

(a) For tax-payers who are not claimed as a tax dependent by another individual, the household group consists of the taxpayer and all individuals whom the tax payer intends to claim as tax dependents.

(b) For tax-payers who are married and living with their spouse, each spouse shall be included in the household group of the other spouse, whether they file taxes together or separately.

(2) Tax dependent's Household group:

(a) In the case of an individual who expects to be claimed as a tax dependent by another individual, the household group is that of the individual claiming the tax dependent; or

(b) Household group is determined under section (3) of this rule, where the tax dependent:

(A) Is not the tax payer's spouse or child;

(B) Is a child living with both parents but the parents are not filing taxes jointly and one of the parents is claiming the child as a tax dependent; or

(C) Is a child claimed as a tax dependent by a non-custodial parent.

(3) The household group for a tax dependent who meets the criteria in section (2)(b) consists of the tax dependent and the following individuals, if living in the same household:

(a) The tax dependent's spouse;

(b) The tax dependent's children;

(c) If the tax dependent is a child, the child's parents and siblings.

(4) For individuals who do not file a tax return and are not claimed as a tax dependent, the individual's household group is determined in accordance with section (3).

(5) Notwithstanding the above sections, the household group for an inmate who becomes hospitalized as a patient consists of only the individual.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0310

Eligibility and Budgeting; MAGI Medicaid/CHIP; Not BCCTP or EXT

(1) The budget month means the calendar month from which nonfinancial and financial information is used to determine eligibility for OCCS Medical Programs.

(2) The budget month is determined as follows:

(a) For a new applicant, the budget month is:

(A) The month in which medical assistance is requested; or

(B) If ineligible in the month in which medical assistance is requested, the budget month is the following month.

(b) For a current Medicaid/CHIP beneficiary, the budget month is:

(A) The final month of the twelve-month enrollment period;

(B) The month a change that affects eligibility is reported, if reported timely; or

(C) The month the individual ages off a medical program or is no longer eligible for a medical assistance program.

(c) For retroactive medical, the budget month is the month in which the applicant received medical services for which they are requesting payment. Retroactive medical is determined on a month-by-month basis.

(3) Countable income anticipated or received in the budget month is determined as follows:

(a) Income is calculated by adding together the income of the household group already received in the budget month, and the income that is reasonably expected to be received in the remainder of the budget month.

(b) If ineligible in the budget month, countable income from the month following the budget month is considered.

(c) If ineligible under subsections (a) or (b) of this section because the countable income is over the income standard for OCCS Medical Programs, income shall be annualized using the requirements in 26 CFR §1.36 B-1(e) for the year in which medical has been requested, and applied to the budget month. If the annualized income is below 100% FPL as identified in 26 CFR §1.36 B-1(e), eligibility shall be determined for the appropriate program pursuant to OAR 410-200-0315.

(4) The household group's budget month income is compared to the income standard for the appropriate family size to determine if an applicant may be eligible for an OCCS Medical Program.

NOTE: This rule replaces and amends information previously found in OAR 461-150-0055, 461-155-0060, 461-150-0070.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, , 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0315

Standards and Determining Income Eligibility

(1) MAGI-based income not specifically excluded is countable, and its value is used in determining the eligibility and benefit level of an applicant or beneficiary.

(2) MAGI-based income is considered available on the date it is received or the date a member of the household group has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(3) In determining financial eligibility for each applicant, the sum of the budget month MAGI-based income of all household group members is combined and compared to the applicable income standard for the family size. If the income is at or below the MAGI income standard, the individual meets the financial eligibility requirements. Except as provided in section (4)(a), if income exceeds the MAGI income standard, the individual is ineligible.

(4) This section is effective January 1, 2014:

(a) If an individual is ineligible for MAGI Medicaid based solely on income, and would otherwise be eligible for MAGI CHIP or be referred to the Exchange for APTC, a disregard equivalent to 5 percentage points of the federal poverty level for the applicable family size shall be applied the household group's income. If the resulting amount is below the income standard for the applicable program and family size, the individual meets the financial eligibility requirements in the following programs:

(A) The MAGI Parent or Other Caretaker Relative Program,

(B) The MAGI Child Program,

(C) The MAGI Adult Program, and

(D) The MAGI Pregnant Woman Program

(b) If an individual is ineligible for MAGI CHIP based solely on income, and would otherwise be referred to the Exchange for APTC, a disregard equivalent to 5 percentage points of the federal poverty level for the applicable family size shall be applied the household group's income. If the resulting amount is below the income standard for the applicable program and family size, the individual meets the financial eligibility requirements in the MAGI CHIP.

(c) The MAGI income standard for the MAGI Parent or Other Caretaker-Relative program is set as follows: [Table not included. See ED. NOTE.]

(d) The MAGI income standard for the MAGI Child Program and the MAGI Adult Program is set at 133% of the FPL as follows. If an individual's household group income exceeds the income standard for their family size, the appropriate disregard for their family size described in section (4)(a) shall be applied: [Table not included. See ED. NOTE.]

(e) The MAGI income standard for the MAGI Pregnant Woman Program and for MAGI Child Program recipients under age one is set at 185% FPL. If an individual's household group income exceeds the income standard for their family size, the appropriate disregard for their family size described in section (4)(a) shall be applied: [Table not included. See ED. NOTE.]

(f) The MAGI income standard for the MAGI CHIP program is set through 300% of FPL as follows. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for MAGI CHIP, the appropriate disregard for their family size described in section (5)(a)(B) shall be applied: [Table not included. See ED. NOTE.]

(5) Effective October 1, 2013 through December 31, 2013, the MAGI income standards listed in this section are used.

(a) Individuals who apply from October 1, 2013 through December 31, 2013 shall first be considered for the programs described in OAR 410-200-0510. Individuals found ineligible based on information from all budget months of October, November, or December 2013 shall have their eligibility determined as follows:

(A) For individuals who would be eligible for programs based on eligibility and income standards found in section (4)(c) through (e) as of January 1, 2014, eligibility for the applicable program shall begin as of that date.

(B) For individuals who are ineligible for programs which begin on January 1, 2014 who would otherwise be eligible for MAGI CHIP or be referred to the Exchange for APTC as of January 1, 2014, a disregard equivalent to 5 percentage points of the federal poverty level for the applicable family size will be applied the household group's income. If the resulting amount is below the January 1, 2014 income standard found in section (4)(c) through (e) for the applicable program and family size, the individual meets the financial eligibility requirements for MAGI Medicaid/CHIP.

(b) The MAGI-based income standard for the MAA and SAC programs is as follows. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for Medicaid, the appropriate disregard for their family size described in section (5)(a)(B) shall be applied: [Table not included. See ED. NOTE.]

(c) The MAGI-based income standard for the OHP-OPU program is set at 100 percent of the federal poverty level: [Table not included. See ED. NOTE.]

(d) The MAGI-based income standard for the OHP-OPC program is set to 100 percent of the federal poverty level. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for Medicaid, the appropriate disregard for their family size described in section (5)(a)(B) shall be applied: [Table not included. See ED. NOTE.]

(e) The MAGI-based income standard for the OHP-OP6 program is set at 133 percent of the federal poverty level. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for Medicaid, the appropriate disregard for their family size described in section (5)(a)(B) shall be applied: [Table not included. See ED. NOTE.]

(f) The MAGI-based income standard for the OHP-OPP program is set at 185 percent of the federal poverty level. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for Medicaid, the appropriate disregard for their family size described in section (5)(a)(B) shall be applied: [Table not included. See ED. NOTE.]

(g) The MAGI income standard for the MAGI CHIP program is set through 300% of FPL as follows: [Table not included. See ED. NOTE.]

(h) In the MAGI CHIP and MAGI Child Program, when the Department uses a finding made during an ELE determination and the child meets all other MAGI CHIP, or MAGI Child Program nonfinancial eligibility requirements, the standard for the number of eligibility group members determined by the is used to determine eligibility regardless of the family size. The countable income of the household group is the same as the income amount determined by the ELA. A child is deemed eligible for MAGI CHIP, or MAGI Child Program as follows:

(A) If the MAGI-based income of the household group is below 163 percent of the federal poverty level as listed below, the Department deems the child eligible for the MAGI Child Program. [Table not included. See ED. NOTE.]

(B) If the MAGI-based income of the household group is at or above 163 percent of the FPL through 300% percent of the FPL as listed in section (5)(b)(E) of this rule, the Agency deems the child eligible for MAGI CHIP.

NOTE: This rule replaces and amends information previously found in OAR 461-140-0010, 461-140-0040, 461-150-0055, 461-155-0180, and 461-155-0225.
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0400
Specific Requirements; Breast and Cervical Cancer Treatment Program (BCCTP)

This rule establishes eligibility criteria for medical assistance based on an individual's need of treatment for breast or cervical cancer, including pre-cancerous conditions (treatment). The Authority administers the Oregon Breast and Cervical Cancer Treatment Program (BCCTP) by entering into agreements with qualified entities as approved by the Authority to provide screening services for BCCTP funded by the Centers for Disease Control in support of the National Breast and Cervical Cancer Early Detection Program.

(1) To be eligible for BCCTP, an individual must:

(a) Be found to need treatment following screening services provided by a qualified entity;

(b) Be under the age of 65;

(c) Not be covered for treatment by minimum essential coverage; and

(d) Not be eligible for Medicaid through a Medicaid program listed in 42 U.S.C. §1396a(a)(10)(A)(i) (mandatory Medicaid eligibility groups).

(2) An individual is presumptively eligible for BCCTP beginning the day a qualified entity determines, on the basis of preliminary information, that she is likely to meet the requirements of section (1). A qualified entity that determines an individual presumptively eligible for BCCTP must:

(a) Notify the Authority of the determination within five working days; and

(b) Explain to the individual at the time the determination is made the circumstances under which an application for medical assistance must be submitted to the Authority and the deadline for the application (see section (3)).

(3) To remain eligible for benefits, an individual determined by a qualified entity to be presumptively eligible for BCCTP must apply for medical assistance no later than the last day of the month following the month in which the determination of presumptive eligibility is made. Presumptive eligibility for BCCTP ends on:

(a) The last day of the month following the month in which presumptive eligibility begins, if the individual does not file an application by that date.

(b) The day on which a determination is made for other Medicaid/CHIP program benefits.

(4) An individual found eligible for the BCCTP by the Authority becomes ineligible upon the first of the following to occur:

(a) The treating health professional determines the course of treatment is complete.

(b) Upon reaching age 65.

(c) When the individual becomes covered for treatment by minimum essential coverage.

(d) Upon becoming a resident of another state.

(e) When the Authority determines she does not meet the requirements for eligibility.

NOTE: This rule replaces and amends information previously found in OAR 461-135-1060.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536, 414.540 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0405

Specific Requirements; Substitute Care

In addition to eligibility requirements applicable to the Substitute Care program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the Substitute Care program.

(1) To be eligible for Substitute Care, an individual must be under the age of 21 and live in an intermediate psychiatric care facility for which a public agency of Oregon is assuming at least partial financial responsibility, including those placed in an intermediate psychiatric care facility by the Oregon Youth Authority.

(2) While living in an intermediate psychiatric care facility, an individual's household group consists of the individual only.

(3) There is no income test for Substitute Care.

NOTE: This rule replaces and amends information previously found in OAR 461-135-0150.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0406

Specific Requirements; Former Foster Care Youth Medical

In addition to eligibility requirements applicable to the Former Foster Care Youth Medical program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the Former Foster Care Youth Medical program.

(1) Individuals may not be eligible for the Former Foster Care Youth Medical program with an effective date prior to January 1, 2014.

(2) There is no income test for the Former Foster Care Youth Medical program.

(3) An individual is assumed eligible for Former Foster Care Youth Medical if the criteria in section (1) is met and the individual:

(a) Is 18 years of age or older, but under 26 years of age;

(b) Was in foster care under the responsibility of the State or Tribe and enrolled in Medicaid under the State's Medicaid State plan or 1115 demonstration upon attaining:

(A) Age 18, or

(B) If over 18, the age at which Oregon Medicaid or Oregon Tribal foster care assistance ended under Title IV-E of the Act;

(c) Is not receiving SSI; and

(d) Is not receiving adoption assistance or foster care maintenance payments

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; Suspended by DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0410

Specific Requirements; MAGI CHIP

In addition to eligibility requirements applicable to the MAGI CHIP program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI CHIP program.

(1) Individuals may not be eligible for the MAGI CHIP program with an effective date prior to October 1, 2013.

(2) To be eligible for the MAGI CHIP program, an individual must be under 19 years of age and must:

(a) Not be eligible for MAGI Child, MAGI Pregnant Woman, MAGI Parent or Caretaker Relative or Substitute Care programs;

(b) Meet budgeting requirements of OAR 410-200-0315; and

(c) Not be covered by minimum essential coverage. For the purposes of this rule, a child is not considered to have minimum essential coverage if it is not accessible for one or more of the following reasons:

(A) The travel time or distance to available providers within the minimum essential coverage network exceeds:

(i) In urban areas: 30 miles, 30 minutes, or the community standard, whichever is greater; or

(ii) In rural areas: 60 miles, 60 minutes, or the community standard, whichever is greater.

(B) Accessing the minimum essential coverage would place a household group member at risk of harm.

(3) For the Authority to enroll a child in MAGI CHIP based on a determination made by an Express Lane Agency (ELA), the child's parent or guardian must give consent in writing, by telephone, orally, or through electronic signature.

NOTE: This rule replaces and amends information previously found in OAR 461-135-1100(7).

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0415

Specific Requirements; MAGI Child

In addition to eligibility requirements applicable to the MAGI Child program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Child Program.

(1) Individuals may not be eligible for the MAGI Child program with an effective date prior to January 1, 2014.

(2) To be eligible for the MAGI Child Program, the child must be under the age of 19 with household income at or below:

(a) 133 percent of the federal poverty level (see OAR 410-200-0315) for the applicable family size for a child over the age of one but less than age 19; or

(b) 185 percent of the federal poverty level for the applicable family size for an infant under the age of one.

(3) To be eligible for the MAGI Child Program, an individual may not:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be receiving Medicaid through another program.

(4) A child born to a mother eligible for and receiving Medicaid benefits is assumed eligible for medical benefits under this rule until the end of the month the child turns one year of age, unless:

(a) The child dies;

(b) The child is no longer a resident of Oregon; or

(c) The child's representative requests a termination of the child's eligibility.

(5) To enroll a child in the MAGI Child Program based on a determination made by an Express Lane Agency (ELA), the child's parent or guardian must give consent in writing, by telephone, orally, or through electronic signature.

(6) ELE qualifies a child for medical assistance benefits based on a finding from the Department, even when the Department's eligibility methodology differs from that used for OCCS Medical Programs.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0420

Specific Requirements; MAGI Parent or Other Caretaker Relative

In addition to eligibility requirements applicable to the MAGI Parent and Other Caretaker Relative program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Parent or Other Caretaker Relative Program.

(1) Individuals may not be eligible for the MAGI Parent and Other Caretaker Relative Program with an effective date prior to January 1, 2014.

(2) To be eligible for the MAGI Parent or Other Caretaker Relative program, an individual must have household group income at or below income standard for the applicable family size as identified in OAR 410-200-0315;

(3) To be eligible for the MAGI Parent or Other Caretaker Relative program, an individual must have a dependent child in the home. However, a dependent child for who foster care payments are made for more than 30 days is not eligible while the payments are being made for the dependent child.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0425

Specific Requirements; MAGI Pregnant Woman

In addition to eligibility requirements applicable to the MAGI Pregnant Woman program in other rules in chapter 410 division 200, this

rule describes specific eligibility requirements for the MAGI Pregnant Woman program.

(1) Individuals may not be eligible for the MAGI Pregnant Woman program with an effective date prior to January 1, 2014.

(2) To be eligible for the MAGI Pregnant Woman program, an individual must be pregnant, and:

(a) Have household income that is at or below 185 percent of the federal poverty level (see OAR 410-200-0315); or

(b) Be eligible for Continuous Eligibility according to the policy described in OAR 410-200-0135(2).

(3) Once a beneficiary is eligible and receiving Medicaid through the MAGI Pregnant Woman program, they are eligible through the end of the calendar month in which the 60th following the last day of the pregnancy falls (see OAR 410-200-0135).

NOTE: This rule replaces and amends information previously found in OAR 461-135-1100.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0435

Specific Requirements; MAGI Adult

In addition to eligibility requirements applicable to the MAGI Adult program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Adult program.

(1) An individual may not be eligible for the MAGI Adult program with an effective date prior to January 1, 2014.

(2) The Agency may not allow retroactive enrollment into the MAGI Adult program for effective dates prior to January 1, 2014.

(3) To be eligible for the MAGI Adult program an individual must:

(a) Be 19 years of age or older and under age 65; and

(b) Have household income at or below 133 percent federal poverty level (see OAR 410-200-0315) for the applicable family size.

(4) To be eligible for the MAGI Adult program, an individual may not be:

(a) Pregnant;

(b) Entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act;

(c) Receiving SSI benefits; or

(d) A parent or other caretaker relative living with a dependent child who is not enrolled in minimum essential coverage.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0440

Specific Requirements; Extended Medical Assistance

(1) Individuals who are eligible for and receiving Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), MAGI Child or MAGI Parent or Other Caretaker Relative benefits and lose eligibility:

(a) Due to the receipt or increase of earned income are eligible for 12 months of Extended Medical Assistance (EXT) benefits if eligibility is redetermined and the individual is not eligible for Medicaid/CHIP; or

(b) Due to the receipt or increase of spousal support are eligible for 4 months of EXT benefits if:

(A) Eligibility is redetermined and the individual is not eligible for Medicaid/CHIP; and

(B) They were eligible for and receiving benefits for three of six months preceding the receipt or increase of spousal support.

(2) Individuals who are eligible for and receiving MAGI Pregnant Woman benefits and lose eligibility due to the increase of earned income or spousal support are eligible for 4 months of EXT benefits if:

(a) Eligibility is redetermined and the individual is not eligible for Medicaid/CHIP; and

(b) They were eligible for and receiving MAGI Pregnant Women benefits for three of the six months preceding the receipt or increase of earned income or spousal support.

(3) To be eligible for EXT, the Household Group of individuals who lose eligibility for MAGI Parent or Other Caretaker Relative benefits must contain a dependent child who has minimum essential coverage.

(4) The EXT beneficiary must be a resident of Oregon.

(5) Individuals who lose EXT eligibility because they leave the household during the EXT eligibility period may regain eligibility if they return to the household.

(6) The effective date of EXT is the first of the month following the month in which MAA, MAF, MAGI Child, MAGI Parent or Other Caretaker Relative, or the MAGI Pregnant Women program eligibility ends.

(7) If an individual receives MAA, MAF, MAGI Child, MAGI Parent or Other Caretaker Relative, or MAGI Pregnant Women benefits during months when they were eligible for EXT:

(a) Such months are not an overpayment.

(b) Any month in which an individual receives MAA, MAF, MAGI Parent or Other Caretaker Relative, or MAGI Pregnant Women benefits when they were eligible for EXT is counted as a month of the EXT eligibility period.

(8) If a beneficiary of MAA, MAF, MAGI Child, MAGI Parent or Other Caretaker Relative, or MAGI Pregnant Women benefits experiences another change in conjunction with the receipt or increase of earned income or spousal support, and the other change, by itself, makes the Household Group ineligible for the current program, the beneficiary is not eligible for EXT.

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038 & 414.025

Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0500

Transitioning Benefits — 2013 Programs

(1) For individuals who apply for OCCS Medical Programs on or after October 1, 2013, eligibility and budgeting shall be determined according to this section of rules.

(2) Individuals who apply from October 1, 2013 through December 31, 2013 shall first be considered for the programs described in OAR 410-200-0510. If an individual is eligible for one of those programs, eligibility shall continue according to section (3) of this rule. Individuals found ineligible based on information from all budget months of October, November, or December 2013 shall have their eligibility determined as follows:

(a) Individuals who would be eligible for new programs based on eligibility and income standards which begin January 1, 2014, shall become eligible for applicable programs as of that date.

(b) Individuals who are ineligible for new programs which begin on January 1, 2014 shall be referred to the Exchange.

(4) Individuals who are eligible and receiving OCCS Medical Program benefits described in OAR 410-200-0510 on December 31, 2013, shall be treated as follows effective January 1, 2014:

(a) Individuals receiving OHP-OPU program benefits shall be converted to the MAGI Adult program.

(b) Individuals receiving HKC program benefits shall be converted to the MAGI CHIP program.

(c) Individuals receiving OHP-CHP whose household income is below 133 percent of FPL shall be converted to the MAGI Child program.

(d) All others shall maintain their current program benefits until:

(A) A change occurs that impacts their eligibility; or

(B) Their next scheduled renewal occurs according to OAR 410-200-0115.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, , 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0505

Specific Requirements; SNAP-Based Eligibility for MAA, OHP-OPP, or MAGI Medicaid

In SNAP-based eligibility, the Agency relies on a determination made for SNAP program benefits. A SNAP recipient adult may be found eligible for these medical programs based on findings from the Department, even if the Department's eligibility methodology differs from that used by the Agency to determine eligibility for OCCS Medical Programs.

(1) For SNAP-based eligibility, the adult must have SNAP income that is at or below the applicable income standards for MAA, OHP-OPP, or MAGI Medicaid.

(2) A new application is not required for SNAP-based eligibility.

(3) For SNAP-based eligibility, the adult in the household group must:

(a) Not be eligible for or receiving Supplemental Security Income;

(b) Indicate they wish to pursue medical assistance;

(c) Agree to cooperate with the Division of Child Support; and

(d) Meet the specific program requirements for the applicable program.

(4) If the individual requests SNAP-based eligibility and is not eligible, the Authority must review the individual's eligibility for OCCS Medical Programs based on a full determination without requiring a new application. The Date of Request is the date the Authority received consent for SNAP-based eligibility.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 413.038
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0510

Specific Program Requirements; BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and SAC

(1) This rule describes OCCS Medical Programs for which individuals may be determined eligible through December 31, 2013. See OAR 410-200-0500 for information regarding the treatment of those beneficiaries as of January 1, 2014.

(2) To be eligible for a program listed in this rule, an individual must meet the following:

(a) The eligibility factors set forth in OAR 410-200-0200 through 410-200-0240;

(b) The budgeting and income standard requirements set forth in OAR 410-200-0300 through 410-200-0315; and

(c) The individual must have established a Date of Request prior to January 1, 2014.

(3) For purposes of this rule, private major medical health insurance means a comprehensive major medical insurance plan that, at a minimum, provides physician services; inpatient and outpatient hospitalization; outpatient lab, x-ray, immunizations; and prescription drug coverage. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program but does include policies that are purchased privately or are employer-sponsored.

(4) For the purposes of this rule, the receipt of private major medical health insurance does not affect OCCS Medical Program eligibility if it is not accessible. Private major medical health insurance is not considered accessible if:

(a) The travel time or distance to available providers exceeds:

(A) In urban areas: 30 miles, 30 minutes, or the community standard, whichever is greater;

(B) In rural areas: 60 miles, 60 minutes, or the community standard, whichever is greater.

(b) Accessing the private major medical health insurance would place a filing group member at risk of harm.

(5) To be eligible for Chafee medical, the individual must be a child who was receiving foster care in Oregon, upon attaining:

(a) Age 18, or

(b) If over 18, the age at which Oregon Medicaid or Oregon Tribal foster care assistance ended under Title IV-E of the Act;

(6) CEM provides eligibility for the balance of the 12-month eligibility period for non-CAWEM children who were receiving Child Welfare (CW) medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits and lost eligibility for reasons other than moving out of state or turning 19 years old. CEM benefits end when:

(a) The child becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits;

(b) The child turns 19 years of age;

(c) The child moves out of state; or

(d) Benefits are closed voluntarily.

(7) CEC provides eligibility for the OHP-CHP program for non-CAWEM pregnant children who were receiving OHP-CHP and would have otherwise lost eligibility for reasons other than moving out of state or becoming a recipient of private major medical health insurance. CEC eligibility for OHP-CHP ends the day following the end of the month in which the earliest of the following occur:

(a) The pregnancy ends;

(b) The individual moves out of state;

(c) The individual begins receiving private major medical health insurance;

(d) Benefits are closed voluntarily; or

(e) The individual becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

(8) For the Authority to enroll a child in the program based on a determination made by an ELA, the child's parent or guardian must give consent in writing, by telephone, orally, or through electronic signature.

(9) To be eligible for EXT, an individual must have been eligible for and receiving MAA or MAF and became ineligible due to a caretaker relative's increased earned income or due to increased spousal support (see OAR 410-200-0440).

(10) To be eligible for MAA or MAF, an individual must be one of the following:

(a) A dependent child who lives with a caretaker relative. However, a dependent child for who foster care payments are made for more than 30 days is not eligible while the payments are being made.

(b) A caretaker relative of an eligible dependent child. However, a caretaker relative to who foster care payments are made for more than 30 days is not eligible while the payments are being made.

(c) A caretaker relative of a dependent child, when the dependent child is ineligible for MAA or MAF for one of the following reasons:

(A) The child is receiving SSI;

(B) The child is in foster care, but is expected to return home within 30 days; or

(C) The child's citizenship has not been documented.

(d) An essential person. An essential person is a member of the household group who:

(A) Is not required to be in the filing group;

(B) Provides a service necessary to the health or protection of a member of the household group who has a mental or physical disability; and

(C) Is less expensive to include in the benefit group than the cost of purchasing this service from another source.

(e) A parent of an unborn as follows:

(A) For the MAA program:

(i) Any parent whose only child is an unborn child, once the mother's pregnancy has reached the calendar month preceding the month in which the due date falls.

(ii) The father of an unborn child who does not meet the criteria described in subsection (e)(A)(i) of this part may be eligible if there is another dependent child in the household group.

(B) For the MAF program, a mother whose only child is an unborn child, once the mother's pregnancy has reached the calendar month preceding the month in which the due date falls

(11) To be eligible for any OHP program in sections (12) through (15), an individual may not be:

(a) Receiving SSI benefits;

(b) Eligible for Medicare, except that this requirement does not apply to the OHP-OPP program:

(c) Receiving Medicaid through any other program concurrently.

(12) To be eligible for the OHP-OPC program, an individual must be less than 19 years of age.

(13) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(14) To be eligible for the OHP-OPP program, an individual must:

(a) Be pregnant;

(b) Be within the time period through the end of the calendar month in which the 60th following the last day of the pregnancy falls; or

(c) Be an infant under age one.

(15) To be eligible for the OHP-CHP program, an individual must be under 19 years of age and must:

(a) Not be eligible for the OHP-OPC, OHP-OPP, or OHP-OP6 programs; and

(b) Not be covered by any private major medical health insurance. An individual may be eligible for OHP-CHP if the private major medical health insurance is not accessible as outlined in section (4).

(16) Effective July 1, 2004, the OHP-OPU program is closed to new applicants. Except as provided in subsections (a) and (b) of this section, a new applicant may not be found eligible for the OHP-OPU program.

(a) An individual is not a new applicant if the Department determines that the individual is continuously eligible for medical assistance as follows:

(A) The individual is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, and the Department determines that the individual continues after that date to meet the eligibility requirements for the OHP-OPU program.

(B) The individual is eligible for and receiving benefits under the CAWEM program on June 30, 2004, and is eligible for the CAWEM program based on the OHP-OPU program, and the Department determines that the individual continues to meet the eligibility requirements for the OHP-OPU program except for citizenship or alien status requirements.

(C) The eligibility of the individual ends under the BCCM, CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or SAC program, or the related CAWEM program; or because the individual has left the custody of the Oregon Youth Authority

(OYA); and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program.

(D) The individual is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program.

(E) The Department determines that the individual was continuously eligible for the OHP-OPU program on or after June 30, 2004 under paragraphs (A) to (D) of this section.

(b) An individual who is not continuously eligible under subsection (a) is not a new applicant if the individual:

(A) Has eligibility end under the BCCM, CEC, CEM, EXT, HKC, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or SAC program, or the related CAWEM program; because the individual has left the custody of the OYA; or is a child in the custody of the Department whose eligibility for Medicaid ends due to the child's age;

(B) Established a Date of Request prior to the eligibility ending date in paragraph (A) of this section; and

(C) Meets the eligibility requirements for the OHP-OPU program or the related CAWEM program within either the month of the Date of Request or, if ineligible in the month of the Date of Request, the following month.

(17) To be eligible for the OHP-OPU program, an individual must meet the requirements listed in section (16), and be 19 years of age or older and may not be pregnant. Additionally, and individual must meet the following requirements:

(a) Must be currently receiving Medicaid or CHIP benefits when determined eligible for OHP-OPU.

(b) Must not be covered by any private major medical health insurance. An individual may be eligible for OHP-CHP if the private major medical health insurance is not accessible as outlined in section (4).

(c) May not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) Any of the criteria in section (4) are met;

(B) The individual has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(C) The individual's health insurance premium was reimbursed because the individual was receiving Medicaid, and the Department or the Authority found the premium was cost-effective;

(D) The individual's health insurance was subsidized through FHIAP or the Office of Private Health Partnerships in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(E) A member of the individual's household group was a victim of domestic violence.

(18) To be eligible for the Substitute Care program, an individual must meet the specific eligibility requirements for Substitute Care found in OAR 410-200-0405.

(19) Except for OHP-CHP and CEC, a pregnant woman who is eligible for and receiving benefits through any program listed in this rule remains eligible through the end of the calendar month in which the 60th following the last day of the pregnancy falls.

(20) A child who becomes ineligible for the OHP program because of age while receiving in-patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in-patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.402, 411.404, , 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

410-200-0515
OHP-OPU Premiums

(1) OHP-OPU beneficiaries must pay a monthly premium unless the beneficiary is exempt as any of the following:

(a) A member of a federally recognized Indian tribe, band, or group.

(b) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act.

(c) An individual eligible for benefits through an Indian Health Program.

(d) An individual eligible for CAWEM benefits (see OAR 410-200-0240).

(e) An individual whose household group income is 10 percent or less of the federal poverty level in at least one of the following situations:

(A) Using income assigned to the budget month at certification or renewal;

(B) Using income assigned to the budget month at most recent eligibility determination, when an OHP-OPU beneficiary leaves the household group.

(C) Using income assigned to the budget month at most recent eligibility determination, when multiple OHP program cases are combined into one case.

(2) Each non-exempt beneficiary is responsible for payment of premiums.

(3) Once the amount of the premium is established, the amount shall not change until a redetermination takes place, unless the conditions under at least one of the following apply:

(a) A beneficiary becomes pregnant.

(b) A beneficiary becomes eligible for another program.

(c) An OHP-OPU beneficiary leaves the household group, and the remaining household group income is 10 percent or less of the federal poverty level.

(d) OHP program cases are combined.

(e) A beneficiary's exemption status changes.

(4) A premium is considered paid on time when the payment is received by the Oregon Health Plan billing office on or before the due date which is the 20th of the month for which the premium was billed. The day the payment arrives in the billing office's post office box when sent via mail or the day it is submitted via telephone or electronically to the billing office is the date it is received. A premium not paid on time is in arrears. A premium is past due when it has not been paid within six months of the due date. A client will not lose eligibility due to premiums in arrears or past due premiums unless an eligibility determination takes place. All premiums in arrears and past due premiums for a filing group must be paid before a client can be redetermined for ongoing eligibility.

(5) For any billed premium, the Agency shall cancel the arrearage if the applicant is otherwise eligible for the OHP-OPU program and one of the following applies:

(a) The arrearage was incurred while the client was exempt from the requirement to pay a premium; or

(b) The applicant is exempt from the requirement to pay premiums under section (1)(e) of this rule.

(6) The Agency shall cancel any premium arrearage over three years old.

(7) The following steps are followed to determine the amount of the monthly premium for an individual:

(a) The number of persons in the OHP household group is determined in accordance with OAR 410-200-0305.

(b) The countable income of the household group is determined in accordance with OAR 410-200-0310.

(c) Based on the number in the household group and the countable income, the monthly premium for each non-exempt OHP-OPU beneficiary is determined using the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS, 411.404, 411.431, 411.432 & 413.042
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.431, 411.432 & 414.025
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; Suspended by DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14

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

Rule Caption: Credentialing Requirements for Telemedicine Providers
Adm. Order No.: OHP 10-2013(Temp)
Filed with Sec. of State: 12-31-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Adopted: 409-045-0105, 409-045-0110, 409-045-0115, 409-045-0120, 409-045-0125, 409-045-0130, 409-045-0135
Subject: The Oregon Health Authority, Office for Oregon Health Policy and Research is adopting temporary administrative rules to comply with the mandates in ORS 441.056, adopted by the 77th Legislative Assembly in section OL 2013, chapter 414 (Enrolled Senate Bill 569) and amendments to ORS 441.223 and 442.015. These temporary rules will apply uniform telemedicine credentialing standards

in Oregon to aid distant-site and originating-site hospitals in Oregon to better serve patients requiring telemedicine.
Rules Coordinator: Zarie Haverkate—(503) 373-1574

409-045-0105
Purpose

These rules, OAR 409-045-0105 to 409-045-0135, establish credentialing requirements for telemedicine health care practitioners providing telemedicine services from distant-site hospitals in Oregon to patients in originating-site hospitals in Oregon.

Stat. Auth.: ORS 441.056
Stats. Implemented: ORS 441.056, 441.223 & 442.015
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

409-045-0110
Definitions

The following definitions apply to OAR 409-045-0105 to 409-045-0135:

(1) "Authority" means the Oregon Health Authority.

(2) "Delegated credentialing agreement" means a written agreement between an originating-site hospital and a distant-site hospital that provides that the medical staff of the originating-site hospital will rely upon the credentialing and privileging decisions of the distant-site hospital in making recommendations to the governing body of the originating-site hospital as to whether to credential a telemedicine provider, practicing at the distant-site hospital either as an employee or under contract, to provide telemedicine services to patients in the originating-site hospital.

(3) "Distant-site hospital" means the hospital where a telemedicine provider, at the time the telemedicine provider is providing telemedicine services, is practicing as an employee or under contract.

(4) "Health services" means clinically related diagnostic, treatment or rehabilitative services, and includes alcohol, drug or controlled substance abuse and mental health services that may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

(5) "Hospital" means a facility with an organized medical staff and a permanent building that is capable of providing 24-hour inpatient care to two or more individuals who have an illness or injury and that provide at least the following health services:

(a) Medical;
(b) Nursing;
(c) Laboratory;
(d) Pharmacy; and
(e) Dietary.

(6) "Originating-site hospital" means a hospital in which a patient is located while receiving telemedicine services.

(7) "Telemedicine" means the provision of health services to patients by physicians and health care practitioners from a distance using electronic communications.

Stat. Auth.: ORS 441.056
Stats. Implemented: ORS 441.056, 441.223 & 442.015
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

409-045-0115
General Applicability

(1) These rules apply to all:

(a) Telemedicine health care practitioners who provide telemedicine services from any distant-site hospital in Oregon to patients in originating-site hospitals in Oregon.

(b) Originating-site hospitals located in Oregon that credential telemedicine health care practitioners located at distant-site hospitals in Oregon.

(2) Completion of credentialing requirements does not require a governing body of a hospital to grant privileges to a telemedicine health care practitioner and does not affect the responsibilities of a governing body under ORS 441.055.

Stat. Auth.: ORS 441.056
Stats. Implemented: ORS 441.056, 441.223 & 442.015
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

409-045-0120
Standard List of Credentialing Documents

(1) To become credentialed by an originating-site hospital, a telemedicine healthcare practitioner or the distant-site hospital must provide the following information and documentation to the originating-site hospital:

(a) A completed current (within the past 6 months) Oregon Practitioner Credentialing Application (OPCA) and the following accompanying documents:

(A) A copy of state medical license;

(B) Drug Enforcement Agency certificate;

(C) Educational Commission for Foreign Medical Graduates certificate, if applicable; and

(D) Certification of professional liability insurance.

(b) Attestation by medical staff at the distant-site hospital that they have conducted primary source verification of all materials of the OPCA except for:

(A) Hospital affiliations other than to the distant-site hospital;

(B) Work history beyond 5 years previous.

(2) Originating-site hospitals may request documentation of all the verifications above from the distant-site hospital or the telemedicine health practitioner. Verifications that are not provided may be obtained separately by the originating-site hospital.

(3) Originating-site hospitals must not require either the telemedicine healthcare practitioner or the distant-site hospital to provide the following documentation for the purposes of credentialing or privileging a telemedicine provider:

(a) Proof of Tuberculosis Screening;

(b) Proof of vaccination or immunity to communicable diseases;

(c) HIPAA training verification;

(4) Originating-site hospitals shall not require a telemedicine provider to attend physician/staff meetings at the originating-site hospital.

(5) Originating-site hospitals must not request credentialing information if the credentialing information was made available under OAR 409-045-0120(1) and is not subject to change.

(6) To become recredentialed by an originating-site hospital, a telemedicine healthcare practitioner or the distant-site hospital must, every two years, provide a completed current Oregon Practitioner Recredentialing Application and all other information required in OAR 409-045-0120(1).

Stat. Auth.: ORS 441.056
Stats. Implemented: ORS 441.056, 441.223 & 442.015
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

409-045-0125
Distant-Site Hospital Agreements

In lieu of the requirements in OAR 409-045-0120, hospitals may use delegated credentialing agreements to provide that the governing body of a hospital accepts the recommendation of the medical staff at another hospital to credential telemedicine providers. If a delegated credentialing agreement is in place the originating-site hospital is not limited to the information and documents prescribed by the Authority in 409-045-0120.

Stat. Auth.: ORS 441.056
Stats. Implemented: ORS 441.056, 441.223 & 442.015
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

409-045-0130
Hold Harmless Clause

Originating-site hospitals that use credentialing information provided by distant-site hospitals are immune from civil liability that might otherwise be incurred or imposed with respect to the use of that credentialing information.

Stat. Auth.: ORS 441.056
Stats. Implemented: ORS 441.056, 441.223 & 442.015
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

409-045-0135
Information Sharing or Use of Data

(1) Telemedicine healthcare practitioners must provide written, signed permission that explicitly allows the sharing of required documents and necessary evidence by a distant-site hospital with originating-site hospitals, including but not limited to any release required under HIPAA or other applicable laws.

(2) Dissemination of information received under these rules shall only be made to individuals with a demonstrated and legitimate need to know the information.

Stat. Auth.: ORS 441.056
Stats. Implemented: ORS 441.056, 441.223, 442.015
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14

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Oregon Health Authority, Office of Private Health Partnerships
Chapter 442

Rule Caption: Small Employer Health Plans abolished; Administrative Rules repealed

Adm. Order No.: OPHP 1-2014
Filed with Sec. of State: 1-2-2014
Certified to be Effective: 1-2-14
Notice Publication Date: 12-1-2013
Rules Repealed: 442-006-0000, 442-006-0010, 442-006-0020, 442-006-0030, 442-006-0040
Subject: The Oregon Health Authority, Office of Private Health Partnerships, is proposing to permanently repeal Oregon Administrative Rules related to programs within the Office of Private Health Partnerships.

Due to Medicaid expansion as a result of federal legislation, these programs are no longer necessary.
Rules Coordinator: Cindy Bowman—(503) 378-4674

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Rule Caption: Office of Private Health Partnerships abolished; Administrative Rules repealed
Adm. Order No.: OPHP 2-2014
Filed with Sec. of State: 1-2-2014
Certified to be Effective: 1-2-14
Notice Publication Date: 12-1-2013
Rules Repealed: 442-001-0000, 442-001-0005, 442-001-0050, 442-001-0060, 442-001-0070, 442-001-0080, 442-001-0090, 442-001-0100, 442-001-0110, 442-001-0120, 442-001-0130, 442-001-0140, 442-001-0150, 442-001-0160
Subject: The Oregon Health Authority, Office of Private Health Partnerships, is proposing to permanently repeal Oregon Administrative Rules related to programs within the Office of Private Health Partnerships.

Due to Medicaid expansion as a result of federal legislation, these programs are no longer necessary.
Rules Coordinator: Cindy Bowman—(503) 378-4674

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Oregon Health Authority, Oregon Educators Benefit Board
Chapter 111

Rule Caption: Amendments made to implement new groups that are newly eligible due to House Bill 2279
Adm. Order No.: OEBB 20-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-27-13
Notice Publication Date: 11-1-2013
Rules Amended: 111-010-0015
Rules Repealed: 111-010-0015(T)
Subject: With the passage of House Bill 2279, new groups have the option of joining the Oregon Educators Benefit Board. The amendments to Division 10 provide language for the implementation of new groups under House Bill 2279. In addition, an amendment is made related to the Affordable Care Act and new federal requirements related to Health Reimbursement Arrangements (HRAs).
Rules Coordinator: April Kelly—(503) 378-6588

111-010-0015
Definitions

Unless the context indicates otherwise, as used in OEBB administrative rules, the following definitions will apply:

(1) "Actuarial value" means the expected financial value for the average member of a particular benefit plan.

(2) "Adverse Benefit Determination" means a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part), for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on but not limited to:

(a) A determination of a member's eligibility to participate in the plan;

(b) A determination that the benefit is not a covered benefit; or

(c) A rescission of coverage, whether or not, in connection with rescission, there is an adverse effect on any particular benefit.

(3) "Affidavit of Domestic Partnership" means a document that attests the eligible employee and one other eligible individual meet the criteria in section (15)(b).

(4) "Benefit plan" includes, but is not limited to, insurance or other benefits including:

(a) Medical (including non-integrated health reimbursement arrangements (HRAs));

(b) Dental;

(c) Vision;

(d) Life, disability and accidental death;

(e) Long term care;

(f) Employee Assistance Program Plans;

(g) Supplemental medical, dental and vision coverages (including Integrated General Purpose and Integrated Post-Deductible health reimbursement arrangements (HRAs); and Limited Purpose, Post-Separation/Retiree, and Premium Only health reimbursement arrangements (HRAs));

(h) Any other remedial care recognized by state law, and related services and supplies;

(i) Comparable benefits for employees who rely on spiritual means of healing; and

(j) Self-insurance programs managed by the Board.

(5) "Benefits" means goods and services provided under Benefit Plans.

(6) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(7) "Child" means and includes the following:

(a) An eligible employee's, spouse's, or domestic partner's biological son or daughter; adopted child; child placed for adoption; or legally placed child, who is 25 or younger on the first day of the month. An eligible employee must provide the required custody or legal documents to their Educational Entity showing proof of adoption, legal guardianship or other court order if enrolling a child for whom the employee, spouse, or domestic partner is not the biological parent. Grandchildren are only eligible when the eligible employee is the legal guardian or adoptive parent of the grandchild.

(b) A person who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. When the dependent child is 26 years of age or older all the following requirements must be met:

(A) The disability must have existed before attaining age 26.

(B) The employee must provide evidence to the Educational Entity or OEBB that (1) the person had health plan coverage, group or individual, prior to attaining age 26, and (2) health plan coverage continued without a gap until the OEBB health plan effective date.

(C) The person's attending physician must submit documentation of the disability to the eligible employee's OEBB health insurance plan for review and approval. If the person receives health plan approval, the health plan may review the person's health status at any time to determine continued OEBB coverage eligibility.

(D) The person must not have terminated from OEBB health plan coverage after attaining the age of 26.

(c) Eligibility for coverage under this rule includes people who may not be dependents under federal or state tax law and may require an Educational Entity to adjust an Eligible Employee's income based on the imputed value of the benefit.

(8) "Comparable cost (Medical, Dental and Vision)" means that the total cost to a district for enrollment in OEBB plans comparable in design to the district's plan(s) do not exceed the total cost to a district for enrollment in the district's plan(s) using the rate(s) in effect or proposed for the benefit plan year.

(9) "Comparable cost (Basic and Optional Life Insurance, Accidental Death & Dismemberment, and Short and Long Term Disability)" means that the premium rates of an OEBB plan design option do not exceed the average, aggregate premium rates of a district's pre-OEBB plan design in effect the year prior to implementation.

(10) "Comparable plan design (Medical, Dental and Vision)" means that the actuarial values of two plan designs are within 2.5 percent higher or lower of each other.

(11) "Comparable plan design (Basic and Optional Life Insurance and Accidental Death & Dismemberment)" means that 90 percent of district employees can obtain a maximum benefit through an OEBB plan design that is within $2,500 of the maximum benefit obtained through a pre-OEBB plan design in effect the year prior to implementation.

(12) "Comparable plan design (Short and Long Term Disability)" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered com-

pensation, coverage period duration, and maximum payment per benefit period through an OEBB plan design as through a pre-OEBB plan design in effect the year prior to implementation.

(13) "Dependent" means and includes the eligible employee's spouse or domestic partner, or child as defined by OAR 111-010-0010(7), unless otherwise defined in another OEBB rule.

(14) "Documented district policies" means Educational Entities' policies and practices that apply to an employee group and are submitted to the Oregon Educators Benefit Board during the plan selection process. Educational Entities' policies and practices must be identified and submitted with the applicable employee group plan selections.

(15) "Eligible Domestic partner," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or

(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:

(A) Both are at least 18 years of age;

(B) Are responsible for each other's welfare and are each other's sole domestic partners;

(C) Are not married to anyone and have not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;

(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(E) Have jointly shared the same regular and permanent residence for at least six months immediately preceding the date the Affidavit of Domestic Partnership is signed and submitted to the Educational Entity; and

(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.

(G) The eligible employee and domestic partner must jointly complete and submit to the Educational Entity an Affidavit of Domestic Partnership form, within five business days of the electronic enrollment date or the date the Educational Entity received the enrollment/change form. If the affidavit is not received, coverage will terminate for the domestic partner retroactive to the effective date.

(c) The Eligible Employee must notify the Educational Entity within 31 days of meeting all criteria as defined in 111-010-0015 (15)(b) or obtaining the "Declaration of Domestic Partnership" which is recognized under Oregon law.

(d) Educational Entities' must calculate and apply applicable imputed value tax for domestic partners covered under OEBB benefit plans.

(16) "Educational Entity" means public school districts (K–12), education service districts (ESDs), community colleges and public charter schools participating in OEBB.

(17) "Eligible employee" means and includes an employee of an Educational Entity or Local Government who is actively working or on paid or unpaid leave that is recognized by federal or state law, and:

(a) Is employed in a half time or greater position or is in a job-sharing position; or

(b) Meets the definition of an eligible employee under a separate OEBB rule or under a collective bargaining agreement or documented district policy in effect on January 31, 2008; or

(c) Is an employee of a community college who is covered under a collectively bargained contract and has worked a class load of between 25 percent and 49 percent for a minimum period of two years and is expected to continue to work a class load of at least 25 percent. Coverage is limited to medical to include Kaiser Medical Plan 2 (where available), Moda Health Plan E, Moda Health Plan G, or Moda Health Plan H. Moda Health Plan H can only be elected if the eligible employee is eligible for and actively contributing to a Health Savings Account (HSA). The tiered rate structure will apply to all medical plans.

(18) "Eligible Early Retiree" means and includes a previously Eligible Employee who is:

(a) Not Medicare-eligible; or

(b) Under 65 years old; and

(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;

(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.

(19) "Employee Group" means employees and early retirees of a similar employment type, for example administrative, represented classified, non-represented classified, confidential, represented licensed, or non-represented licensed, within an Educational Entity. If one or more collective bargaining unit exists within an employee group, each unit will be considered a separate employee group.

(20) "Flexible benefit plan" includes plans that allow contributions on a tax-favored basis including health savings accounts.

(21) "Health Reimbursement Arrangement (HRA)" means an account established and funded solely by the employer that can be used to pay for qualified health care expenses for eligible employees and their spouses and federal tax dependents, up to a maximum dollar amount for a coverage period, and any unused portion of the maximum dollar amount at the end of a coverage period is carried forward to increase the maximum reimbursement amount in subsequent coverage periods. This definition should be interpreted to comply with the guidelines established by the IRS for treatment of HRAs on a tax-favored basis in Technical Release No. 2013-03, IRS Publication 969 and IRS Notice 2002-45. HRA includes, but is not limited to, the following:

(a) "Integrated General Purpose HRA" is an HRA that allows participants to be reimbursed for all IRS qualified expenses and is available only to eligible employees who are enrolled in an OEBB medical plan as the primary subscriber, or as an eligible dependent.

(b) "Integrated Post-Deductible HRA" is an HRA that allows participants to be reimbursed for expenses up to a certain amount, but only after the participants have met the annual deductible on an OEBB medical plan in which the employee participant is enrolled as the primary subscriber, or as an eligible dependent.

(c) "Limited Purpose HRA" is an HRA that allows participants to be reimbursed for only standard dental, vision, and orthodontia expenses and does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(d) "Non-integrated HRA" is an HRA that allows participants to be reimbursed for all IRS qualified expenses when the employee participant is not enrolled in an OEBB medical plan as the primary subscriber, or as an eligible dependent.

(e) "Post-Separation/Retiree HRA" is an HRA that allows participants to be reimbursed for qualified expenses only after the employee separates/retires and does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(f) "Premium Only HRA" is an HRA that allows participants to be reimbursed only for insurance premiums paid on an after tax basis, where the employee participant has no ability to pay the premium on a pre-tax basis and the HRA does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(22) "Health Savings Account (HSA)" means a tax-exempt trust or custodial account that is set up with a qualified HSA trustee to pay or reimburse certain incurred medical expenses, as defined in 26 U.S.C. ¦ 223(d) and IRS Publication 969.

(23) "High Deductible Health Plan (HDHP)" means a health plan that meets the criteria for a "high deductible health plan" as outlined in 26 U.S.C. ¦ 223(c)(2). Enrollment in an HDHP is one of the requirements that must be met in order to qualify to contribute to a health savings account (HSA).

(24) "Local Government" means cities, counties and special districts in Oregon.

(25) "Members" means and includes the following:

(a) "Eligible employee" as defined by OAR 111-010-0015(17).

(b) "Child" as defined by OAR 111-010-0015(7).

(c) "Domestic Partner" as defined by OAR 111-010-0015(15).

(d) "Spouse" as defined by OAR 111-010-0015(3031).

(26) "Non-subject District" means a community college not yet participating in benefit plans provided by the Oregon Educators Benefit Board, or a charter school whose employees are not considered employees of a school district.

(27) "Oregon Educators Benefit Board or OEBB" means the program created under chapter 00007, Oregon Laws 2007.

(28) "OEBB participating organization" means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEBB).

(29) "Provisional Non-subject District" means a common school district, a union high school district, or an education service district that:

(a) Was self-insured on December 31, 2006;

(b) Had an independent health insurance trust established and functioning on December 31, 2006; or

(c) Can provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this Rule.

(30) "Qualified Status Change (QSC)" means a change in family or work status that allows limited mid-year changes to benefit plans consistent with the individual event.

(31) "Special district" means any district listed in ORS chapter 198 "Special Districts Generally," or as determined by the Board.

(32) "Spouse" means a person who is married under the laws of the State of Oregon or under the laws of any other state or country. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

(33) "Subject District" means a common school district, a union high school district, or an education service district that:

(a) Did not self-insure on January 1, 2007;

(b) Did not have a health trust in effect on January 1, 2007; or

(c) Does not provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this rule.

Stat. Auth.: ORS 243.860 – 243.886

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

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 2-2008, f. & cert. ef. 1-4-08; OEBB 10-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBB 1-2009, f. & cert. ef. 1-30-09; OEBB 5-2009(Temp), f. & cert. ef. 3-10-09 thru 9-4-09; OEBB 8-2009, f. & cert. ef. 5-1-09; OEBB 12-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 19-2009, f. & cert. ef. 12-17-09; OEBB 7-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 11-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 1-2011, f. & cert. ef. 2-11-11; OEBB 6-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 14-2011, f. & cert. ef. 8-2-11; OEBB 15-2011(Temp), f. & cert. ef. 8-2-11 thru 1-28-12; OEBB 16-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 1-28-12; OEBB 20-2011, f. 10-13-11, cert. ef. 10-14-11; OEBB 22-2011, f. & cert. ef. 12-14-11; OEBB 13-2012, f. & cert. ef. 12-19-12; OEBB 6-2013, f. & cert. ef. 7-12-13; OEBB 12-2013(Temp), f. & cert. ef. 10-11-13 thru 4-8-14; OEBB 19-2013(Temp), f. & cert. ef. 11-19-13 thru 4-8-14; OEBB 20-2013, f. & cert. ef. 12-27-13

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Rule Caption: Amendments made to implement new groups that are newly eligible due to House Bill 2279
Adm. Order No.: OEBB 21-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-27-13
Notice Publication Date: 11-1-2013
Rules Amended: 111-030-0050
Rules Repealed: 111-030-0050(T)
Subject: With the passage of House Bill 2279, new groups have the option of joining the Oregon Educators Benefit Board. The amendments to Division 30 provide language for the implementation of new groups under House Bill 2279.
Rules Coordinator: April Kelly—(503) 378-6588

111-030-0050
Premium Rate Structure Selection Process and Limitations

(1) Educational Entities and Local Governments may choose a composite or tiered rate structure for each Employee Group for medical, dental and vision coverage unless otherwise specified in an OEBB administrative rule. The rate structure selected for each coverage type applies to all individuals electing to participate as active employees within an Employee Group.

(2) Educational Entities and Local Governments may select a composite or tiered rate structure for early retirees unless otherwise specified in an OEBB administrative rule.

(3) Educational Entities and Local Governments may select a composite or tiered rate structure for part-time employees of an Employee Group unless otherwise specified in an OEBB administrative rule. If a different rate structure is selected for part-time employees that structure must apply to all participating part-time employees within that Employee Group.

(4) Rate structures must be selected during the plan selection process.

(5) Once an Educational Entity or Local Government elects a change in rate structure for a type of coverage within an Employee Group, the rate structure selection cannot be changed for at least three plan years. The rate structure change will go into effect on the first day of the next plan year, October 1.

(6) Educational Entities or Local Governments who offered LTD on a composite rate structure prior to moving to OEBB coverages can continue to do so. Use of the composite rate structure for LTD plans is only available on a mandatory LTD plan and requires 100 percent enrollment.

(a) Employee Groups using a composite rate structure for mandatory LTD plans effective October 1, 2012, may continue to use either the employer-paid or employee-paid option.

(b) Effective October 1, 2013, OEBB will expand the availability of the composite rate structure for mandatory LTD plans only to those Employee Groups that chose to elect an employer-paid plan option.

(c) Rate structures must be selected during the plan selection period and become effective the first day of the next plan year, October 1.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 864(1)(a)

Hist.: OEBB 8-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 2-2011, f. & cert. ef. 2-11-11; OEBB 1-2013(Temp), f. & cert. ef 2-21-13 thru 8-19-13; OEBB 4-2013, f. & cert. ef. 5-10-13; OEBB 10-2013(Temp), f. & cert. ef. 10-11-13 thru 4-8-14; OEBB 21-2013, f. & cert. ef. 12-27-13

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Rule Caption: Amendments made to implement new groups that are newly eligible due to House Bill 2279
Adm. Order No.: OEBB 22-2013
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-27-13
Notice Publication Date: 11-1-2013
Rules Adopted: 111-020-0010
Rules Amended: 111-020-0001, 111-020-0005
Rules Repealed: 111-020-0010(T), 111-020-0001(T), 111-020-0005(T)
Subject: With the passage of House Bill 2279, new groups have the option of joining the Oregon Educators Benefit Board. The amendments to Division 20 provide language for the implementation of new groups under House Bill 2279.
Rules Coordinator: April Kelly—(503) 378-6588

111-020-0001
Initial Employee Group Phase-in

(1) Any employee group in Subject Districts or Provisional Non-subject Districts may elect to participate in benefit plans provided by the Board beginning on October 1, 2008, October 1, 2009, or October 1, 2010, without having to meet the phase-in requirements outlined under Sections 2, 3 and 4; however:

(a) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date of July 1, 2007, through June 30, 2008, must participate in benefit plans provided by the Board beginning October 1, 2008.

(b) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date of July 1, 2008, through June 30, 2009, must participate in benefit plans provided by the Board beginning October 1, 2009.

(c) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date on or after July 1, 2009, must participate in benefit plans provided by the Board beginning October 1, 2010.

(d) Eligible employees of a Subject District who are not represented under a collective bargaining agreement must participate in benefit plans provided by the Board consistent with the requirements governing eligible employees of the Subject District who are represented under a collective bargaining contract as outlined under section 1(a), (b) and (c) above. If more than one collective bargaining contract exists in the Subject District, the earliest collective bargaining contract end date must be applied. If no employee group in the Subject District is represented through a collective bargaining agreement, all eligible employees of the district must participate in benefit plans provided by the Board beginning October 1, 2008.

(2) An employee group electing to participate in benefit plans provided by the Board under section 1 must provide notice of such election not later than June 30 of the year in which they plan to move to the OEBB benefit plans on October 1, or at least 90 days or more from the date benefits under OEBB will go into effect if moving from a plan year other than October 1 through September 30.

(3) Employee groups in Provisional Non-subject Districts who elect to participate in benefit plans provided by the Board cannot return to benefit plans provided or administered by an entity other than the Board.

(4) Employee groups electing to participate in OEBB benefit plans prior to the date mandated by Senate Bills 426 and 1066 (Chapter 7, Oregon

Laws 2007, as amended by Chapter 39, Oregon Laws 2008) must participate in all types of benefit coverage provided by the Board at the time of plan selection.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.886
Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 3-2007(Temp), f. & cert. ef. 11-15-07 thru 3-18-08; OEBB 5-2008, f. & cert. ef. 4-1-08; OEBB 12-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09, OEBB 2-2009, f. & cert. ef. 1-30-09; OEBB 6-2009(Temp), f. & cert. ef. 3-10-09 thru 9-4-09; OEBB 9-2009, f. & cert. ef. 5-1-09; OEBB 3-2010, f. & cert. ef. 3-15-10; OEBB 11-2013(Temp), f. & cert. ef. 10-11-13 thru 4-8-13; OEBB 22-2013, f. & cert. ef. 12-27-13

111-020-0005
Employee Group Phase-in for Non-subject Districts

(1) An Employee Group in a Non-subject District may elect to participate in a benefit plan provided by the Board on October 1, 2008, or on October 1 of any following year, or on another date if moving from a plan year other than October 1 through September 30.

(2) An Employee Group in a Non-subject District electing to participate in benefit plans provided by the Board under section 1 must provide notice of such election not later than June 30 of the year in which they plan to move to the OEBB benefit plans on October 1, or at least 90 days or more from the date benefits under OEBB will go into effect if moving from a plan year other than October 1 through September 30.

(3) An Employee Group in a Non-subject District who elects to participate in benefit plans provided by the Board cannot return to benefit plans provided or administered by an entity other than the Board.

Stat. Auth.: ch.7, OL 2007
Stats. Implemented: Sec.14, ch. 7, OL 2007, Sec.16, ch. 7, OL 2007
Hist.: OEBB 3-2008, f. & cert. ef. 1-4-08; OEBB 11-2013(Temp), f. & cert. ef. 10-11-13 thru 4-8-13; OEBB 22-2013, f. & cert. ef. 12-27-13

111-020-0010
Educational Entity or Local Government Joining OEBB

(1) Effective January 1, 2014 an Educational Entity or Local Government can elect to participate in benefit plans provided by the Board subject to the following conditions:

(a) The Educational Entity or Local Government completes and submits a Notice of Intent to join OEBB at least 90 days prior to the date OEBB coverage is to go into effect;

(b) OEBB will not transfer any deductibles or annual out-of-pocket maximums met with the prior carrier;

(c) For those members with an existing life insurance policy through the Educational Entity or Local Government, OEBB will transfer the life insurance amount in force on the last day the prior group coverage was in effect if requested and documented by the Educational Entity or Local Government.

(2) Local Governments who elect to participate in benefit plans provided by the Board and then subsequently elect to leave OEBB and participate in the exchange may re-elect to participate in benefit plans provided by the Board on a one-time basis provided the Local Government completes and submits a Notice of Intent to join OEBB at least 90 days prior to the date OEBB coverage is to go into effect.

(3) Once a Local Government re-elects to participate in benefit plans provided by the Board after leaving, they are not eligible to leave again.

Stat. Auth.: ORS 243.860 – 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 11-2013(Temp), f. & cert. ef. 10-11-13 thru 4-8-13; OEBB 22-2013, f. & cert. ef. 12-27-13

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Rule Caption: Amendments update language when a member returns to benefits eligible status and other housekeeping amendments
Adm. Order No.: OEBB 23-2013(Temp)
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-27-13 thru 6-25-14
Notice Publication Date:
Rules Amended: 111-040-0001, 111-040-0005, 111-040-0010, 111-040-0011, 111-040-0015, 111-040-0025, 111-040-0030, 111-040-0040, 111-040-0050
Subject: Amendments update language when a member returns to a benefit eligible status. Housekeeping amendments to this rule align with the new definitions in Division 10, Definitions.
Rules Coordinator: April Kelly—(503) 378-6588

111-040-0001
Effective Dates

(1) Effective Dates for Newly Eligible Employees. Initial benefit elections, unless otherwise specified in a collective bargaining agreement or documented Entity policy in effect on June 30, 2008, are effective on the later of:

(a) The first of the month following a completed online enrollment in the OEBB benefit management system or submission of a paper enrollment or change form, or

(b)(A) The first of the month following the date of hire or the date of eligibility; with the following exception:

(B) The first of the month following approval of Evidence of Insurability for Optional Life Insurance above the guarantee issue amount, Long Term Disability, or Long Term Care insurance.

(2) Effective Dates for Qualified Status Changes. Covered dependent changes are effective the first of the month following the date of the event causing the dependent to be eligible under OEBB administrative rules with the following exceptions:

(a) Coverage for a newborn child is effective on the date of birth. The active eligible employee must add the newborn child to their benefit plans within 60 calendar days from the date of birth in order for the newborn child to be eligible for benefit coverage.

(b) Coverage for a newly adopted child is effective the date of the adoption decree or date of placement for adoption. The active eligible employee must add the adopted child to their benefit plans within 60 calendar days from the date of the decree or placement in order for the newly adopted child to be eligible for benefit coverage; and

(A) The active eligible employee must submit the adoption agreement with the enrollment forms to the Entity.

(B) Claims payments will not be made for expenses incurred prior to the date of decree or placement.

(c) Coverage for an eligible grandchild is as follows:

(A) If the legal guardianship is finalized within the first 60 days following the birth of the grandchild, coverage will be effective retroactive to the date of the birth.

(B) If the legal guardianship is finalized 61 or more days from the date of birth of the grandchild, the coverage will be effective the first of the month following the date the guardianship documents are finalized.

(C) If the legal guardianship is finalized 61 to 180 days from the date of birth of the grandchild, and the effective date of legal guardianship is retroactive to the grandchild's date of birth, coverage will be effective retroactive to the date of birth. If legal guardianship is finalized after 180 days coverage will be effective the first of the month following the date the guardianship documents are finalized.

(d) The first of the month following approval of Evidence of Insurability for Optional Spouse/Domestic Partner Life insurance above the guaranteed issue amount, if applicable, or Long Term Care Insurance.

(3) Elections made during an open enrollment period are effective on the first day of the new plan year. There will be a 12-month waiting period for services other than preventive dental exams and cleanings and/or routine vision exams for coverage added during the open enrollment period if enrolling in a dental or vision plan in which the employee and/or dependents were previously eligible.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 21-2009, f. & cert. ef. 12-17-09; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 12-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 17-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 23-2011, f. & cert. ef. 12-14-11; OEBB 4-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; OEBB 9-2012, f. & cert. ef. 10-9-12; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

111-040-0005
Termination Dates

(1) Effective October 1, 2011, if an active eligible employee requests a termination of coverage for them self, a spouse, a domestic partner, or a child, coverage ends on the last day of the month that eligibility is lost. Requests for coverage termination must be made consistent with a Qualified Status Change as defined by 111-040-0040.

(2) Retroactive termination of coverage may be made in the event of a delay in the Entities' reconciliation process and shall generally be within 14 days of receiving notification from the employee of the Qualified Status Change event and requested benefit changes.

(3) Effective October 1, 2011, benefit coverage termination that is considered by OEBB to be intentional misrepresentation may be rescinded in compliance with the law. If this occurs, OEBB shall give the affected

individual 30 days' notice of the rescission of benefit coverage and an opportunity to appeal before the rescission takes effect.

(4) Benefit coverage for active eligible employees ends on the last day of the month that they retire, unless otherwise determined in a collective bargaining agreement or documented Entity policy in effect on June 30, 2008. Benefit coverage may be continued based on the requirements and limitations in OARs 111-050-0001 through 111-050-0050.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 12-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 23-2011, f. & cert. ef. 12-14-11; OEBB 4-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; OEBB 9-2012, f. & cert. ef. 10-9-12; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

111-040-0010
Newly-hired and Newly-eligible Employees

(1) Newly-hired and newly-eligible employees must enroll in OEBB-sponsored benefit plans through the OEBB benefit management system or paper equivalent within 31 calendar days of the date of hire or date of gaining eligibility, unless determined otherwise in a separate OEBB administrative rule or in a collective bargaining agreement or documented Entity policy in effect on June 30, 2008.

(2) An employee enrolling in OEBB-sponsored benefit plans and terminating employment before the effective date of benefit coverage is not eligible to receive benefits.

Stat. Auth: 2007 OL Ch. 7
Stats. Implemented: 2007 OL Ch. 7, Sec. 3
Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 4-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; OEBB 9-2012, f. & cert. ef. 10-9-12; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

111-040-0011
Returning to Benefit Eligible Status

(1) A former Eligible Employee returning to benefit-eligible status with the same Entity following an unpaid leave of absence, or termination of employment, or returning from a strike, lock-out, layoff, within six months of the date eligibility was lost will have their benefit plans and coverages reinstated.

(a) All coverages and plans previously enrolled in will be effective the first of the month following the date eligibility is regained, unless otherwise stipulated in a collective bargaining agreement or documented Entity policy in effect on or before May 1, 2013.

(b) The 12-month late enrollment waiting period for dental and/or vision coverage will only apply if it was in effect at the time coverage was initially lost.

(c) Plan changes or changes to covered dependents may only be made if:

(A) A Qualified Status Change occurred during the period of ineligibility, consistent with OAR 111-040-0040, and requested within 31 days of returning to benefit-eligible status, or

(B) Benefits are being reinstated in a new plan year from which benefits were initially lost.

(2) If reinstatement occurs within the same plan year, medical, dental and vision coverage will be reinstated at the same level as was in effect immediately prior to the loss of eligibility. (i.e., dental incentive levels, amounts applied toward deductibles, annual maximum out-of-pockets and benefit maximums, and benefits beyond routine and basic dental and vision), if applicable.

(3) The Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA gives an employee and previously covered dependents the right to reinstate coverage upon returning to employment with the Entity in a benefit eligible position with no waiting period.

Stat. Auth.: ORS 243.860 – 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 3-2013, f. & cert. ef. 4-26-13; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

111-040-0015
Removing an Ineligible Individual from Benefit Plans

(1) An active employee who enrolls them self and/or an eligible person is responsible for removing spouses, domestic partners and children from their OEBB-sponsored benefit plans by submitting completed, applicable forms to their Entity benefits administrator within 31 calendar days after the date the individual becomes ineligible. Coverage ends on the date identified under OAR 111-040-0005.

(2) An Entity is responsible for removing ineligible individuals from the OEBB benefits management system. The Entity must complete such removal within 14 calendar days after:

(a) An event resulting in loss of the employee's eligibility, or

(b) The receipt of notification of an event resulting in loss of eligibility of the employee's spouse, domestic partner or child.

(3) If coverage of an employee's spouse, domestic partner or child is terminated retroactively then:

(a) The employee may be responsible for claims previously paid by the benefit plans to the providers during the period of ineligibility at the carrier's discretion; and

(b) Premium adjustments will be made retroactively based on the coverage end date.

(4) OEBB shall conduct eligibility verifications and reviews to monitor compliance with OEBB administrative rules governing eligibility and enrollment. Eligibility reviews may occur at different times throughout the plan year. The member is responsible to submit documentation upon request. In the event the member does not provide the required documentation in a timely manner to sufficiently prove the dependent meets eligibility requirements, or the documentation provided is insufficient, the dependent's coverage will be terminated. Retroactive terminations may occur if the documentation provided shows the dependent was not eligible for coverage and the member misrepresented the dependent as being an eligible dependent as defined by OAR 111-080-0045.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 12-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 17-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 23-2011, f. & cert. ef. 12-14-11; OEBB 4-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; OEBB 9-2012, f. & cert. ef. 10-9-12; OEBB 15-2013, f.& cert. ef. 10-23-13; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

111-040-0025
Correcting Enrollment and Processing Errors

(1) Employee Enrollment Errors. Enrollment errors occur when an Eligible Employee provides incorrect information or fails to make correct selections when making benefit plan elections. The Eligible Employee is responsible for identifying enrollment errors or omissions.

(a) OEBB authorizes Entities to correct enrollment errors reported by the Eligible Employee within 45 calendar days of the original eligibility date, open enrollment period end date, or Qualified Status Change date.

(b) Enrollment errors identified after 45 calendar days of the eligibility date, open enrollment period end date or Qualified Status Change date must be submitted to OEBB for review and approval based on OAR 111-080-0030.

(2) Benefit Administrator Processing Errors. Processing errors or omissions occur when benefit plan elections are processed incorrectly in the benefit system or when a newly eligible employee does not receive correct enrollment information.

(a) OEBB authorizes Entities to correct processing errors identified within 45 calendar days of the eligibility date, open enrollment period end date, or Qualified Status Change date. The Entity must reconcile all premium discrepancies.

(b) Processing errors identified after 45 calendar days of the eligibility date, open enrollment period end date, or Qualified Status Change date must be submitted to OEBB for review and approval based on OAR 111-080-0030. The Educational Entity must reconcile all premium discrepancies within 30 calendar days of any adjustments made in the system.

(3) The effective date for the correction of either an employee enrollment error or benefit administrator error is retroactive to the original effective date as identified in OAR 111-040-0001.

(4) The OEBB Administrator has the authority to grant exceptions to OEBB's Administrative Rules when there are extenuating circumstances which can be supported by documentation and verified by OEBB staff.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 21-2009, f. & cert. ef. 12-17-09; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 17-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 23-2011, f. & cert. ef. 12-14-11; OEBB 4-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; OEBB 9-2012, f. & cert. ef. 10-9-12; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

111-040-0030
Late Enrollment

(1) Late enrollment occurs when an active eligible employee fails to notify their Entity of the Qualified Status Change within 31 calendar days, or unless otherwise specified in rule, of:

(a) The date of hire or other benefit eligibility date as identified in OAR 111-040-0001;

(b) The date a spouse, domestic partner, or child gains eligibility;

(c) The date of marriage to a spouse who was most recently enrolled as a domestic partner; or

(d) The date of birth of the employee's biological newborn child;

(e) The date the child was adopted or the date the employee became the legal guardian.

(2) OEBB authorizes Entities to add and/or enroll employees and dependents within 45 calendar days of the eligibility dates referenced in sections (1)(a), (1)(b), and (1)(c) and within 60 calendar days of the eligibility dates referenced in (1)(d) and (1)(e).

(3) OEBB must review and approve all late enrollment requests based on OAR 111-080-0030 when the request and enrollment is made more than 45 calendar days after the eligibility dates referenced in sections (1)(a), (1)(b), and (1)(c), and more than 60 calendar days after the eligibility dates referenced in sections (1)(d) and (1)(e).

(4) Approved late enrollment requests, unless determined otherwise in a collective bargaining agreement or documented district policy in effect on June 30, 2008, are effective the first of the month following the date the request is received by an Entity benefits administrator or OEBB, except for approved requests to add newborn children or newly adopted child which are retroactive to the month the child was born or adopted along with any premium adjustments.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 21-2009, f. & cert. ef. 12-17-09; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 4-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; OEBB 9-2012, f. & cert. ef. 10-9-12; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

111-040-0040
Qualified Status Changes (QSC's)

(1) An Eligible Employees experiencing a change in family or work status as noted below after an annual open enrollment, or anytime during the plan year, has 31 calendar days beginning on the date of the event to make allowable changes. If the event is gaining a child, as defined by 111-040-0040(4)(c), or results in a loss of eligibility, the Eligible Employee has 60 calendar days after the event to make allowable changes.

(2) An Eligible Employee can only make changes that are consistent with the event for them self and/or dependents.

(3) An Eligible Employee must report the Qualified Status Change (QSC) to the employee's Entity within the specified timeframe. Failure to report a QSC that will result in removal of a spouse, domestic partner, or child within the timeframe stated in 111-040-0040(1) may be considered intentional misrepresentation, and OEBB may rescind the individual's coverage back to the last day of the month in which the individual lost eligibility. Please refer to the QSC matrix for details on what changes can occur with each event.

(4) Qualified Status Changes which allow an employee to make changes to his or her coverage are:

(a) Gaining a spouse by marriage or domestic partner by meeting domestic partner eligibility;

(b) Loss of spouse or domestic partner by divorce, annulment, death or termination of domestic partnership,

(c) Gaining a child by birth, placement for/or adoption, or Domestic Partner's children (by affidavit of domestic partnership),

(d) Change in employee group which affects plan option availability;

(e) Spouse or domestic partner starts new employment or other change in employment status which affects eligibility for benefits;

(f) Spouse or domestic partner's employment ends or other change in employment status resulting in a loss of eligibility for benefits under their employer's plan;

(g) Event by which a child satisfies eligibility requirements under OEBB plans;

(h) Event by which a child ceases to satisfy eligibility requirements under OEBB plans;

(i) Changes in the residence of the active eligible employee, spouse, domestic partner, or child (i.e., moving out of the service area of an HMO);

(j) Significant changes in cost of the Eligible Employee's or Early Retiree's current plan and tier level that result in a negative impact of 10 percent or more to:

(A) The amount an active Eligible Employee or Early Retiree must contribute toward benefits.

(B) The amount a spouse or domestic partner must contribute toward his or her group health insurance plan cost.

(k) Different Open Enrollment/Plan Year under a spouse/domestic partner's employer plan.

(l) Related laws or court orders. For example: Qualified Medical Child Support Order (QMSCO), Entitlement to Medicare or Medicaid, HIPAA, or Children's Health Insurance Program (CHIP). Changes are determined by the applicable law or court order.

(5) Changes in coverage, or contribution amounts that result in a reduced amount that an employee or eligible dependent must contribute toward benefits, do not constitute a Qualified Status Change.

(6) The following applies to the Long Term Care benefit plans only:

(a) Cancel the plan at any time without a QSC event.

(b) Plan additions or changes require a QSC event as defined 111-040-0040(2). The addition of a plan or change in plans with a QSC is subject to a medical evidence review by the LTC carrier.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 10-2009(Temp), f. 5-4-09, cert. ef. 5-5-09 thru 10-31-09; OEBB 11-2009, f. & cert. ef. 7-31-09; OEBB 17-2009(Temp), f. & cert. ef. 10-7-09 thru 4-4-10; OEBB 22-2009, f. & cert. ef. 12-17-09; OEBB 2-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; OEBB 6-2010, f. & cert. ef. 8-3-10; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 12-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 7-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 11-2011, f. & cert. ef. 6-22-11; OEBB 17-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; OEBB 23-2011, f. & cert. ef. 12-14-11; OEBB 4-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; OEBB 9-2012, f. & cert. ef. 10-9-12; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

111-040-0050
Declination of Coverage

(1) As used in this section:

(a) "Opting out of coverage" means that an otherwise Eligible Employee elects not to enroll in a medical plan and is eligible to receive a portion of the cash contribution or other type of remuneration as provided for under a collective bargaining agreement, documented Entity policy, or employment contract.

(b) "Waiving benefits" means that an otherwise Eligible Employee elects not to enroll in any one of the benefit plans available under the OEBB-sponsored benefits program and is not eligible to receive any portion of a cash contribution or other type of remuneration.

(2) Unless otherwise specified in a collective bargaining agreement, documented Entity policy or employment contract in effect on July 1, 2008, an Eligible Employee may opt out of the OEBB-sponsored medical benefit plans. Eligible Employees electing to opt out must:

(a) Maintain coverage under another employer-sponsored group medical benefit plan;

(b) Meet the requirements of the Entity opt out program in which they are participating;

(c) Submit their election to opt out through the OEBB benefit management system; and

(d) If requested, provide proof of current coverage under another employer-sponsored group medical benefit plan.

(3) Eligible Employees electing to opt out of the OEBB-sponsored medical benefit plans may enroll in the dental benefit plans, vision benefit plans, and optional benefit plans.

(4) The level and type of funds and allowances retained by Eligible Employees and Entities as a result of opt out programs are determined through collective bargaining agreements and documented Entity policies.

(5) An Entity will provide OEBB with a written description of its opt out program upon request.

(6) An otherwise Eligible Employee may opt-out of medical if the criteria above are met, decline dental and/or vision, or elect any combination of benefits provided under the OEBB-sponsored benefits program, unless otherwise stated in a collective bargaining agreement or documented Entity policy.

(7) Elections to opt out of the medical benefit plans or waive benefits must be made at the time of hire, when initially meeting eligibility, during an open enrollment period, or following a QSC event whereby the OEBB QSC Matrix allows this as an option.

(a) Coverage for previously OEBB-eligible employees or a previously OEBB-eligible dependent enrolling in the dental and/or vision plans during an open enrollment period will be limited to routine and preventive care for the first 12 months and subject to a 12-month waiting period for orthodontia coverage.

(b) An Eligible Employee who enrolls in the dental or vision plans, or adds previously OEBB- eligible dependents to the dental and vision plans following and consistent with a QSC event will not be subject to waiting periods.

(8) An Eligible Employee electing to not enroll when initially eligible for optional insurance plans, or enrolling for more than the guarantee issue amount, will have to go through a medical review. Failure to remit a med-

ical history statement or complete other requirements will result in a declination of requested amounts, or the amount above the guaranteed amount, if applicable.

(9) An Eligible Employee electing to not enroll when initially eligible for optional short term disability will be subject to a late enrollment penalty upon enrollment.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 9-2008, f. 6-25-08, cert. ef. 6-26-08; OEBB 14-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 21-2009, f. & cert. ef. 12-17-09; OEBB 9-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 3-2011, f. & cert. ef. 2-11-11; OEBB 4-2012(Temp), f. & cert. ef. 4-20-12 thru 10-16-12; OEBB 9-2012, f. & cert. ef. 10-9-12; OEBB 23-2013(Temp), f. & cert. ef. 12-27-13 thru 6-25-14

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Rule Caption: Amended to include new definitions used by OEBB
Adm. Order No.: OEBB 24-2013(Temp)
Filed with Sec. of State: 12-27-2013
Certified to be Effective: 12-27-13 thru 4-8-14
Notice Publication Date:
Rules Amended: 111-010-0015
Subject: Amendments to 111-010-0015 include new definitions used by OEBB. Due to the expanding eligibility criteria, OEBB added a definition that will encompass all of our eligible groups.
Rules Coordinator: April Kelly—(503) 378-6588

111-010-0015
Definitions

Unless the context indicates otherwise, as used in OEBB administrative rules, the following definitions will apply:

(1) "Actuarial value" means the expected financial value for the average member of a particular benefit plan.

(2) "Adverse Benefit Determination" means a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part), for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on but not limited to:

(a) A determination of a member's eligibility to participate in the plan;

(b) A determination that the benefit is not a covered benefit; or

(c) A rescission of coverage, whether or not, in connection with rescission, there is an adverse effect on any particular benefit.

(3) "Affidavit of Domestic Partnership" means a document that attests the eligible employee and one other eligible individual meet the criteria in section (15)(b).

(4) "Benefit plan" includes, but is not limited to, insurance or other benefits including:

(a) Medical (including non-integrated health reimbursement arrangements (HRAs));

(b) Dental;

(c) Vision;

(d) Life, disability and accidental death;

(e) Long term care;

(f) Employee Assistance Program Plans;

(g) Supplemental medical, dental and vision coverages (including Integrated General Purpose and Integrated Post-Deductible health reimbursement arrangements (HRAs); and Limited Purpose, Post-Separation/Retiree, and Premium Only health reimbursement arrangements (HRAs));

(h) Any other remedial care recognized by state law, and related services and supplies;

(i) Comparable benefits for employees who rely on spiritual means of healing; and

(j) Self-insurance programs managed by the Board.

(5) "Benefits" means goods and services provided under Benefit Plans.

(6) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(7) "Child" means and includes the following:

(a) An eligible employee's, spouse's, or domestic partner's biological son or daughter; adopted child; child placed for adoption; or legally placed child, who is 25 or younger on the first day of the month. An eligible employee must provide the required custody or legal documents to their Educational Entity showing proof of adoption, legal guardianship or other court order if enrolling a child for whom the employee, spouse, or domestic partner is not the biological parent. Grandchildren are only eligible when the eligible employee is the legal guardian or adoptive parent of the grandchild.

(b) A person who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. When the dependent child is 26 years of age or older all the following requirements must be met:

(A) The disability must have existed before attaining age 26.

(B) The employee must provide evidence to the Educational Entity or OEBB that (1) the person had health plan coverage, group or individual, prior to attaining age 26, and (2) health plan coverage continued without a gap until the OEBB health plan effective date.

(C) The person's attending physician must submit documentation of the disability to the eligible employee's OEBB health insurance plan for review and approval. If the person receives health plan approval, the health plan may review the person's health status at any time to determine continued OEBB coverage eligibility.

(D) The person must not have terminated from OEBB health plan coverage after attaining the age of 26.

(c) Eligibility for coverage under this rule includes people who may not be dependents under federal or state tax law and may require an Educational Entity to adjust an Eligible Employee's income based on the imputed value of the benefit.

(8) "Comparable cost (Medical, Dental and Vision)" means that the total cost to a district for enrollment in OEBB plans comparable in design to the district's plan(s) do not exceed the total cost to a district for enrollment in the district's plan(s) using the rate(s) in effect or proposed for the benefit plan year.

(9) "Comparable cost (Basic and Optional Life Insurance, Accidental Death & Dismemberment, and Short and Long Term Disability)" means that the premium rates of an OEBB plan design option do not exceed the average, aggregate premium rates of a district's pre-OEBB plan design in effect the year prior to implementation.

(10) "Comparable plan design (Medical, Dental and Vision)" means that the actuarial values of two plan designs are within 2.5 percent higher or lower of each other.

(11) "Comparable plan design (Basic and Optional Life Insurance and Accidental Death & Dismemberment)" means that 90 percent of district employees can obtain a maximum benefit through an OEBB plan design that is within $2,500 of the maximum benefit obtained through a pre-OEBB plan design in effect the year prior to implementation.

(12) "Comparable plan design (Short and Long Term Disability)" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered compensation, coverage period duration, and maximum payment per benefit period through an OEBB plan design as through a pre-OEBB plan design in effect the year prior to implementation.

(13) "Dependent" means and includes the eligible employee's spouse or domestic partner, or child as defined by OAR 111-010-0010(7), unless otherwise defined in another OEBB rule.

(14) "Documented district policies" means Educational Entities' policies and practices that apply to an employee group and are submitted to the Oregon Educators Benefit Board during the plan selection process. Educational Entities' policies and practices must be identified and submitted with the applicable employee group plan selections.

(15) "Eligible Domestic partner," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or

(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:

(A) Both are at least 18 years of age;

(B) Are responsible for each other's welfare and are each other's sole domestic partners;

(C) Are not married to anyone and have not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;

(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(E) Have jointly shared the same regular and permanent residence for at least six months immediately preceding the date the Affidavit of Domestic Partnership is signed and submitted to the Educational Entity; and

(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.

(G) The eligible employee and domestic partner must jointly complete and submit to the Educational Entity an Affidavit of Domestic Partnership form, within five business days of the electronic enrollment date or the date the Educational Entity received the enrollment/change form. If the affidavit is not received, coverage will terminate for the domestic partner retroactive to the effective date.

(c) The Eligible Employee must notify the Educational Entity within 31 days of meeting all criteria as defined in 111-010-0015 (15)(b) or obtaining the "Declaration of Domestic Partnership" which is recognized under Oregon law.

(d) Educational Entities' must calculate and apply applicable imputed value tax for domestic partners covered under OEBB benefit plans.

(16) "Educational Entity" means public school districts (K–12), education service districts (ESDs), community colleges and public charter schools participating in OEBB.

(17) "Eligible employee" means and includes an employee of an Educational Entity or Local Government who is actively working or on paid or unpaid leave that is recognized by federal or state law, and:

(a) Is employed in a half time or greater position or is in a job-sharing position; or

(b) Meets the definition of an eligible employee under a separate OEBB rule or under a collective bargaining agreement or documented district policy in effect on January 31, 2008; or

(c) Is an employee of a community college who is covered under a collectively bargained contract and has worked a class load of between 25 percent and 49 percent for a minimum period of two years and is expected to continue to work a class load of at least 25 percent. Coverage is limited to medical to include Kaiser Medical Plan 2 (where available), Moda Health Plan E, Moda Health Plan G, or Moda Health Plan H. Moda Health Plan H can only be elected if the eligible employee is eligible for and actively contributing to a Health Savings Account (HSA). The tiered rate structure will apply to all medical plans.

(18) "Eligible Early Retiree" means and includes a previously Eligible Employee who is:

(a) Not Medicare-eligible; or

(b) Under 65 years old; and

(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;

(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.

(19) "Employee Group" means employees and early retirees of a similar employment type, for example administrative, represented classified, non-represented classified, confidential, represented licensed, or non-represented licensed, within an Educational Entity. If one or more collective bargaining unit exists within an employee group, each unit will be considered a separate employee group.

(20) "Entity" means an Educational Entity, Local Government or Special district.

(21) "Flexible benefit plan" includes plans that allow contributions on a tax-favored basis including health savings accounts.

(22) "Health Reimbursement Arrangement (HRA)" means an account established and funded solely by the employer that can be used to pay for qualified health care expenses for eligible employees and their spouses and federal tax dependents, up to a maximum dollar amount for a coverage period, and any unused portion of the maximum dollar amount at the end of a coverage period is carried forward to increase the maximum reimbursement amount in subsequent coverage periods. This definition should be interpreted to comply with the guidelines established by the IRS for treatment of HRAs on a tax-favored basis in Technical Release No. 2013-03, IRS Publication 969 and IRS Notice 2002-45. HRA includes, but is not limited to, the following:

(a) "Integrated General Purpose HRA" is an HRA that allows participants to be reimbursed for all IRS qualified expenses and is available only to eligible employees who are enrolled in an OEBB medical plan as the primary subscriber, or as an eligible dependent.

(b) "Integrated Post-Deductible HRA" is an HRA that allows participants to be reimbursed for expenses up to a certain amount, but only after the participants have met the annual deductible on an OEBB medical plan in which the employee participant is enrolled as the primary subscriber, or as an eligible dependent.

(c) "Limited Purpose HRA" is an HRA that allows participants to be reimbursed for only standard dental, vision, and orthodontia expenses and does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(d) "Non-integrated HRA" is an HRA that allows participants to be reimbursed for all IRS qualified expenses when the employee participant is not enrolled in an OEBB medical plan as the primary subscriber, or as an eligible dependent.

(e) "Post-Separation/Retiree HRA" is an HRA that allows participants to be reimbursed for qualified expenses only after the employee separates/retires and does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(f) "Premium Only HRA" is an HRA that allows participants to be reimbursed only for insurance premiums paid on an after tax basis, where the employee participant has no ability to pay the premium on a pre-tax basis and the HRA does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.

(23) "Health Savings Account (HSA)" means a tax-exempt trust or custodial account that is set up with a qualified HSA trustee to pay or reimburse certain incurred medical expenses, as defined in 26 U.S.C. § 223(d) and IRS Publication 969.

(24) "High Deductible Health Plan (HDHP)" means a health plan that meets the criteria for a "high deductible health plan" as outlined in 26 U.S.C. § 223(c)(2). Enrollment in an HDHP is one of the requirements that must be met in order to qualify to contribute to a health savings account (HSA).

(25) "Local Government" means cities, counties and special districts in Oregon.

(26) "Members" means and includes the following:

(a) "Eligible employee" as defined by OAR 111-010-0015(17).

(b) "Child" as defined by OAR 111-010-0015(7).

(c) "Domestic Partner" as defined by OAR 111-010-0015(15).

(d) "Spouse" as defined by OAR 111-010-0015(34).

(27) Newly-hired and newly-eligible employee means a benefit-eligible employee who is being hired at an Entity and has not been employed or eligible for benefits through the hiring Entity in the past six months, or within the same benefit Plan Year.

(28) "Non-subject District" means a community college not yet participating in benefit plans provided by the Oregon Educators Benefit Board, or a charter school whose employees are not considered employees of a school district.

(29) "Oregon Educators Benefit Board or OEBB" means the program created under chapter 00007, Oregon Laws 2007.

(30) "OEBB participating organization" means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEBB).

(31) "Provisional Non-subject District" means a common school district, a union high school district, or an education service district that:

(a) Was self-insured on December 31, 2006;

(b) Had an independent health insurance trust established and functioning on December 31, 2006; or

(c) Can provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this Rule.

(32) "Qualified Status Change (QSC)" means a change in family or work status that allows limited mid-year changes to benefit plans consistent with the individual event.

(33) "Special district" means any district listed in ORS chapter 198 "Special Districts Generally," or as determined by the Board.

(34) "Spouse" means a person who is married under the laws of the State of Oregon or under the laws of any other state or country. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

(35) "Subject District" means a common school district, a union high school district, or an education service district that:

(a) Did not self-insure on January 1, 2007;

(b) Did not have a health trust in effect on January 1, 2007; or

(c) Does not provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this rule.

Stat. Auth.: ORS 243.860 – 243.886

Stats. Implemented: ORS 243.864(1)(a)
Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 2-2008, f. & cert. ef. 1-4-08; OEBB 10-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBB 1-2009, f. & cert. ef. 1-30-09; OEBB 5-2009(Temp), f. & cert. ef. 3-10-09 thru 9-4-09; OEBB 8-2009, f. & cert. ef. 5-1-09; OEBB 12-2009(Temp), f. & cert. ef. 7-31-09 thru 1-26-10; OEBB 19-2009, f. & cert. ef. 12-17-09; OEBB 7-2010(Temp), f. & cert. ef. 8-3-10 thru 1-29-11; OEBB 11-2010(Temp), f. 9-30-10, cert. ef. 10-1-10 thru 1-29-11; OEBB 1-2011, f. & cert. ef. 2-11-11; OEBB 6-2011(Temp), f. & cert. ef. 2-15-11 thru 8-13-11; OEBB 14-2011, f. & cert. ef. 8-2-11; OEBB 15-2011(Temp), f. & cert. ef. 8-2-11 thru 1-28-12; OEBB 16-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 1-28-12; OEBB 20-2011, f. 10-13-11, cert. ef. 10-14-11; OEBB 22-2011, f. & cert. ef. 12-14-11; OEBB 13-2012, f. & cert. ef. 12-19-12; OEBB 6-2013, f. & cert. ef. 7-12-13; OEBB 12-2013(Temp), f. & cert. ef. 10-11-13 thru 4-8-14; OEBB 19-2013(Temp), f. & cert. ef. 11-19-13 thru 4-8-14; OEBB 20-2013, f. & cert. ef. 12-27-13; OEBB 24-2013(Temp), f. & cert. ef. 12-27-13 thru 4-8-14

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Oregon Health Authority, Oregon Medical Insurance Pool Chapter 443

Rule Caption: Creates safety net plan for OMIP members with no January 2014 health insurance coverage.
Adm. Order No.: OMIP 1-2013(Temp)
Filed with Sec. of State: 12-23-2013
Certified to be Effective: 1-1-14 thru 6-30-14
Notice Publication Date:
Rules Adopted: 443-003-0005, 443-003-0010, 443-003-0015, 443-003-0020, 443-003-0025, 443-003-0030, 443-003-0035, 443-003-0040, 443-003-0045, 443-003-0050, 443-003-0055, 443-003-0060, 443-003-0065, 443-003-0070, 443-003-0075, 443-003-0080, 443-003-0085, 443-003-0090, 443-003-0095, 443-003-0100, 443-003-0105, 443-003-0110, 443-003-0115, 443-003-0120, 443-003-0125
Subject: Oregon Administrative rules 443-003-0005-0125 create a new temporary safety net insurance and subsidy program for individuals covered under the Oregon Medical Insurance Pool on 12/31/2013 who have not secured health insurance coverage for January 1, 2014. The safety net program serves as bridge coverage until OMIP members enroll in new health care coverage no later than March 31, 2014.
Rules Coordinator: Cindy Bowman—(503) 378-4674

443-003-0005
Scope and Duration

(1) The Oregon Medical Insurance Program (OMIP) described by Division 2 of these rules terminates for dates of service after December 31, 2013. The Temporary Medical Insurance Plan (TMIP) described by Division 3 of these rules provides temporary coverage for dates of service January 1 through March 31, 2014.

(2) OMIP is not liable for any Claims incurred under TMIP. TMIP is not liable for any Claims incurred under OMIP.

(3) TMIP is subject to the Authority's available funds and may be terminated by OHA at any time due to exhaustion of available funds. In establishing the availability of funds, the Authority will take into account its appropriations and expenditure limitations established by the Oregon State Legislature, claims and revenue projections, and the level of cash reserve required to pay claims incurred but not yet paid or reported. OHA will give TMIP enrollees notice if the TMIP is terminated for lack of funds. If TMIP is terminated by OHA for lack of funds, OHA is not obligated to pay for services under TMIP, including services rendered prior to the date of the notice, except as described in the notice to enrollees.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0010
Definitions

(1) "Administering Insurer" means the insurance company or third party administrator selected by, and under contract with, the Authority to provide administrative services to operate TMIP.

(2) "Appeal" means a request to have an adverse decision reviewed.

(3) "Benefit Enrollment Period" means three months beginning on January 1, 2014 and ending on March 31, 2014 for TMIP coverage.

(4) "Children" means the enrollee's natural, legally adopted child, or legal guardian, stepchildren living in the home or non-resident stepchildren if there is a qualified medical child support order that requires the applicant to provide health insurance.

(5) "Children's Health Insurance Program (CHIP)" means a federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Authority.

(6) "Claim" means a request for payment under the terms of an insurance contract or the OMIP or TMIP rules.

(7) "Dependent" means the contract holder's enrolled legal spouse, domestic partner, and unmarried children less than 27 years of age.

(8) "Enrollee" means an individual who is enrolled in one of the TMIP medical benefit plans.

(9) "External Review" is a review performed by a state contracted independent review organization (IRO) when an enrollee has exhausted the internal appeal procedures and wants the opinion of a medical professional who is separate from the Administering Insurer. External review applies only to disputes about medical necessity, experimental or investigational treatment, or need for continuity of care.

(10) "Federal poverty level" means the United States Department of Health and Human Services poverty income guidelines.

(11) "FHIAP" means the Family Health Insurance Assistance Program.

(12) "Medicaid" means a federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by the Authority.

(13) "Medicare" means coverage under either parts A or B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et. seq., as amended.

(14) "Member" means a person approved for and enrolled in TMIP

(15) Misrepresentation" means making an inaccurate or deliberately false statement of material fact, by word, action, or omission.

(16) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(17) "OMIP" means the Oregon Medical Insurance Pool described under Division 2 of these rules.

(18) Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or paid on behalf of, that member, as well as any civil penalty assessed by the Office.

(19) "Resident" means a person who is legally domiciled and maintains a principal place of residence in Oregon.

(20) "Substantially Equivalent Health Benefits or Coverage" means health insurance coverage that reimburses for medical and hospital expenses without regards to a specific medical condition or disease and has comparable, similar benefits and payout amounts, to TMIP's health benefit plan.

(21) "Temporary Medical Insurance Plan (TMIP)" means the program administered by the Authority to provide medical assistance during the Benefit Enrollment Period for former enrollees of OMIP.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0015
Eligibility

Individuals eligible for TMIP must meet the following eligibility requirements:

(1) Must be a resident of the state of Oregon;

(2) Must be enrolled in OMIP on December 31, 2013;

(3) Must not be enrolled in Substantially Equivalent Health Benefits or Coverage including Medicaid, CHIP, a qualified health plan (QHP) or commercial market coverage; and

(4) Must not have been disenrolled from TMIP.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0020
Premiums

(1) Individuals eligible for TMIP must pay a premium rate equal to the rate in effect during December, 2013 for the 2013 OMIP medical benefits plans.

(2) Premiums will be based on the age of the oldest enrolled person under the TMIP policy and are rated incrementally with 5-year age bands.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0025
Member Termination

The Authority's termination of an enrollee's TMIP coverage will be prospective, except as set forth in OAR 443-003-0100. The Authority will terminate an enrollee's TMIP coverage if any of the following occurs:

(1) An enrollee ceases to be an Oregon resident. Termination will become effective at the end of the month in which the enrollee is no longer an Oregon resident as determined by the Authority.

(2) An enrollee reaches 65 years of age or is disabled and becomes eligible for Medicare. The Authority may terminate coverage effective on the date on which the enrollee's coverage under Medicare becomes effective.

(3) An enrollee becomes eligible for and enrolled in a comprehensive health care benefit package under ORS Chapter 414 (Medicaid or CHIP). The Authority may terminate coverage effective on the date on which the enrollee's coverage under Medicaid or CHIP becomes effective.

(4) The Authority discovers that a public entity, employer, health care provider, or any other entity has paid under TMIP or OMIP or is paying the premiums for the enrollee or reimburses him/her for premium payments for the purpose of reducing its own financial loss or obligation. Termination may take effect the date the public entity or health care provider began paying, or reimbursing the enrollee for, the TMIP or OMIP premium.

(5) An enrollee is employed by a business with two or more eligible employees as defined by ORS 743.730 and applied for TMIP or OMIP coverage at the direction of an insurance agent, insurance company, employer or any other entity for the purpose of separating the enrollee from health insurance benefits that the business offers or provides to its employees. Termination may take effect as of the effective date of TMIP coverage.

(6) TMIP discovers that an enrollee had substantially equivalent health care benefits as of the effective date of TMIP or OMIP coverage. Termination may take effect back to the effective date of TMIP coverage. The enrollee may be responsible for reimbursing TMIP for any claims paid.

(7) An enrollee becomes an inpatient or inmate at a State of Oregon correctional or mental institution as defined under ORS 179.321. Termination may take effect the date in which the enrollee became an inpatient or inmate.

(8) TMIP discovers that an enrollee made a material misrepresentation, omission on the application or at anytime during enrollment in OMIP or TMIP, used fraudulent statements or misrepresentation; the coverage may terminate back to the effective date of coverage.

(9) An enrollee misuses the provider network by being disruptive, unruly or abusive in a way that threatens the physical health or well-being of health care staff and seriously impairs the ability of the carrier or its providers to provide service to that enrollee. Termination may take effect at the end of the month for which the enrollee has paid premium.

(10) An enrolled dependent turns 27 years of age and is not mentally or physically incapacitated. Termination will take effect at the end of the month in which the dependent reached his/her 27th birthday.

(11) An enrolled dependent under 27 years of age marries, is no longer an Oregon resident as defined by TMIP.

(12) The enrollee dies.

(13) An enrollee fails to pay the premium by the premium due date. Termination may take effect at the end of the month for which the enrollee has paid premium.

(14) An enrollee voluntarily requests that TMIP terminate coverage at the end of any period during which the enrollee has paid premiums.

(15) An enrollee's enrollment in OMIP as of December 31, 2013, is terminated, or the enrollee is determined by OHA not to be eligible for OMIP as of December 31, 2013. In such a case the TMIP enrollee's enrollment will be rescinded.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0030
Removing an Ineligible Individual from Benefit Plan

(1) All enrollees have 30 days from the date the enrollee loses eligibility to notify the Authority of the loss of eligibility. All enrollees have 30 days from the date a spouse, domestic partner, or dependent child loses eligibility to remove the individual from TMIP coverage. When the Authority receives updated forms to remove ineligible individuals within the required 30 days coverage terminations are prospective, ending the last day of the month following Authority receipt of the appropriate forms.

(2) An enrollee's failure to report a loss of eligibility within 30 days of the event is an intentional misrepresentation of a material fact of enrollment by the enrollee. The Authority will rescind all coverage back to the last day of the month and plan year when eligibility was lost.

(3) The Authority may remove from coverage or deny the claims of an enrollee because of fraud, intentional misrepresentation of a material fact, or eligibility violations.

(4) When the Authority discovers ineligibility, the Authority may rescind coverage for individuals identified as ineligible to the end of the month that eligibility is lost, whether or not requested by the enrollee within the 30-day period.

(5) Termination for non-payment of premium may take effect at the end of the month for which the enrollee has paid premium.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0035
Coordination of Benefits

(1) In all instances, TMIP is the payer of last resort and any other health care coverage is the primary payer.

(2) The other insurance cannot be Medicaid or CHIP (Oregon Health Plan/OHP) or Medicare. Enrollees are not eligible for TMIP coverage if they are enrolled or receiving Medicaid, CHIP, or Medicare benefits.

(3) As the payer of last resort, TMIP may retroactively pursue claim payments that it made as the primary payer.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0040
Effective Dates

(1) Effective date for TMIP coverage is January 1, 2014, if the OMIP enrollee has not secured other Substantially Equivalent Health Benefits or Coverage.

(2) The Administering Insurer will inform enrollees of their eligibility for TMIP coverage by sending a premium notice. The enrollee accepts coverage by paying the monthly premium.

(3) If an enrollee fails to return the premium when requested, the Administering Insurer will deny the coverage as never in force.

(4) If the Administering Insurer determines that an enrollee or dependents of an enrollee are not eligible for the program, the Administering Insurer will inform the enrollee by sending them a letter explaining the reason for the termination.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0045
Pre-Existing Conditions

(1) A "pre-existing condition" is defined as

(a) a condition for which medical advice, diagnosis, care or treatment was recommended or received during the six-month period immediately preceding the insured's OMIP effective date of coverage; or

(b) pregnancy during the six-month period immediately preceding the insured's OMIP effective date of coverage.

(2) With respect to enrollees and dependents, during the first six months after the insured's OMIP effective date of coverage, TMIP will not pay claims for any condition that is a pre-existing condition.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0050
Credit Towards the Six-Month Waiting Period for Pre-Existing Conditions

(1) TMIP may reduce the six month wait period for pre-existing conditions for each month of creditable coverage the enrollee had prior to applying to OMIP if:

(a) The enrollee's application to OMIP was received by OMIP or OMIP's third party administrator within 63 days from the prior health plan's termination date; and

(b) The enrollee provided a Certificate of Coverage (COC) document reflecting the enrollee's name, effective date of coverage, and termination date. In addition, the enrollee included a summary of benefits for the prior health plan, to determine if the plan was creditable. A COC is a certificate that is provided by an insurance carrier as proof of prior insurance coverage.

(2) TMIP may not give credit for benefits, treatments, or services if the enrollee had not satisfied any of the prior health plan's waiting periods or if the benefit, treatment, or services were excluded by the previous health plan.

Stat. Auth.: ORS 413.032, 413.033

Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0055
Appeals and External Review

If an enrollee believes that a policy, action, or decision of the Authority is incorrect, the enrollee may file a written appeal.

(1) To file an appeal the enrollee must submit a written statement to the Administering Insurer within 180 days from the adverse contract, action, or decision, outlining the issue and any other supporting documentation.

(a) The Administering Insurer will send a written decision to the enrollee within 30 calendar days after receiving the appeal. In the event more extensive review is needed, the Administering Insurer will notify the enrollee of the delay and will send a written response to the enrollee within 30 calendar days after receiving the appeal.

(b) For appeals involving a pre-service preauthorization of a procedure, the Administering Insurer will send a written response to the enrollee within 14 calendar days after receiving the appeal.

(c) For appeals which the enrollee and/or their treating provider determine that their health could be jeopardized while waiting for a decision under the regular appeal process, an Expedited Appeal may specifically be requested.

(2) If, after filing an internal appeal, the enrollee is dissatisfied with the Administering Insurer's response to the internal appeal, the enrollee may then file an External appeal with an IRO.

(a) The enrollee must file an External appeal in writing to the Administering Insurer within 180 calendar days from the date of the written decision of the internal appeal.

(b) The issue being submitted to the IRO for external review must be a dispute over an Adverse Benefit Determination by the internal review concerning:

(c) The enrollee has the right to request an external review by an IRO if the dispute is regarding medical necessity, experimental or investigational procedures, or need for continuity of care. The Authority is bound by the decision of the IRO.

(d) If the enrollee chooses to send an appeal to External Review, it will be considered the final level of appeal. The I.R.O. will make its review and report its decision within 30 calendar days.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0060
Purpose and Statutory Authority

The TMIP program described in these rules is a successor to the OMIP and FHIAP programs in effect through December 31, 2013.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0065
Subsidy Levels and Eligibility

(1) TMIP members who qualify for a TMIP subsidy remain at the same subsidy level that was in effect with the FHIAP program on 12/31/13.

(2) In order for a member to qualify for a TMIP subsidy, a member must:

(a) Have been determined eligible by FHIAP to receive a subsidy in 2014;

(b) Be a current FHIAP member enrolled in an Oregon Medical Insurance Pool plan on 12/31/13 and enrolling in TMIP with coverage effective January 1, 2014.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0070
Member Invoicing

(1) OHA shall not pay TMIP until the subsidy member's portion of the premium has been received.

(2) Subsidy member payments are due to OHA by the date provided on the monthly invoice.

(3) For subsidy members, unpaid balances greater than $3.00 are mailed a reminder and given an extension on the original due date.

(4) If the subsidy member's payment is not postmarked by the due date on the reminder, TMIP subsidy may be cancelled.

(5) If OHA fails to send a reminder, the subsidy member shall be billed for two months during the next billing cycle. In these instances:

(a) OHA shall not pay TMIP until the amount due has been paid.

(b) OHA shall not be responsible for TMIP non-payment terminations.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0075
Member Payments

(1) Subsidy member payments shall be processed no less than each business day.

(2) Subsidy members shall be notified of payments returned by the bank for Non-Sufficient Funds (NSF).

(a) A check that is returned for Non-Sufficient Funds is considered the same as non-payment.

(b) Replacement funds must be sent within 10 days of the date on the notification letter.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0080
Refunds

(1) OHA shall resolve member overpayments by requesting a refund from TMIP; except for overpayments resulting from member misrepresentation.

(2) OHA shall seek TMIP refunds within 30 days of overpayment determination.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0085
Member Refunds

(1) Member refunds shall be processed no less than weekly.

(2) Member refunds shall not be processed for amounts under $25.00 unless it is the final payment on a termed account.

(3) Members shall receive refunds for their portion of any overpaid premium.

(4) Member refunds of premiums paid to TMIP shall be processed upon receipt of the refund from TMIP.

(5) Current members billed incorrectly may request a refund or take a credit on their active account for refunds over $25.00.

(6) Member refunds for premium not yet sent to TMIP shall be paid weekly even if an additional refund is due from TMIP as long as both refunds are over $25.00.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0090
Member Reporting

Members must report changes in circumstances to OHA within 30 calendar days of their occurrence by phone or in writing. These circumstances include the following:

(1) Change of Name

(2) Change of home or mailing address, even if temporarily away (more than 30 days).

(3) Obtaining new health insurance coverage.

Failure to report any of the above changes may result in termination from the program, loss of insurance coverage, an overpayment or an underpayment.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0095
Termination of Subsidy

Termination from the TMIP program occurs when:

(1) Payment of the member's share of the insurance premium is not postmarked by the date stipulated in correspondence from OHA;

(a) This includes non-payment of the premium; meaning the member did not send the required payment to OHA.

(b) If a subsidy account is terminated due to non-payment of the member's portion of monthly premium, all family members enrolled on that TMIP-subsidized plan become ineligible for further TMIP subsidy under the current reservation number.

(2) The member is no longer a resident of Oregon;

(3) The member terminates TMIP coverage;

(4) A member is found to have committed misrepresentation.

(5) Projected program costs exceed the funding available to cover subsidy payments for those enrolled.

(6) The TMIP program ends on March 31, 2014.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0100
Misrepresentation/Civil Penalty

OHA may investigate any member or former member for misrepresentation in obtaining subsidy benefits. Such investigations may be through random file audits or by management request.

(1) The member is terminated from TMIP and ineligible to re-enroll in TMIP;

(2) The member is liable for repayment to OHA the full amount of overpayment.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0105
Overpayments

(1) Any overpayment amount is a debt owed to the State of Oregon and may be subject to collection. An overpayment may result from administrative error, member error, misrepresentation, or civil penalty.

(2) An overpayment is considered to be member error if it is caused by the member's misunderstanding or error. Examples include, but are not limited to, instances where the member intentionally or unintentionally:

(a) Did not provide correct or complete information to OHA;

(b) Did not report changes in circumstances to OHA

(3) An administrative error overpayment may be caused by any of the following circumstances:

(a) OHA committed a calculation, procedural, or typing error that was no fault of the member;

(4) A misrepresentation error includes but is not limited to the member giving an inaccurate or deliberately false statement of fact that results in an incorrect subsidy level calculation or incorrect receipt of subsidy after enrollment. Misrepresentation may result in a civil penalty.

(5) The TMIP member is having the health insurance premium subsidized by another state government program, such as, but not limited to OHP, and such subsidy results in a double payment for the same health insurance premium.

(6) OHA shall mail notification of overpayments to the member. This written notice shall:

(a) Inform the member of the amount of and the reason for the overpayment;

(b) Inform members of their appeal and contested case hearing rights.

(7) OHA shall collect overpayment amounts in one lump sum if the member is currently enrolled and financially able to repay the overpayment amount in that manner.

(8) If the currently enrolled member is financially unable to pay the amount due in one lump sum, OHA will accept regular installment payments.

(9) If OHA is unable to recover the overpayment amount from the currently enrolled member within overpayment guidelines:

(a) OHA may renegotiate the payment plan agreement with the member.

(b) If OHA is unable to negotiate an acceptable payment plan, the member's TMIP account shall be terminated and the outstanding balance due referred to the Oregon Health Authority (OHA) Fiscal Unit for collection after the member's appeal and hearing rights expire.

(10) If the member submits an appeal or contested case hearing request, OHA shall discontinue any attempts at collection until the conclusion of the appeal or hearing.

(11) If the appeal decision is in the member's favor, OHA shall refund any money collected as overpayment recovery.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0110
Collections

(1) OHA staff shall reconcile terminated accounts with unpaid balances.

(2) OHA staff shall notify the member whose account has been terminated in writing of the collection amount. The former member shall have 21 days to appeal before further collection action is taken, unless appeal rights were already extended in other OHA correspondence.

(3) TMIP shall refer the overpayment to the OHA Fiscal Unit for collection after the former member's appeal and hearing rights expire.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0115
Subsidy Member Appeals

(1) All OHA correspondence that notifies subsidy members of decisions and determinations shall include appeal language and outline the steps necessary to file an appeal.

(2) A subsidy member may appeal any decision made or action taken by OHA.

(3) To appeal a decision or action, the subsidy member must advise OHA in writing of their desire to appeal. The written appeal request must be postmarked, hand or electronically delivered within 21 calendar days of the date on the notice or action.

(4) The appeal request must include the reasons for the appeal, which shall be limited to the issue(s) cited in the decision or determination.

(5) On its own or if asked by a subsidy member, OHA may consider additional information during the appeal process. If further information is requested by OHA, the member has 15 calendar days from the date on the request to provide the additional information. If the information requested by OHA is not postmarked or delivered within 15 calendar days from the date on the request, the original decision shall be upheld or amended if warranted.

(6) Once OHA has made a decision on appeal, the member shall be notified of the appeal decision.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0120
Contested Case Hearings

(1) A member may request a hearing on OHA's appeal decision.

(2) To receive a hearing, the hearing request must be in writing, signed by the member, or their attorney and be postmarked, and hand or electronically delivered no later than 21 calendar days following the date of the appeal decision notice.

(3) The hearing request must include the reasons for the hearing, which shall be limited to the issue(s) cited in the appeal decision notice.

(4) OHA shall participate in a contested case hearing pursuant to ORS 183.413 to 183.470 and may use lay representation per OAR 943-001-0009.

(5) Once a hearing is requested, OHA shall not pursue collection of any alleged overpayment until OHA has issued a final order affirming the overpayment.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

443-003-0125
Extenuating Circumstances

The Program Administrator or designee will review extenuating circumstance requests that may result in exceptions to application of the administrative rules. Requests relating to life circumstances beyond the applicant's control or verifiable third-party interference will be considered. Exceptions will be considered for non-payment of the member's portion of the insurance premium.

Stat. Auth.: ORS 413.032, 413.033
Stats. Implemented: ORS 413.032, 413.033
Hist.: OMIP 1-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14

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Oregon Health Authority, Public Employees' Benefit Board
Chapter 101

Rule Caption: Local government participation implementation as required by the passage of HB 2279 (2013).
Adm. Order No.: PEBB 3-2013(Temp)
Filed with Sec. of State: 12-17-2013
Certified to be Effective: 12-17-13 thru 6-15-14
Notice Publication Date:
Rules Adopted: 101-070-0001, 101-070-0005
Subject: The Oregon Health Authority, Public Employees' Benefit Board (PEBB), is proposing to adopt Oregon Administrative Rules

in Chapter 101, Division 70, relative to local government participation in PEBB health plans.
Rules Coordinator: Cherie Taylor—(503) 378-6296

101-070-0001
Definitions

"Local Government" has the meaning given to it in House Bill 2279 (2013).

Stat. Auth: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707
Stats. Implemented: ORS 243.061-302 & OL 2007 Ch. 99
Hist.: PEBB 3-2013(Temp), f. & cert. ef. 12-17-13 thru 6-15-14

101-070-0005
Participation Requirements

(1) Notice of Intent to Participate.

(a) Local Governments choosing voluntarily to participate in PEBB must complete and submit to PEBB a written Notice of Intent to Participate. The following notification timeline applies if the Local Government employs:

(A) 50 or fewer participating, eligible employees — 90 days prior to the PEBB Open Enrollment start date (usually October 1), or

(B) More than 50 participating, eligible employees but fewer than 500 participating, eligible employees — 120 days prior to the PEBB Open Enrollment start date, or

(C) More than 500 participating, eligible employees — 180 days prior to the PEBB Open Enrollment start date.

(b) Local Governments employing more than 500 participating, eligible employees that submit a Notice of Intent to Participate may allow individual employee groups entry into PEBB plans upon expiration of collective bargaining agreements that govern employee health and welfare benefits for the individual employee groups.

(2) Financial Participation.

(a) Local Governments must provide PEBB with the most recent two years of medical premium-equivalent rates for self-insured groups and the most recent two years of medical premium rates for fully insured groups either before submitting a Notice of Intent to Participate or accompanied with the Notice of Intent to Participate. Demographic data and logistical data may be requested as well.

(A) If an actuarial plan comparison completed by PEBB's Consultant demonstrates these rates are less than 10% over PEBB's costs during the same two year period, the Local Government may enter participation at current PEBB rates.

(B) If an actuarial plan comparison demonstrates these rates are equal to or over 10% of PEBB's costs during the same two year period, PEBB may add a rate surcharge for up to three years.

(i) Upon entry into PEBB participation, Local Governments with more than 500 self-insured employees must either:

(I) Deposit a sufficient monetary reserve by February 1 of the first plan year to finance the stabilization account of the PEBB revolving fund to the PEBB risk-adjusted level as determined by the PEBB Consultant; or

(II) Agree to pay an additional surcharge to premiums to establish a reserve fund for the Local Government over a period of time as determined by PEBB's Consultant.

(ii) When a Local Government with more than 500 self-insured employees terminates participation in PEBB, it may take its initial contribution paid into the stabilization account of the PEBB revolving fund as determined by PEBB's Consultant.

(iii) When a Local Government provides a cash incentive to a member for opting-out of health coverage and the value of the incentive is 50% or more than the PEBB premium rate for an employee-only tier, PEBB may assess a surcharge to the Local Government.

(iv) Monthly Remittance. For the purpose of subsections (6) through (11), the terms below have the following meanings:

(I) "ACH credit" means a payment initiated by a participating Local Government that is cleared through the Automated Clearing House (ACH) network for deposit to the PEBB treasury account;

(II) "ACH debit" means a payment initiated by PEBB and cleared through the ACH network to debit a participating Local Government's financial account and credit the PEBB treasury account;

(III) "Local Government Payment" means the monthly Local Government Payment to PEBB that includes the contributions of both Local Government as the employer, and its employees as required to pay the monthly premiums in full for selected PEBB benefit plans;

(IV) "Local Government Payment Invoice" means a monthly itemized statement provided by PEBB that includes the enrollment elections of the employees and dependents of a Local Government and the PEBB premium rate associated with the benefit coverage enrollment month.

(V) "Pay-As-Billed" means billing a Local Government based upon its monthly enrollment file in the PEBB.benefits system.

(VI) "Overpayment" means the amount of a Local Government's monthly payment to PEBB that exceeds the amount due.

(VII) "Underpayment" means a payment submitted by a Local Government that is less than the invoiced amount.

(VIII) "Electronic Funds Transfer" refers to a payment through ACH credit or ACH debit.

(IX) "Cover Oregon" refers to the Oregon Health Insurance Exchange public corporation.

(X) "Due date" means the third business day into the current month of coverage.

(v) Local Governments will receive a monthly invoice from PEBB by the first business day of the month of coverage that details the payments due for that month of coverage.

(vi) Local Governments are required to submit payment to PEBB through Electronic Funds Transfer no later than the due date.

(vii) PEBB reserves the right to issue surcharges or take other appropriate measures to Local Governments that submit monthly payments after the due date.

(viii) Local Governments must select an electronic funds transfer method by submitting an Electronic Funds Transfer authorization form to PEBB 45 days prior to participation in a PEBB plan year.

(ix) Local Governments seeking a refund of an overpayment must notify PEBB within 45 calendar days from the date the overpayment occurred;

(I) PEBB will request a refund from a carrier in accordance with the law. The carrier will refund the premium to PEBB back to the date of the termination or the date allowed by law for recoupment.

(II) PEBB will generally reimburse a Local Government overpayment by making an adjustment to the next monthly invoice.

(3) General Participation Requirements.

(a) Local Governments who choose to participate in PEBB must comply with PEBB eligibility, enrollment, and continuation of insurance rules as defined in OAR division 101-010, 101-015 and 101-030, regardless of whether the Local Government is administering a Section 125 Cafeteria Plan.

(b) Local Governments must agree to and sign an inter-governmental agreement with PEBB along with the Notice of Intent to Participate that includes provisions of their participation in PEBB, including, but not limited to, the following participation requirements. Local Governments must:

(A) Retain full authority to define employee-employer premium cost share arrangements compliant with Affordable Care Act (ACA) regulations.

(B) Participate in all benefit coverage types approved and provided by PEBB. All PEBB plans must be available to all benefit eligible employees.

(C) Use the PEBB tiered-rate structure for all benefit coverage types.

(D) Participate in all PEBB health and wellness and programs offered by PEBB.

(E) Comply with the PEBB benefit plan-year cycle, Open Enrollment period, and plan renewal timeline.

(F) Submit all premium payments to PEBB on a monthly basis. Premium submission to PEBB is completed through Electronic Funds Transfer, no later than the due date as indicated by PEBB.

(G) Not transfer to any PEBB plan any deductibles or annual out-of-pocket maximums met with a prior carrier.

(H) Agree that PEBB.benefits is the authority for managing and reporting all billing, eligibility and enrollment information communicated to the insurance plan carriers by PEBB and Local Governments will update employment changes in PEBB.benefits as they occur.

(c) Local governments may allow currently enrolled Early Retirees to participate in PEBB retiree plans only if the retirees participated in the Local Government's retiree medical plan for at least two years prior to January 1, 2014. The PEBB Retiree Rules as defined in OAR division 101-050-0005 et. seq. apply to all Early Retirees.

(d) Local Governments may request transfer of term life insurance coverage through the Local Government group life policy to the PEBB term life insurance policy. PEBB will transfer the life insurance amount in force on the last day the prior group coverage was in effect if requested and documented by the Local Government rounded to the nearest multiple of $10,000. Premium rates for the coverage will be at the current PEBB life insurance rate tier structure.

(e) Local Governments that elect to participate in benefit plans provided by PEBB may elect to terminate participation in PEBB, subject to the following rules:

(I) Termination of participation will be allowed on a one-time basis only; however, Local Governments electing to terminate PEBB plan coverage and electing to participate in Cover Oregon, can elect to return to participate in plans provided by the PEBB. Upon returning to PEBB, a Local Government must again satisfy all Notice of Intent to Participate and other participation requirements.

(II) PEBB may terminate participation of a Local Government within three months of entering PEBB if the Local Government fails to perform any action required by Oregon Revised Statutes (ORS) 243.105 to 243.285 and 292.051 or by PEBB rule.

(f) Local Governments may purchase employee benefits not offered by PEBB or Cover Oregon.

Stat. Auth: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707
Stats. Implemented: ORS 243.061-302 & OL 2007 Ch. 99
Hist.: PEBB 3-2013(Temp), f. & cert. ef. 12-17-13 thru 6-15-14

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Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Health Care Acquired Infection Reporting and Public Disclosure
Adm. Order No.: PH 13-2013
Filed with Sec. of State: 12-26-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Ren. & Amend: 409-023-0000 to 333-018-0100, 409-023-0005 to 333-018-0105, 409-023-0010 to 333-018-0110, 409-023-0012 to 333-018-0115, 409-023-0013 to 333-018-0120, 409-023-0015 to 333-018-0125, 409-023-0020 to 333-018-0130, 409-023-0025 to 333-018-0135, 409-023-0030 to 333-018-0140, 409-023-0035 to 333-018-0145
Subject: The Oregon Health Authority, Public Health Division is permanently amending and renumbering OAR 409-023-0000 through 409-023-0035 to 333-018-0100 through 333-018-0145 pertaining to health care acquired infection reporting and public disclosure. The HAI Reporting Program used to be housed in the Office for Oregon Health Policy and Research (chapter 409) but has since been moved to the Public Health Division (chapter 333). HB 2094, passed during the 2013 legislative session, was a technical fix bill for the Public Health Division and one of the provisions of the bill was to amend statutes regarding the HAI Reporting Program to reference the Oregon Health Authority instead of the Office for Oregon Health Policy and Research. The renumbering of the rules from chapter 409 to chapter 333 is a result of this legislative change. Other minor housekeeping amendments are also being made to the rules.

In addition, the amendments update references and add two new health care acquired infections (HAIs) to the list of reportable conditions - namely, catheter-associated urinary tract infections (CAUTIs) and methicillin-resistant Staphylococcus aureus infections (MRSAs) as defined in the National Healthcare Safety Network (NHSN) Manual.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-018-0100
Definitions

The following definitions apply to OAR 333-018-0100 through 333-018-0145:

(1) "ASC" means an ambulatory surgical center as defined in ORS 442.015 and that is licensed pursuant to ORS 441.015.

(2) "Authority" means the Oregon Health Authority.

(3) "CBGB" means coronary bypass graft surgery with both chest and graft incisions, as defined in the NHSN Manual.

(4) "CAUTI" means catheter-associated urinary tract infection as defined in the NHSN Manual.

(5) "CDC" means the federal Centers for Disease Control and Prevention.

(6) "CDI" means Clostridium difficile infection as defined in the NHSN Manual.

(7) "CLABSI" means central line associated bloodstream infection as defined in the NHSN Manual.

(8) "CMS" means the federal Centers for Medicare and Medicaid Services.

(9) "COLO" means colon procedures as defined in the NHSN Manual.

(10) "Committee" means the Health Care Acquired Infections Advisory Committee as defined in section 4, chapter 838, Oregon Laws 2007.

(11) "Dialysis facility" means outpatient renal dialysis facility as defined in ORS 442.015.

(12) "Follow-up" means post-discharge surveillance intended to detect CBGB, COLO, HPRO, HYST, KRPO, and LAM surgical site infection (SSI) cases occurring after a procedure.

(13) "HAI" means health care acquired infection as defined in section 2, chapter 838, Oregon Laws 2007.

(14) "Health care facility" means a facility as defined in ORS 442.015.

(15) "Hospital" means a facility as defined in ORS 442.015 and that is licensed pursuant to ORS 441.015.

(16) "Hospital Inpatient Quality Reporting Program" means the initiative administered by CMS and formerly referred to as RHQDAPU.

(17) "HPRO" means hip prosthesis procedure as defined in the NHSN Manual.

(18) "HYST" means abdominal hysterectomy procedure as defined in the NHSN Manual.

(19) "ICU" means an intensive care unit as defined in the NHSN Manual.

(20) "KPRO" means knee prosthesis procedure as defined in the NHSN Manual.

(21) "Lab ID" means laboratory-identified event as defined in the NHSN Manual.

(22) "LAM" means laminectomy procedure as defined in the NHSN Manual.

(23) "LTC facility" means long term care facility as defined in ORS 442.015.

(24) "MDS" mean the Centers for Medicare and Medicaid Services' minimum data set nursing home resident assessment and screening tool, version 2.0 or its successor, including but not limited to manuals, forms, software, and databases.

(25) "Medical ICU" means a non-specialty intensive care unit in which at least 80 percent of patients served are adult medical patients.

(26) "Medical/Surgical ICU" means a non-specialty intensive care unit in which less than 80 percent of patients served are adult medical, adult surgical, or specialty patients.

(27) "MRSA" means methicillin-resistant Staphylococcus aureus as defined in the NHSN Manual.

(28) "NHSN" means the CDC's National Healthcare Safety Network.

(29) "NHSN Inpatient" means a patient whose date of admission to the healthcare facility and the date of discharge are different days as defined in the NHSN Manual.

(30) "NHSN Manual" means the Patient Safety Component Protocol of the NHSN manual, version January 2013.

(31) "NICU" means a specialty intensive care unit that cares for neonatal patients.

(32) "Oregon HAI group" means the NHSN group administered by the Authority.

(33) "Overall-facility wide" means data are collected for the entire facility as defined in the NHSN Manual.

(34) "Patient information" means individually identifiable health information as defined in ORS 179.505.

(35) "Person" has the meaning given that term in ORS 442.015.

(36) "Procedure" means an NHSN operative procedure as defined in the NHSN Manual.

(37) "Provider" means health care services provider as defined in ORS 179.505.

(38) "QIO" means the quality improvement organization designated by CMS for Oregon.

(39) "RHQDAPU" means the Reporting Hospital Quality Data for Annual Payment Update initiative administered by CMS.

(40) "SCIP" means the Surgical Care Improvement Project.

(41) "SCIP-Inf-1" means the HAI process measure published by SCIP defined as prophylactic antibiotic received within one hour prior to surgical incision.

(42) "SCIP-Inf-2" means the HAI process measure published by SCIP defined as prophylactic antibiotic selection for surgical patients.

(43) "SCIP-Inf-3" means the HAI process measure published by SCIP defined as prophylactic antibiotics discontinued within 24 hours after surgery end time (48 hours for cardiac patients).

(44) "SCIP-Inf-4" means the HAI process measure published by SCIP defined as cardiac surgery patients with controlled 6 a.m. postoperative serum glucose.

(45) "SCIP-Inf-6" means the HAI process measure published by SCIP defined as surgery patients with appropriate hair removal.

(46) "SCIP-Inf-9" means urinary catheter removed on postoperative day 1 or postoperative day 2 with day of surgery being day zero.

(47) "SCIP-Inf-10" means the HAI process measure published by SCIP defined as surgery patients with perioperative temperature management.

(48) "Specialty ICU" means an intensive care unit in which at least 80 percent of adult patients served are specialty patients, including but not limited to oncology, trauma, and neurology.

(49) "SSI" means a surgical site infection event as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2013.

(50) "Staff" means any employee of a health care facility or any person contracted to work within a health care facility.

(51) "State agency" has the meaning given that term in ORS 192.410.

(52) "Surgical ICU" means a non-specialty intensive care unit in which at least 80 percent of patients served are adult surgical patients.

Stat. Auth.: ORS 442.420 & OL 2007, Ch. 838 § 1-6 & 12
Stats. Implemented: ORS 179.505, 192.410, 192.496, 192.502, 441.015, 442.011, 442.400, 442.405, & OL 2007, Ch. 838 § 1-6 &12
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; OHP 1-2009, f. & cert. ef. 7-1-09; OHP 4-2010, f. 6-30-10, cert. ef. 7-1-10; OHP 4-2011(Temp), f. 7-28-11, cert. ef. 8-1-11 thru 1-25-12; OHP 7-2011, f. 9-30-11, cert. ef. 10-1-11; Renumbered from 409-023-0000 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0105
Review

Unless otherwise directed by the Authority, the committee shall review these rules (OAR 333-018-0100 through 333-018-0145) at least biennially.

Stat. Auth.: ORS 442.420 & 2007 OL Ch. 838 § 1–6 & 12
Stats. Implemented: 2007 OL Ch. 838 § 1–6 & 12
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; Renumbered from 409-023-0005 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0110
HAI Reporting for Hospitals

(1) All hospitals shall collect data for HAI outcome and process measures for the HAI reporting program in accordance with these rules, except:

(a) Hospitals shall report facility-wide inpatient MRSA bacteremia data using the Lab-ID method for MRSA bacteremia in the NHSN MDRO and CDI Module protocol for services provided in hospitals on or after January 1, 2014.

(b) Hospitals shall report NHSN inpatient CAUTI events in adult and pediatric ICUs for services provided on or after January 1, 2014.

(2) Reportable HAI outcome measures are:

(a) SSIs for NHSN Inpatient CBGB, COLO, HPRO, HYST, KPRO, and LAM procedures.

(b) CLABSI in medical ICUs, surgical ICUs, and combined medical/surgical ICUs.

(c) NHSN Inpatient CDI facility-wide.

(d) NHSN Inpatient MRSA bacteremia facility-wide.

(e) CAUTI in adult and pediatric ICUs.

(3) The infection control professional (ICP), as defined by the facility, shall actively seek out infections defined in subsections (2)(a) and (e) of this rule during a patient's stay by screening a variety of data that may include but is not limited to:

(a) Laboratory;

(b) Pharmacy;

(c) Admission;

(d) Discharge;

(e) Transfer;

(f) Radiology;

(g) Imaging;

(h) Pathology; and

(i) Patient charts, including history and physical notes, nurses and physicians notes, and temperature charts.

(4) The ICP shall use follow-up surveillance methods to detect SSIs for procedures defined in subsection (2)(a) of this rule using at least one of the following:

(a) Direct examination of patients' wounds during follow-up visits to either surgery clinics or physicians' offices;

(b) Review of medical records, subsequent hospitalization records, or surgery clinic records;

(c) Surgeon surveys by mail or telephone;

(d) Patient surveys by mail or telephone; or

(e) Other facility surveys by mail or telephone.

(5) Others employed by the facility may be trained to screen data sources for these infections, but the ICP must determine that the infection meets the criteria established by these rules.

(6) The HAI reporting system for HAI outcome measures shall be NHSN. Each Oregon hospital shall comply with processes and methods prescribed by CDC for NHSN data submission. These include but are not limited to definitions, data collection, data reporting, and administrative and training requirements. Each Oregon hospital shall:

(a) Join the Oregon HAI group in NHSN.

(b) Authorize disclosure of NHSN data to the Authority as necessary for compliance with these rules, including but not limited to summary data and denominator data for all SSIs, the annual hospital survey and data analysis components for all SSIs, and summary data and denominator data for all medical ICUs, surgical ICUs, and combined medical/surgical ICUs.

(c) Report its data for outcome measures to NHSN no later than 30 days after the end of the collection month. The NHSN field "Discharge Date" is mandatory for all outcome measures.

(7) Each hospital shall report on a quarterly basis according to OAR 333-018-0110(1) the following HAI process measures:

(a) SCIP-Inf-1;

(b) SCIP-Inf-2;

(c) SCIP-Inf-3;

(d) SCIP-Inf-4;

(e) SCIP-Inf-6;

(f) SCIP-Inf-9; and

(g) SCIP-Inf-10.

(8) The reporting system for HAI process measures shall be the Hospital Inpatient Quality Reporting Program, formerly referred to as the RHQDAPU program as configured on July 1, 2008. Each Oregon hospital shall:

(a) Comply with reporting processes and methods prescribed by CMS for the RHQDAPU program. These include but are not limited to definitions, data collection, data reporting, and administrative and training requirements; and

(b) Report data quarterly for HAI process measures. Data must be submitted to and successfully accepted into the QIO clinical warehouse no later than 11:59 p.m. central time, on the 15th calendar day, four months after the end of the quarter.

(9) For NICUs, the HAI reporting system for outcome measures shall be NHSN. Each Oregon hospital with a NICU shall comply with processes and methods prescribed by NHSN for the CLABSI reporting, including but not limited to definitions, data collection, data submission, and administrative and training requirements. Each Oregon hospital shall:

(a) Authorize disclosure of NHSN data to the Authority as necessary for compliance with these rules, including but not limited to facility identifiers.

(b) Submit NICU data to NHSN according to the NHSN Manual.

(10) Each hospital shall complete an annual survey, as defined by the Authority, of influenza vaccination of staff and submit the completed survey to the Authority. The survey shall include but not be limited to the following questions regarding influenza vaccine coverage of facility staff:

(a) Number of staff with a documented influenza vaccination during the previous influenza season;

(b) Number of staff with a documented medical contraindication to influenza vaccination during the previous influenza season;

(c) Number of staff with a documented refusal of influenza vaccination during the previous influenza season; and

(d) Facility assessment of influenza vaccine coverage of facility staff during the previous influenza season and plans to improve vaccine coverage of facility staff during the upcoming influenza season.

Stat. Auth.: ORS 442.420 & 2007 OL Ch. 838 § 1–6 & 12
Stats. Implemented: ORS 442.405 & 2007 OL Ch. 838 § 1–6 & 12
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; OHP 1-2009, f. & cert. ef. 7-1-09; OHP 4-2010, f. 6-30-10, cert. ef. 7-1-10; OHP 4-2011(Temp), f. 7-28-11, cert. ef. 8-1-11 thru 1-25-12; OHP 7-2011, f. 9-30-11, cert. ef. 10-1-11; Renumbered from 409-023-0010 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0115
HAI Reporting for Ambulatory Surgery Centers

(1) Each ASC shall complete a survey of evidenced-based elements of patient safety performance as defined by the Authority.

(2) The survey shall be submitted annually by each ASC to the Authority no later than 30 days after receipt of the survey.

(3) Each ASC shall complete an annual survey, as defined by the Authority, of influenza vaccination of staff and submit the completed survey to the Authority. The survey shall include but not be limited to the following questions regarding influenza vaccine coverage of facility staff:

(a) Number of staff with a documented influenza vaccination during the previous influenza season;

(b) Number of staff with a documented medical contraindication to influenza vaccination during the previous influenza season;

(c) Number of staff with a documented refusal of influenza vaccination during the previous influenza season; and

(d) Facility assessment of influenza vaccine coverage of facility staff during the previous influenza season and plans to improve vaccine coverage of facility staff during the upcoming influenza season.

Stat. Auth.: ORS 442.420 & OL 2007, Ch. 838 § 1-6 and 12
Stats. Implemented: ORS 442.405 & OL 2007, Ch. 838 § 1-6 and 12
Hist.: OHP 1-2009, f. & cert. ef. 7-1-09; OHP 4-2011(Temp), f. 7-28-11, cert. ef. 8-1-11 thru 1-25-12; OHP 7-2011, f. 9-30-11, cert. ef. 10-1-11; Renumbered from 409-023-0012 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0120
HAI Reporting for Long Term Care Facilities

(1) The HAI Reporting System for outcome measures shall be MDS.

(2) Reportable HAI outcome measures are from MDS and include the data element, "urinary tract infection in the last 30 days."

(3) Each LTC facility shall comply with reporting processes and methods prescribed by CMS for MDS. These include but are not limited to definitions, data collection, data submission, and administrative and training requirements.

(4) Each LTC facility shall complete an annual survey, as defined by the Authority, of influenza vaccination of staff and submit the completed survey to the Authority. The survey shall include but not be limited to the following questions regarding influenza vaccine coverage of facility staff:

(a) Number of staff with a documented influenza vaccination during the previous influenza season;

(b) Number of staff with a documented medical contraindication to influenza vaccination during the previous influenza season;

(c) Number of staff with a documented refusal of influenza vaccination during the previous influenza season; and

(d) Facility assessment of influenza vaccine coverage of facility staff and volunteers during the previous influenza season and plans to improve vaccine coverage of facility staff during the upcoming influenza season.

Stat. Auth.: ORS 442.420 & 2007 OL Ch. 838 § 1–6 & 12
Stats. Implemented: ORS 442.405 & 2007 OL Ch. 838 § 1–6 & 12
Hist.: OHP 1-2009, f. & cert. ef. 7-1-09; Renumbered from 409-023-0013 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0125
HAI Reporting for Other Health Care Facilities

Dialysis facilities shall submit data for the HAI reporting program for services provided on or after January 1, 2013 Dialysis facilities that report events data to the Centers for Medicare and Medicaid (CMS) shall be considered to comply with HAI reporting requirements if these dialysis facilities provide the same data to the Authority, or permits the Authority to have access to the same data, as is reported to CMS.

Stat. Auth.: ORS 442.420 & OL 2007, Ch. 838 § 1-6 and 12
Stats. Implemented: ORS 442.405 & OL 2007, Ch. 838 § 1-6 and 12
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; OHP 1-2009, f. & cert. ef. 7-1-09; OHP 4-2011(Temp), f. 7-28-11, cert. ef. 8-1-11 thru 1-25-12; OHP 7-2011, f. 9-30-11, cert. ef. 10-1-11; Renumbered from 409-023-0015 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0130
HAI Public Disclosure

(1) The Authority shall disclose to the public updated facility-level and state-level HAI rates at least quarterly.

(2) The Authority may disclose state-level and facility-level HAI data, including but not limited to observed frequencies, expected frequencies, proportions, and ratios.

(3) The Authority shall summarize HAI data by facilities subject to this reporting in an annual report. The Authority shall publish the annual report no later than April 30 of each calendar year.

(4) The Authority shall disclose data and accompanying explanatory documentation in a format that facilitates access and use by the general public and health care providers.

(5) The Authority may use statistically valid methods to make comparisons by facility, and to state, regional, and national statistics.

(6) The Authority shall provide a maximum of 30 calendar days for facilities to review facility-reported data prior to public release of data.

(7) The Authority shall provide facilities the opportunity to submit written comments and may include any submitted information in the annual report.

(8) Pending recommendations from the committee, the Authority may publish additional reports intended to serve the public's interest.

Stat. Auth.: ORS 442.420 & 2007 OL Ch. 838 § 1–6 & 12
Stats. Implemented: ORS 442.405, 192.496, 192.502, 192.243, 192.245 & 2007 OL Ch. 838 § 1–6 & 12
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; Renumbered from 409-023-0020 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0135
HAI Data Processing and Security

(1) The Authority shall obtain hospital outcome measure data files directly from NHSN at least quarterly.

(2) The Authority shall obtain hospital process measure data files from the CMS hospital compare website at least quarterly.

(3) The Authority shall calculate state-level and facility-level statistics to facilitate HAI public disclosure. These statistics may include but are not limited to observed frequencies, expected frequencies, proportions, rates, and ratios. The Authority shall make public the methods used to calculate statistics and perform comparisons.

(4) The Authority shall use statistically valid risk adjustment methods recommended by the committee including but not limited to NHSN methodology.

(5) The Authority shall undertake precautions to prevent unauthorized disclosure of the raw data files. These precautions include but are not limited to:

(a) Storing the raw data files on the internal storage hardware of a password-protected personal computer that is physically located within the Authority;

(b) Restricting staff access to the raw data files;

(c) Restricting network access to the raw data files; and

(d) If applicable, storing patient information within a strongly-encrypted and password-protected virtual drive or using other methods to reliably achieve the same level of security.

Stat. Auth.: ORS 442.420 & 2007 OL Ch. 838 § 1–6 & 12
Stats. Implemented: ORS 192.496, 192.502 & 2007 OL Ch. 838 § 1–6 & 12
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; Renumbered from 409-023-0025 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0140
Prohibited Activities

Unless specifically required by state or federal rules, regulations, or statutes, the Authority is prohibited from:

(1) Disclosing individually identifiable patient, health care professional, or health care facility employee information;

(2) Intentionally linking or attempting to link individual providers to individual HAI events; and

(3) Providing patient-level or provider-level reportable HAI data to any state agency for enforcement or regulatory actions.

Stat. Auth.: ORS 442.420 & 2007 OL Ch. 838 § 1–6 & 12
Stats. Implemented: ORS 192.496, 192.502 & 2007 OL Ch. 838 § 1–6 & 12
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; Renumbered from 409-023-0030 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0145
Compliance

(1) Health care facilities that fail to comply with these rules or fail to submit required data shall be subject to civil penalties not to exceed $500 per day per violation.

(2) The Authority shall annually evaluate the quality of data submitted, as recommended by the committee.

Stat. Auth.: ORS 442.445 & 442.420
Stats. Implemented: ORS 442.445
Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; Renumbered from 409-023-0035 by PH 13-2013, f. 12-26-13, cert. ef. 1-1-14

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Rule Caption: Edits, amendments, and adoption of rules related to Radiation Protection Services
Adm. Order No.: PH 14-2013
Filed with Sec. of State: 12-26-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013

Rules Adopted: 333-106-0735
Rules Amended: 333-116-0660, 333-116-0680, 333-116-0683, 333-116-0687, 333-116-0690, 333-116-0700, 333-116-0715, 333-118-0040, 333-119-0010, 333-119-0090, 333-119-0110
Subject: The Oregon Health Authority, Public Health Division, Center for Health Protection is permanently amending and adopting Oregon Administrative Rules related to the programs within the Radiation Protection Services.

The Radiation Materials Licensing program is amending rules to comply with the Nuclear Regulatory Commission's (NRC) 10 CFR Parts 1-50 by correcting rule cross referencing pertaining to the training requirements for the medical use of radioactive materials. OAR 333-118-0040 is being revised to correct an omission within the rule allowing physicians to transport radioactive materials. Rule amendments do not impact current practices, but provides for clarity regarding rule referencing.

The X-ray program is adopting rules relating to the passage of Senate Bill 420 by the 2013 Legislative Assembly which requires facilities that perform mammography to notify the patient and healthcare provider if results identify the presence of dense breast tissue and to inform the patient of the possibility of unrecognized breast cancer. The rule also recommends the appropriateness of supplemental testing.

The Tanning program is adopting rules relating to the passage of House Bill 2896 by the 2013 Legislative Assembly. House Bill 2896 prohibits tanning facilities from allowing a person who is under 18 years of age to use a tanning device owned or operated by the facility except as directed by a licensed physician and to post a notice in a conspicuous space that communicates that persons under the age of 18 are not allowed to use a tanning device.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-106-0735
Breast Density Notification

(1) As used in this rule:

(a) "Breast Density" refers to the relative amount of different tissues present in the breast. A dense breast has less fat than glandular and connective tissue. Mammogram films of breasts with higher density are harder to read and interpret than those of less dense breasts. (Source: National Cancer Institute).

(b) "Facility" has the meaning given that term in 42 U.S.C. 263b and includes but is not limited to a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility that conducts breast cancer screening or diagnosis through mammography activities. "Facility" does not include a facility of the Department of Veterans Affairs.

(c) "Mammography activities" means the operation of equipment to produce a mammogram, the processing of the film, the initial interpretation of the mammogram and the viewing conditions for that interpretation.

(2) In all cases where a mammogram shows a patient has extreme breast density, the facility shall incorporate the following notification within the lay summary mammography report provided to the patient. When a mammogram shows a patient has heterogeneous breast density, the decision of whether or not to incorporate the patient notification is left to the interpreting radiologist's discretion:

DENSE BREAST TISSUE NOTIFICATION

Your mammogram shows that your breast tissue is dense. For most women, breast density decreases with age, but in some women, there is little change. Dense breast tissue is common and is not abnormal. However, dense breast tissue can make it harder to find cancer on a mammogram and may also be associated with an increased risk of breast cancer. This information is provided to you by Oregon State Law to raise your awareness and to promote discussion with your health care provider about your own risk for breast cancer. Together, you can decide if additional breast imaging tests such as a breast ultrasound, Magnetic Resonance Imaging (MRI) or Breast-Specific-Gamma-Imaging (BSGI) would be beneficial based on your risk factors and physical examinations. A report of your results was sent to your health care provider.

(3) The Dense Breast Tissue Notification statement and guidelines shall be included in the facility's policy on how they communicate mammography results to the patient and their health care providers.

Stat. Auth.: ORS 413.042 & 2013 OL Ch. 411
Stats. Implemented: 2013 OL Ch. 411
Hist.: PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-116-0660
Training for Uptake, Dilution or Excretion Studies

Except as provided in OAR 333-116-0740, the licensee shall require the authorized user of a radiopharmaceutical listed in 333-116-0300 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State and who meets the requirements in section (4) of this rule (The names of board certifications recognized by the NRC or an Agreement State are posted on the NRC's website). To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Complete 60 hours of training and experience in basic radionuclide handling techniques applicable to the medical use of unsealed byproduct material for uptake, dilution, and excretion studies. The training and experience must include paragraphs (3)(a)(A) through (3)(b)(F) of this rule; and

(b) Pass an examination administered by diplomats of the specialty board that assesses knowledge and competence in radiation safety, radionuclide handling and quality control; or

(2) Is an authorized user under OAR 333-116-0670, 333-116-0680, or equivalent Nuclear Regulatory Commission or Agreement State requirements; or

(3) Has completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed byproduct material for uptake, dilution, and excretion studies. The training and experience must include:

(a) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(b) Work experience, under the supervision of an authorized user who meets the requirements in OAR 333-116-0660, 333-116-0670, 333-116-0680 and 333-116-0740 or Nuclear Regulatory Commission or equivalent Agreement State requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(E) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(F) Administering dosages of radiopharmaceutical drugs to patients or human research subjects; and

(4) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements, in OAR 333-116-0740, 333-116-0660, 333-116-0670, or 333-116-0680, or Nuclear Regulatory Commission or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a) or section (3) of this rule and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under 333-116-0300.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-116-0680
Training for Therapeutic Use of Radiopharmaceuticals

Except as provided in OAR 333-116-0740, the licensee must require an authorized user of unsealed byproduct material for the uses authorized under 333-116-0360 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraph (2)(b)(F) and subparagraph (2)(b)(F)(ii) of this rule. (Specialty boards whose certification processes

have been recognized by the Nuclear Regulatory Commission or an Agreement State will be posted on the Nuclear Regulatory Commission's webpage). To be recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in section (2) and subsection (2)(b). Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed byproduct material for which a written directive is required; or

(2) Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training in basic radionuclide handling techniques applicable to the medical use of unsealed byproduct material requiring a written directive. The training and experience must include:

(a) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(b) Work experience, under the supervision of an authorized user who meets the requirements in OAR 333-116-0740, and sections (1) and (2) of this rule, or Nuclear Regulatory Commission or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in section (2) of this rule, must have experience in administering dosages in the same dosage category or categories as given in 333-116-0680(2)(b)(F) as the individual requesting authorized user status. The work experience must involve:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey instruments;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(E) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(F) Administering dosages of radiopharmaceutical drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

(i) Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131;

(ii) Oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131;

NOTE: Experience with at least three cases in Category (vii)(2) also satisfies the requirement in Category (vii)(A).

(iii) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV; or

(iv) Parenteral administration of any other radionuclide; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in sections (1) and (2) and (2)(b)(F) of this rule, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under OAR 333-116-0360. The written attestation must be signed by a preceptor authorized user who meets the requirements in 333-116-0740, 333-116-0680 or equivalent Nuclear Regulatory Commission or Agreement State requirements. The preceptor authorized user, who meets the requirements in section (2) of this rule, must have experience in administering dosages in the same dosage category or categories as given in 333-116-0680(2)(b)(F)(i), (ii), (iii), or (iv) as the individual requesting authorized user status.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-116-0683

Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Less Than or Equal to 1.22 Gigabecquerels (33 millicuries)

Except as provided in OAR 333-116-0740, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive and the total treatment quantity is less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in section (3) of this rule and whose certification has been recognized by the Nuclear Regulatory Commission or an Agreement State and who meets the requirements in subsection (3)(c) of this rule. (The names of board certifications which have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the Nuclear Regulatory Commission's webpage); or

(2) Is an authorized user under OAR 333-116-0680 for uses listed in 333-116-0680(2)(b)(F)(i) or (ii) or 333-116-0687, or equivalent Agreement State requirements; or

(3) Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive.

(a) The training must include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in OAR 333-116-0680, 333-116-0683, 333-116-0687, 333-116-0740 or equivalent Nuclear Regulatory Commission or Agreement State requirements. A supervising authorized user who meets the requirements in 333-116-0680(2) must have experience in administering dosages as specified in 333-116-0680(2)(b)(F)(i) or (ii). The work experience must involve:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Calibrating instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of byproduct material;

(E) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(F) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsections (3)(a) and (3)(b) of this rule and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under OAR 333-116-0360. The written attestation must be signed by a preceptor authorized user who meets the requirements in 333-116-0740, 333-116-0680, 333-116-0683, 333-116-0687 or equivalent Nuclear Regulatory Commission or Agreement State requirements. A preceptor authorized user, who meets the requirement in 333-116-0680(2), must also have experience in administering dosages as specified in 333-116-0680(2)(b)(F)(i) and (ii).

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-116-0687

Qualifications for Authorized User for Oral Administration When a Written Directive is Required

Except as provided in OAR 333-116-0740, the licensee must require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(a) and (3)(b) of this rule and whose certification has been recognized by the Commission or

an Agreement State, and who meets the requirements in subsection (3)(c) of this rule. (The names of board certifications which have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the Nuclear Regulatory Commission webpage); or

(2) Is an authorized user under OAR 333-116-0680 for uses listed in 333-116-0680(2)(b)(F)(ii), or equivalent Nuclear Regulatory commission or Agreement State requirements; or

(3) Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive.

(a) The training must include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in OAR 333-116-0680, 333-116-0687, 333-116-0740, or equivalent Nuclear Regulatory Commission or Agreement State requirements. A supervising authorized user, who meets the requirements in 333-116-0680(2), must have experience in administering dosages as specified in 333-116-0680(2)(b)(F)(ii). The work experience must involve:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Calibrating instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of byproduct material;

(E) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(F) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsections (3)(a) and (3)(b) of this rule, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under OAR 333-116-0360. The written attestation must be signed by a preceptor authorized user who meets the requirements in 333-116-0680, 333-116-0687, 333-116-0740, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in 333-116-0680(2), must have experience in administering dosages as specified in 333-116-0680(2)(b)(F)(ii).

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-116-0690
Training for Therapeutic Use of Brachytherapy Source

Except as provided in OAR 333-116-0740, the licensee must require the authorized user using manual brachytherapy sources specified in 333-116-0420 for therapy to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in section (2) of this rule. (The names of board certifications which have been recognized by the Commission or an Agreement State are posted on the NRC's webpage.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomates of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(2) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

(a) 200 hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(b) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this rule, OAR 333-116-0740 or equivalent Nuclear Regulatory Commission or Agreement State requirements at a medical institution, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Checking survey meters for proper operation;

(C) Preparing, implanting, and removing brachytherapy sources;

(D) Maintaining running inventories of material on hand;

(E) Using administrative controls to prevent a medical event involving the use of byproduct material; and

(F) Using emergency procedures to control byproduct material; and

(c) Has completed three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in OAR 333-116-0740, 333-116-0690, or equivalent Nuclear Regulatory Commission or Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, or the Royal College of Physicians and Surgeons of Canada, or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (2)(b) of this rule; and

(d) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in OAR 333-116-0740, 333-116-0690, or equivalent Nuclear Regulatory Commission or Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (1)(a), or subsections (2)(a), (2)(b) and (2)(c) of this rule and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under 333-116-0420.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 4-2013, f. & cert. ef. 1-29-13; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-116-0700
Training for Ophthalmic Use of Strontium-90

Except as provided in OAR 333-116-0740, the licensee must require the authorized user using only strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) Is an authorized user under OAR 333-116-0690 or equivalent Nuclear Regulatory Commission or Agreement State requirements; or

(2) Has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy.

(a) The training must include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training must involve:

(A) Examination of each individual to be treated;

(B) Calculation of the dose to be administered;

(C) Administration of the dose;

(D) Follow up and review of each individual's case history; and

(E) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in OAR 333-116-0740, 333-116-0690, 333-116-0700, or equivalent Nuclear Regulatory Commission or Agreement State requirements, that the individual has satisfactorily completed the requirements in section (2) of this rule and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 4-2013, f. & cert. ef. 1-29-13; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-116-0715

Training for the Parenteral Administration of Unsealed Byproduct Material Requiring a Written Directive

Except as provided in OAR 333-116-0740, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

(1) Is an authorized user under OAR 333-116-0680 for uses listed in 333-116-0680(2)(b)(F)(iii) or 333-116-0680(2)(b)(F)(iv) or equivalent Agreement State requirements; or

(2) Is an authorized user under OAR 333-116-0690 or 333-116-0720, or equivalent Agreement State or Nuclear Regulatory Commission requirements and who meets the requirements in section (4) of this rule; or

(3) Is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State under OAR 333-116-0690 or 333-116-0720, and who meets the requirements in section (4) of this rule.

(4) Has successfully completed 80 hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of any other radionuclide for which a written directive is required.

(a) The training must include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in OAR 333-116-0680, 333-116-0715, 333-116-0740 or equivalent Nuclear Regulatory Commission or Agreement State requirements, in the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in 333-116-0680 must have experience in administering dosages as specified in 333-116-0680(2)(b)(F)(iii) or 333-116-0680(2)(b)(F)(iv). The work experience must involve:

(A) Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(E) Using procedures to contain spilled byproduct material safely, and using proper decontamination procedures; and

(F) Administering dosages to patients or human research subjects, that include at least three cases involving the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV and at least three cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in sections (2) or (3) of this rule, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed byproduct material requiring a written directive. The written attestation must be signed by a preceptor authorized user who meets the requirements in OAR 333-116-0680, 333-116-0715, 333-116-0740 or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in 333-116-0680, must have experience in administering dosages as specified in 333-116-0680(2)(b)(F)(iii) or 333-116-0680(2)(b)(F)(iv).

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-118-0040

Exemptions

(1) Common and contract carriers, freight forwarders, and warehouse workers that are subject to the requirements of the U.S. Department of Transportation in 49 CFR 170 through 189 or the U.S. Postal Service in the U.S. Postal Service Manual Domestic Mail Manual, (DMM), section C-023.9.0 are exempt from the rules in chapter 333, divisions 102, 105, 113, 115, 116, 117, and 121 and the requirements for a license to the extent that they transport or store radioactive material in the regular course of their carriage for others or storage incident thereto. Common and contract carriers who are not subject to the requirements of the U.S. Department of Transportation or U.S. Postal Service are subject to OAR 333-118-0030 and other applicable requirements of these rules.

(2) Any licensee is exempt from the requirements of this division to the extent that the licensee delivers to a carrier for transport a package containing radioactive material having a specific activity not greater than (0.002 microcurie per gram 70 Becquerels per gram (Bq/g).

(3) Any physician licensed under division 116 or by an Agreement State or the Nuclear Regulatory Commission to dispense radiopharmaceuticals in the practice of medicine, is exempt from OAR 333-118-0050 with respect to transporting licensed material for use in the practice of medicine.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-119-0010

Definitions

(1) "Authority" means the Oregon Health Authority.

(2) "Customer" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a condition or benefit of membership or access.

(3) "Employee" means any individual, including a minor whether lawfully or unlawfully employed, who engages to furnish services for remuneration, financial or otherwise, subject to the direction and control of an employer and includes any individual who is required to have workers' compensation coverage.

(4) "EPA" means the U.S. Environmental Protection Agency.

(5) "FDA" means the U.S. Food and Drug Administration.

(6) "Formal Training" means a course of instruction reviewed and approved by the Authority and which is conducted or presented under formal classroom conditions or online by a qualified expert possessing adequate knowledge and experience to offer a curriculum, associated training, and certification testing pertaining to and associated with the correct use of tanning equipment. Operator training shall cover ultraviolet radiation and effects on the skin, photosensitivity, FDA and State of Oregon regulations, eye protection, and equipment maintenance.

(7) "Handrails" means a suitable physical aid that will help to maintain proper exposure distance.

(8) "Identification" means:

(a) A government-issued photo identification that displays the individual's date of birth; or

(b) A government or non-government issued photo identification when submitted with a completed Oregon Underage Tanning Medical Recommendation form.

(9) "Individual" means any human being.

(10) "Minor" means any individual under the age of 18 years old.

(11) "Operator" means the person who is an employee (defined by the Oregon Occupational Safety and Health Division, OAR 437-003-0011(2)) or contractor of the tanning facility who has received a certificate from an approved formal training course and who is responsible for:

(a) Determining customer's skin type;

(b) Determining the suitability for use of a tanning device;

(c) Providing information regarding the dangers of ultraviolet radiation exposure including photoallergic reactions and photosensitizing agents;

(d) Assuring that all required forms are understood and properly signed by the customer;

(e) Maintaining required exposure records;

(f) Recognizing and reporting injuries or alleged injuries to the registrant;

(g) Determining the customer's exposure schedule;

(h) Setting timers which control the duration of exposure; and

(i) Instructing the customer in the proper use of protective eyewear.

(12) "Other Compensation" means the payment or exchange of goods, services or anything of value for use of the tanning device or devices.

(13) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, polit-

ical subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.

(14) "Phototherapy Device" means equipment that emits Ultraviolet radiation used by a health care professional in the treatment of disease or illness.

(15) "Program" means the Radiation Protection Services section of the Public Health Division.

(16) "Protective Eyewear" means suitable eyewear that protects the eye from Ultraviolet radiation and allows adequate vision.

(17) "Public Places" means the area where members of the public may assemble and are not directly affected by tanning operations.

(18) "Recommendation" means a written directive using a form provided by the Authority and signed by a licensed physician.

(19) "Registrant" means a tanning facility registered with the Authority as required by provisions of this division.

(20) "Registration" means registration with the Authority in accordance with provisions of this division.

(21) "Safe Level" means not more than 50 colonies of microorganisms per four square inches of equipment surface.

(22) "Sanitize" means the effective bactericidal treatment of surfaces of equipment and devices by an EPA or FDA registered product that provides a sufficient concentration of chemicals, and enough time to reduce the bacterial count, including pathogens, to a safe level. Chemical germicides that are registered with EPA as hospital disinfectants when used at recommended dilutions and directions may be approved for sanitizing of tanning devices.

(23) Skin Types:

(a) "Type 1" means skin burns easily and severely (painful burn); tans little or none and peels.

(b) "Type 2" means skin burns easily and severely (painful burn); tans minimally or lightly and also peels.

(c) "Type 3" means skin burns moderately and tans about average.

(d) "Type 4" means skin burns minimally, tans easily and above average with each exposure; exhibits immediate pigment darkening reaction.

(e) "Type 5" means skin rarely burns, tans easily and substantial; always exhibits immediate pigment darkening reaction

(24) "Tanning Device" means any equipment used for tanning of the skin, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers including, but not limited to, a sunlamp, Ultraviolet Lamp, tanning booth, facial unit, UVA wand, or tanning bed. "Tanning device" also means any accompanying equipment, including, but not limited to, protective eyewear, timers, ballasts, starters, lamps, reflectors, cooling fans, acrylics, comfort pillows and handrails.

(25) "Tanning Facility" means any location, place, area, structure, or business that provides persons access to any tanning device.

(26) "Timer" means a device provided to terminate the exposure at a preset time interval.

(27) "Ultraviolet Radiation" means radiation that has a wavelength between two hundred nanometers and four hundred nanometers.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-119-0090
Protection of Consumers

The registrant shall establish and use a procedure manual that will aid in the protection of the customer to excessive or unnecessary exposure to Ultraviolet Light. This manual shall include, but not be limited to, the following instructions:

(1) Only one customer may occupy the tanning room. In the case of a customer using a tanning device who may need the aid or assistance from another person, that individual must also be provided with and wear protective eyewear.

(2) No customer under the age of 18 years shall be allowed to use a tanning device without a completed Oregon Underage Tanning Medical Recommendation form completed by a licensed physician and identification. The recommendation:

(a) Must identify the physician and client and describe the recommended tanning session frequency(s) and duration(s);

(b) Must identify dates for starting and ending of the tanning sessions; and

(c) Cannot exceed the exposure scheduled per OAR 333-119-0100(14)(b).

(3) A sign shall be posted in conspicuous view at or near the reception area with the following text in a minimum of at least 36 point type:

"PERSONS UNDER AGE 18 ARE NOT ALLOWED TO USE A TANNING DEVICE WITHOUT A WRITTEN RECOMMENDATION FROM A LICENSED PHYSICIAN"

(4) Each person using a tanning device shall be instructed by the operator on the maximum exposure time and proper exposure distance, as recommended by the manufacturer of the device. The operator shall also instruct the customer as to the location and proper operation of the tanning device's emergency shut off switch.

(5) Infants and minors are not permitted to be in the tanning device room during exposure by parents or guardians.

(6) Tanning operators shall limit exposure time to the exposure time recommendation provided by the device manufacturer on the tanning device or in the device operating manual. The maximum exposure time recommended by the manufacturer of the device shall not be exceeded in any 24-hour period.

(7) Tanning facilities shall post the following signs visible to the customer:

(a) "In Case Of An Emergency, Dial 911";

(b) "Oregon Radiation Protection Services at (971) 673-0490".

(8) Tanning operators shall maintain a list of the common photosensitizing agents as provided by the Public Health Division, FDA, or other appropriate authorities, available for review by customers.

(9) Tanning facilities are prohibited from controlling the use of tanning devices solely with token timer systems or a mechanical timer system.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.930
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

333-119-0110
Records and Reports

(1) The registrant shall maintain a record of each customer's total number of tanning visits, dates and durations of tanning exposures.

(2) The registrants shall maintain a record of each customer's signature and acknowledgement that they understand the potential risks involved with exposure to Ultraviolet radiation and overexposure, and that they have reviewed a photosensitizing drug list.

(3) The registrant shall maintain and have available when requested by the Authority, all completed Oregon Underage Tanning Medical Recommendation forms with copies of the identification used for each minor allowed to use a tanning device.

(4) Any tanning client who appears to be under the age of 26 years shall be required to show identification. The type of identification, identification number, client's name, and date of birth shall be recorded by the registrant. When requested by the Authority, records shall be available for review.

(5) The registrant shall submit to the Authority a written report of injury for which medical attention was sought or obtained from the use of registered tanning devices within five working days after occurrence. The report shall include:

(a) The name, address and phone number of the affected individual;

(b) The name, location and phone number of the tanning facility involved;

(c) The nature of the actual or alleged injury; and

(d) Any other information relevant to the actual or alleged injury to include the date and duration of exposure and any documentation of medical attention sought or obtained.

(6) The registrant shall maintain records showing the results of annual timer tests.

(7) The registrant shall maintain a record of operator training as required in OAR 333-119-0080(4).

(8) The registrant shall maintain the following information for each tanning device:

(a) Manufacturer's equipment manual and any other service related material or instruction; and

(b) The exposure schedule developed by the manufacturer; and

(c) Records of surveys, inspections, maintenance, and modifications performed on the tanning device with names of persons performing such services, the date of service, and the hour meter reading of the device serviced.

(9) Records shall be maintained showing the receipt, transfer, repair and disposal of all tanning devices and lamps.

(10) All required records shall be maintained until inspected by the Authority and shall be so filed as to be readily available for review.

Stat. Auth.: ORS 431.925 - 431.955
Stats. Implemented: ORS 431.925 - 431.955
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 14-2013, f. 12-26-13, cert. ef. 1-1-14

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Rule Caption: Procedures and criteria for the certification, suspension and decertification of school-based health centers
Adm. Order No.: PH 15-2013
Filed with Sec. of State: 12-26-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 333-028-0200, 333-028-0210, 333-028-0220, 333-028-0230, 333-028-0240, 333-028-0250
Subject: The Oregon Health Authority, Public Health Division is permanently adopting rules pertaining to the procedures and criteria for the certification, suspension and decertification of school-based health centers (SBHCs) as mandated by the passage of House Bill 2445 (OL 2013, ch. 683) by the 2013 Legislature. The rules are intended to fulfill the mandates by prescribing certification requirements used for clinics to qualify as SBHCs, the reporting requirements for SBHCs, and the process to become a certified SBHC.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-028-0200
Purpose

The school-based health center (SBHC) program supports communities in promoting the health and well-being of the school-age population through the evidence-based best practice within a public health framework. These rules (OAR 333-028-0200 through 333-028-0250) establish the procedure and criteria the Oregon Health Authority shall use to certify, suspend and decertify SBHCs. Certification of a SBHC by the SBHC state program is voluntary; an operating clinic is free to choose not to participate in certification and still operate. Only certified SBHCs are eligible for funding from the Oregon Health Authority.

Stat. Auth.: 2013 OL Ch. 683
Stats. Implemented: 2013 OL Ch. 683 & ORS 413.225
Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14

333-028-0210
Definitions

(1) "Authority" means the Oregon Health Authority.

(2) "Certification year" means a one-year period beginning on July 1 and ending on June 30.

(3) "Electronic health record (EHR)" means an electronic record of an individual's health-related information that conforms to nationally recognized interoperability standards and that can be created, managed and consulted by authorized clinicians and staff across more than one health care provider.

(4) "Electronic medical record (EMR)" means a digital version of a paper chart that contains all of the patient's medical history from one practice. An EMR is mostly used by providers for diagnosis and treatment.

(5) "Program" means the Oregon Health Authority, Public Health Division, school-based health center program.

(6) "School-based health center" (SBHC) has the meaning given the term in ORS 413.225.

(7) "SBHC system" is one or more SBHCs that operate under the same sponsoring agency.

(8) "Sponsoring agency" is an entity that provides the following services for a SBHC or contracts with another entity to provide one or more of the following:

(a) Funding;
(b) Staffing;
(c) Medical oversight;
(d) Liability insurance; and
(e) Billing support.

Stat. Auth.: 2013 OL Ch. 683
Stats. Implemented: 2013 OL Ch. 683 & ORS 413.225
Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14

333-028-0220
Certification Requirements

In order to be certified as a SBHC, a SBHC must meet all requirements for certification in the following sections of the 2013 SBHC Standards for Certification Manual, incorporated by reference.

(1) Sponsoring agency, section B.1;
(2) Facility, section B.2;
(3) Hours of operation, section C.1;
(4) Staffing, section C.2;
(5) Eligibility for services, section C.3;
(6) Policies and procedures, section C.4;
(7) Laboratory/Diagnostic services, section D;
(8) Comprehensive Services, section E.1;
(9) Equipment, section E.2;
(10) Medication, section E.3;
(11) Data collection/reporting, section F; and
(12) Billing, section G.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: 2013 OL Ch. 683
Stats. Implemented: 2013 OL Ch. 683 & ORS 413.225
Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14

333-028-0230
Application and Certification Process

(1) An individual with legal authority to act on behalf of the entity that administers a SBHC may apply for certification of a SBHC by submitting a SBHC Certification Application to the Authority via electronic mail to the program's electronic mail address posted on the program's website or by mail to the mailing address posted on the program's website, www.healthoregon.org/sbhc. Instructions and criteria for submitting a SBHC Certification Application is posted on the program's website.

(2) An individual may submit an application for more than one SBHC provided that each SBHC will be administered by the same entity and each SBHC individually meets the certification requirements.

(3) The program shall review the application within 30 days of receiving the application to determine whether it is complete.

(4) If the program determines that the application is not complete, it will be returned to the applicant for completion and resubmission.

(5) If the program determines that the application is complete it will be reviewed to determine if it meets certification requirements described in OAR 333-028-0210. If the program determines that on the face of the application and in reviewing any other applicable documents that the SBHC meets the certification requirements the program shall:

(a) Inform the applicant in writing that the application has been approved;

(b) Request the applicant complete the program's online Operational Profile forms prior to the on-site verification review; and

(c) Schedule an on-site verification review.

(6) If a SBHC does not meet certification requirements in their certification application, the Authority may choose one of the following actions:

(a) The program may deny SBHC certification if the SBHC does not meet the requirements of these rules. The program will provide the applicant with a clear description of reasons for denial based on the certification requirements in the denial letter. An applicant may request that the program reconsider the denial of SBHC certification. A request for reconsideration must be submitted in writing to the program within 90 days of the date of the denial letter and must include a detailed explanation of why the applicant believes the program's decision is in error along with any supporting documentation. The program shall inform the applicant in writing whether it has reconsidered its decision; or

(b) The program may approve the applicant's SBHC certification based on an agreed upon timeline for a corrective action plan for the non-compliant requirements. The site must submit a waiver to the program that includes an explanation of the non-compliant requirements, a plan for corrective action and date for meeting compliance.

(7) Once a SBHC is certified, the certification status is effective for the following certification year.

(8) A certified SBHC must renew its certification no later than October 1 each year via the program's online Operational Profile forms in order to remain certified.

(9) The program will notify SBHCs of their certification renewal status by November 1 each year.

Stat. Auth.: 2013 OL Ch. 683
Stats. Implemented: 2013 OL Ch. 683 & ORS 413.225
Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14

333-028-0240
Verification

(1) The program shall conduct one on-site verification review of each approved SBHC within one year of application approval to determine compliance with SBHC certification requirements.

(2) After the initial on-site verification review, the program shall conduct an on-site verification review every two years for a representative sample of certified SBHCs in each SBHC system.

(3) A SBHC will be notified, in writing, no less than 30 days before its scheduled verification review.

(4) A SBHC must permit program staff access to the site's place of business during the review.

(5) The verification review must include, but is not limited to:

(a) Review of documents, policies and procedures, and records;

(b) Review of electronic medical record systems, review of electronic health records systems, and review of practice management systems;

(c) Review of data reports from electronic systems or other patient registry and tracking systems;

(d) Interviews with practice management, clinical and administrative staff;

(e) On-site observation of practice staff with at a minimum two patients, with the consent of the patient; and

(f) On-site observation of patient environment and physical environment.

(6) Following a review, program staff may conduct an exit interview with SBHC representative(s). During the exit interview the program staff shall:

(a) Inform the SBHC representative(s) of the preliminary findings of the review; and

(b) Give the SBHC representatives(s) a reasonable opportunity to submit additional facts or other information to the program staff in response to the findings.

(7) Within two weeks of the on-site visit program staff must prepare and provide the SBHC with a written report of the findings from the on-site review.

(8) If no certification deficiencies are found during the review, the program shall issue written findings to the SBHC indicating no deficiencies were found.

(9) If certification deficiencies are found during the on-site review, the program may take action in compliance with OAR 333-028-0250.

(10) The program may conduct a review of a certified SBHC without prior notice of any or all selected certification requirements for compliance and perform a verification on-site review of a certified SBHC if the program is made aware of issues of compliance from any source.

(11) At any time, a SBHC may request an administrative review of compliance, which includes one on-site visit. The review will be considered a "no penalty" review with the exception of gross violation or negligence that may require site closure or temporary suspension of services.

Stat. Auth.: 2013 OL Ch. 683
Stats. Implemented: 2013 OL Ch. 683 & ORS 413.225
Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14

333-028-0250
Compliance

(1) A SBHC must notify the program within 20 days of any change that brings the SBHC out of compliance with the certification requirements. A SBHC must submit a waiver to the program that includes an explanation of the non-compliant requirement, a plan for corrective action and date for meeting compliance.

(2) The program will review the waiver request and inform the SBHC of approval or denial of the waiver within two weeks of submission.

(3) If the waiver is approved the SBHC must comply with certification requirements by the proposed date of compliance.

(4) If a waiver is denied; a SBHC does not come into compliance by the date of compliance stated on the waiver; or a SBHC is out of compliance with certification requirements and has not submitted a waiver, based on the program's discretion, the program may:

(a) Require the SBHC to complete an additional waiver with an updated plan for corrective action and updated date for meeting compliance; or

(b) Require the SBHC to complete a waiver to satisfy the requirements in section (1) of this rule; or

(c) Issue a written warning with a timeline for corrective action; or

(d) Issue a letter of non-compliance with the notification of a suspension or decertification status.

(5) A SBHC that had been decertified may be reinstated after reapplying for certification.

(6) A SBHC with its certification status suspended may have its suspension lifted once the program determines that compliance with certification requirements has been achieved satisfactorily.

(7) If there are updates to the current rules that require a SBHC to make any operational changes, the program will allow the SBHC until the beginning of the next certification year or a minimum of 90 days to come into compliance.

Stat. Auth.: 2013 OL Ch. 683
Stats. Implemented: 2013 OL Ch. 683 & ORS 413.225
Hist.: PH 15-2013, f.12-26-13, cert. ef. 1-1-14

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Rule Caption: New definitions and new disease reporting requirements
Adm. Order No.: PH 16-2013
Filed with Sec. of State: 12-26-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 333-019-0052, 333-056-0045
Rules Amended: 333-017-0000, 333-018-0005, 333-018-0010, 333-018-0015, 333-018-0018, 333-018-0020, 333-018-0035, 333-019-0010, 333-019-0014, 333-019-0031, 333-056-0020, 333-056-0030, 333-056-0040, 333-056-0050
Rules Repealed: 333-019-0046
Subject: The Oregon Health Authority, Public Health Division is permanently amending, adopting and repealing rules in chapter 333, divisions 17, 18, 19 and 56 relating to reportable diseases and infectious waste. The changes will: add clarifying language regarding definitions in division 17; add Vibrio spp, Grimontia spp, and nontuberculous mycobacteria (NTM) to the list of reportable diseases in division 18; simplify Typhoid restrictions, add mumps to imposition of restrictions, and adopt a new rule regarding communication during patient transfer of multidrug-resistant organisms in division 19; and adopt a rule in division 56 to implement HB 2612 (Oregon Laws 2013, chapter 109), which entitles post-partum mothers, or their designees if they are incapacitated, to take their placentas with them after discharge from the health care facility wherein the mother had given birth if certain criteria are met.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-017-0000
Definitions

For purposes of OAR chapter 333, divisions 17, 18, and 19, unless the context requires otherwise or a rule contains a more specific definition, the following definitions shall apply.

(1) "AIDS": AIDS is an acronym for acquired immunodeficiency syndrome. An individual is considered to have AIDS when their illness meets criteria published in Morbidity and Mortality Weekly Report, Volume 41, Number RR-17, pages 1–4, December 18, 1992.

(2) "Animal Suspected of Having Rabies": An animal is suspected of having rabies when:

(a) It is a dog, cat, or ferret not known to be satisfactorily vaccinated against rabies (as defined in OAR 333-019-0017), or it is any other mammal; and

(b) It exhibits one or more of the following aberrant behaviors or clinical signs: unprovoked biting of persons or other animals, paralysis or partial paralysis of limbs, marked excitation, muscle spasms, difficulty swallowing, apprehensiveness, delirium, or convulsions; and it has no other diagnosed illness that could explain the neurological signs.

(3) "Approved Fecal Specimen" means a specimen of feces from a person who has not taken any antibiotic orally or parenterally for at least 48 hours prior to the collection of the specimen. Improper storage or transportation of a specimen, or inadequate growth of the culture suggestive of recent antibiotic usage can, at the discretion of public health microbiologists, result in specimen rejection.

(4) "Authority" means the Oregon Health Authority.

(5) "Bite, Biting, Bitten": The words bite, biting, and bitten refer to breaking of the skin by the teeth of an animal, or mouthing a fresh abrasion of the skin by an animal.

(6) "Case" means a person who has been diagnosed by a health care provider as having a particular disease, infection, or condition, or whose illness meets defining criteria published in the Authority's Investigative Guidelines.

(7) "Child Care Facility" means any facility as defined in ORS 657A.250 where care is provided to three or more children.

(8) "Control" has the meaning given that term in ORS 433.001.

(9) "Disease outbreak" has the meaning given that term in ORS 431.260.

(10) "Enterobacteriaceae family" means the family of bacteria that includes but is not limited to the following genera and taxonomic groups:

(a) Budvicia;

(b) Buttiauxella;
(c) Cedecea;
(d) Citrobacter;
(e) Edwardsiella;
(f) Enteric Group 58;
(g) Enteric Group 59;
(h) Enteric Group 60;
(i) Enteric Group 63;
(j) Enteric Group 64;
(k) Enteric Group 68;
(l) Enteric Group 69;
(m) Enteric Group 137;
(n) Enterobacter;
(o) Escherichia;
(p) Ewingella;
(q) Hafnia;
(r) Klebsiella;
(s) Kluyvera;
(t) Leclercia;
(u) Leminorella;
(v) Moellerella;
(w) Morganella;
(x) Obesumbacterium;
(y) Pantoea;
(z) Photorhabdus;
(aa) Plesiomonas;
(bb) Pragia;
(cc) Proteus;
(dd) Providencia;
(ee) Rahnella;
(ff) Salmonella;
(gg) Serratia;
(hh) Shigella;
(ii) Tatumella;
(jj) Trabulsiella;
(kk) Xenorhabdus;
(ll) Yersinia;
(mm) Yokenella.

(11) "Food Handler" means any business owner or employee who handles food utensils or who prepares, processes, handles or serves food for people other than members of their immediate household, for example restaurant, delicatessen, and cafeteria workers, caterers, and concession stand operators.

(12) "Food Service Facility" means an establishment that processes or serves food for sale.

(13) "Health Care Facility" has the meaning given that term in ORS 442.015.

(14) "Health Care Provider" has the meaning given that term in ORS 433.443.

(15) "HIV" means the human immunodeficiency virus, the causative agent of AIDS.

(16) "HIV Test" means a Food and Drug Administration (FDA)-approved test for the presence of HIV (including RNA testing), or for antibodies or antigens that result from HIV infection, or for any other substance specifically associated with HIV infection and not with other diseases or conditions.

(17) "HIV Positive Test" means a positive result on the most definitive HIV test procedure used to test a particular individual. In the absence of the recommended confirmation tests, this means the results of the initial test done.

(18) "Lead Poisoning" means a blood lead level of least 10 micrograms per deciliter.

(19) "Licensed Laboratory" means a medical diagnostic laboratory that is inspected and licensed by the Authority or otherwise licensed according to the provisions of the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. § 263a). Any laboratory operated by the U.S. Centers for Disease Control and Prevention shall also be considered a Licensed Laboratory.

(20) "Licensed Physician" means any physician who is licensed by the Oregon Medical Board or the Board of Naturopathic Medicine.

(21) "Licensed Veterinarian" means a veterinarian licensed by the Oregon Veterinary Medical Examining Board.

(22) "Local Public Health Administrator" has the meaning given that term in ORS 431.260.

(23) "Local Public Health Authority" has the meaning given that term in ORS 431.260.

(24) "Non-Susceptible to any Carbapenem Antibiotic" means the finding of any of the following:

(a) Gene sequence specific for carbapenemase;

(b) Phenotypic test (e.g., Modified Hodge) positive for production of carbapenemase; or

(c) Resistance to all third-generation cephalosporin antibiotics tested, along with any of the following elevated minimum inhibitory concentrations (MIC) for a carbapenem antibiotic:

(A) MIC for imipenem greater than or equal to 2 µg/ml; or

(B) MIC for meropenem greater than or equal to 2 µg/ml.

(25) "Novel Influenza" means influenza A virus that cannot be subtyped by commercially distributed assays.

(26) "Onset": Unless otherwise qualified, onset refers to the earliest time of appearance of signs or symptoms of an illness.

(27) "Pesticide Poisoning" means illness in a human that is caused by acute or chronic exposure to:

(a) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or

(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant as defined in ORS 634.006.

(28) "Public Health Division (Division)" means the Public Health Division within the Oregon Health Authority.

(29) "Suspected Case" means a person whose illness is thought by a health care provider to have a significant likelihood of being due to a reportable disease, infection, or condition, based on facts such as but not limited to the patient's signs and symptoms, possible exposure to a reportable disease, laboratory findings, or the presence or absence of an alternate explanation for the illness.

(30) "Uncommon Illness of Potential Public Health Significance": These illnesses include:

(a) Any infectious disease with potentially life-threatening consequences that is exotic to or uncommon in Oregon, for example, variola (smallpox) or viral hemorrhagic disease;

(b) Any illness related to a contaminated medical device or product; or

(c) Any acute illness suspected to be related to environmental exposure to any infectious or toxic agent or to any household product.

(31) "Veterinary Laboratory" means a laboratory whose primary function is handling and testing diagnostic specimens of animal origin.

[Publications: Publications referenced are available from the Agency.]
Stat. Auth.: ORS 413.042, 433.004, 437.010, 616.745 & 624.080
Stats. Implemented: ORS 433.004, 433.360, 437.030, 616.745 & 624.380
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 12-1983, f. & ef. 8-1-83; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 13-1990(Temp), f. 3-25-90, cert. ef. 8-1-90; HD 5-1991, f. 5-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 2-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 5-2010, f. & cert. ef. 3-11-10; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0005
To Whom Reports Shall Be Made

(1) In general, if the patient is an Oregon resident, reports shall be made to the local public health administrator for the patient's place of residence.

(2) In lieu of reporting to the local public health administrator, with the consent of the local public health administrator and the Authority, reports may be made directly to the Authority (for example, via electronic reporting).

(3) In urgent situations when local public health staff are unavailable, case reports shall be made directly to the Authority.

(4) Where the case is not an Oregon resident, reports shall be made either to the patient's local public health authority (if the patient resides in the United States) or directly to the Authority.

(5) In lieu of reporting to the local public health administrator, with the consent of the local public health administrator, licensed laboratories shall report directly to the Authority's HIV Program:

(a) All tests indicative of and specific for HIV infection as required by OAR 333-018-0015;

(b) All CD4+ T-lymphocyte counts; and

(c) All HIV viral load tests.

Stat. Auth.: ORS 431.110, 433.001, 433.004, 433.006
Stats. Implemented: ORS 431.110, 433.001, 433.004, 433.006, 433.106
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-

2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 1-2007, f. & cert. ef. 1-16-07; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0010
Form of the Report

(1) A health care provider required to report reportable diseases under ORS 433.004 and these rules shall submit to the local public health administrator a report that includes but is not limited to:

(a) The identity, address, and telephone number of the person reporting;

(b) The identity, address, and telephone number of the attending health care provider, or other treating health care provider if any;

(c) The name of the person affected or ill, that person's current address, telephone number, and date of birth;

(d) The diagnosed or suspected disease, infection, or condition; and

(e) The date of illness onset.

(2) A licensed laboratory required to report reportable diseases under ORS 433.004 and these rules shall submit to the local public health administrator a report that includes but is not limited to:

(a) The name and telephone number of the reporting laboratory;

(b) The name, gender, age or date of birth, the address and county of residence of the person from whom the laboratory specimen was obtained, if known;

(c) The date the specimen was obtained;

(d) The name, address and telephone number of the health care provider of the person from whom the laboratory specimen was obtained;

(e) The name or description of the test;

(f) The test result; and

(g) Information required by the Authority's Manual for Mandatory Electronic Laboratory Reporting, if electronic reporting is required under OAR 333-018-0013.

(3) Reportable disease reports shall be made in the following manner:

(a) Reports for diseases or suspected diseases that are immediately reportable under OAR 333-018-0015 shall be submitted orally, by telephone, with a follow-up written report via facsimile.

(b) Reports for diseases or suspected diseases that are required to be reported within one to seven days under OAR 333-018-0013 shall be submitted in writing via facsimile or by other means approved by the local public health administrator, consistent with the need for timely reporting as provided in OAR 333-018-0015.

(c) Electronically, if required by OAR 333-018-0013.

(4) If requested by a local public health administrator or the Oregon Public Health Division, health care providers and licensed laboratories shall provide additional information of relevance to the investigation or control of reportable diseases or conditions (for example, reported signs and symptoms, laboratory test results (including negative results), potential exposures, contacts, and clinical outcomes).

Stat. Auth.: ORS 413.042 & 433.004
Stats. Implemented: ORS 433.004
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 29-1994, f. & cert. ef. 12-2-94; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 5-2010, f. & cert. ef. 3-11-10; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0015
What Is to Be Reported and When

(1) Health care providers shall report all human cases or suspected human cases of the diseases, infections, microorganisms, and conditions specified below. The timing of health care provider reports is specified to reflect the severity of the illness or condition and the potential value of rapid intervention by public health agencies.

(2) When local public health administrators cannot be reached within the specified time limits, reports shall be made directly to the Authority, which shall maintain an around-the-clock public health consultation service.

(3) Licensed laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, and conditions specified below for humans. Such tests include but are not limited to: microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences.

(4) Human reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:

(a) Immediately, day or night: Bacillus anthracis (anthrax); Clostridium botulinum (botulism); Corynebacterium diphtheriae (diphtheria); novel influenza; Yersinia pestis (plague); poliomyelitis; rabies (human); measles (rubeola); Severe Acute Respiratory Syndrome (SARS) and infection by SARS coronavirus; rubella; variola major (smallpox); Francisella tularensis (tularemia); Vibrio cholerae O1, O139, or toxigenic; hemorrhagic fever caused by viruses of the filovirus (e.g., Ebola, Marburg) or arenavirus (e.g., Lassa, Machupo) families; yellow fever; intoxication caused by marine microorganisms or their byproducts (for example, paralytic shellfish poisoning, domoic acid intoxication, ciguatera, scombroid); any known or suspected common-source outbreaks; any uncommon illness of potential public health significance.

(b) Within 24 hours (including weekends and holidays): Haemophilus influenzae (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); Neisseria meningitidis (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); pesticide poisoning.

(c) Within one local public health authority working day: Bordetella pertussis (pertussis); Borrelia (relapsing fever, Lyme disease); Brucella (brucellosis); Campylobacter (campylobacteriosis); Chlamydophila (Chlamydia) psittaci (psittacosis); Chlamydia trachomatis (chlamydiosis; lymphogranuloma venereum); Clostridium tetani (tetanus); Coxiella burnetii (Q fever); Creutzfeldt-Jakob disease and other transmissible spongiform encephalopathies; Cryptococcus (cryptococcosis), Cryptosporidium (cryptosporidiosis); Cyclospora cayetanensis (cyclosporosis); bacteria of the Enterobacteriaceae family found to be non-susceptible to third-generation cephalosporins and to carbapenem antibiotic (other than ertapenem); Escherichia coli (Shiga-toxigenic, including E. coli O157 and other serogroups); Giardia (giardiasis); Grimontia spp.; Haemophilus ducreyi (chancroid); hantavirus; hepatitis A; hepatitis B (acute or chronic infection); hepatitis C; hepatitis D (delta); hepatitis E; HIV infection (does not apply to anonymous testing) and AIDS; death of a person <18 years of age with laboratory-confirmed influenza; lead poisoning; Legionella (legionellosis); Leptospira (leptospirosis); Listeria monocytogenes (listeriosis); mumps; Mycobacterium tuberculosis and M. bovis (tuberculosis); nonrespiratory infection with nontuberculous mycobacteria; Neisseria gonorrhoeae (gonococcal infections); pelvic inflammatory disease (acute, nongonococcal); Plasmodium (malaria); Rickettsia (all species: Rocky Mountain spotted fever, typhus, others); Salmonella (salmonellosis, including typhoid); Shigella (shigellosis); Taenia solium (including cysticercosis and undifferentiated Taenia infections); Treponema pallidum (syphilis); Trichinella (trichinosis); Vibrio spp.; Yersinia (other than pestis); any infection that is typically arthropod vector-borne (for example: babesiosis, California encephalitis, Colorado tick fever, dengue, Eastern equine encephalitis, ehrlichiosis, Heartland virus infection, Kyasanur Forest disease, St. Louis encephalitis, West Nile fever, Western equine encephalitis, etc.); a human bitten by any other mammal; and hemolytic uremic syndrome.

(d) Within seven days: Any blood lead level tests including the result.

(5) Licensed laboratories shall report, within seven days, the results of all tests of CD4+ T-lymphocyte absolute counts and the percent of total lymphocytes that are CD4 positive, and HIV nucleic acid (viral load) tests.

Stat. Auth.: ORS 413.042, 433.004 & 433.006
Stats. Implemented: ORS 433.004 & 437.010
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 7-2006, f. & cert. ef. 4-17-06; PH 13-2006(Temp), f. 6-27-06, cert. ef. 7-1-06 thru 12-27-06; PH 19-2006, f. & cert. ef. 9-13-06; PH 11-2007(Temp), f. & cert. ef. 8-22-07 thru 2-18-08; PH 13-2007, f. & cert. ef. 11-7-07; PH 8-2009(Temp), f. & cert. ef. 9-1-09 thru 2-26-10; PH 5-2010, f. & cert. ef. 3-11-10; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0018
Submission of Isolates to the Public Health Laboratory

Licensed laboratories are required to forward aliquots or subcultures of the following to the Oregon State Public Health Laboratory:

(1) Suspected Neisseria meningitidis and Haemophilus influenzae from normally sterile sites.

(2) Suspected Shiga-toxigenic Escherichia coli (STEC), including E. coli O157; Salmonella spp., Shigella spp., Vibrio spp., Grimontia spp., Listeria spp., Yersinia spp.; Mycobacterium tuberculosis and M. bovis from any source.

(3) Serum that tests positive for IgM antibody to hepatitis A virus.

(4) Serum that tests positive for IgM core antibody to hepatitis B virus.

(5) All cryptococcal isolates.

(6) All isolates of the Enterobacteriaceae family resistant to third-generation cephalosporins and non-susceptible to any carbapenem antibiotic other than ertapenem.

(7) For persons under the age of 18 who died with laboratory-confirmed influenza: respiratory specimens or viral isolates, any Staphylococcus aureus isolates, and, after consulting with the Oregon Public Health Division, autopsy specimens.

Stat. Auth.: ORS 413.042, 433.004 & 438.450
Stats. Implemented: ORS 433.004 & 438.310
Hist.: HB 248, f. 6-30-70, ef. 7-25-70; HD 28-1988, f. & cert. ef. 12-7-88; HD 20-1994, f. & cert. ef. 7-20-94; HD 6-1995, f. & cert. ef. 9-13-95; OHD 11-2001, f. & cert. ef. 5-16-01, Renumbered from 333-024-0050(5); OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 28-2006, f. 11-30-06, cert. ef 12-18-06; PH 5-2010, f. & cert. ef. 3-11-10; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0020
Reports from Local Public Health Administrators

(1) The local public health administrator shall notify the Authority immediately of any reported cases of the following diseases and conditions: anthrax, botulism (foodborne), cholera, diphtheria, marine intoxications, measles, pesticide poisoning, plague, poliomyelitis, rabies; any uncommon illness of potential public health significance; any outbreak of disease.

(2) Animal bites that have been investigated by the local public health administrator and for which testing of the biting animal for rabies has been deemed unnecessary need not be reported to the Authority.

(3) For other reportable diseases and conditions, the local public health administrator shall notify the Authority no later than the end of each business week of all cases reported during that week. Reports shall be made by means approved by the Authority and in a format approved by the Authority.

Stat. Auth.: ORS 431.110, 431.120, 433.004, 437.010, 616.010 & 624.005
Stats. Implemented: ORS 433.004 & 437.010
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 12-1983, f. & ef. 8-1-83; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 29-1994, f. & cert. ef. 12-2-94; OHD 3-2002, f. & cert. ef. 3-4-02; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-018-0035
Procedures Involving Emergency Response Employees

(1) Each person or local government employing persons to render emergency care shall designate a contact person or "designated officer" to receive reports from the local public health administrator made under ORS 433.006. The employer shall assure that the designated officer has sufficient training to carry out the duties as described below, which shall include appropriate procedures for follow-up after occupational exposures to specific diseases as specified below in section (2) and section (6).

(2) Sections (3) through (5) apply only to the following subset of reportable diseases: meningococcal disease, infectious pulmonary or laryngeal tuberculosis, diphtheria, plague (Yersinia pestis), rabies, hemorrhagic fevers (for example, Lassa, Marburg, and Ebola).

(3) Health care providers and health care facilities shall, when reporting this subset of diseases, determine and include as part of their report whether or not an emergency care provider was involved in pre-hospital care for this disease.

(4) Health care providers and facilities shall report to the local public health administrator and may relay the diagnosis of these diseases directly to the emergency care providers or the designated officer specified below in section (5), but shall not disclose the identity or addresses of the person having the disease or otherwise refer specifically to the person.

(5) Upon receiving a report of a reportable disease as defined in section (2) above, the designated officer shall notify all out-of-hospital caregivers, including but not limited to: first responders, emergency medical technicians, paramedics, firefighters, law enforcement officers, corrections officers, probation officers, or other current or former personnel of the employer who may have been exposed to the reportable disease. The designated officer shall inform the personnel only of the reportable disease and the fact of possible exposure and the appropriate follow-up procedures. The designated officer shall not inform the personnel of the identity or addresses of the individual having the reportable disease or otherwise refer specifically to the individual having the reportable disease.

(6) In the event of an occupational exposure to a bloodborne pathogen as defined by ORS 433.060, the designated officer shall also assist the exposed worker as defined in ORS 433.060 in implementing the provisions of ORS 433.065 through ORS 433.080 and associated Authority rules (chapter 333, division 22). These rules include provisions for determining HIV, hepatitis B and hepatitis C status of the source patient and soliciting HIV testing after an occupational exposure.

Stat. Auth.: ORS 433.045 - 433.080 & 431.110
Stats. Implemented: ORS 433.006 & 433.065
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 12-1983, f. & ef. 8-1-83; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 29-1994, f. & cert. ef. 12-2-94; HD 8-1997, f. & cert. ef. 6-26-97; OHD 15-2001, f. & cert. ef. 7-12-01, Renumbered from 333-018-0023; OHD 3-2002, f. & cert. ef. 3-4-02; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-019-0010
Imposition of Restrictions

(1) To protect the public health, persons who attend or work at schools or child care facilities or who work at health care facilities or food service facilities shall not attend or work at these facilities whilst in a communicable stage of any restrictable diseases unless authorized to do so as hereunder specified.

(2) At all such facilities, restrictable diseases include: diphtheria, measles, Salmonella enterica serotype Typhi infection, shigellosis, Shiga-toxigenic Escherichia coli (STEC) infection, hepatitis A, tuberculosis, open or draining skin lesions infected with Staphylococcus aureus or Streptococcus pyogenes, and any illness accompanied by diarrhea or vomiting.

(3) At schools, child care, and health care facilities, such restrictable diseases shall also include: chickenpox, mumps, pertussis, rubella, and scabies. Children in the communicable stages of hepatitis B infection may be excluded from attending school or child care if, in the opinion of the local health officer, the child poses an unusually high risk to other children (for example, exhibits uncontrollable biting or spitting).

(4) At the discretion of local school authorities or the local public health authority, pediculosis may be considered a school-restrictable condition.

(5) Nothing in these rules prohibits the adoption of more stringent rules regarding exclusion from schools or child care facilities. Such additional restrictions shall require formal certification that the disease or condition in question presents a significant public health risk in that setting. For schools, this action may be taken by the local public health authority or the local school governing body. For child care facilities, this action may be taken by the local public health authority.

(6) The infection control committee at all health care facilities shall adopt policies to restrict the work of employees with restrictable diseases in accordance with recognized principles of infection control. Nothing in these rules prohibits health care facilities or the local public health authority from adopting additional or more stringent rules for exclusion from these facilities.

Stat. Auth.: ORS 413.042, 431.110, 433.004, 433.329, 433.332, 616.750, & 624.005
Stats. Implemented: ORS 433.260, 433.407, 433.411 & 433.419
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; OHD 4-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-019-0014
Removal of Restrictions

(1) Worksite, child care, and school restrictions can be removed by statement of the local public health administrator that the disease is no longer communicable to others or that adequate precautions have been taken to minimize the risk of transmission.

(2) School or child care restrictions for chickenpox, scabies, staphylococcal skin infections, streptococcal infections, diarrhea, or vomiting may also be removed by a school nurse or health care provider.

(3) Restrictions at health care facilities for chickenpox, scabies, staphylococcal skin infections, streptococcal infections, diarrhea, or vomiting may also be removed by the facility's infection control committee when sufficient measures have been taken to prevent or minimize the transmission of disease, in accordance with written procedures approved by the committee.

(4) In general, restrictions on persons diagnosed with shigellosis or Shiga-toxigenic Escherichia coli (STEC) infection, including E. coli O157 infection shall not be lifted until no pathogens are identified by a licensed laboratory in two consecutive approved fecal specimens collected not less than 24 hours apart. Such restrictions may be waived or modified at the discretion of the local public health administrator.

(5) Individuals infected with Salmonella enterica serotype Typhi (with or without symptoms), hereinafter referred to as "typhoid cases," must, before having a restriction removed, submit fecal specimens and one urine specimen to a licensed laboratory for testing on a schedule specified by the local public health administrator.

(6) A restriction on a typhoid case who is not a chronic carrier must be lifted by the local public health administrator when Salmonella enterica serotype Typhi is not identified by a licensed laboratory in any of four successive approved fecal specimens, collected at least 24 hours apart and not earlier than one month after illness onset, and one urine specimen.

(7) A "chronic carrier" is an individual who has fecal specimens test positive for Salmonella enterica serotype Typhi more than one year after onset or first diagnosis or on two occasions at least one year apart. A restriction on a chronic carrier may only be removed when Salmonella enterica serotype Typhi is not identified by a licensed laboratory in any of six suc-

cessive approved fecal specimens, collected at least 72 hours apart, and one urine specimen.

Stat. Auth.: ORS 413.042, 431.110, 433.004, 616.010 & 624.005
Stats. Implemented: ORS 433.004, 433.260 & 433.273
Hist.: OHD 4-2002, f. & cert. ef. 3-4-02; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-019-0031
Acquired Immunodeficiency Syndrome/Human Immunodeficiency Virus

Investigation of cases of HIV infection or AIDS. Investigations of HIV infection or AIDS shall be conducted to the extent that resources permit. The Authority, or the local public health administrator, will ensure that each identified case is offered prevention, care, and partner counseling and referral services.

NOTE: Specific rules regarding reporting requirements for HIV and AIDS may be found in OAR 333-018-0015. Rules regarding informed consent for HIV testing and confidentiality of HIV test results may be found in OAR 333-022-0200 through 333-022-0315.

Stat. Auth.: ORS 431.110, 433.004
Stats. Implemented: ORS 431.110, 433.004
Hist.: HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 29-1994, f. & cert. ef. 12-2-94; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0223; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 4-2002, f. & cert. ef. 3-4-02; PH 7-2006, f. & cert. ef. 4-17-06; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-019-0052
Communication during Patient Transfer of Multidrug-Resistant Organisms

(1) As used in this rule:

(a) "Facility" means:

(A) A healthcare facility as that term is defined in ORS 442.015;

(B) An infirmary (for example, in a jail or prison);

(C) A residential facility or assisted living facility as those terms are defined in ORS 443.400;

(D) An adult foster home as that term is defined in ORS 443.705;

(E) A hospice program as that term is defined in ORS 443.850; and

(F) Any other facility that provides 24-hour patient care.

(b) "Multidrug-resistant organism" (MDRO) means an organism causing human disease which has acquired antibiotic resistance, as listed and defined in the Centers for Disease Control and Prevention's Antibiotic Resistance Threats in the United States, 2013 (Atlanta, GA; 2013). MDROs include but are not limited to:

(A) Methicillin-resistant Staphylococcus aureus (MRSA);

(B) Vancomycin-resistant Enterococcus (VRE);

(C) Carbapenem-resistant Enterobacteriaceae (CRE), as that term is defined in OAR 333-017-0000 sections (10) and (24);

(D) Multidrug-resistant Acinetobacter baumannii;

(E) Multidrug-resistant Pseudomonas aeruginosa;

(F) Drug-resistant Streptococcus pneumoniae;

(G) Other Gram-negative bacteria producing extended-spectrum beta-lactamases (ESBL); and

(H) Toxin-producing Clostridium difficile.

(c) "Receiving facility" means the facility receiving or admitting the case patient into their care from another facility's care.

(d) "Referring facility" means the facility transferring or discharging the case patient out of its care and into another facility's care.

(e) "Standard Precautions" means the minimum infection prevention measures that apply to all patient care, regardless of suspected or confirmed infection status of the patient, in any setting where healthcare is delivered. Standard Precautions include:

(A) Hand hygiene;

(B) Use of personal protective equipment (for example, gloves, gowns, facemasks), depending on the anticipated exposure;

(C) Respiratory hygiene and cough etiquette;

(D) Safe injection practices; and

(E) Safe handling of potentially contaminated equipment or surfaces in the patient environment.

(f) "Transmission Based Precautions" means infection control practices that are implemented in addition to Standard Precautions in patients with known or suspected colonization or infection of highly transmissible or epidemiologically important infectious pathogens (for example, CRE, norovirus, Neisseria meningitidis) or syndromes (for example, diarrhea) when there is strong evidence that the pathogen or syndrome may be transmitted from person to person via droplet, contact, or airborne routes in healthcare or non-healthcare settings (Siegel JD, Rhinehart E, Jackson M, Chiarello L, and the Healthcare Infection Control Practices Advisory Committee. Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, 2007).

(2) When a referring facility transfers or discharges a patient who is infected or colonized with a multidrug-resistant organism (MDRO) or pathogen which warrants Transmission Based Precautions, it must include written notification of the infection or colonization to the receiving facility in transfer documents. The referring facility must ensure that the documentation is readily accessible to all parties involved in patient transfer (for example, referring facility, medical transport, emergency department, receiving facility).

(3) When a facility becomes aware that it received in transfer one or more patients with an MDRO or pathogen that warrants Transmission Based Precautions, and that was isolated from a patient specimen collected within 48 hours after transfer, it must notify the referring facility.

(4) When a facility becomes aware that it transferred or discharged one or more patients who have an MDRO or pathogen that warrants Transmission Based Precautions, the referring facility must notify the receiving facility.

(5) If a facility transfers or discharges a patient with laboratory-confirmed, carbapenemase-producing Enterobacteriaceae, the facility must notify the local health department communicable disease staff within one working day of the date and destination of the transfer or discharge.

Stat. Auth.: ORS 413.042, 431.110, 433.004, 433.010
Stats. Implemented: ORS 433.004, 433.006, 433.010, 433.110, 442.015, 443.400, 443.705, 443.850
Hist.: PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-056-0020
Definitions Relating to Infectious Waste

As used in OAR 333-056-0010 through 333-056-0050, unless the context requires otherwise, the following definitions apply:

(1) "Act" means chapter 763, Oregon Laws, 1989, codified as ORS 459.386 to 459.405.

(2) "Disposal" means the final placement of treated infectious waste in a disposal site operating under a permit issued by a state or federal agency.

(3) "Disposal site" means land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site. "Disposal site" does not include:

(a) A facility subject to the permit requirements of ORS 468.740 [468B.050];

(b) A landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable materials, unless the site is used by the public either directly or through a solid waste collection service; or

(c) A site operated by a wrecker issued a certificate under ORS 822.110.

(4) "Division" means the Oregon Health Authority, Public Health Division.

(5) "Incineration" means the reduction in volume and weight of waste by combustion.

(6) "Infectious waste" means:

(a) "Biological waste", which includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into the municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces. In addition, biological waste does not include articles contaminated with fully absorbed or dried blood, such as gauze, paper towels, and sanitary napkins;

(b) "Cultures and stocks", which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures;

(c) "Pathological waste", which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents;

(d) "Sharps", which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(7) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(8) "Noninfectious" means a state in which a disease causing agent is not capable of causing an infection to occur.

(9) "Saturated Waste" means waste that contains enough body fluid that it would cause dripping of the body fluid from the waste container, with or without compaction.

(10) "Sterilization" means, for purposes of these rules, any process which changes infectious waste so that disease causing agents contained within it are rendered non-infectious at the time the process is completed.

(11) "Storage" means the temporary containment of infectious waste in a manner that does not constitute treatment or disposal of such waste.

(12) "Transportation" means the movement of infectious waste from the point of generation over a public highway to any intermediate point, to the point of final treatment, and to the point of final disposal.

(13) "Treatment" means incineration, sterilization or other method, technique or process approved by the Oregon Health Authority, Public Health Division that changes the character or composition of any infectious waste so as to render the waste noninfectious. Treatment also includes methods of rendering waste noninfectious, which are approved by the Environmental Quality Commission.

Stat. Auth.: ORS 431.110, 433.004 & 459.395
Stats. Implemented: ORS 431.110, 433.004 & 459.395
Hist.: HD 15-1990, f. 6-5-90, cert. ef. 7-1-90; OHD 15-2001, f. & cert. ef. 7-12-01, Renumbered from 333-018-0050; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-056-0030
Infectious Waste Treatment

(1) Pathological wastes shall be treated by incineration in an incinerator that provides complete combustion of waste to carbonized or mineralized ash. However, if the Department of Environmental Quality determines that incineration is not reasonably available within a wasteshed, pathological wastes may be disposed of in the same manner provided for cultures and stocks.

(2) Cultures, stocks, sharps and biological wastes must be treated using one of the following methods, as delineated in subsections (2)(a), (b) and (c) of this rule:

(a) Treated via incineration. If incineration is utilized, it shall be done in compliance with all applicable rules established by the Environmental Quality Commission;

(b) Sterilization with saturated steam in a pressurized vessel. If this method is employed, a vessel dedicated to infectious waste treatment must be utilized. Operating procedures which must be developed and implemented shall include at least the following:

(A) Adoption of standard written operating procedures for each steam sterilizer including time, temperature, pressure, type of waste, type of container(s), type of closure on container(s), pattern of loading, and maximum load quantity. The manufacturer's recommendations shall be taken into account;

(B) Methods for monitoring recording or temperature measuring devices during each complete cycle to ensure that the manufacturer's recommended temperature is attained for the recommended amount of time in order to achieve sterilization of the entire load. Temperature measuring devices shall be checked for calibration at least annually;

(C) Methods for using heat sensitive tape or other device designed to indicate attainment of adequate sterilization conditions, for each container;

(D) Methods for at least monthly use of the biological indicator Bacillus stearothermophilus, or equivalent, placed at the center of a load processed under standard operating conditions, to confirm the attainment of adequate sterilization conditions;

(E) Methods for maintenance of records pertaining to paragraphs (2)(a)(A), (B) and (D) of this rule. These records shall be maintained and available for Division review for a period of not less than one year.

(c) Treated by other methods that meet the following criteria:

(A) The specific processes of the method have been tested under the conditions in which the method would be used in Oregon for the treatment of infectious waste. Such testing has demonstrated that the method is effective in rendering infectious agents non-infectious by showing bactericidal efficacy against at least spore-forming bacteria and a Mycobacterium. The testing methodology, test results, and documentation thereof must be considered scientifically valid by the Division. The determination of validity requires, but is not limited to:

(i) The testing methodology follows basic scientific principles or objectivity and is fully documented;

(ii) The results of the testing are fully documented. Raw data are made available to the Division if they are requested by the Division;

(iii) The testing has been done by a scientist(s) with an advanced degree in microbiology and with a record of having published scientific research results in a peer reviewed journal;

(iv) The report of the testing methodology and results, together with the statement "This report is an accurate and complete account of the test methods I performed and the test results I obtained" have been signed by the scientist(s) who performed the testing; and

(B) Any discharges into air or water and any solid waste resulting from the method meet the requirements of the laws and administrative rules of the Oregon Department of Environmental Quality; or

(C) The Environmental Quality Commission has approved the method and has accepted that method by administrative rule.

(3) Liquid or soluble semi-solid biological wastes may be discharged into a sewage treatment system that provides secondary treatment of waste.

(4) After treatment approved by the Division or the Environmental Quality Commission, sharps may be disposed of directly into a permitted land disposal site only if the sharps are in a red, leak-proof, rigid, puncture-resistant container which is taped closed or tightly lidded to prevent loss of the contents. The containers may not be compacted or otherwise broken before placement in the landfill. They must be placed in a segregated area of the landfill.

(5) Methods of treatment which have not been delineated in this rule or approved by the Division or the Environmental Quality Commission, as applicable, are not permitted.

Stat. Auth.: ORS 431.110, 433.004 & 459.395
Stats. Implemented: ORS 431.110, 433.004 & 459.395
Hist.: HD 15-1990, f. 6-5-90, cert. ef. 7-1-90; HD 20-1991(Temp), f. & cert. ef. 11-8-91; HD 13-1992(Temp), f. & cert. ef. 12-23-92 (and corrected 12-30-92); HD 29-1994, f. & cert. ef. 12-2-94; OHD 15-2001, f. & cert. ef. 7-12-01, Renumbered from 333-018-0060; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-056-0040
Infectious Waste Storage Times and Temperature

(1) Infectious waste shall be segregated from other wastes by separate containment at the point of generation.

(2) Enclosures used for storage of infectious waste shall be secured to prevent access by unauthorized persons and marked with prominent warning signs.

(3) Pathological waste, biological waste and cultures/stocks shall be treated or disposed of pursuant to OAR 333-056-0010 through 333-056-0030 within seven days of generation, unless it is refrigerated (between 33 and 48 degrees Fahrenheit) or frozen (less than 32 degrees Fahrenheit). Refrigerated or frozen infectious waste may be stored 30 days prior to treatment or disposal.

(4) Prior to being treated pursuant to OAR 333-056-0010 through 333-056-0030, sharps contained in a leak proof, rigid, puncture resistant container which is taped closed or tightly lidded to prevent loss of the contents may be stored indefinitely.

(5) Generators that produce 50 pounds or less of infectious waste in any calendar month shall be exempt from the requirements pertaining to storage times and temperatures.

Stat. Auth.: ORS 431.110, 433.004 & 459.395
Stats. Implemented: ORS 431.110, 433.004 & 459.395
Hist.: HD 15-1990, f. 6-5-90, cert. ef. 7-1-90; OHD 15-2001, f. & cert. ef. 7-12-01, Renumbered from 333-018-0070; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-056-0045
Exemption for Placenta Removal from a Health Care Facility

(1) Notwithstanding any other provision in these rules, a health care facility or freestanding birthing center, as those terms are defined in ORS 442.015, may release a placenta to the woman from whom the placenta originated, or to her designee, if:

(a) The facility or birthing center has a written policy and procedure to ensure the safe management and transport of placentas;

(b) The woman tested negative for infection by hepatitis B and human immunodeficiency viruses by testing obtained since the beginning of the pregnancy; and

(c) The woman, or her designee, and the woman's health care provider sign a form that contains at least the following:

(A) The woman's name, date of birth, address and the name of the health care provider;

(B) An attestation by the woman or her designee that the placenta will not be used for commercial purposes; and

(C) An attestation by the health care provider that:

(i) Since the beginning of the pregnancy the woman tested negative for infection by hepatitis B and human immunodeficiency viruses;

(ii) The woman either tested negative for hepatitis C virus since the beginning of the pregnancy or is not at risk for hepatitis C; and

(iii) To the health care provider's knowledge, the woman has no infection that poses a threat to persons who handle the placenta.

(2) The health care facility or freestanding birthing center must keep a copy of the signed release form described in subsection (1)(c) of this rule in the mother's medical record.

(3) Health care facilities and freestanding birthing centers shall make policies and procedures developed in accordance with subsection (1)(a) of this rule available to the Division upon request.

(4) Nothing in this rule prohibits a health care facility or freestanding birthing center from having additional requirements for the removal of a placenta from the facility or center.

Stat. Auth.: ORS 431.110, 433.004, 459.400
Stats. Implemented: ORS 431.110, 433.004, 459.400
Hist.: PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

333-056-0050
Prevention of Disease Transmission by Blood-Contaminated Sharp Objects

Any person using sharp instruments (for example, needles, lancets, scalpels) for purposes of drawing blood, administering medication, or medical/surgical procedures on humans, shall dispose of such items in a manner that will protect any other handlers of this waste from injury. The disposal of such waste shall be in accordance with current recommendations of the U.S. Centers for Disease Control and Prevention, and shall include the use of impervious, rigid, puncture-proof containers. This rule applies to but is not limited to blood banks, plasmapherisis centers, medical clinics, dental offices, outpatient care centers, inpatient care facilities, hospitals, and home health agencies.

Stat. Auth.: ORS 431.110, 433.004 & 459.395
Stats. Implemented: ORS 431.110, 433.004 & 459.395
Hist.: HD 4-1987, f. 6-12-87, ef. 6-19-87; OHD 15-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0212; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14

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Rule Caption: Vital records modernization
Adm. Order No.: PH 17-2013
Filed with Sec. of State: 12-26-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 333-011-0205, 333-011-0210, 333-011-0215, 333-011-0220, 333-011-0225, 333-011-0230, 333-011-0235, 333-011-0240, 333-011-0245, 333-011-0250, 333-011-0255, 333-011-0260, 333-011-0265, 333-011-0270, 333-011-0280, 333-011-0285, 333-011-0300, 333-011-0305, 333-011-0310, 333-011-0320, 333-011-0325, 333-011-0330
Rules Repealed: 333-011-0006, 333-011-0011, 333-011-0016, 333-011-0021, 333-011-0043, 333-011-0048, 333-011-0061, 333-011-0067, 333-011-0072, 333-011-0073, 333-011-0096, 333-011-0116, 333-011-0155
Rules Ren. & Amend: 333-011-0047 to 333-011-0275, 333-011-0200 to 333-011-0290, 333-011-0076 to 333-011-0295, 333-011-0110 to 333-011-0315, 333-011-0101 to 333-011-0335, 333-011-0106 to 333-011-0340
Subject: The Oregon Health Authority, Public Health Division is permanently amending rules in chapter 333, division 11 pertaining to vital records. The rules are being revised to align with House Bill 2093 (Oregon Laws 2013, chapter 366), the vital records modernization bill, passed by the Oregon legislature in June 2013. House Bill 2093 reorganized and updated Oregon vital records and vital statistics law. The reorganization and modernization of the law was based on a model law that was written between 2009 and 2011 by the National Center for Health Statistics in collaboration with the National Association for Public Health Statistics and Information Systems. The last model law was in 1992, and Oregon implemented that model in 1997. House Bill 2093 updated laws to account for changes in technology, security and parentage.

The new law takes effect January 1, 2014 and requires additional rules as well as updates to current rules. The subjects of the rules includes reports of live birth, reports of death, reports of fetal death, marriages, Oregon registered domestic partnerships, dissolutions of marriage or domestic partnerships, amendments of records, and county vital records offices. The goal of these rules is to implement the new laws.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-011-0205
County Vital Records Services

A county registrar may only sell certified copies of records with authorization by the state registrar. A county registrar may apply to the state registrar for authorization to sell certified copies of death records or certified copies of birth records and death records. The application shall specify the county need and interests that the sale of certified copies would serve, types of records to be issued, and hours of service available. The state registrar shall review the application and authorize the county registrar to sell certified copies if such action is supported by local needs and resources.

(1) If approved for birth records, the county registrar may issue certified copies of registered birth records from the state vital records system for a period not to exceed six months from the date of birth.

(2) If approved for death records, the county registrar may accept after review paper death records for deaths occurring in the county prior to registration at the state office. The county registrar shall forward death records that have been filed at the county to the state registrar within three business days of the date filed by the county registrar.

(a) County registrars may issue certified copies from the original record while the original record is in the possession of the county. County registrars may maintain a copy of the completed death record for a period up to 14 calendar days from the date the record is forwarded to the state and within that time period may issue from that copy until the record is registered in the state vital records system.

(b) After the death record is registered in the state vital records system, whether originally a paper record or an electronic record, the county registrar may issue only from the state vital records system for a period not to exceed six months from the date of death.

Stat Auth: 2013 OL Ch. 366, Sec. 7
Stats. Implemented: 2013 OL Ch. 366, Sec. 7
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0210
Prenatal Care Information

(1) The physician, institution or other person providing prenatal care shall transfer the prenatal care information including but not limited to pregnancy history, date of first visit, number of visits, pregnancy risk factors, and cigarette use as required in Oregon Laws 2013, chapter 366, section 10 to the institution where the delivery is expected to occur not less than 30 calendar days and not more than 45 calendar days prior to the expected delivery date.

(2) If the institution where the delivery is expected to occur has direct access to the prenatal care information, the physician, institution or other person providing prenatal care may authorize direct access to the information.

(3) If the institution where the delivery is expected to occur does not have direct access to the prenatal care information or direct access is not authorized by the physician, institution or other person providing prenatal care, the prenatal care provider shall send by facsimile or otherwise electronically transmit in a secure manner the prenatal care information on a form prescribed by the State Registrar of the Center for Health Statistics.

Stat Auth: 2013 OL Ch. 366, Sec. 10
Stats. Implemented: 2013 OL Ch. 366, Sec. 10
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0215
Registering Live Births that Occur Outside of a Facility with a Licensed Birth Attendant or Non-licensed Midwife within One Year of the Date of Birth

(1) For purposes of this rule, attendant means:

(a) A physician;

(b) A nurse practitioner as defined in ORS 678.010;

(c) A direct entry midwife licensed under ORS 687.405 to 687.495; or

(d) A person not required by law to be licensed to practice midwifery who is registered with the Center for Health Statistics to submit reports of live birth.

(2) Any individual listed in subsections (1)(a) through (d) of this rule who attends a birth that occurred outside a health care facility must register the birth with the Center for Health Statistics.

(a) Information regarding the birth may be submitted through the state electronic vital records system or through a paper report of live birth. All information required in the report of live birth must be received by the Center for Health Statistics prior to registration.

(b) Reports of live birth submitted within one year from the date of birth shall not be marked "Delayed."

(c) The attendant may submit the report of live birth based on existing medical records.

(A) Personal information, such as the name of the child, can be completed from information provided by the parent at the time of birth.

(B) If the birth cannot be confirmed through other public health sources including but not limited to newborn metabolic screening, first dose immunization records, or early hearing test, the state registrar may require the parents to submit additional documents that support the birth of the child in Oregon or present the child at the county vital records office.

(d) The state registrar may request additional documentation from the attendant or explanation of the delay in submitting the report of live birth for reports submitted more than 10 days after the date of birth.

(e) The state registrar shall review and register reports of live birth submitted within one year from the date of birth using the same process for reviewing and registering reports of births submitted within five days from the date of birth.

(3) An attendant who attends the birth of their own child, grandchild, niece or nephew must submit the application and documentation required under OAR 333-011-0220 if the birth does not occur in a licensed medical facility.

Stat Auth: 2013 OL Ch. 366, Sec. 10
Stats. Implemented: 2013 OL Ch. 366, Sec. 10
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0220

Registering Live Births that Occur Outside of a Facility and Without a Licensed Attendant within One Year of the Date of Birth

When a birth occurs outside a licensed health care facility, the birth attendant is not an attendant described in OAR 333-011-0215 and a report of live birth has not been submitted to the state registrar, the mother, the father if the father's relationship to the child is legally established, the legal guardian, or a state agency with physical custody shall fill out a form prescribed by the state registrar to report the live birth and provide additional evidence to the state register if the birth occurred within one year of the report being submitted to the Center for Health Statistics.

(1) The individual submitting the report of live birth must also submit evidence to establish the following facts:

(a) The mother was pregnant at the time relevant to the birth. If the birth cannot be confirmed through other public health sources, the parents must submit additional documents that support the birth of the child in Oregon. Evidence of the pregnancy can include but is not limited to:

(A) Prenatal record or a statement from a physician or other health care provider qualified to determine pregnancy who examined the mother during the pregnancy; or

(B) Chart notes from a home visit by a public health nurse or other health care provider that include observation of the pregnancy.

(b) A live birth resulted from the pregnancy. Evidence that the infant was born alive can include but is not limited to:

(A) A statement from a physician, naturopathic doctor, nurse practitioner, or registered nurse who saw or examined the infant within three months of the birth; or

(B) Chart notes of an observation of the infant during a home visit by a public health nurse within three months of the birth; or

(C) Presentation of the child at the state or county vital records office.

(c) The mother was present in Oregon at the time of birth. Evidence of the mother's presence in this state within 30 days of the date of the live birth and inclusive of the date of birth can include but is not limited to:

(A) A rent receipt that includes the mother's name and address; or

(B) A utility, telephone, or other bill that includes the mother's name and address.

(d) Information on the identity of the mother and information on the identity of the father if the father is to be listed on the record of live birth. Evidence of the identity of the mother or the father shall include:

(A) An official identification document from a government agency that includes a photograph of the mother or of the father; and

(B) A certified copy of the mother's or father's birth record; or

(C) Other official documents acceptable to the state registrar.

(2) If a parent's current legal name does not match the name on his or her birth record, evidence of the legal name change through court order, marriage or other legal process must be provided.

(3) If the father is listed on the record of live birth because the mother and father are married, a certified copy of a marriage record for the mother and the father must be submitted.

(4) After the application is received and evidence has been submitted, the state registrar shall review the documents and application, and verify any documentation at the state registrar's discretion.

(5) The state registrar shall determine if a previously registered record of live birth exists for the registrant. If no previously registered record is identified and the submitted application and evidence appear valid, the record may be registered.

(6) Reports of live birth filed within one year from the date of birth shall not be marked "Delayed."

Stat Auth: 2013 OL Ch. 366, Sec. 10
Stats. Implemented: 2013 OL Ch. 366, Sec. 10
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0225

Registering Live Births that Occur in a Licensed Medical Facility More Than One Year after the Date of Birth

All reports of live birth for births occurring in licensed medical facilities certified more than one year from the date of live birth are to be submitted by hospital staff through the electronic system and registered on the current form in use.

(1) Births may be matched to newborn screening records for the purpose of confirming the birth occurred.

(2) Reports of live birth submitted more than one year from the date of birth shall be marked "Hospital Delayed" and include a footnote that the record was filed based on the medical facility's record of the live birth.

(3) The facility administrator or designee shall submit the report of live birth based on existing medical or business records related to the birth if all facts of birth appear in the medical or business records. Personal information, such as the name of the child, can be completed from information provided by the parent at the time of birth.

(4) The facility administrator or designee shall include an explanation of the delay in submitting the report of live birth and the facility records on which the report of live birth is based.

(5) The state registrar shall determine if a previously registered record of live birth exists for the registrant and may inspect the medical facility's medical and business records prior to registration. If no previously registered record is identified and the submitted record appears valid, the record may be registered.

Stat Auth: 2013 OL Ch. 366, Sec. 14
Stats. Implemented: 2013 OL Ch. 366, Sec. 14
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0230

Registering Live Births that Occur Outside a Facility More Than One Year after the Date of Birth

(1) When a live birth that occurred outside a licensed medical facility has not been registered within one year from the date of birth, an application for a delayed registration of live birth may be submitted. The applicant shall complete a delayed report of live birth application form prescribed by the state registrar, pay the delayed filing fee, and shall provide additional documentation described in this rule.

(a) If the proposed registrant is age 18 or older, the proposed registrant must file the application unless the proposed registrant has a legal guardian due to incapacity. If the proposed registrant is age 18 or older and has a legal guardian due to incapacity, the legal guardian may file the application on behalf of the proposed registrant.

(b) If the proposed registrant is less than age 18, the mother, the father if legal relationship is established, the legal guardian, or a state agency with physical custody may file the application.

(c) No delayed report of live birth shall be registered for a deceased person.

(2) A delayed registration of birth application form shall be signed by the person authorized to request a delayed registration of birth as described in subsections (1)(a) and (b) of this rule and sworn to before an official authorized to administer oaths, swearing to the accuracy of the facts stated therein.

(3) In addition to completing the delayed registration of live birth application, the applicant must submit documents to establish the facts of birth including:

(a) The full name of the proposed registrant at the time of birth;

(b) The date of birth;

(c) The place of birth within Oregon;

(d) The mother's full name at birth and current full legal name; and

(e) Proof that a record does not currently exist in Oregon.

(4) If the mother was not married either at the time of conception or birth or within 300 days prior to the birth, the state registrar shall not enter the name of the father on the delayed record of live birth for a minor child except upon receipt of a voluntary acknowledgment of paternity as provided in OAR 333-011-0270 or upon receipt of a court order establishing paternity.

(5) A delayed registration of birth application completed and submitted to the state registrar within 10 years of the birth of the proposed registrant must include three pieces of documentary evidence that support the facts of birth.

(a) One of the three documents must establish the mother's residence address in Oregon within 30 days of the date of the live birth and inclusive of the date of birth. A personal affidavit cannot be used to establish residence.

(b) One document other than a personal affidavit must have the full name at birth of the proposed registrant, the date of birth, and the full legal name or the full name at birth of the mother. This document must be dated either:

(A) Before the first birthday of the proposed registrant; or

(B) At least one year prior to the date of the application.

(c) One of the documents may be a personal affidavit. To be accepted, a personal affidavit must be signed by a person who is at least 18 years of age and is at least 10 years older than the proposed registrant. That person must have personal knowledge of the facts of birth and not be a family member of either parent.

(d) In addition to the facts of birth, information on the identity of the mother and father is required.

(A) Evidence of the identity of the mother shall include:

(i) An official identification document from a government agency that includes a photograph of the mother; and

(ii) A certified copy of the mother's record of birth; or

(iii) Other official documents acceptable to the state registrar.

(B) Evidence of the identity of the father if the father is to be listed on the record of live birth shall include:

(i) An official identification document from a government agency that includes a photograph of the father; and

(ii) A certified copy of the father's record of birth; or

(iii) Other official documents acceptable to the state registrar.

(C) If a parent's current legal name does not match the name on his or her record of birth, evidence of the legal name change through court order, marriage or other legal process must be provided.

(e) If the father is listed on the birth report because the mother and father are married, a certified copy of a marriage record for the mother and the father must be submitted.

(6) If a delayed registration of live birth application is completed and submitted to the state registrar 10 years or later after the date of birth of the proposed registrant, at least three pieces of documentary evidence shall be submitted with the application for delayed record of live birth.

(a) All documents must have been established:

(A) Prior to the proposed registrant's 10th birthday and at least one year prior to the date of application; or

(B) At least 10 years prior to the date of application.

(b) One document must have the full name at birth of the proposed registrant, the date of birth or age, the place of birth within Oregon, and the mother's first and last name prior to marriage.

(c) The remaining two documents must have the name of the proposed registrant, the date of birth or age, and place of birth. One document of the three must include the registrant's first and last name, date of birth and place of birth within Oregon.

(d) The father will be included on the record of live birth if the proposed registrant is age 18 or older and the evidence submitted documents the identity and relationship.

(e) Documents in addition to the three required may include first and last names only and do not need to include the date of birth and place of birth if sufficient information appears in the document to clearly identify the proposed registrant as the subject of the document. These documents may be used to correct the spelling of a name or to add information missing from the three documents required, such as a parent's place of birth.

Stat Auth: 2013 OL Ch. 366, Sec. 14
Stats. Implemented: 2013 OL Ch. 366, Sec. 14
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0235

Documentation in Support of an Application to Register a Delayed Report of Live Birth

(1) The following documents shall be considered by the state registrar to meet the documentation requirements for delayed registration of live birth described in OAR 333-011-0230 if the documents contain sufficient information to identify the proposed registrant as the subject of the document and support the facts of birth as reported by the applicant. Documents may include:

(a) Licensed medical facility records of the proposed registrant;

(b) A certified copy of an accepted application for a Social Security card for the proposed registrant;

(c) The proposed registrant's mother's medical record if the proposed registrant's name, date of birth and place of birth are included in the record;

(d) A certified copy of school records of the proposed registrant;

(e) A certified copy of census records;

(f) Military records of the proposed registrant;

(g) A certified copy of marriage record;

(h) A certified copy of birth record of the proposed registrant's child;

(i) Voter registration records for the proposed registrant; or

(j) Other official documents acceptable to the state registrar.

(2) All documents submitted in support of an application for delayed registration of live birth must be original documents or certified copies of original documents. Certified copies must be authenticated by the official custodian of the record.

Stat Auth: 2013 OL Ch. 366, Sec. 14
Stats. Implemented: 2013 OL Ch. 366, Sec. 14
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0240

Review and Filing of Delayed Registration of Live Birth

(1) The state registrar shall review the application for delayed registration of birth and documents in support of the application for authenticity, relevance and content required by OAR 333-011-0230. If the application cannot be approved as submitted, the applicant will be notified by correspondence or electronic mail of the deficiencies and provided an opportunity to submit additional documentation.

(2) The state registrar shall review the delayed registration of live birth application and the documents submitted, and shall search to confirm there is no existing birth record for the proposed registrant in Oregon. If the state registrar finds no such records and finds that the documents submitted are adequate to establish that the proposed registrant was born in Oregon on the date specified, the state registrar or the state registrar's designated representative shall register the record and include on the record of delayed registration of live birth an abstract of the evidence supporting the delayed report of live birth.

(3) If the application and evidence is accepted, the state registrar shall send the delayed report of live birth, including the abstract of evidence, to the applicant for notarized signature.

(4) When the notarized delayed report of live birth with the applicant's notarized signature is received, the state registrar shall create the delayed record of live birth. The record of live birth shall be marked 'Delayed' and shall include a description of each document submitted to support the facts shown on the delayed birth record. This description shall include:

(a) The title or description of the document;

(b) The name of the affiant, if the document is an affidavit of personal knowledge, or of the custodian, if the document is an original or certified copy of a record or a signed statement from the custodian;

(c) The date of the original filing of the document being abstracted; and

(d) The information regarding the birth facts contained in the document.

(5) The state registrar shall return all original documents other than personal affidavits submitted in support of the application for delayed registration of live birth and received directly from the applicant to the applicant after review. A copy of the personal affidavit shall be provided to the applicant. Copies of documents and application will be maintained for delayed registrations of live birth that are accepted for registration.

Stat Auth: 2013 OL Ch. 366, Sec. 14
Stats. Implemented: 2013 OL Ch. 366, Sec. 14
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0245

Denial of Application for Delayed Registration of Live Birth after Two Years

(1) An application for an out of facility record of live birth or delayed record of live birth which is not completed through the submission of required evidence of all facts to be established as identified in rule within two years of application shall be denied. The applicant shall be notified of the right to appeal the decision of the state registrar under ORS 183.484. The applicant may request denial for the purpose of seeking a court order prior to two years.

(2) Any applicant that has had a previous application denied must file a new application for the proposed registrant including the fee if choosing to submit a new application for delayed registration of birth.

(3) Copies of the application and submitted documentation will be maintained according to the agency's retention schedule and may be used if a subsequent application indicates contradictory information.

Stat Auth: 2013 OL Ch. 366, Sec. 14
Stats. Implemented: 2013 OL Ch. 366, Sec. 14
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0250

Court Ordered Birth Records

A certified copy of each order to establish a record of birth shall be forwarded to the State Registrar from the court clerk by the 5th and 15th working day of each month. The order shall be in the form specified by the State Registrar and shall be suitable for issuing certified copies of the birth record on a single sheet.

Stat Auth: ORS 432.142
Stats. Implemented: ORS 432.142
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0255

Infants of Unknown Parentage

(1) A report for a minor child of unknown parentage found in Oregon shall be registered in the current format for births.

(2) If the minor child is less than one year of age, the hospital where the child is examined shall submit the report of live birth in the state's electronic reporting system.

(3) If the minor child is more than one year of age, the agency who has assumed custody of the child shall submit a request to locate birth record to the state registrar. The request shall include:

(a) A statement that the child is a possible foundling;

(b) All information available on the identity of the child and parents for the purpose of identifying the birth record;

(c) Whether the agency will be able to locate evidence to support a delayed record of birth if a birth record is not identified;

(d) Whether an expedited denial is requested for the purpose of obtaining a court order to register the birth.

(4) If the agency requests expedited denial, the state registrar shall review the information available and determine whether a birth record can be identified. If no birth record can be identified based on the information provided by the agency and the agency cannot provide additional documentation to support a delayed record of birth, the state registrar shall issue a denial of the request.

(5) If the agency later identifies the child's parents, the agency shall notify the state registrar within 10 days of the additional information. If a previously registered record is identified with the child's information, the record registered under this rule shall be voided. If no registered record with the parent information is found, the agency shall amend the court order to register the birth to include the names, dates of birth and places of birth of the parents.

Stat Auth: 2013 OL Ch. 366, Sec. 13
Stats. Implemented: 2013 OL Ch. 366, Sec. 13
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0260

Amendment of the Same Item More than Once

Once an amendment of an item is made on a vital record, except for cause and manner of death to be amended by the medical certifier or Medical Examiner or clerical error on the part of the reporting source or the state registrar, that item shall not be amended again except upon receipt of an appropriate order which, depending on the nature of the order, shall be from either a court of competent jurisdiction or a court with competent jurisdiction over the state agency.

Stat Auth: 2013 OL Ch. 366, Sec. 29
Stats. Implemented: 2013 OL Ch. 366, Sec. 29
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0265

Amending Birth Records

(1) All amendments. Unless otherwise provided in these rules or in statute, all amendments to vital records shall be supported by:

(a) An affidavit setting forth:

(A) Information to identify the record;

(B) The incorrect data as it is listed on the record; and

(C) The correct data as it should appear.

(b) One or more original items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of application for amendment or within seven years of the date of the event and one year prior to the date of the requested amendment.

(2) The state registrar shall evaluate the evidence submitted in support of any amendment, and when the state registrar finds reason to doubt its validity or adequacy the amendment may be rejected and the applicant advised of the reasons for this action.

(3) Who may apply:

(a) To change the date of birth, time of birth or sex of the registrant, only the facility where the birth occurred or the individual who submitted the report of birth may apply to amend unless the medical record is no longer available at the facility. If the medical record is no longer available, other individuals, including the parents and the registrant, shall submit an application for amendment under section (1) of this rule. If the evidence is not sufficient, the applicant must present a certified copy of a court order ordering such amendment.

(b) To amend a record of live birth for items other than date of birth, time of birth or sex, application may be made by one of the parents, the legal guardian, the registrant if 18 years of age or over, or the individual responsible for filing the report of live birth.

(c) To amend the sex of a registrant on a record of live birth following the completion of sexual reassignment, an individual must submit documentation under OAR 333-011-0275.

(4) Amendment of registrant's first, middle or last names on records of live birth within the first year. Until the registrant reaches the age of one year, first, middle, or last names of the registrant may be amended upon written request of:

(a) Both parents; or

(b) The mother if no father or second parent appears on the record or if the father or second parent is deceased or incapacitated; or

(c) The father or second parent if the mother is deceased or incapacitated; or

(d) The legal guardian or agency having legal custody of the registrant.

(5) Amendment of registrant's first, middle or last names on records of live birth after the first year:

(a) After one year from the date of birth the provisions of section (1) of this rule must be followed to amend a first, middle or last name if the name was misspelled on the birth record.

(b) A legal change of name order must be submitted from a court of competent jurisdiction to change a first, middle or last name that appears on the birth record after one year from date of birth.

(6) Addition of first, middle or last name of a registrant on a record of live birth:

(a) Until the registrant's seventh birthday, first, middle and last names, for a child whose birth was registered without such names, may be added to the record of live birth upon written request of:

(A) Both parents; or

(B) The mother if no father appears on the record or if the father is deceased or incapacitated; or

(C) The father if the mother is deceased or incapacitated; or

(D) The legal guardian or agency having legal custody of the registrant.

(b) After seven years the provisions of section (1) of this rule must be followed to add a first, middle or last name.

(7) Amendment of parents' information on birth records. When a requested amendment to an item, in combination with previous amendments or concurrent requests for amendment, would appear to change the identity of the parent through cumulative changes to name, date of birth, or place of birth, the state registrar shall only make such an amendment upon receipt of a court order from a court of competent jurisdiction.

(8) Original evidence documents submitted to correct errors in the spelling of a parent name, parent date of birth, or parent place of birth must be dated prior to the birth of the child.

(9) Birthing facilities may correct typographical errors on birth records within the first year. After one year, only errors in the child's date

of birth, time of birth or sex will be accepted directly from the birthing facility. The birthing facility must have access to the medical record when submitting the correction.

(10) For births occurring outside a birthing facility, medical certifiers may only correct typographical errors within the first year with evidence from the medical record or the birth worksheet.

(11) Amendment of minor errors on birth records. Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions may be made by the state registrar either upon the state registrar's observation or upon request of one of the parents, the legal guardian, or the birthing facility or by the individual responsible for filing the report of live birth. The record shall not be marked "Amended". Corrections to names will not be considered minor errors.

(12) In all cases where the record is amended, there shall be inserted on the record a statement identifying the affidavit or documentary evidence used as proof of the correct facts, the date the amendment was made, and the initials of the person making the change. As required by statute or rule, the record shall be marked "Amended".

Stat Auth: 2013 OL Ch. 366, Sec. 29
Stats. Implemented: 2013 OL Ch. 366, Sec. 29
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0270

Voluntary Acknowledgment of Paternity

(1) Any voluntary acknowledgment paternity form establishes paternity, and the establishment of paternity shall be a rebuttable presumption. Forms must contain all information necessary to comply with existing federal and state laws and regulations for determination and recording of paternity including but not limited to:

(a) The current full names of mother, father and child;

(b) The social security numbers of mother and father if available;

(c) The dates of birth for mother, father and child;

(d) The address(es) of the mother and of the father;

(e) The birthplace of the child;

(f) A brief explanation of the legal significance of signing a voluntary paternity affidavit and a statement that both parents have 60 days to rescind the paternity acknowledgment affidavit;

(g) A statement signed by both parents indicating they understand that signing the paternity acknowledgment is voluntary and that they understand the rights, responsibilities, alternatives to signing, and consequences of signing;

(h) Signature lines for the mother and the father; and

(i) Signature lines for witnesses or notaries.

(2) The witnessed voluntary acknowledgment of paternity form is established for completion in a health care facility where births occur. This form can be used by unwed biological parents if:

(a) The mother was not married at conception, at birth, or within 300 days prior to the birth;

(b) The form is completed:

(A) After the birth; and

(B) While the mother is admitted for this birth; and

(c) The form is witnessed by a member of the hospital staff; and

(d) The form is submitted to the Center for Health Statistics within five days after the birth.

(e) This form will not be accepted and the father's information will not be placed on this record of live birth if any of these conditions are not met.

(3) Completion of a voluntary acknowledgment of paternity form and returning the form to the hospital staff for submission is the responsibility of the biological parents.

(4) The notarized voluntary acknowledgment of paternity form can be used by unwed biological parents if:

(a) The mother was not married at conception, at birth, or within 300 days prior to the birth;

(b) The form is completed after the birth; and

(c) Signatures of each biological parent are notarized.

(d) This form will not be accepted and the father's information will not be placed on this record of live birth if any of these conditions are not met.

(5) The State Registrar of the Center for Health Statistics shall consult the Division of Child Support on the language in the rights and responsibility statement for voluntary acknowledgment of paternity forms to ensure compliance with state and federal law and regulations.

(6) All questions regarding acceptability of a completed form are determined by the State Registrar for the Center for Health Statistics. Appeals of decisions of determination of the state registrar will be made under ORS 183.484.

Stat Auth: 2013 OL Ch. 366, Sec. 12
Stats. Implemented: 2013 OL Ch. 366, Sec. 12
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0275

New Record of Birth Following Adoption, Legitimation, Paternity Determination, and Paternity Acknowledgement or Sexual Reassignment

(1) The state registrar shall amend a record of live birth and establish a replacement record of live birth for a person born in this state upon receipt of the following:

(a) Legitimation. If the mother is unmarried at the time of birth and the biological parents marry after the birth of a child, a new record of live birth shall be prepared by the state registrar for a child born in this state upon receipt of a sworn acknowledgement of paternity signed by the biological parents of said child together with a certified copy of the parents' marriage record. The mother's legal name can be amended to the name taken at marriage on the child's record of live birth if requested.

(b) Determination of paternity. A new record of live birth shall be prepared by the State Registrar for a child born in this state upon receipt of a certified copy of a court determination of paternity. If the mother's marital status was not unmarried at the time of birth or if another man is listed as the father, the court order must disestablish paternity as well as establish the new father. If the surname of the child is not decreed by the court, the request for the new record received with the certified copy of the court determination shall specify the surname requested by both parents to be placed on the record.

(c) Acknowledgement of paternity. A new record of live birth shall be prepared by the state registrar for a child born to an unmarried mother in this state upon acceptance of a notarized voluntary acknowledgement of paternity signed by both parents if no father appears on the record. The child's surname may be changed through the voluntary acknowledgment of paternity.

(d) Adoption. A certified copy of a report of adoption as provided in ORS 432.415 or a certified copy of the decree of adoption, together with the information necessary to identify the original record of live birth and to establish a replacement record of live birth, except that a replacement record of live birth shall not be established if so requested by the court decreeing the adoption.

(e) Sexual reassignment. A certified copy of an order of a court of competent jurisdiction indicating that an individual born in this state has completed sexual reassignment and that the sex on the record of live birth shall be changed.

(2) The mother's marital status is unmarried at the time of birth if she was not married at conception, at birth, or within 300 days prior to the birth.

(3) New record:

(a) The new record of live birth prepared after adoption, legitimation, determination of paternity, or acknowledgment of paternity, or sexual reassignment shall be on the form in use at the time of its preparation and shall include the following items and such other information necessary to complete the certification:

(A) The name of the child;

(B) The date and place of birth as transcribed from the original record;

(C) The full names, dates of birth and places of birth of the adoptive parents or the biological parents whichever is appropriate;

(D) The name of the attendant;

(E) The state file number assigned to the original birth record; and

(F) The original filing date.

(b) The information necessary to locate the existing record and to complete the new record shall be submitted to the state registrar on forms prescribed or approved by the state registrar.

(4) Existing record to be placed in a special file. After preparation of the new record, the existing record and the evidence upon which the new record was based are to be placed in a special file. Such file shall not be subject to inspection except upon order of a court of competent jurisdiction or by the state registrar for purposes of properly administering the vital statistics program. A court order is not required before the release of a Voluntary Acknowledgment of Paternity form to any government agency responsible for the administration of child support enforcement programs created under Title IV-D of the Social Security Act, to a parent who signed the form or to the registrant if age 18 or older.

Stat. Auth.: ORS 432.230, 432.287 & 432.289
Stats. Implemented: ORS 432.230, 432.287 & 432.289

Hist.: HD 24-1981, f. & ef. 11-17-81; PH 2-2003(Temp), f. & cert. ef. 2-20-03 thru 8-19-03; PH 11-2003, f. & cert. ef. 7-31-03; Renumbered from 333-011-0047 by PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0280
Extension of Time for Submission of Report of Death or Fetal Death

(1) Upon written request by the funeral service practitioner, person acting as a funeral service practitioner, or Medical Examiner, the state registrar may extend the period to file a report of death, not to exceed 60 days.

(2) Upon written request by the facility administrator or the Medical Examiner, the state registrar may extend the period to file a report of fetal death, not to exceed 60 days.

(3) The request shall include the date of event, name of the decedent if a report of death or name of the mother if a report of fetal death, and an explanation of why the extension of time is required.

(4) The state registrar shall respond to such request within two business days of receipt. The request may be faxed or otherwise transmitted electronically, but must include a signature of the person requesting the extension.

Stat Auth: 2013 OL Ch. 366, Sec. 21
Stats. Implemented: 2013 OL Ch. 366, Sec. 21
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0285
Report of Fetal Death Which Occurred Outside a Licensed Medical Facility

When a fetal death occurs outside a licensed medical facility, the report of fetal death must be submitted by the Medical Examiner or physician who attended at or immediately after the delivery through the electronic reporting system.

Stat Auth: 2013 OL Ch. 366, Sec. 19
Stats. Implemented: 2013 OL Ch. 366, Sec. 19
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0290
Commemorative Certificate of Stillbirth

(1) The Certificate of Stillbirth shall be suitable for display and shall feature an attractive design with calligraphy-like font, high quality paper, a State of Oregon seal, and signature of the state registrar.

(2) Information on the Certificate of Stillbirth shall be prepared using information from the "Report of Fetal Death" submitted to the Center for Health Statistics. The text of the certificate shall contain the name of the child, date and place of birth, names of parent(s), date of issuance, state file number from the fetal death record, and a statement that the certificate is not proof of a live birth. The word deceased would be included after the name of the child.

Stat. Auth.: ORS 432.266
Stats. Implemented: ORS 432.266
Hist.: PH 27-2006, f. 11-30-06, cert. ef. 12-1-06; Renumbered from 333-011-0200 by PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0295
Authorization for Final Disposition

(1) Removal of body. Before removing a dead body or fetus from the place of death, the funeral director or person acting as such shall:

(a) Obtain assurance from the attending physician that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death or fetal death and receive permission to remove the body from the place of death; or

(b) Notify the medical examiner, if the case comes within the medical examiner's jurisdiction and obtain authorization to remove the body.

(2) Authorization for disinterment and reinterment. An authorization for disinterment and reinterment of human remains shall be issued by the state registrar upon receipt of a written application signed by the next of kin and the person who is in charge of the disinterment or upon receipt of an order of a court of competent jurisdiction directing such disinterment:

(a) Upon receipt of such a court order or signed permission of the next of kin, the state registrar may issue one authorization to permit disinterment and reinterment of all human remains in a mass disinterment provided that, insofar as possible, the remains of each body be identified and the place of disinterment and reinterment specified. The authorization shall be permission for disinterment, transportation, and reinterment;

(b) Human remains properly prepared by an embalmer and deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final reinterment within the same cemetery.

Stat. Auth.: ORS 432.317
Stats. Implemented: ORS 432.317
Hist.: HB 169, f. & ef. 10-16-63; HD 24-1981, f. & ef. 11-17-81; Renumbered from 333-011-0076 by PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0300
Amendments to Death Records

(1) To amend a death record, application may be made by the informant, the next of kin of the decedent, person acting as the funeral service practitioner who signed the report of death, or a funeral service practitioner employed by the licensed funeral establishment that submitted the report of death.

(a) Next of kin is, in order of preference:

(A) Spouse of the decedent;

(B) A son or daughter age 18 or older of the decedent;

(C) The mother or the father of the decedent;

(D) A brother or sister age 18 or older of the decedent;

(E) The guardian of the decedent at the time of death;

(F) The personal representative of the estate of the decedent; or

(G) The person nominated as the personal representative of the decedent in the decedent's will.

(b) Applications to amend the medical certification of cause of death shall be made only by the physician who signed the medical certification or the medical examiner.

(c) A completed and signed affidavit in a format prescribed by the state registrar is required for all amendments.

(2) When the marital/partnership status is shown as married/partnered and a surviving spouse/partner is listed on the death record of the decedent then the marital/partnership status shall be changed to:

(a) Widowed and the spouse/partner removed if a certified copy of a death record for the spouse/partner documenting that the spouse/partner died prior to the death of the decedent is submitted by the informant.

(b) Divorced or never married and the spouse/partner removed if a certification of divorce/dissolution/annulment documenting that the event occurred prior to the death of the decedent is submitted by the informant.

(3) If the marital/partnership status is shown as married/partnered and surviving spouse/partner is listed as unknown or is blank on the death record, then a certified copy of the record of marriage/partnership must be provided to add the name of the surviving spouse/partner.

(4) If the marital/partnership status is shown as married/partnered and the surviving spouse/partner is listed on the death record then an order from a court of competent jurisdiction will be needed to change that spouse/partner to a different person.

(5) When the marital/partnership status is shown as divorced, widowed, or never married and no surviving spouse/partner is listed on the death record of the decedent then the marital/partnership status shall be amended to married/partnered and the surviving spouse/partner added upon receipt of notarized affidavits from both the informant and from the alleged surviving spouse/partner stating that an error was made and stating the correct information, and either:

(a) A certified copy of the marriage/partnership record showing that the person to be listed as the surviving spouse/partner was married to/partnered with the decedent prior to death is submitted by the informant; or

(b) An order from a court of competent jurisdiction issued in a legal action indicating that the person was in a common-law marriage with the decedent at the time of the decedent's death.

(6) Other changes to marital/partnership status and surviving spouse/partner will be made only upon the finding of a court of competent jurisdiction in an order that determined the marital/partnership status of the decedent and identifies the surviving spouse/partner, if appropriate.

(7) For sections (2) through (5) of this rule, in addition to documentation required, the informant listed on the death record shall be notified of the requested change and given the opportunity to respond prior to the state registrar amending the death record. If the informant disagrees with the change, marital status and surviving spouse can only be changed upon receipt of an order from a court of competent jurisdiction.

(8) Amendment to other items on the death record:

(a) Signatures may not be amended.

(b) Other personal and statistical items on the death record may be amended by the funeral services practitioner based on a correction affidavit.

(c) Other personal and statistical items on the death record shall be amended by the informant or next of kin only if supported by an affidavit and documentary evidence that is acceptable to the state registrar.

(d) An order from a court of competent jurisdiction may be used to amend any item except signatures, the date of registration, or to amend the date of death to a date that is after the date of registration.

(9) Notwithstanding sections (2) through (7) of this rule, any item may be amended except signatures if the amendment is required because of clerical error by the facility, institution or individual responsible for sub-

mitting the report. The request for amendment shall be supported by a written statement explaining the error.

Stat Auth: 2013 OL Ch. 366, Sec. 29
Stats. Implemented: 2013 OL Ch. 366, Sec. 29
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0305
Marriage and Oregon Registered Domestic Partnership Records

(1) The state registrar shall register Declaration of Oregon Registered Domestic Partnership forms that have been completed, notarized, and filed with an Oregon county clerk.

(a) The form shall be considered complete when all items not identified as optional or statistical have been completed.

(b) If the item "legal name taken after domestic partnership" is not completed, the form may be accepted for registration. A partner not completing the item will retain the legal name prior to the declaration as their sole legal name.

(2) The state registrar shall register the Application, License, and Record of Marriage forms that have been completed by the officiant and filed with the Oregon county clerk who issued the license.

(a) The form shall be considered complete when all items not identified as statistical have been completed. Affidavit of age may be blank if not required by the county clerk under ORS 109.050.

(b) If the item "legal name taken after marriage" is not completed, the form may be accepted for registration. A party not completing the item will retain the legal name prior to the marriage as their sole legal name.

Stat Auth: 2013 OL Ch. 366, Sec. 22
Stats. Implemented: 2013 OL Ch. 366, Sec. 22
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0310
Record of Dissolution

(1) The state registrar shall register Record of Dissolution of Marriage, Annulment or Domestic Partnership forms that have been completed and certified by an Oregon clerk of the court. The form shall be considered complete when the following minimal information has been completed:

(a) Husband/Partner A legal name, date of birth and birthplace;

(b) Wife/Partner B legal name, date of birth and birthplace;

(c) Date of marriage or filing of registered domestic partnership, place of marriage or registered domestic partnership;

(d) Date marriage or registered domestic partnership was dissolved, date judgment becomes effective, county of decree; and

(e) Signature, either physical or electronic, of court official, title of official and date signed.

(2) The clerk of the court shall complete and submit reports of dissolution of marriage or dissolution of domestic partnership for cases where final judgment has been entered on the 5th working day and the 15th working day of each month.

Stat Auth: 2013 OL Ch. 366, Sec. 25
Stats. Implemented: 2013 OL Ch. 366, Sec. 25
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0315
Disposition of Reports of Induced Termination of Pregnancy

(1) Reports of induced termination of pregnancy are statistical reports only and are not to be incorporated into the official records of the Vital Statistics Section. The state registrar is authorized to dispose of such reports when all statistical processing of the records has been accomplished. However, the state registrar may establish a file of such records so they will be available for future statistical and research projects provided such file is not made a part of the official records and the reports are not made available for the issuance of certified copies. Such file shall be retained for as long as the state registrar deems necessary and it shall then be destroyed. The file may be maintained by photographic, electronic, or other means as determined by the state registrar, in which case the original report from which the photographic, electronic, or other file was made shall be destroyed.

(2) The provisions of this regulation shall also apply to all records of induced termination of pregnancy filed prior to the adoption of this regulation.

Stat. Auth.: ORS 432.337
Stats. Implemented: ORS 432.337
Hist.: HB 228, f. 11-5-69; HD 24-1981, f. & ef. 11-17-81; Renumbered from 333-011-0110 by PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0320
Preservation of Vital Records

(1) When an authorized reproduction of a vital record has been properly prepared by the state registrar and when all steps have been taken to provide for the continued preservation of the information, the record from which such authorized reproduction was made may be disposed of by the state registrar. Such record may not be disposed of until:

(a) The quality of the authorized reproduction has been tested to ensure that acceptable certifications can be issued;

(b) A permanent copy of such record has been placed in a secure location removed from the building where the authorized reproduction is housed; and

(c) The original records have been offered to the State Archives.

(2) Such permanent copy described in section (1) shall be maintained in such a manner to ensure that it can replace the authorized reproduction should the authorized reproduction be lost or destroyed.

(3) The state registrar shall offer the original documents from which the authorized reproductions are made to the State Archives. The State Archives shall retain permanently such records and shall adhere to the restrictions in the vital statistics law related to access to such records. If the State Archives declines to place such records in its files the state registrar shall be authorized to destroy the documents. Such destruction shall be in accordance with generally accepted methods for disposition of confidential or sensitive documents.

(4) Microfilm used for preservation shall be manufactured and stored in accordance with the standards established by the State Archives by rule. Redundant copies shall be stored at one or more sites distant from the master copies. Mechanisms for retrieving copies from distant sites shall be documented and periodically tested.

(5) Electronic images of vital record documents shall be indexed for ease of retrieval. Long-term archiving of electronic documents shall follow standards established by the State Archives by rule. The index shall allow for linking of amended or corrected images to the original image. The images shall be stored in a tamper resistant manner and media. The preservation management program shall include the refreshment of storage media to assure integrity and prevent obsolescence on a periodic basis into new formats as they become accepted.

(6) Vital event information stored as electronic data shall be stored in a manner that is both tamper resistant and tamper evident. All changes to information shall be tracked, including the item changed, the user who made the change, the date of the change, and the justification for the change. Back-ups of electronic data shall be made at regular intervals, and copies shall be stored at one or more sites distant from the master copy. Mechanisms and procedures for retrieving copies from distant sites shall be documented and periodically tested.

(7) The preservation management program shall provide for the periodic refreshment of electronic data, to include hardware, software, and coding standards. The program must include documentation of changes in coding structures, provide for testing of converted files to assure data quality, and address associated costs.

Stat Auth: 2013 OL Ch. 366, Sec. 32
Stats. Implemented: 2013 OL Ch. 366, Sec. 32
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0325
Confidentiality and Disclosure of Information from Vital Records or Vital Reports

To protect the confidentiality and security of vital records and vital reports:

(1) The state registrar shall not permit access to or disclosure of personally identifiable information contained in vital records, or issue a copy of all or part of any such record unless the applicant is authorized to obtain such record for a proper purpose under Oregon Laws 2013, chapter 366, section 33, or is authorized to obtain such record under Oregon Laws 2013, chapter 366, section 36.

(a) Access to or disclosure of information contained in vital records for sale or release to the public, for direct or indirect marketing of goods or services, for other non-research solicitation of registrants or families of registrants, or for other commercial or speculative purposes shall not be deemed a proper purpose.

(b) The state registrar may impose reasonable conditions as to the use and re-disclosure of information, and may limit access to the minimum necessary to fulfill the purpose for which information is requested.

(2) Requests for personally identifiable information contained in vital records for health research purposes shall be submitted in writing to the state registrar.

(a) Each request shall contain at a minimum:

(A) Name, title, organizational affiliation and contact information (mailing address, telephone number, and electronic mail address) of the requestor and the organizational official authorized to execute agreements;

(B) Title, objectives and description of the proposed research study;

(C) Institutional Review Board approval of study protocol if any contact with study subjects including children or parents listed on live birth records or next-of-kin or informants of decedents is proposed;

(D) Physical and electronic storage and security measures to be taken to assure confidentiality and security of identifying information, and provision for return or destruction of the information at the conclusion of the research study;

(E) Time frame of the research study;

(F) Names of all persons on the research study team who will have access to the personally identifiable information;

(G) Plan for dissemination of the results.

(b) Each request for personally identifiable information from vital records to be used for health research purposes shall be reviewed to determine compliance with at least the following:

(A) Contains all elements required by this rule;

(B) Adequately justifies the need for the requested information;

(C) Compliance with past data use agreements;

(D) The requested information can be provided within the time frame set forth in the request; and

(E) The state registrar has adequate resources with which to comply with the request.

(3) Requests by government agencies for any identifiable information contained in the state's vital records maintained pursuant to ORS chapter 432, or for verifications thereof, shall specify in writing the official use to which the requested information will be put and why the information is necessary in accordance with Oregon Laws 2013, chapter 366, section 33. The request may be granted only if the state registrar agrees that the requested information is necessary for a proper purpose.

(a) Each request shall contain at a minimum:

(A) Name, title, agency, and contact information (mailing address, telephone number, and electronic mail address) of the requestor and the agency official authorized to execute agreements;

(B) Purpose or intended use of the data or vital records being requested;

(C) Physical and electronic storage and security measures to be taken to assure confidentiality and security of identifying information, and provision for return or destruction of the information at the conclusion of the intended use;

(D) Time frame of intended use; and

(E) Names of all persons who will have access to the personally identifiable information being requested.

(b) Each request from a government agency for personally identifiable information from vital records shall be reviewed to determine compliance with at least the following:

(A) Contains all elements required by this rule;

(B) Adequately justifies the need for the requested information;

(C) Compliance with past data use agreements;

(D) The requested information can be provided within the time frame set forth in the request; and

(E) The state registrar has adequate resources with which to comply with the request.

(4) The state registrar shall enter into data use agreements for all approved health research and government agency requests for personally identifiable information from vital records. Each data use agreement shall include but not be limited to:

(a) Specification of exactly what information will be disclosed to the requestor, the purpose for which it is provided, and the manner in which the data will be used;

(b) The charges or fees, if any, to be paid by the requestor to the state registrar for use of the data;

(c) A prohibition of re-release by the requestor of any information that may identify any person or any individual case record, whether identifiable or not, without the prior written approval of the state registrar;

(d) The requestor's acknowledgment and agreement that ownership of all information provided by the state registrar shall remain exclusively that of the state registrar and that the data use agreement constitutes a license to use the data provided only for the purpose and in the manner set forth in the agreement;

(e) The requestor's agreement neither to attempt to link nor to permit others to attempt to link the data set with individually identifiable records from any other data set without the prior written approval of the state registrar;

(f) The requestor's agreement neither to use nor to allow anyone else to use the information to attempt to learn the identity of any person included from the information provided without the prior written approval of the state registrar;

(g) Agreement that if the identity of any person is discovered inadvertently, the recipient:

(A) Will not make use of this knowledge;

(B) Will immediately notify the state registrar; and

(C) Will safeguard or destroy the information which led to the identification of the individual as requested by the state registrar;

(h) Acknowledgment and agreement that the requestor shall be responsible for any breach of security, including but not limited to any notifications to affected persons required by law or by the state registrar, and any fines, penalties or other sanctions that may be imposed pursuant to applicable law.

(i) Agreement to prohibit the use of data provided for any purpose not explicitly identified and approved in the signed data use agreement.

Stat Auth: 2013 OL Ch. 366, Sec. 33
Stats. Implemented: 2013 OL Ch. 366, Sec. 33
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0330
Authentication of Applicant

(1) An authentication quiz shall be used for each application received by telephone, Internet, or through a kiosk. The authentication quiz shall be based on publicly available information and must be information requiring personal knowledge not available from reviewing current information typically found in a wallet.

(a) For applications received by telephone or Internet, successful completion of the authentication quiz shall serve as identification of the applicant and additional documentation shall not be required.

(b) For applications received by telephone or Internet and the authentication quiz is not successfully completed, the applicant shall be instructed to send additional identity documentation to support the application.

(c) For applications received by kiosk and the authentication quiz is not successfully completed, the applicant must show identification documents before receiving a certified copy in person or by mail.

(2) All applicants applying in person must show identification regardless of authentication quiz completion.

(3) Applicants for records for events occurring more than 50 years for death, fetal death, marriage, Oregon registered domestic partnerships or dissolution of marriage or registered domestic partnerships or 100 years for birth, shall be submitted on the same form and in the same manner, including the authentication quiz, as records for current events.

Stat Auth: 2013 OL Ch. 366, Sec. 36
Stats. Implemented: 2013 OL Ch. 366, Sec. 36
Hist.: PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0335
Copies of Vital Records

(1) Full or short form certified copies of vital records may be made by mechanical, electronic, or other reproductive processes, except that the information contained in the "Information for Medical and Health Use Only" section of the record of live birth shall not be included.

(2) When a certified copy is issued, it shall be certified as a true representation of the facts of the event by an authorized agent and shall include the date issued, the name of the state registrar, the state registrar's signature or an authorized facsimile thereof, and the seal of the state and agency authorized under ORS 432.010.

(3) Confidential verification of the facts contained in a vital record may be furnished by the state registrar to any federal, state, county, or municipal government agency or to any other agency representing the interest of the registrant, subject to the limitations as indicated in section (1) of this rule. Such confidential verifications shall be on forms prescribed and furnished by the state registrar or on forms furnished by the requesting agency and acceptable to the state registrar; or, the state registrar may authorize the verification in other ways when it shall prove in the best interests of his or her office.

(4) The state registrar may authorize certification or verification of fact of death to an institution when the institution has demonstrated to the satisfaction of the state registrar that such information is necessary for a determination of or protection of a personal or property right of the institution.

(5) When the state registrar finds evidence that a record was registered through misrepresentation or fraud, he or she shall have authority to

withhold the issuance of a certified copy of such record until a court determination of the facts has been made.

(6) The state registrar shall determine the minimum information needed to locate and identify a particular record within the files.

(7) Subject to the penalties of ORS 432.993, no person is authorized to photograph, photostat, duplicate, or issue what purports to be a certified copy, certification, or record of birth, death, or fetal death except authorized employees of the Public Health Division, county registrars, or their deputies, acting in accordance with directives, regulations, or law governing their official duties.

(8) Certified copies of records of death or records of fetal death issued to an employee or agent of a funeral home or a person acting as a funeral service practitioner shall be transferred only to persons eligible to receive certified copies if applying individually.

(9) The county registrar shall forward any completed original birth records received to the state registrar immediately for registration at the state.

(10) Certified copies of death records used to record the transfer of property in Oregon must not include cause of death information if:

(a) The death occurred after 1977;

(b) The death occurred in Oregon; and

(c) The certified copy is issued after January 1, 2014.

Stat. Auth.: ORS 432.010, 432.085, 432.121 & 432.180

Stats. Implemented: ORS 432.010, 432.085, 432.121 & 432.180

Hist.: HB 169, f. & ef. 10-16-63; HD 24-1981, f. & ef. 11-17-81; HD 3-1986, f. & ef. 2-5-86; PH 16-2011, f. 12-28-11, cert. ef. 1-1-12; Renumbered from 333-011-0101 by PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

333-011-0340

Fees

(1) The fee for a certified copy of a vital statistics record or for an abbreviated birth or death record shall be $20. Additional copies of each record ordered at the same time shall have a fee of $15 per certified copy.

(2) The fee for a Commemorative Certificate of Stillbirth shall be $20. Additional copies of each record ordered at the same time shall have a fee of $15 per certificate.

(3) The fee for any search of the files and records shall be $20. The fee shall include the issuing, when requested, of one certified copy.

(4) The $20 fee shall cover the cost of a five year search for death, marriage and divorce records. If more than a five year search is requested, an additional fee of $1 per year shall be charged.

(5) The fee for a certified copy of a recorded court order registering an unrecorded birth under ORS 432.142, to be furnished by the clerk of the circuit court or the state registrar shall be $20.

(6) Overpayment of a required fee received in the office of the state registrar shall be refunded if in excess of $6 and any overpayment less than $6 shall be refunded upon written request of the applicant within one year.

(7) A fee of $50 shall be paid to the state registrar for the preparation of a new or supplemental record of live birth to amendment, correction, adding the father's name to the birth record or filing of adoption orders and delayed and court registered birth records. The fee shall include the charge for one certified copy of the new or supplementary record of live birth. If a certified copy is not requested at the time of amendment or creation of the supplementary record, the amendment fee shall be $30.

(a) The $30 amendment fee may be waived to correct an error or omission by a reporting source if a birth record is corrected within the first year from the date of the event.

(b) The $30 amendment fee may be waived at any future time to correct an error on a record of live birth by a reporting source for date of birth, time of birth or gender of registrant.

(8) A fee of $50 shall be paid to the state registrar for the preparation of an amended death record, if amendments are filed more than one year after the date of death. However, no fee shall be paid for amendments to the cause of death filed by the physician or medical examiner that signed the report of death.

(9) A fee of $5.50 shall be paid to expedite the search and filling of an order for a certified copy when the order is placed by telephone or the Internet, billed to a credit card and processed the same or the next working day. This fee is in addition to the fee charged by a subcontractor providing computer, prepayment, billing and collection services for orders processed using the subcontractor's services.

(10) A fee of $45 shall be paid for heirloom birth certificates.

(11) A fee of $5 per year shall be charged for duplicate copies of microfiche cards containing index information for death, marriage and divorce records.

(12) A fee of $8.50 per reel shall be charged for duplicate copies of microfilm containing index information of death, marriage and divorce records.

(13) Persons requesting special services or specific data sets shall be charged actual time and material costs of producing the data.

(14) The fee for certified copies to be used in research approved by the state registrar shall be $20 for quantities less than 100 certified copies. If the quantity is 100 or more the following scale shall apply:

(a) If a listing is supplied which provides year and state file number, or name, date, and place of event, the fee shall be $10 per copy;

(b) If a listing is supplied which provides name and year of event, the fee shall be $15 per copy;

(c) Listings supplying less information shall be at the regular fee.

(15) A fee of $20 shall be paid for making certified copies of documents from sealed files.

(a) A fee of $20 shall be paid for making certified copies of affidavits and supplemental reports.

(b) A fee of $2 per page shall be charged for uncertified copies of affidavits and supplemental reports that can be issued without opening sealed files.

(16) A fee of $25 may be charged for each check returned for nonpayment.

(17) A flat fee of $20 shall be paid for the replacement of certified copies when the original documents are returned within a year of issuance with an acceptable correction document and appropriate amendment fee. This fee may be waived when fewer than four certified copies are being replaced.

(18) A fee of $8 shall be paid for each manual verification of a vital event for each government agency or subdivision of a government agency requesting over 10 verifications per month.

(19) A fee not to exceed $4 shall be paid for each electronic verification of a vital event. This fee is in addition to the fee charged by a subcontractor providing computer system, billing and collection services for verifications processed using the subcontractor's services.

Stat. Auth.: ORS 432.015, 432.121, 432.146 & 432.266 & 2013 OL Ch. 366, Sec. 3, 33 & 41

Stats. Implemented: ORS 432.146 & 432.266 & 2013 OL Ch. 366, Sec. 3, 33 & 41

Hist.: HB 169, f. & ef. 10-16-63; HD 13-1979(Temp), f. & ef. 10-1-79; HD 18-1979, f. & ef. 12-12-79; HD 2-1985, f. & ef. 2-19-85; HD 1-1987, f. 1-20-87, ef. 2-2-87; HD 10-1990, f. 5-3-90, cert. ef. 7-1-90; HD 4-1992(Temp), f. & cert. ef. 4-28-92; HD 8-1992, f. & cert. ef. 6-22-92; HD 19-1993(Temp), f. & cert. ef. 10-27-93; HD 21-1994, f. & cert. ef. 8-15-94; PH 17-2003, f. 10-31-03, cert. ef. 12-1-03; PH 3-2010, f. & cert. ef. 2-3-10; Renumbered from 333-011-0106 by PH 17-2013, f. 12-26-13, cert. ef. 1-1-14

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Rule Caption: Pulse oximetry screening for newborns at hospitals and birthing centers

Adm. Order No.: PH 18-2013(Temp)

Filed with Sec. of State: 12-31-2013

Certified to be Effective: 1-1-14 thru 6-29-14

Notice Publication Date:

Rules Amended: 333-076-0670, 333-520-0060

Subject: The Oregon Health Authority (Authority), Public Health Division is amending rules in chapter 333, divisions 76 and 520 related to pulse oximetry screening for newborns at hospitals and birthing centers. These rules implement SB 172 passed during the 2013 legislative session, which directs the Authority to adopt rules requiring birthing facilities to perform pulse oximetry screening on each newborn delivered at the birthing facility before discharging the newborn. The screening requirement applies to hospitals that provide services related to the delivery of newborns and birthing centers. The rules require hospitals and birthing centers to perform pulse oximetry screening on every newborn born at the facility on or after March 1, 2014, to notify parents and the infant's health care provider of the results, to provide any necessary follow-up services or treatment in accordance with the applicable standard of care, or provide a referral for such services or treatment, and to document the screening in the infant's medical record. The screening is to be done in a manner consistent with recommendations published in Strategies for Implementing Screening for Critical Congenital Heart Disease, AR Kemper et al.,Pediatrics 2011;128(5): 1267.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-076-0670

Policies and Procedures

Each Center must have a detailed Policies and Procedures Manual in easily accessible form, that has been approved by the governing body or person. In order to be approved by the Division for licensing purposes, these policies and procedures must meet North American Registry of Midwives (NARM) standards. All the above noted policies must be made available to representatives of the Division on request, and subject to their approval. Failure of approval will be adequate reason for the finding of deficiencies that must be corrected for continuation of licensure. The policies must be implemented as applicable, and there must be documented evidence of implementation of the above noted policies. The policies and procedures that will be developed as applicable and implemented include:

(1) A detailed organizational chart that shows the governing body or person, and clearly delineates lines of authority, responsibility and accountability for each position included in the organization, including volunteers.

(2) Staffing — The governing body or person must ensure, through the policies and procedures, that there are adequate numbers of qualified and, where required, licensed or registered personnel on duty and immediately available to provide services intended for mothers and families, and to provide for safe maintenance of the Center.

(3) Detail of procedures to be permitted, and by whom, and method of determining the qualifications and privileges of all personnel. Staff will be required to provide documented evidence of such qualifications. Such evidence must be maintained by the Center.

(4) System for ensuring 24-hour coverage of the Center, including constant attendance by qualified attendants while a client is in the Center.

(5) System for training and for continuing education for all personnel according to their assigned duties and evaluation of skills consistent with the individual practitioners' scopes of practice. All personnel providing direct client care must be trained in cardiopulmonary resuscitation (CPR) and there must be a record of current CPR certification. In addition there must be present at each birth one practitioner trained in care and resuscitation of the newborn.

(6) System delineating how and when the Center will seek consultation with clinical specialists in obstetrics and pediatrics in order to ensure that all services, policies, and procedures meet North American Registry of Midwives (NARM) standards.

(7) Protocol for referral or transfer to appropriate health care facilities all clients whose risk status exceeds that for "low risk pregnancy."

(8) Procedures by which risk status will be assessed during the antepartal, intrapartal, and post partum period, and the identification of medical and social factors which exclude women, fetuses and newborns from the low-risk group; and for the annual review of these methods. Documentation of such assessments must be maintained in client's clinical records. Only those clients for whom prenatal and intrapartum history, physical examination, and laboratory screening procedures have demonstrated a low risk pregnancy and labor will be accepted into the Center for childbirth.

(9) System by which the Center will ensure the presence and continuing maintenance, as recommended by the manufacturer(s), of equipment needed to provide low risk maternity care, and to initiate emergency procedures in life-threatening events to the mother or baby.

(10) Plan and protocols for ensuring that emergency situations in either the mother or newborn are recognized in a timely fashion, and care is provided within the limits of the practitioner's scope of practice.

(11) System delineating how emergency transportation will be promptly available for transport of the mother and/or newborn to a health care facility with the capacity for emergency care of women, in all the stages of labor, and newborns. The written policy must include a listing of situations for the mother and/or newborn that would have the potential to necessitate emergency transfer. The policy must also include the requirement that a transfer plan for each patient be developed.

(12) Systems for ensuring the orientation and education of women and families registering for care at the Center so that they will be informed as to the benefits and risks of the services available to them at the Center and the qualifications and licensure status of practitioners at the Center. They must be fully informed of the risk criteria as defined in OAR 333-076-0650 and provide written consent. The client, as a part of the informed consent, must also agree in advance to transfer to another clinician or appropriate health care facility, should the need occur due to the development of unexpected risk factors after admission to the Center. The client must be informed of the benefits and risks of such a transfer.

(13) System for the sterilization of equipment and supplies, unless only pre-packaged and pre-sterilized items are used.

(14) System to ensure the performance of appropriate laboratory studies and to ensure that the results are available in a timely manner.

(15) System for the storage and administration of drugs. All medications must be prescribed and/or administered within the individual practitioner's licensure and/or scope of practice.

(16) System to ensure the timely administration of Rh immune globulin to the mother, where applicable.

(17) System to ensure the timely appropriate administration of Vitamin K to the newborn, according to rules of the Division.

(a) The purpose of ORS 433.303 to 433.314 is to protect newborn infants against hemorrhagic disease of the newborn.

(b) The Vitamin K forms suitable for use are forms of Vitamin K1 (Phytonadione), available in injectable or oral forms: as Mephyton for oral use, or as aquamephyton or konakion for injectable use. The Vitamin K dose is to be administered within the first 24 hours of delivery. Menadione (Vitamin K3) is not recommended for prophylaxis and treatment of hemorrhagic disease of the newborn.

(c) The dose of any of the Vitamin K1 forms to be administered is one dose of 0.5 to 1.0 mg., if given by injection, or one dose of 1.0 to 2.0 mg. if given orally.

(d) A parent may, after being provided a full and clear explanation, decline to permit the administration of Vitamin K based on religious tenets and practices. In this event, the parent must sign a form acknowledging his/her understanding of the reason for administration of Vitamin K and possible adverse consequences in the presence of a person who witnessed the instruction of the parent, and who must also sign the form. The form must become a part of the clinical record of the newborn infant.

(18) System to ensure the timely and appropriate collection of blood from the newborn for testing by the State Laboratory, Newborn Screening Program, for the Metabolic Diseases listed in 333-024-0210.

(19) System to ensure that pulse oximetry screening is performed on every newborn infant delivered at the birthing center on and after March 1, 2014, before discharging the newborn infant. Screening should be done in a manner consistent with the recommendations found in Strategies for Implementing Screening for Critical Congenital Heart Disease, AR Kemper et al., Pediatrics 2011;128(5): e1259–1267.

(a) A center must have policies and procedures or protocols based on nationally recognized recommendations for newborn infant pulse oximetry screening and follow-up care, for determining what is considered a positive screen result and the follow-up services, treatment, or referrals that must be provided if a newborn infant has a positive screen result.

(b) In addition, there must be a system to ensure that:

(A) The health care provider responsible for the newborn infant and the infant's primary care provider are notified of the results of the screening;

(B) The parent or legal representative of the newborn infant is notified of the results of the screening;

(C) In accordance with the applicable standard of care, any appropriate follow-up services or treatment for the newborn infant is provided, if necessary; or that a referral to a parent or legal representative of the newborn infant is provided for follow-up services or treatment if necessary; and

(D) There is documentation in the infant's medical record that screening was performed, the results, the names of the health care providers who were notified of the results, and any follow-up services or treatment or referral for services or treatment.

(c) A parent or legal representative of a newborn infant may decline testing and if testing is declined the declination must be documented in the medical record.

(20) Protocol delineating the steps to ensure the prompt and safe evacuation of the Center in the event of emergency situations, such as fire. The Center must ensure the evaluation of staff in managing such situations by periodic drills for fire, and/or other emergencies. Such drills must be documented.

(21) System of infection control to address the prevention and early recognition of the possibility of infection, and timely and acceptable methods of control. This includes written documentation of the problem, and measures taken for control, and must at least meet the requirements of the rules of the Division. Documentation must also include methods for the control and prevention of cross-infection between clients and services in accordance with 2003 Center for Disease Control and Prevention "Guidelines for Environmental Infection Control in Health-Care Facilities."

(22) System to be used for the prevention of Ophthalmia Neonatorum in the newborn OAR 333-019-0036(2). Prophylaxis for Gonococcal Ophthalmia Neonatorum:

(a) The practitioner attending the birth of an infant must, after evaluating the infant as being at risk and within two hours of delivery, instill appropriate prophylactic antibiotic ointment from single patient use applicators into each eye of the newborn infant;

(b) Parent(s) refusing to allow prophylaxis for their infant(s) must be informed, by the attending Health Care Provider, of the risks attendant to such action and must sign a witnessed affidavit to testify that they have been so informed and nonetheless refuse to allow prophylaxis.

(c) If Vitamin K and/or Gonococcal Ophthalmia Neonatorum Prophylaxis cannot be administered by the individual delivering the newborn, methods must be described to ensure that these services are arranged by referral.

(23) System to ensure that appropriate vital records are filed according to the rules of the Division.

(24) System for a semi-annual clinical record audit to evaluate the care process and outcome.

Stat. Auth.: ORS 441.025 & 442.015
Stats. Implemented: ORS 441.025 & 442.015
Hist.: HD 26-1985, f. & ef. 10-28-85; HD 2-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0420; PH 15-2006, f. & cert. ef. 6-27-06; PH 18-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-29-14

333-520-0060
Maternity Services

(1) General hospitals are required to comply with this rule. A low occupancy acute care hospital shall comply with this rule if it offers maternity services.

(2) A hospital that provides maternity services shall have separate maternity facilities and a maternity care department that:

(a) Has labor, delivery, recovery, postpartum, and nursery rooms that conform to the applicable requirements of OAR chapter 333, division 535;

(b) Requires every person in the delivery room during a delivery to be appropriately attired according to the hospital's Infection Control Policy;

(c) Has appropriate resuscitation equipment immediately available to rooms where deliveries are planned and where newborn infants are kept;

(d) Has a warmed blanket or incubator for newborns to prevent thermal loss;

(e) Has incubators for premature infants equipped with a governor to control the flow of oxygen at 40 percent or under, and an oxygen analyzer;

(f) Has an accurate scale for weighing of infants; and

(g) Includes a nursery and a separate bassinet for each infant with a clean mattress covered with suitable sheeting, washable pads, and bed linen that is kept clean at all times.

(3) A health care practitioner attending the birth of a newborn shall evaluate and treat a newborn at risk for chlamydial or gonococcal ophthalmia neonatorum in accordance with OAR 333-019-0036.

(4) A parent or legal representative that refuses to allow prophylaxis for an infant shall be informed by the attending health care practitioner of the risks of the refusal and must sign a witnessed affidavit that attests they have been so informed and nonetheless refuse to allow prophylaxis.

(5) A hospital shall ensure that all newborns are given Vitamin K at birth as required by ORS 433.303 through 433.314.

(a) A physician or midwife attending the mother at the birth of the child shall be responsible for ensuring that the newborn infant receives Vitamin K within 24 hours of birth to protect the infant against hemorrhagic disease of the newborn.

(b) The Vitamin K forms suitable for use are:

(A) Vitamin K 1 (Phytonadione) for oral or injectable use;

(B) Mephyton for oral use; or

(C) Aquamephyton or konakion for injectable use.

(c) A parent may, after being provided a full and clear explanation, decline to permit the administration of Vitamin K based on religious tenets and practices. If a parent or legal representative declines Vitamin K, the parent shall sign a form acknowledging his or her understanding of the reason for administration of Vitamin K and possible adverse consequences in the presence of a person who witnessed the instruction of the parent, who shall also sign the form. The form shall become a part of the medical record of the newborn infant.

(6) A hospital shall ensure that every newborn infant born in the hospital is tested for Metabolic Diseases as required by OAR 333-024-0210 through 333-024-0235 and instructions to the parents or legal representative regarding the testing that be documented in the medical record.

(7) A hospital shall ensure that every newborn infant born in the hospital receives a Newborn Hearing Screening Test as required by ORS 433.321 and OAR chapter 333, division 020.

(8) On and after March 1, 2014, a hospital must perform pulse oximetry screening on every newborn infant delivered at the hospital before discharging the newborn infant. Screening should be done in a manner consistent with the recommendations found in Strategies for Implementing Screening for Critical Congenital Heart Disease, AR Kemper et al.,Pediatrics 2011;128(5): e1259–1267.

(a) A hospital must have policies and procedures or protocols based on nationally recognized recommendations for newborn infant pulse oximetry screening and follow-up care, for determining what is considered a positive screening result and the follow-up services, treatment, or referrals that must be provided if a newborn infant has a positive screening result.

(b) Following the screening a hospital must:

(A) Notify the health care provider responsible for the newborn infant and the infant's primary care provider of the results of the screening;

(B) Notify a parent or legal representative of the newborn infant of the results of the screening;

(C) In accordance with the applicable standard of care, provide any appropriate follow-up services or treatment for the newborn infant if necessary or provide a referral to a parent or legal representative of the newborn infant for follow-up services or treatment if necessary; and

(D) Document in the newborn infant's medical record that the screening was performed, the results, the names of the health care providers who were notified of the results, and any follow-up services or treatment or referral for services or treatment.

(c) A parent or legal representative of a newborn infant may decline testing and if testing is declined, the declination must be documented in the medical record.

(9) Every infant born in a hospital shall be marked for identification before the infant is removed from the place of delivery and such identification shall not be removed from the infant until the infant is discharged.

(10) A hospital shall not admit visitors to a delivery room, maternity rooms, wards, units, or the nursery except in accordance with the hospital's visiting policy.

(11) A hospital shall ensure that persons entering the nursery are attired according to the hospital infection control policy and that hands are washed before touching an infant.

(12) A hospital shall follow its infection control policy when handling and storing linens.

(13) Formula feedings and any other feedings shall be given only as prescribed in writing by the physician or certified nurse midwife.

(14) A hospital shall maintain and preserve a log of births giving date of birth, name of newborn, and mother's name and chart number, in addition to complying with the requirements of the Authority's Center for Health Statistics.

(15) A hospital may use a part of the maternity department for selected, non-communicable non-obstetrical patients as defined by hospital policy and approved by the hospital's infection control program under the following conditions:

(a) Patients admitted or transferred to the maternity department shall be instructed by appropriate maternity service personnel as to their responsibilities regarding use of the facility.

(b) Patients admitted to the maternity department shall be limited to obstetrical patients admitted for delivery, patients with obstetric complications, and selected non-communicable, non-obstetrical patients.

(c) Obstetrical patients and medical/surgical patients shall not occupy the same room.

(d) If necessary, one or more medical/surgical patients shall be transferred to another service in order to admit obstetrical patients.

(16) A hospital shall adhere strictly to the guidelines for standard precautions developed by the Hospital Infection Control Practices Advisory Committee (HICPAC) when caring for obstetrical patients with infectious conditions. Patients with infectious conditions requiring strict isolation according to the above guidelines shall be transferred out of the maternity department following delivery, and given care in an area of the hospital where that isolation can be provided. If a maternity patient is found to have an infectious condition during surgery or delivery, the patient shall be returned to the maternity department and isolated according to hospital infection control policy.

(17) A delivery room suite may be used for surgical procedures on non-obstetrical patients if approved by the Chief of Obstetrics in accordance with medical staff rules and regulations.

(18) A hospital with maternity services may place stable postpartum patients and stable newborns, as those terms are defined in OAR 333-500-0010, on another acute care unit on a periodic basis under the following conditions:

(a) When a postpartum patient or newborn to be transferred out of the OB unit meet the hospital's criteria for care on another unit as described in this rule;

(b) Where the decision to place a postpartum patient or newborn on another unit is based on currently accepted postpartum and newborn care standards and the ability of that unit to meet the needs of the patient; and

(c) When nursing staff on the non-OB unit have received training required by this rule and have demonstrated continuing competence.

(19) A hospital that provides care to postpartum patients and newborns on non-OB units shall:

(a) Develop and implement policies and procedures that include but are not limited to:

(A) The transfer of postpartum patients and newborns to non-OB units including a delineation of the authority for medical, clinical and administrative nursing staff, and, when applicable, nurse practitioner staff to make the decision;

(B) Staffing guidelines for the nursing care of postpartum patients and newborns on the non-OB unit;

(C) Provision of information to maternity patients of possible or intended placement on a non-OB unit;

(D) Provision of consumer information related to the availability and location of specialty maternity services;

(E) Infection control practices including the use of standard precautions;

(F) Procedures for patient placement, privacy, and safety that prohibit postpartum patients and newborns from occupying the same room as non-obstetrical patients;

(G) Protocols for the placement of newborns without mothers;

(H) Procedures to assure the inclusion of the care of postpartum patients and newborns on non-OB units in the hospital's quality assurance program; and

(I) Delineation of hospital protocols for the return of postpartum patients and newborns to the OB unit, including addressing situations when safe care can no longer be provided on the non-OB unit.

(b) Develop and implement staff training, continuing education, and continuing competency program that includes but is not limited to:

(A) Postpartum nursing care;

(B) Nursing care of the newborn;

(C) Newborn resuscitation;

(D) Newborn feeding;

(E) Maternal and family education;

(F) Infection control practices including the use of standard precautions; and

(G) Maternity services policies and procedures including those required in subsection (19)(a) of this rule.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(12), (13), & (14); HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; HD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13; PH 18-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-29-14

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Rule Caption: Updating rules for Medical Marijuana pertaining to registration fees and adding a new medical condition

Adm. Order No.: PH 1-2014

Filed with Sec. of State: 1-13-2014

Certified to be Effective: 1-13-14

Notice Publication Date: 12-1-2013

Rules Amended: 333-008-0010, 333-008-0020, 333-008-0045

Rules Repealed: 333-008-0020(T)

Subject: The Oregon Health Authority, Public Health Division, Oregon Medical Marijuana Program (OMMP) is permanently amending OAR 333-008-0010 relating to a new medical condition, and OAR 333-008-0020 and 333-008-0045 relating to registration for medical marijuana use.

In 2013 the Legislature approved medical marijuana fee reductions for individuals that are eligible for Oregon Health Plan (OHP) benefits or are receiving food stamp benefits through the Oregon SNAP program. In addition, the passage of SB 281 added Post Traumatic Stress Disorder (PTSD) as a new medical condition. The fee reductions were implemented beginning October 1, 2013 with a temporary rulemaking that expires on March 30, 2014. This rulemaking will make those fee changes in rule permanent.

The Oregon Medical Marijuana Act (OMMA) mandates the Authority to adopt a fee structure in rule. In order to comply with the OMMA and legislative direction, the OMMP must amend its rules to reduce the application fee for OHP clients and SNAP recipients, and to add PTSD as a qualifying medical condition. Additionally, the Authority is simplifying the proof of residency requirements for those individuals submitting a reduced application fee, and clarifying that the replacement card fee is non-refundable in order to be consistent with other fees.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-008-0010

Definitions

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

(1) "Act" means the Oregon Medical Marijuana Act.

(2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Authority.

(3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS Chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(4) "Authority" means the Oregon Health Authority.

(5) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

(c) Post-traumatic stress disorder; or

(d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the Authority by rule or approved by the Authority pursuant to a petition submitted under OAR 333-008-0090.

(6) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.

(7) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority. "Designated primary caregiver" does not include the person's attending physician.

(8) "Food stamps" means the Supplemental Nutrition Assistance Program as defined and governed by ORS 411.806 through 411.845.

(9) "Grow site" means a specific location used by the grower to produce marijuana for medical use by a specific patient.

(10) "Grow site registration card" means the card issued to the patient and displayed at the grow site.

(11) "Grower" has the same meaning as "person responsible for a marijuana grow site."

(12) "Immature plant" has the same meaning as "seedling or start."

(13) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(14) "Mature plant" means a marijuana plant that does not fall within the definition of a seedling or a start.

(15) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(16) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Authority under ORS chapter 414.

(17) "OMMP" refers to the office within the Authority that administers the provisions of the OMMA, and all policies and procedures pertaining thereto, as set forth in these rules.

(18) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(19) "Patient" has the same meaning as "registry identification cardholder."

(20) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose.

(21) "Primary responsibility" as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS chapter 677, the patient's physician assistant licensed under ORS chapter 677, or the patient's nurse practitioner licensed under ORS chapter 678; and,

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(22) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(23) "Registry identification card" means a document issued by the Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(24) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

(25) "Replacement registry identification card" means a new card issued in the event that a registry identification cardholder's card, designated primary caregiver identification card, grower identification card, or grow site registration card is lost or stolen, or if a registry identification cardholder's designation of primary caregiver, grower, or grow site has changed.

(26) "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all three criteria shall be considered a mature plant.

(27) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(28) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(29) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 1-2014, f. & cert. ef. 1-13-14

333-008-0020

New Registration Application and Verification

(1) A person may apply for a registry identification card on forms prescribed by the Authority. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form signed and dated by the applicant;

(b) Copies of legible and valid U.S. state or federal issued photographic identification that includes last name, first name, and date of birth from the applicant, the designated primary caregiver, and grower, as applicable. Acceptable forms of current U.S. state or federal issued photographic identification include but are not limited to:

(A) Driver's license;

(B) State identification card;

(C) Passport; or

(D) Military identification card.

(c) Written documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Authority, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) If applicable, a completed and notarized "Declaration of Person Responsible for Minor" form for any person under 18 years of age, signed and dated by the person responsible for the minor;

(e) The name of a designated primary caregiver, if any, and one designated grower (either the patient or another person) and the location of the grow site; and

(f) An application fee and grow site registration fee, if applicable, in the form of cash, bank check, money order, or personal check.

(2) The Authority shall process an application prior to issuing registry identification cards to assure that the application is complete and information provided has been verified.

(a) The Authority shall only accept applications that are mailed or are hand-delivered.

(b) If an applicant does not provide all the information required and the application is considered incomplete, the Authority shall notify the applicant of the information that is missing, and shall allow the applicant 14 days to submit the missing information.

(c) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsections (2)(b) and (3)(e) of this rule, the application shall be rejected as incomplete. An applicant whose application is rejected as incomplete may reapply at any time. If an applicant submits an application fee and the application is subsequently denied or rejected, the application fee may be applied toward a new application submitted within one year of the denial or rejection date.

(d) The Authority may reject an application if the application or supporting documents appear to be altered (for example, writing is whited out). An application shall be denied in accordance with OAR 333-008-0030 if an application or supporting documents are determined to have been falsified.

(e) The Authority may verify information on each application and accompanying documentation, including:

(A) Contacting each applicant by telephone or by mail. If proof of identity is uncertain, the Authority may require a face-to-face meeting and may require the production of additional identification materials;

(B) Contacting a minor's parent or legal guardian;

(C) Contacting the Oregon Medical Board to verify that an attending physician is licensed to practice in the state and is in good standing;

(D) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Authority shall notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application. If the Authority is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed 30 days to submit written documentation or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030;

(E) Contacting the Division of Medical Assistance Programs, Department of Human Services-Self Sufficiency, or the Social Security Administration (SSA) to verify eligibility for benefits; and

(F) Conducting a criminal records check under ORS 181.534 of any person whose name is submitted as a grower.

(3) Application fees.

(a) A non-refundable application fee of $200 is required at the time of application.

(b) If applicable as specified in OAR 333-008-0025, a non-refundable grow site registration fee of $50 is required at the time of application.

(c) An applicant who can demonstrate current receipt of SSI benefits, current eligibility for OHP benefits or current receipt of food stamp benefits through the Oregon SNAP program qualifies for a reduced non-refundable application fee.

(A) An applicant demonstrating receipt of SSI benefits by providing a copy of a current monthly SSI benefit card showing dates of coverage is entitled to a reduced application fee of $20.

(B) An applicant demonstrating current eligibility for OHP benefits by providing a copy of the applicant's current eligibility statement is entitled to a reduced application fee of $50.

(C) An applicant demonstrating receipt of current food stamp benefits, verified by enrollment in Oregon's Food Stamp Management Information System database system and by providing current proof of his or her food stamp benefits, is entitled to a reduced application fee of $60.

(d) The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(e) The Authority shall notify an applicant who submits a reduced application fee for which the applicant is not eligible and will allow the applicant 14 days from the date of notice to pay the correct application fee and submit a current valid proof of eligibility.

(f) The application fees established in paragraphs (3)(c)(B) and (C) of this rule are effective for applications received on or after October 1, 2013.

(4) The application forms referenced in this rule may be obtained by contacting the Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or by calling 971-673-1234.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05; PH 17-2005, f. 11-25-05, cert. ef. 12-1-05; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 14-2010(Temp), f. & cert. ef. 7-6-10 thru 12-31-10; PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 9-2013(Temp), f. & cert. ef. 10-2-13 thru 3-30-14; PH 1-2014, f. & cert. ef. 1-13-14

333-008-0045

Interim Changes

(1) A patient shall notify the Authority within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.

(2) A patient shall notify the designated primary caregiver and the grower of any changes in status including, but not limited to:

(a) The assignment of another individual as the designated primary caregiver for the patient;

(b) The assignment of another individual as a grower for the patient; or

(c) The end of eligibility of the patient to hold a registry identification card.

(3) If the Authority is notified by the patient that a designated primary caregiver or a grower has changed, the Authority shall notify the designated primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that their card is no longer valid and must be returned to the Authority within seven calendar days.

(4) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Authority within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Authority may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.

(5) Change forms may only be submitted to the Authority via mail or in person at the OMMP office.

(6) If a patient's designated primary caregiver, grower or grow site has changed, the non-refundable fee to receive a replacement card is $100. If the patient qualifies for the reduced application fee of $20, the non-refundable fee to receive a replacement card is $20.

(7) If a patient is registering a new grow site at any time other than when submitting a new application or a renewal application, a grow site registration fee will not be charged.

Stat. Auth.: ORS 475.309 & 475.312

Stats. Implemented: ORS 475.309 & 475.312

Hist.: PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 1-2014, f. & cert. ef. 1-13-14

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Rule Caption: Medical Marijuana Facilities
Adm. Order No.: PH 2-2014(Temp)
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-15-14 thru 7-13-14
Notice Publication Date:
Rules Adopted: 333-008-1000, 333-008-1010, 333-008-1020, 333-008-1030, 333-008-1040, 333-008-1050, 333-008-1060, 333-008-1070, 333-008-1080, 333-008-1090, 333-008-1100, 333-008-1110, 333-008-1120, 333-008-1130, 333-008-1140, 333-008-1150, 333-008-1160, 333-008-1170, 333-008-1180, 333-008-1190, 333-008-1200, 333-008-1210, 333-008-1220, 333-008-1230, 333-008-1240, 333-008-1250, 333-008-1260, 333-008-1270, 333-008-1280, 333-008-1290
Rules Amended: 333-008-0010, 333-008-0020, 333-008-0025, 333-008-0045, 333-008-0050, 333-008-0120
Subject: The Oregon Health Authority (Authority), Public Health Division is temporarily amending and adopting administrative rules in chapter 333, division 8 pertaining to medical marijuana facilities. HB 3460 was passed during the 2013 legislative session directing the Authority to establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants. The rules also establish fees for applying and registering and renewing registration for a medical marijuana facility.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-008-0010

Definitions

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

(1) "Act" means the Oregon Medical Marijuana Act.

(2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Authority.

(3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS Chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(4) "Authority" means the Oregon Health Authority.

(5) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

(c) Post-traumatic stress disorder; or

(d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the Authority by rule or approved by the Authority pursuant to a petition submitted under OAR 333-008-0090.

(6) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.

(7) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority. "Designated primary caregiver" does not include the person's attending physician.

(8) "Food stamps" means the Supplemental Nutrition Assistance Program as defined and governed by ORS 411.806 through 411.845.

(9) "Grow site" means a specific location registered by the Authority used by the grower to produce marijuana for medical use by a specific patient.

(10) "Grow site registration card" means the card issued to the patient and displayed at the grow site.

(11) "Grower" has the same meaning as "person responsible for a marijuana grow site."

(12) "Immature plant" has the same meaning as "seedling or start."

(13) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(14) "Mature plant" means a marijuana plant that does not fall within the definition of a seedling or a start.

(15) "Medical marijuana facility" is a facility, registered by the Authority, under OAR 333-008-1050.

(16) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(17) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Authority under ORS chapter 414.

(18) "OMMP" refers to the office within the Authority that administers the provisions of the OMMA, and all policies and procedures pertaining thereto, as set forth in these rules.

(19) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(20) "Patient" has the same meaning as "registry identification cardholder."

(21) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose.

(22) "Person responsible for a medical marijuana facility" has the meaning given that term in OAR 333-008-1010.

(23) "Primary responsibility" as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS chapter 677, the patient's physician assistant licensed under ORS chapter 677, or the patient's nurse practitioner licensed under ORS chapter 678; and,

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(24) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(25) "Registry identification card" means a document issued by the Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(26) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

(27) "Replacement registry identification card" means a new card issued in the event that a registry identification cardholder's card, designated primary caregiver identification card, grower identification card, or grow site registration card is lost or stolen, or if a registry identification cardholder's designation of primary caregiver, grower, or grow site has changed.

(28) "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all three criteria shall be considered a mature plant.

(29) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(30) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(31) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-0020

New Registration Application and Verification

(1) A person may apply for a registry identification card on forms prescribed by the Authority. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form signed and dated by the applicant;

(b) Copies of legible and valid U.S. state or federal issued photographic identification that includes last name, first name, and date of birth from the applicant, the designated primary caregiver, and grower, as applicable. Acceptable forms of current U.S. state or federal issued photographic identification include but are not limited to:

(A) Driver's license;

(B) State identification card;

(C) Passport; or

(D) Military identification card.

(c) Written documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Authority, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) If applicable, a completed and notarized "Declaration of Person Responsible for Minor" form for any person under 18 years of age, signed and dated by the person responsible for the minor;

(e) The name of a designated primary caregiver, if any;

(f) The name of a designated grower (either the patient or another person), if any and the location of the grow site; and

(g) An application fee and grow site registration fee, if applicable, in the form of cash, bank check, money order, or personal check.

(2) The Authority shall process an application prior to issuing registry identification cards to assure that the application is complete and information provided has been verified.

(a) The Authority shall only accept applications that are mailed or are hand-delivered.

(b) If an applicant does not provide all the information required and the application is considered incomplete, the Authority shall notify the applicant of the information that is missing, and shall allow the applicant 14 days to submit the missing information.

(c) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsections (2)(b) and (3)(e) of this rule, the application shall be rejected as incomplete. An applicant whose application is rejected as incomplete may reapply at any time. If an applicant

submits an application fee and the application is subsequently denied or rejected, the application fee may be applied toward a new application submitted within one year of the denial or rejection date.

(d) The Authority may reject an application if the application or supporting documents appear to be altered (for example, writing is whited out). An application shall be denied in accordance with OAR 333-008-0030 if an application or supporting documents are determined to have been falsified.

(e) The Authority may verify information on each application and accompanying documentation, including:

(A) Contacting each applicant by telephone or by mail. If proof of identity is uncertain, the Authority may require a face-to-face meeting and may require the production of additional identification materials;

(B) Contacting a minor's parent or legal guardian;

(C) Contacting the Oregon Medical Board to verify that an attending physician is licensed to practice in the state and is in good standing;

(D) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Authority shall notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application. If the Authority is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed 30 days to submit written documentation or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030;

(E) Contacting the Division of Medical Assistance Programs, Department of Human Services-Self Sufficiency, or the Social Security Administration (SSA) to verify eligibility for benefits; and

(F) Conducting a criminal records check under ORS 181.534 of any person whose name is submitted as a grower.

(3) Application fees.

(a) A non-refundable application fee of $200 is required at the time of application.

(b) If applicable as specified in OAR 333-008-0025, a non-refundable grow site registration fee of $50 is required at the time of application.

(c) An applicant who can demonstrate current receipt of SSI benefits, current eligibility for OHP benefits or current receipt of food stamp benefits through the Oregon SNAP program qualifies for a reduced non-refundable application fee.

(A) An applicant demonstrating receipt of SSI benefits by providing a copy of a current monthly SSI benefit card showing dates of coverage is entitled to a reduced application fee of $20.

(B) An applicant demonstrating current eligibility for OHP benefits by providing a copy of the applicant's current eligibility statement is entitled to a reduced application fee of $50.

(C) An applicant demonstrating receipt of current food stamp benefits, verified by enrollment in Oregon's Food Stamp Management Information System database system and by providing current proof of his or her food stamp benefits, is entitled to a reduced application fee of $60.

(d) The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(e) The Authority shall notify an applicant who submits a reduced application fee for which the applicant is not eligible and will allow the applicant 14 days from the date of notice to pay the correct application fee and submit a current valid proof of eligibility.

(f) The application fees established in paragraphs (3)(c)(B) and (C) of this rule are effective for applications received on or after October 1, 2013.

(4) The application forms referenced in this rule may be obtained by contacting the Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or by calling 971-673-1234.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05; PH 17-2005, f. 11-25-05, cert. ef. 12-1-05; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 14-2010(Temp), f. & cert. ef. 7-6-10 thru 12-31-10; PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 9-2013(Temp), f. & cert. ef. 10-2-13 thru 3-30-14; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-0025

Marijuana Grow Site Registration

(1) A patient may register a marijuana grow site with the Authority. The address of a medical marijuana facility may not be listed by a patient on the grow site application as the location of the marijuana grow site. The Authority will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Authority an application, prescribed by the Authority, that includes:

(a) The name of the grower;

(b) The date of birth of the grower;

(c) The physical address of the marijuana grow site where marijuana is to be produced;

(d) The mailing address of the grower;

(e) The registry identification card number of the patient, if known, for whom the marijuana is being produced; and

(f) A non-refundable grow site registration fee of $50 in the form of cash, bank check, money order, or personal check. If the grower is the applicant, he or she is not required to pay the grow site registration fee. The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(3) The Authority shall conduct a criminal background check on the grower as authorized under ORS 475.304.

(a) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offense occurred on or after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(b) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offenses occurred after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(c) The Authority shall notify a patient by certified mail that the grower is ineligible and the patient will be allowed the opportunity to identify another grower.

(4) The Authority shall issue a marijuana grow site registration card to a patient who has met the requirements of section (2) of this rule, unless the grower is disqualified under section (3) of this rule.

(5) A grower must display a marijuana grow site registration card for each patient for whom marijuana is being produced, at the marijuana grow site at all times.

(6) All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a patient by a grower, are the property of the patient and must be provided to the patient, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a registered medical marijuana facility, upon request.

(7) All marijuana produced for a patient must be provided to the patient or designated primary caregiver when the grower ceases producing marijuana for the patient.

(8) A grower must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the grower ceases producing marijuana for the patient.

(9) A patient or the designated primary caregiver of the patient may reimburse the grower for the costs of supplies and utilities associated with production of marijuana for patient. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.

(10) A grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.

(11) The Authority may not register a grow site if the location of the grow site is the same location as a medical marijuana facility.

Stat.Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-0045
Interim Changes

(1) A patient shall notify the Authority within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.

(2) A patient shall notify, as applicable, the designated primary caregiver, the grower, and the person responsible for a medical marijuana facility of any changes in status including, but not limited to:

(a) The assignment of another individual as the designated primary caregiver for the patient;

(b) The assignment of another individual as a grower for the patient;

(c) The revocation of an Authorization to Transfer form under OAR 333-008-1230; or

(d) The end of eligibility of the patient to hold a registry identification card.

(3) If the Authority is notified by the patient that a designated primary caregiver or a grower has changed, the Authority shall notify the designated primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that their card is no longer valid and must be returned to the Authority within seven calendar days.

(4) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Authority within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Authority may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.

(5) Change forms may only be submitted to the Authority via mail or in person at the OMMP office.

(6) If a patient's designated primary caregiver, grower or grow site has changed, the non-refundable fee to receive a replacement card is $100. If the patient qualifies for the reduced application fee of $20, the non-refundable fee to receive a replacement card is $20.

(7) If a patient is registering a new grow site at any time other than when submitting a new application or a renewal application, a grow site registration fee will not be charged.

Stat. Auth.: ORS 475.309 & 475.312
Stats. Implemented: ORS 475.309 & 475.312
Hist.: PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-0050
Confidentiality

(1) The Authority shall create and maintain either paper or computer data files of patients, designated primary caregivers, growers, and grow site addresses. The data files shall include all information collected on the application forms or equivalent information from other written documentation, plus a copy of OMMP registry identification cards, effective date, date of issue, and expiration date. Except as provided in section (2) of this rule, the names and identifying information of registry identification cardholders and the name and identifying information of a pending applicant for a card, a designated primary caregiver, a grower, and a marijuana grow site location, shall be confidential and not subject to public disclosure.

(2) Names and other identifying information made confidential under section (1) of this rule may be released to:

(a) Authorized employees of the Authority as necessary to perform official duties of the Authority, including the production of any reports of aggregate (i.e., non-identifying) data or statistics;

(b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify:

(A) That a person is or was a lawful possessor of a registry identification card;

(B) That a person is or was a person responsible for a registered medical marijuana facility;

(C) That the address is or was a documented grow site, and how many people are authorized to grow at that grow site;

(D) How many people a person was or is authorized to grow for; or

(E) That an address is or was the location of a registered medical marijuana facility.

(c) Other persons (such as, but not limited to, employers, lawyers, family members) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or grower. The release of information must specify what information the Authority is authorized to release and to whom.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-0120
System to Allow Verification of Data at All Times

(1) The Authority shall establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, grower, person responsible for a medical marijuana facility, grow site location, or medical marijuana facility is listed or registered with the Authority.

(2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.

(3) The Authority may allow the release of reports related to verification if it is without identifying data.

(4) The Authority shall have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two business days, the Authority shall ensure program staff are available by phone for verification purposes.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 – 475.346
Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1000
Applicability

(1) A person may not establish, conduct, maintain, manage or operate a facility on or after March 1, 2014, unless the facility has been registered by the Authority under these rules.

(2) Nothing in these rules exempts a PRF, an employee of a registered facility, or a registered facility from complying with any other applicable state or local laws.

(3) Registration of a facility does not protect a PRF or employees from possible criminal prosecution under federal law.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1010
Definitions

For the purposes of OAR 333-008-1000 through 333-008-1290 the following definitions apply:

(1) "Agricultural land" means land that is located within an exclusive farm use zone as that term is described in ORS 215.203.

(2) "Attended primarily by minors" means that a majority of the students are minors.

(3) "Authority" means the Oregon Health Authority.

(4) "Batch" means a quantity of usable marijuana or a number of immature plants transferred at one time to a facility by a person authorized by a patient to transfer usable marijuana to a registered facility.

(5) "Career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

(6) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(7)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical con-

dition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority.

(b)"Designated primary caregiver" does not include the person's attending physician.

(8) "Domicile" means the place of abode of an individual where the person intends to remain and to which, if absent, the individual intends to return.

(9) "Edible" means a product made with marijuana that is intended for ingestion.

(10)(a) "Employee" means any person, including aliens, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer.

(b) "Employee" does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.

(11) "Facility" means a medical marijuana facility.

(12) "Farm use" has the meaning given that term in ORS 215.203.

(13) "Finished product" means a product infused with usable marijuana that is intended for use, ingestion or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.

(14) "Grower" has the same meaning as "person responsible for a marijuana grow site."

(15) "Grow site" means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient.

(16)(a) "Immature marijuana plant or immature plant" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.

(b) A seedling or start that does not meet all three criteria in subsection (16)(a) is a mature plant.

(17) "Macroscopic screening" means visual observation without the aid of magnifying lens(es).

(18) "Microscopic screening" means visual observation with a minimum magnification of 40x.

(19) "Minor" means an individual under the age of 18.

(20) "Oregon Medical Marijuana Program or OMMP" means the program operated and administered by the Authority that registers patients, designated primary caregivers, and growers.

(21) "Patient" has the same meaning as "registry identification cardholder."

(22) "Person" means an individual.

(23) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose and has the same meaning as "grower".

(24) "Person responsible for a medical marijuana facility or PRF" means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in these rules and has been approved by the Authority.

(25) "Pesticide" means any substance or mixture of substances, intended to prevent, destroy, repel, or mitigate any pest.

(26) "Premises" means a location registered by the Authority under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.

(27) "Primary school" means a learning institution containing any combination of grades Kindergarten through 8 or age level equivalent.

(28) "Random sample" means an amount of usable marijuana taken from a batch in which different fractions of the usable marijuana have an equal probability of being represented.

(29) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

(30) "Remuneration" means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.

(31) "Resident" means an individual who has a domicile within this state.

(32) "Safe" means a metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered facility that is rendered immobile by being securely anchored to a permanent structure of the building, or a "vault".

(33) "Secondary school" means a learning institution containing any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(34) "These rules" means OAR 333-008-1000 through 333-008-1290.

(35) "Usable marijuana" has the meaning given that term is ORS 475.302 and includes "finished product".

(36) "Valid testing methodology" means a scientifically valid testing methodology described in a published national or international reference and validated by the testing laboratory.

(37) "Vault" means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1020
Application for Medical Marijuana Facility Registration

(1) Beginning on March 3, 2014, at 8:30 a.m. Pacific Standard Time (PST), the Authority shall begin accepting applications for the registration of a facility. An application may be submitted at any time on or after March 3, 2014, at 8:30 a.m., PST.

(2) A PRF wishing to apply to register a facility must provide to the Authority:

(a) An application on a form prescribed by the Authority;

(b) Any additional documentation required by the Authority in accordance with these rules;

(c) The applicable fee as specified in OAR 333-008-1030; and

(d) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-1130.

(3) An application for the registration of a facility must be submitted by a PRF electronically via the Authority's website, http://mmj.oregon.gov. The documentation required in subsection (2)(b) of this rule and the information and fingerprints described in subsection (2)(d) of this rule may be submitted electronically to the Authority or may be mailed but must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered to be incomplete. Applicable fees must be paid online at the time of application.

(4) The Authority must review each application received to ensure the application is complete, that the required documentation has been submitted, and the fee paid. The Authority shall return an incomplete application to the person that submitted the application. A person may re-submit an application that was returned as incomplete at any time.

(5) Applications will be reviewed in the order they are received by the Authority. An application that is returned as incomplete must be treated by the Authority as if it was never received.

(6) A PRF who wishes to register more than one location must submit a separate application and application fee for each location.

(7) At the time of application the PRF will be asked, by the Authority, to sign an authorization permitting the Authority to publish the location of the facility if the facility is registered.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1030
Fees

(1) The initial fees for the registration of a facility are:

(a) A non-refundable application fee of $500; and

(b) A $3,500 registration fee.

(2) The annual renewal fees for the registration of a facility are:

(a) A $500 non-refundable renewal fee; and

(b) A $3,500 registration fee.

(3) The Authority must return the registration fee if:

(a) An application is returned to the applicant as incomplete;

(b) The Authority denies an application; or

(c) An applicant withdraws an application.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1040
Application Review

(1) Once the Authority has determined that an application is complete it must review the application to determine compliance with ORS 475.314 and these rules.

(2) The Authority may, in its discretion, prior to acting on an application:

(a) Contact the applicant and request additional documentation or information; and

(b) Inspect the premises of the proposed facility.

(3) Prior to making a decision whether to approve or deny an application the Authority must:

(a) Ensure that the criminal background check process has been completed and review the results;

(b) Contact the OMMP and obtain documentation of whether the location of the facility is the same location as a registered grow site under OAR 333-008-0025;

(c) Review available records and information to determine whether the proposed facility is located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school; and

(d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility.

(4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority must return the application to the applicant as incomplete.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1050
Approval of Application

(1) If the proposed facility appears to be in compliance with ORS 475.314 and these rules, and the PRF has passed the criminal background check and is determined to reside in Oregon, the Authority must notify the applicant in writing that the application has been approved, that the facility is registered, and provide the applicant with proof of registration that includes a unique registration number.

(2) A facility that has been registered must display proof of registration in a prominent place inside the facility so that proof of registration is easily visible to individuals authorized to transfer usable marijuana and immature plants to the facility and individuals who are authorized to receive a transfer of usable marijuana and immature plants from the facility at all times when usable marijuana or immature plants are being transferred.

(3) A registered facility may not post any signs at the facility that use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration.

(4) A facility's registration is only valid for the location indicated on the proof of registration and is only issued to the PRF that is listed on the application or subsequently approved by the Authority.

(5) A facility's registration may not be transferred to another location.

(6) If a proposed facility appears to be in compliance with ORS 475.314 and these rules except that the proposed facility does not yet have a security system installed and other security requirements in place, the Authority may issue a provisional registration that is valid for 60 days.

(a) In order to receive provisional registration a PRF must submit to the Authority at the time of application a floor plan of the facility that has marked and labeled all points of entry to the facility, all secure areas required by these rules and the proposed placement of all video cameras.

(b) The provisionally registered facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants until the security system and other security requirements are in place and the Authority has approved the provisionally registered facility to begin operating.

(c) When the security system and other security requirements are in place the PRF must notify the Authority and if the Authority determines that the provisionally registered facility is in full compliance with these rules, the Authority must approve the facility for operation.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1060
Denial of Application

(1) The Authority must deny an application if:

(a) An applicant fails to provide sufficient documentation that the proposed facility meets the qualifications for a facility in these rules; or

(b) The PRF has been:

(A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date the application was received by the Authority; or

(B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or

(C) Prohibited by a court from participating in the OMMP.

(2) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1070
Expiration and Renewal of Registration

(1) A facility's registration expires one year following the date of application approval.

(2) If a PRF wishes to renew the facility's registration, the person must submit to the Authority within 60 days of the registration's expiration:

(a) An application renewal form prescribed by the Authority;

(b) The required renewal fees;

(c) Forms required for the Authority to do a criminal background check on the PRF.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1080
Notification of Changes

(1) A PRF must notify the Authority within 10 calendar days of any of the following:

(a) The person's conviction for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(b) The issuance of a court order that prohibits the person from participating in the OMMP;

(c) A decision to change the PRF;

(d) A decision to permanently close the facility at that location;

(e) A decision to move to a new location;

(f) A change in the person's residency; and

(g) The location of an elementary, secondary or career school attended primarily by minors within 1,000 feet of the facility.

(2) The notification required in section (1) of this rule must include a description of what has changed and any documentation necessary for the Authority to determine whether the facility is still in compliance with ORS 474.314 and these rules including but not limited to, as applicable:

(a) A copy of the criminal judgment or order;

(b) A copy of the court order prohibiting the PRF from participating in the OMMP;

(c) The location of the school that has been identified as being within 1,000 feet of the facility; or

(d) The information required in OAR 333-008-1120 and 333-008-1130 to determine the residency of the new PRF and to perform the criminal background check.

(3) Failure of the PRF to notify the Authority in accordance with this rule may result in revocation of a facility's registration.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1090
Required Closures

A facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants if:

(1) The PRF is convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(2) The PRF changes and the Authority has not:

(a) Performed a criminal background check on the proposed PRF in accordance with OAR 333-008-1130;

(b) Determined whether the individual is a resident of Oregon; and

(c) Provided written approval that the new PRF meets the requirements of ORS 475.314.

(3) The PRF has been ordered by the court not to participate in the OMMP; or

(4) An elementary, secondary or career school attended primarily by minors is found to be within 1,000 of the registered facility.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1100
Business Qualifications for Medical Marijuana Facility Registration

(1) A facility must be registered as a business or at the time of applying to register a facility have filed a pending application to register as a business with the Office of the Secretary of State.

(2) The Authority may not approve an application until it has verified that the facility is registered as a business with the Office of the Secretary of State.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1110
Locations of Medical Marijuana Facilities

(1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.

(2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.

(3) A facility may not be located:

(a) At the same address as a registered marijuana grow site;

(b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or

(c) Within 1,000 feet of another medical marijuana facility;

(4) In order for the Authority to ensure compliance with this rule a PRF must submit with an initial application documentation that shows the current zoning for the location of the proposed facility.

(5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising an existing public or private elementary, secondary or career school primarily attended by minors.

(6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property compromising a registered facility.

(7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1120
Person Responsible for a Medical Marijuana Facility (PRF)

(1) A PRF must:

(a) Be a resident of Oregon. Residency may be proved by submitting to the Authority:

(A) An Oregon driver's license, an Oregon identification card that includes a photograph of the person, or a military identification card that includes a photograph of the person; and

(B) Copies of utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the domicile of the PRF.

(b) Have legal authority to act on behalf of the facility; and

(c) Be responsible for ensuring the facility complies with applicable laws, if registered.

(2) A PRF may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) At the time of application a PRF must submit to the Authority a copy of the information described in paragraphs (1)(a)(A) and (B) of this rule.

(4) A PRF is accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of the PRF, who violate ORS 475.314 or these rules.

(5) If a PRF no longer meets the criteria of a PRF the Authority shall inform the PRF and the owner of the facility if different that:

(a) The PRF may no longer serve in that capacity;

(b) In order to remain certified, a change of PRF form must be submitted; and

(c) The facility may not operate until the Authority has approved a new PRF.

(6) If the Authority is notified that a change of PRF is needed, the current PRF is no longer able to serve as the PRF, or the PRF has been or will be removed by the owner of a facility, the owner of the facility must submit a change of PRF form to Authority within 10 business days of the notification or the Authority will begin proceedings to revoke the certification of the facility.

(7) If the PRF of record for the facility is no longer serving in that capacity the facility may not operate until a new PRF has been approved by the Authority.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1130
Criminal Background Checks

(1) A PRF must, at the time of application, provide to the Authority:

(a) A criminal background check request form, prescribed by the Authority that includes but is not limited to:

(A) First, middle and last name;

(B) Any aliases;

(C) Date of birth;

(D) Driver's license information; and

(E) Address and recent residency information.

(b) Fingerprints in accordance with the instructions on the Authority's webpage: http://mmj.oregon.gov.

(2) The Authority may request that the PRF disclose his or her Social Security Number if notice is provided that:

(a) Indicates the disclosure of the Social Security Number is voluntary; and

(b) That the Authority requests the Social Security Number solely for the purpose of positively identifying the PRF during the criminal records check process.

(3) The Authority shall conduct a criminal records check in order to determine whether the PRF has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II in any state.

(4) The Authority must conduct a criminal background check in accordance with this rule on a PRF every year at the time of application renewal.

(5) If a PRF wishes to challenge the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the Department of State Police or Federal Bureau of Investigation, those challenges must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process specified in OAR 333-008-1060(2).

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1140
Security for Registered Facilities

(1) The PRF must ensure that a registered facility complies with OAR 333-008-1140 through 333-008-1180.

(2) The PRF is responsible for the security of all usable marijuana and immature plants in the registered facility, including providing adequate safeguards against theft or diversion of usable marijuana and immature plants and records that are required to be kept.

(3) The PRF must ensure that commercial grade, non-residential door locks are installed on every external door at a registered facility prior to opening for business and used while a facility is registered.

(4) During all hours when the registered facility is open for business, the PRF must ensure that:

(a) All usable marijuana and immature plants received and all usable marijuana and immature plants available for transfer to a patient or a designated primary caregiver are kept in a locked, secure area that can only be accessed by authorized personnel.

(b) All areas where usable marijuana or immature plants are received for transfer by a registered facility are identified as a restricted access area by posting a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads, "Restricted Access Area — Authorized Personnel Only".

(c) All areas where usable marijuana or immature plants are available for transfer to a patient or designated primary caregiver are:

(A) Identified as a restricted access area and clearly identified by the posting of a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads "Restricted Access Area — No Minors Allowed";

(B) Supervised by the PRF or an employee of the registered facility at all times when a patient or designated primary caregiver is present; and

(C) Separate from any area where usable marijuana or immature plants are being transferred to a registered facility.

(5) During all hours when the registered facility is not open for business the PRF must ensure that:

(a) All entrances to and exits from the facility are securely locked and any keys or key codes to the facility remain in the possession of the PRF or authorized employees;

(b) All usable marijuana is kept in a safe; and

(c) All immature plants are in a locked room.

(6) The PRF must ensure that:

(a) Electronic records are encrypted, and securely stored to prevent unauthorized access and to ensure confidentiality;

(b) There is an electronic back-up system for all electronic records; and

(c) All video recordings and archived required records not stored electronically are kept in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the registered facility is open.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1150
Alarm System for Registered Facilities

(1) Prior to opening for business, a PRF must ensure that a registered facility has a security alarm system, installed by an alarm installation company, on all facility entry or exit points and perimeter windows.

(2) At the time of application a PRF must submit to the Authority documentation of the:

(a) Alarm system that is installed or proposed for installation;

(b) Company that installed the system or plans to install the system;

(c) Features of the system that meet the criteria of this rule.

(3) A PRF must ensure that the facility is continuously monitored by the alarm system.

(4) The security alarm system for the registered facility must:

(a) Be able to detect movement inside the registered facility;

(b) Be programmed to notify a security company that will notify the PRF or his or her designee in the event of a breach; and

(c) Have at least two "panic buttons" located inside the registered facility that are linked with the alarm system.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1160
Video Surveillance Equipment for Registered Facilities

(1) Prior to opening for business, a PRF must install a fully operational video surveillance recording system.

(2) At the time of application a PRF must submit to the Authority documentation of the:

(a) Video surveillance system that is installed or proposed for installation;

(b) Company or person that installed the system or plans to install the system;

(c) Features of the system that meet the criteria of this rule.

(3) Video surveillance equipment must, at a minimum:

(a) Consist of:

(A) Digital or network video recorders;

(B) Cameras capable of meeting the requirements of OAR 333-008-1170 and this rule;

(C) Video monitors;

(D) Digital archiving devices; and

(E) A color printer capable of producing still photos.

(b) Be equipped with a failure notification system that provides prompt notification to the PRF or employees of any prolonged surveillance interruption or failure; and

(c) Have sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.

(4) All video surveillance equipment and recordings must be stored in a locked secure area that is accessible only to the PRF, authorized employees of the registered facility and the Authority.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1170
Required Camera Coverage and Camera Placement for Registered Facilities

(1) A PRF must ensure that a registered facility has camera coverage for:

(a) All secure and restricted access areas described in OAR 333-008-1140;

(b) All point of sale areas;

(c) All points of entry to or exit from secure and restricted access areas; and

(d) All points of entry to or exit from the registered facility.

(2) A PRF must ensure that camera placement is capable of identifying activity occurring within 15 feet of all points of entry to the registered facility and exit from the registered facility and shall allow for the clear and certain identification of any individual and activities on the facility premises.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1180
Video Recording Requirements for Registered Facilities

(1) The PRF must ensure that all camera views of all secure and restricted access areas and points of entry to or exit from the registered facility are continuously monitored by motion sensor video equipment or similar technology 24 hours a day.

(2) A PRF must ensure that:

(a) All surveillance recordings are kept for a minimum of 30 days and are in a format that can be easily accessed for viewing;

(b) The surveillance system has the capability to produce a color still photograph from any camera image;

(c) The date and time is embedded on all surveillance recordings without significantly obscuring the picture;

(d) Video recordings are archived in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place; and

(e) Video surveillance records and recordings are available upon request to the Authority for the purpose of ensuring compliance with ORS 475.314 and these rules.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1190
Testing

(1) A PRF must ensure that usable marijuana and immature plants are tested for pesticides, mold and mildew in accordance with this rule prior to the usable marijuana or immature plants being transferred to a patient or a designated primary caregiver.

(2) Upon usable marijuana being transferred to a registered facility in accordance with OAR 333-008-1230, the PRF must ensure the usable marijuana is segregated into batches, that each batch is placed in an individual container or bag, and that a label is attached to the container or bag that includes at least the following information:

(a) A unique identifier;

(b) The name of the person who transferred it; and

(c) The date the usable marijuana was received by the registered facility.

(3) Sampling. A PRF must ensure that random samples from each batch are taken in an amount necessary to conduct the applicable test, that the samples are labeled with the batch's unique identifier, and submitted for testing.

(4) Testing. A PRF must ensure that each sample is tested for pesticides, mold, and mildew and for an analysis of the levels of tetrahydrocannabinol (THC) and Cannabidiol (CBD).

(a) Immature Plants. An immature plant may be tested for pesticides, mold or mildew by conducting a macroscopic or microscopic screening to determine if the plant has visible pesticide residue, mold or mildew.

(b) Flowers or other usable marijuana plant material. Usable marijuana in the form of flowers or other plant material must be:

(A) Tested for pesticides, mold and mildew using valid testing methodologies and macroscopic or microscopic screening may not be used;

(B) Tested for pesticides by testing for the following analytes:

(i) Chlorinated Hydrocarbons;

(ii) Organophosphates;

(iii) Carbamates; and

(iv) Pyrethroids; and

(C) Analyzed, using valid testing methodologies, to determine the levels of THC and CBD.

(c) Edibles, Liquids and Solid Extracts. If the usable marijuana used in the edible, liquid or solid extract has been tested in accordance with this rule and tested negative for pesticides, mold or mildew, the edible, liquid or solid extract does not need to be tested for pesticides, mold and mildew but does need to be tested for an analysis of the levels of THC and CBD. If the usable marijuana used in the edible, liquid, or solid extract was not tested in accordance with this rule, the edible, liquid or solid extract must be tested for pesticides, mold or mildew in accordance with subsection (4)(b) of this rule.

(5) Laboratory Requirements. A PRF must ensure that all testing, except for testing of immature plants, is done by a third party or in-house laboratory that:

(a) Uses valid testing methodologies; and

(b) Has a Quality System for testing of pesticides, mold and mildew that is compliant with the:

(A) 2005 International Organization for Standardization 17025 Standard; or

(B) 2009 National Environmental Laboratory Accreditation Conference Institute TNI Standards.

(6) Macroscopic or microscopic screening of immature plants must be conducted by a person who has a minimum of a bachelor's degree in horticulture, botany, plant pathology, microbiology, or an equivalent degree but is not required to be done by a laboratory.

(7) Testing Results. A laboratory must provide testing results to the PRF signed by an official of the laboratory who can attest to the accuracy of the results, and that includes the levels of pesticides, mold or mildew detected and the levels of THC and CBD.

(a) If an immature plant has visible pesticide residue, mold or mildew it must be deemed to test positive and must be returned to the person who transferred the immature plant to the registered facility.

(b) A sample of usable marijuana shall be deemed to test positive for mold and mildew if the sample has levels that exceed the maximum acceptable counts in the Pharmacopeia, Section 1111 (May 1, 2009), incorporated by reference.

(c) A sample of usable marijuana shall be deemed to test positive for pesticides with a detection of more than 0.1 parts per million of any pesticide.

(8) If an immature plant or sample of usable marijuana tests positive for pesticides, mold or mildew based on the standards in this rule the PRF must ensure the entire batch from which the sample was taken is returned to the person who transferred the immature plant or usable marijuana to the registered facility and must document how many or how much was returned, to whom, and the date it was returned.

(9) A registered facility may perform its own testing as long as the testing complies with this rule.

(10) The PRF may permit laboratory personnel or other persons authorized to do testing access to secure or restricted access areas of the registered facility where usable marijuana or immature plants are stored. The PRF must log the date and time in and out of all such persons.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1200
Operation of Registered Facilities

(1) A PRF must ensure that a registered facility does not permit:

(a) A minor to be present in any area of a registered facility where usable marijuana or immature plants are present, even if the minor is a patient or an employee; and

(b) Consumption, ingestion, inhalation or topical application of usable marijuana anywhere on the premises of the registered facility, except that an employee of a registered facility who is a patient may consume usable marijuana during their work shift as necessary for his or her medical condition, in a closed room, alone if the usable marijuana is being smoked, not visible to the public or to patients or caregivers on the premises of the registered facility to receive a transfer of usable marijuana or an immature plant.

(2) A PRF must ensure that a registered facility uses an Oregon Department of Agriculture approved scale to weigh all usable marijuana.

(3) The following persons are the only persons permitted in any area of a registered facility where usable marijuana or immature plants are present, and only in accordance with these rules, as applicable:

(a) A PRF;

(b) An owner of a registered facility;

(c) An employee of the registered facility;

(d) Laboratory personnel in accordance with OAR 333-008-1190;

(e) A contractor authorized by the PRF to be on the premises of a registered facility;

(f) A patient, designated primary caregiver, or growers;

(g) An authorized employee or authorized contractor of the Authority; and

(h) Other government officials that have jurisdiction over some aspect of the registered facility or that otherwise have authority to be on the premises of the registered facility.

(4) A PRF must have written detailed policies and procedures and training for employees on the policies and procedures that at a minimum, cover the following:

(a) Security;

(b) Testing;

(c) Transfers of usable marijuana and plants to and from the facility;

(d) Operation of a registered facility;

(e) Required record keeping;

(f) Labeling; and

(g) Violations and enforcement.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1210
Record Keeping

(1) A PRF must ensure that the following information is documented and maintained electronically in a manner that can easily be shared with the Authority or accessed by the Authority:

(a) All Authorization to Transfer forms, including the date on which a form was received;

(b) Any written notifications from a patient with regard to any change in status as required by ORS 475.309(7)(a)(B) or (10)(a);

(c) Any revocation of an Authorization to Transfer form;

(d) All transfer information required in OAR 333-008-1230 and 333-008-1240;

(e) Documentation of the costs of doing normal and customary business used to establish the reimbursement amounts for transfers of usable marijuana or immature plants, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(f) The amount of money paid by a registered facility to a grower for each transfer of usable marijuana or immature plants;

(g) The amount of money paid by each patient or designated primary caregiver for a transfer of usable marijuana or an immature plant;

(h) The laboratory reports of all testing and other information required to be documented in OAR 333-008-1190; and

(i) All other information required to be documented and retained in these rules.

(2) The PRF must ensure that information required to be documented pursuant to section (1) of this rule is maintained in a safe and secure manner that protects the information from unauthorized access, theft, fire, or other destructive forces, and is easily retrievable for inspection by the Authority upon request, either at the registered facility or online.

(3) A PRF must ensure that a registered facility uses an electronic data management system for the recording of transfers of usablel marijuana and immature plants. The system must meet the following minimum requirements:

(a) Record the information required to be documented in this rule and OAR 333-008-1230 and 333-008-1240;

(b) Provide for off-site or secondary backup system;

(c) Assign a unique transaction number for each transfer to or from the registered facility;

(d) Monitor date of testing and testing results;

(e) Track products by unique transaction number through the transfer in, testing and transfer out processes;

(f) Generate transaction and other reports requested by the Authority viewable in PDF format;

(g) Produce reports, including but not limited to inventory reports; and

(h) Provide security measures to ensure patient and grower records are kept confidential.

(4) Documents and information required to be maintained in these rules must be retained by the PRF for at least one year.

(5) A PRF must provide the Authority with any documentation required to be maintained in these rules upon request, in the format requested by the Authority, or permit the Authority access to such documentation on-site.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1220
Labeling

(1) Prior to transferring usable marijuana a PRF must ensure that a label is affixed to the usable marijuana that includes but is not limited to:

(a) The amount of THC and CBD in the usable marijuana;

(b) If pre-packaged, the weight or volume of the packaged usable marijuana in metric units;

(c) The amount of usable marijuana in a finished product in metric units;

(d) Potency information; and

(e) Who performed the testing.

(2) If the registered facility transfers usable marijuana in a form that is edible, the PRF must ensure that the usable marijuana has a warning label on the outside of the packaging that includes the following: "WARNING: MEDICINAL PRODUCT — KEEP OUT OF REACH OF CHILDREN" in bold capital letters, in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1230
Transfers to a Registered Facility

(1) A patient may authorize usable marijuana or immature marijuana plants to be transferred to a registered facility by signing an Authorization to Transfer form prescribed by the Authority. A patient may authorize transfers to more than one registered facility. A separate form must be provided for each registered facility. The Authorization must include, but is not limited to, the following information:

(a) The patient's name, OMMP card number and expiration date and contact information;

(b) The name and contact information of the individual who is authorized to transfer the usable marijuana or immature marijuana plants to the registered facility and that individual's OMMP card number and expiration date;

(c) The name and address of the registered facility that is authorized to receive the usable marijuana or immature marijuana plants; and

(d) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(2) Only a patient, the patient's designated primary caregiver, or the patient's grower may be authorized to transfer usable marijuana or immature plants to a registered facility.

(3) The original Authorization to Transfer form must be provided to the registered facility to which a transfer may be made by the patient or person authorized to transfer the usable marijuana or immature plants. The patient should retain a copy of the Authorization to Transfer form for his or her records and provide a copy to the person authorized to transfer the usable marijuana or immature plants.

(4) An Authorization to Transfer form automatically expires on the date the patient's OMMP card expires, unless the patient has specified an earlier expiration date. If the patient renews his or her OMMP card the patient may execute a new Authorization to Transfer form in accordance with this rule.

(5) Once usable marijuana or an immature plant is transferred to a registered facility pursuant to a valid Authorization to Transfer form, the usable marijuana or immature plant is no longer the property of the patient unless the usable marijuana or immature plants are returned by the registered facility.

(6) Prior to a registered facility accepting a transfer of usable marijuana or immature plants the PRF must ensure that:

(a) It has a valid Authorization to Transfer form on file that authorizes the individual that is transferring the usable marijuana or immature plants to make the transfer; and

(b) The individual transferring the usable marijuana or immature plants is the individual authorized to make the transfer.

(7) A PRF must ensure that when a registered facility accepts a transfer of usable marijuana or an immature plant the batch of usable marijuana and each immature plant are segregated in accordance with the testing rule, OAR 333-008-1190 and that the following information is documented, as applicable:

(a) The unique identifier;

(b) The weight in metric units of all usable marijuana received by the registered facility;

(c) The number of immature plants received by the registered facility;

(d) The amount of a finished product received by the registered facility, including, as applicable, the weight in metric units, or the number of units of a finished product;

(e) A description of the form the usable marijuana was in when it was received, for example, oil or an edible product;

(f) Who transferred the usable marijuana or the immature plant, the individual's OMMP card number and expiration date of the card, a copy of the individual's picture identification, the date the usable marijuana or an immature plant was received, and the name of the patient who authorized the transfer; and

(g) The amount of reimbursement paid by the registered facility.

(8) Nothing in these rules requires a PRF or a registered facility to accept a transfer of usable marijuana or immature plants.

(9) A PRF must ensure that:

(a) From the time that a batch or plant has been received by the registered facility until it is tested in accordance with these rules, the usable marijuana and immature plants are segregated, withheld from use, and kept in a secure location so as to prevent the marijuana or plants from becoming contaminated or losing efficacy, or from being tampered with or transferred except that samples may be removed for testing; and

(b) No usable marijuana or immature plants are transferred to a patient or designated primary caregiver until testing has been completed, the registered facility has received a written testing report, and the usable marijuana and immature plants have tested negative for pesticides, mold and mildew.

(10) Usable marijuana and immature plants must be kept on-site at the facility. The Authority may cite a PRF for a violation of these rules if during an inspection it cannot account for its inventory or if the amount of usable marijuana at the registered facility is not within five percent of the documented inventory.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1240
Transfers to a Patient or Designated Primary Caregiver

(1) Prior to a registered facility transferring usable marijuana or an immature plant to a patient or a designated primary caregiver the PRF must ensure that:

(a) The usable marijuana or an immature plant has not tested positive for mold, mildew or pesticides as specified in OAR 333-008-1190; and

(b) The identity and cardholder status of the person requesting usable marijuana or an immature plant is verified by viewing the person's OMMP card and picture identification and making sure the two match.

(2) The PRF must ensure that for each transfer of usable marijuana or an immature plant to a patient or a designated primary caregiver the following information is documented:

(a) The name, OMMP card number and expiration date of the card of each person to whom the registered facility transfers usable marijuana or an immature plant;

(b) A copy of the person's picture identification;

(c) The amount of usable marijuana transferred in metric units, if applicable;

(d) The number of immature plants transferred, if applicable;

(e) The amount of a finished product transferred in metric units, or units of the finished product, if applicable;

(f) A description of what was transferred;

(g) The date of the transfer; and

(h) The amount of money paid by a patient or a designated primary caregiver to a registered facility for the transfer of usable marijuana or an immature plant.

(3) The PRF must ensure that a registered facility does not transfer at any one time more usable marijuana or immature plants than a patient or designated primary caregiver is permitted to possess under ORS 475.320(1)(a). A PRF is not responsible for determining whether a patient or designated primary caregiver is limited in the amount of usable marijuana he or she can possess under 475.320(1)(b).

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1250
Inspections

(1) The Authority must conduct an initial inspection of every registered facility within six months of approving an application to ensure compliance with these rules, and must conduct a routine inspection of every registered facility at least every year.

(2) The Authority may conduct a complaint inspection at any time following the receipt of a complaint that alleges a registered facility is in violation of ORS 475.314 or these rules.

(3) The Authority may conduct an inspection at any time if it believes, for any reason, that a registered facility or a PRF is in violation of ORS 475.314 or these rules.

(4) A PRF and any employees, contractors, or other individuals working at a registered facility must cooperate with the Authority during an inspection.

(5) If an individual at a registered facility fails to permit the Authority to conduct an inspection the Authority may seek an administrative warrant authorizing the inspection pursuant to ORS 431.262.

Stat. Auth.: ORS 431.262, 475.314 & 475.338
Stats. Implemented: ORS 431.262 & 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1260
Violations

(1) A registered facility is in violation of ORS 475.314 or these rules for:

(a) A PRF or an employee of a facility failing to cooperate with an inspection;

(b) The submission by a PRF of false or misleading information to the Authority in support of an application or in seeking to retain registration;

(c) Transferring usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver;

(d) Accepting a transfer of usable marijuana or immature plants without a valid authorization from the patient;

(e) Possessing a mature marijuana plant at the registered facility;

(f) Failing to document and maintain information in the manner required by these rules;

(g) Failing to account for usable marijuana or immature plants on the premises of the registered facility, taking into account a five percent loss;

(g) Failing to submit a plan of correction in accordance with OAR 333-008-1270;

(h) Failing to comply with a final order of the Authority, including failing to pay a civil penalty; or

(i) Failing to comply with ORS 475.314 or any of these rules.

(2) It is a violation of ORS 475.314 and these rules to operate a facility without being registered by the Authority.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1270
Enforcement

(1)(a) Informal Enforcement. If, during an inspection the Authority documents violations of ORS 475.314 or any of these rules, the Authority may issue a written Notice of Violation to the PRF that cites the laws alleged to have been violated and the facts supporting the allegations.

(b) The PRF must submit to the Authority a signed plan of correction within 10 business days from the date the Notice of Violation was mailed to the person. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the Notice.

(c) A PRF must correct all deficiencies within 10 days from the date of the Notice, unless an extension of time is requested from the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(d) The Authority must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority it must notify the PRF in writing and request that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed.

(e) If the registered facility does not come into compliance by the date of correction reflected on the plan of correction, the Authority may propose to revoke the registration of the facility or impose civil penalties.

(f) The Authority may conduct an inspection at any time to determine whether a registered facility has corrected the deficiencies in a Notice of Violation.

(2) Formal Enforcement. If, during an inspection or based on other information the Authority determines that a registered facility or PRF is in violation of ORS 475.314 or these rules the Authority may issue:

(a) A Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470; or

(b) A Notice of Imposition of Civil Penalties in accordance with ORS 183.745. Civil penalties may be issued for any violation of 475.314 and these rules, not to exceed $500 per violation per day.

(3) The Authority must determine whether to use the informal or formal enforcement process based on the nature of the alleged violations, whether there are mitigating or aggravating factors, and whether the PRF or the registered facility has a history of violations.

(4) The Authority must issue a Notice of Proposed Revocation if the:

(a) Facility no longer meets the criteria in ORS 475.314(3)(a) to (d); or

(b) PRF is not a resident of Oregon, has disqualifying criminal convictions as described in OAR 333-008-1120, or a court has issued an order that prohibits the PRF from participating in the OMMP under ORS 475.300 through 475.346 unless a new PRF is approved by the Authority.

(5) The Authority may maintain a civil action against a facility that is operating but not registered in accordance with ORS 475.314 and these rules.

(6) The Authority must post a final order revoking the registration of a facility on the Authority's website and provide a copy of the final order to the OMMP.

(7) To the extent permitted by law, if the Authority discovers violations that may constitute criminal conduct or conduct that is in violation of laws within the jurisdiction of other state or local governmental entities, the Authority may refer the matter to the applicable agency.

(8) If the registration of a facility is revoked the PRF must make arrangements to return the usable marijuana and immature plants in amounts still possessed by the facility, to the person who transferred the usable marijuana or immature plants and must document the same.

Stat. Auth.: ORS 431.262, 475.314 & 475.338
Stats. Implemented: ORS 431.262 & 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1280
Confidentiality

(1) Any criminal background information received by the Authority about a PRF during the criminal background check process is confidential and is not subject to disclosure without a court order.

(2) The name of a PRF and the address of a registered facility is confidential and is not subject to disclosure without a court order, except as provided in section (5) of this rule, or unless a PRF has authorized disclosure.

(3) If an application has been denied, the information submitted to the Authority in an application for registration of a facility is not confidential and may be subject to disclosure under ORS 192.410 through 192.505.

(4) A final order revoking the registration of a facility is not confidential and may be posted on the Authority's website or otherwise made public by the Authority.

(5) Authorized employees of state and local law enforcement agencies may verify with the Authority at all times whether:

(a) A location is the location of a registered facility; or

(b) A person is listed as the PRF of a registered facility.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314 & 475.331
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

333-008-1290
Change of Location

(1) A registered facility that changes location must submit a new application that complies with OAR 333-008-1020.

(2) A facility may not operate at a new location unless it is registered by the Authority.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14

Oregon Health Insurance Exchange
Chapter 945

Rule Caption: Lay Representation in Contested Case Hearings
Adm. Order No.: OHIE 8-2013(Temp)
Filed with Sec. of State: 12-23-2013
Certified to be Effective: 12-23-13 thru 5-17-14
Notice Publication Date:
Rules Adopted: 945-040-0180
Rules Suspended: 945-040-0180(T)
Subject: Authorizes the Exchange to use lay representation in contested case hearings conducted by the Office of Administrative Hearings.
Rules Coordinator: Gregory Jolivette—(503) 373-9406

945-040-0180
Lay Representation in Contested Case Hearings

(1) Subject to the approval of the Attorney General, an officer or employee of the Oregon Health Insurance Exchange (Exchange) is authorized to appear on behalf of the Exchange in the following types of contested case hearings conducted by the Office of Administrative Hearings:

(a) Appeals by individual applicants or enrollees, or an authorized representative of an individual applicant or enrollee, of a decision by the Exchange concerning an initial determination of eligibility or redetermination of eligibility for:

(A) Enrollment in a qualified health plan, including enrollment in a qualified health plan that is a catastrophic plan;

(B) Advance payments of the premium tax credit, including the amount of advance payments of the premium tax credit;

(C) Cost sharing reductions, including the level of cost-sharing reductions;

(D) MAGI-based Medicaid and CHIP program eligibility relevant to appeals described in subsection (a)(i)–(iii); and coordination with the Oregon Health Authority concerning appeals of MAGI-based Medicaid and CHIP eligibility decisions; or

(b) Appeals by individual applicants and enrollees, or an authorized representative of an individual applicant or enrollee, alleging failure of the Exchange to act on an application within 45 days of the filing date.

(2) The Exchange representative may not make legal argument on behalf of the Exchange.

(3) "Legal argument" includes arguments on

(a) The jurisdiction of the Exchange to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Exchange; and

(c) The application of court precedent to the facts of the particular contested case proceeding.

(4) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or representation of factual arguments or arguments on:

(a) The application of the statutes or rules to the facts in the contested case;

(b) Comparison of prior actions of the Exchange in handling similar situations;

(c) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(d) The admissibility of evidence; and

(e) The correctness of procedures being followed in the contested case hearing.

(5) If the administrative law judge determines that statements or objections made by the Exchange representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Exchange to consult with the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(6) For purposes of this rule, "applicant" has the meaning in OAR 945-040-0010(4)(a), and "enrollee" has the meaning in 945-040-0010(15) for qualified individuals.

Stat. Auth.: ORS 741.002
Stats. Implemented: ORS 741.002 & 183.452
Hist.: OHIE 7-2013(Temp), f. & cert. ef. 11-18-13 thru 5-17-14; OHIE 8-2013(Temp), f. & cert. ef. 12-23-13 thru 5-17-14

Oregon Health Licensing Agency
Chapter 331

Rule Caption: Amend fee to decrease from $700 to $350 due to change in license renewal.
Adm. Order No.: HLA 14-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 2-1-14
Notice Publication Date: 10-1-2013
Rules Amended: 331-440-0000
Subject: Amend initial and renewal license fee by decreasing fees from $700 to $350 due to license renewal date change from two years to one year. In July 2013 the Board of Denture Technology amended administrative rules changing active status from a two-year license period to a one-year license period. Inadvertently the fee for initial licensure and renewal was not reduced by half.
Rules Coordinator: Samantha Patnode—(503) 373-1917

331-440-0000
Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency are as follows:

(a) Application:
(A) License: $350.
(B) License by reciprocity: $450.
(C) Temporary license: $50
(b) Examination:
(A) Oregon laws & rules: $50.
(B) Written: $350.
(C) Practical: $650.
(c) Original issuance:
(A) License: $350
(B) Temporary license: $50
(d) Renewal:
(A) License: $350
(B) Temporary license: $50

(e) Delinquent (late) renewal of license: $25 for the first month in expired status, and $10 each month thereafter while in an expired status.

(f) Replacement of license, including name change: $25.

(g) Duplicate license document: $25 per copy with maximum of three.

(h) Affidavit of licensure: $50.

(i) An additional $25 Administrative Processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

Stat. Auth.: ORS 676.605, 676.615 & 680.525
Stats. Implemented: ORS 676.605, 676.615 & 680.525
Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 11-1981(Temp), f. & ef. 7-15-81; HD 9-1985(Temp), f. & ef. 5-24-85; HD 15-1985, f. & ef. 9-4-85; HD 25-1988(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0035; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 3-2003, f. 5-6-03, cert. ef. 5-15-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06; HLA 5-2008, f. 9-15-08, cert. ef. 10-1-08; Renumbered from 331-405-0030, HLA 9-2013, f. & cert. ef. 7-1-13; HLA 13-2013(Temp), f. 8-21-13, cert. ef. 8-23-13 thru 2-19-14; HLA 14-2013, f. 12-30-13, cert. ef. 2-1-14

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Rule Caption: Align earlobe rules with changes from SB 107 and make general amendments to rules.
Adm. Order No.: HLA 15-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 331-900-0077
Rules Amended: 331-900-0010, 331-900-0015, 331-900-0020, 331-900-0040, 331-900-0050, 331-900-0085, 331-900-0090, 331-900-0095, 331-900-0097, 331-900-0098, 331-900-0099, 331-900-0115, 331-905-0020, 331-905-0030, 331-905-0052, 331-905-0058, 331-905-0095, 331-910-0005, 331-910-0010, 331-910-0055, 331-910-0060, 331-915-0020, 331-915-0055, 331-915-0060, 331-915-0065, 331-915-0070, 331-925-0050, 331-940-0000, 331-950-0040

Subject: Passage of SB 107 by the 2013 Legislature created an earlobe piercing field of practice to the Board of Body Art Practitioners. Currently an individual can obtain a temporary earlobe piercing license which is valid for 2 years and cannot be renewed. The proposed rules establish application and renewal requirements to obtain a permanent earlobe piercing license. Individuals who currently hold a temporary earlobe piercing license will not be required to retake the board approved examination.

Amendments include general housekeeping and alignment with current agency standards related to continuing education.

The proposed amendments clarify application requirements for specialty genital piercing for individual licensed prior to January 1, 2012.

Changes streamline written examination requirements for tattooing.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-900-0010
Earlobe Piercing License

(1) An earlobe piercing license is valid for one year, and is eligible for renewal. An earlobe piercing license becomes inactive on the last day of the month one year from the date of issuance.

(2) An earlobe piercing license holder must adhere to all standards within OAR 331-900-0095, 331-900-0097, 331-900-0098, 331-900-0130 and all applicable rules listed in OAR 331 division 925.

(3) An earlobe piercing license holder, licensed under ORS 690.365, may provide earlobe piercing services only.

(4) Upon renewal, individuals who held a technician registration for ear piercing prior to January 1, 2012, must apply for and meet the application requirements for an earlobe piercing license or apply for and meet the application requirements for a standard body piercing license.

(5) An earlobe piercing license holder licensed prior to January 1, 2014 is not required to meet application requirements listed in OAR 331-900-0015.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0015
Application Requirements for Earlobe Piercing License

An individual applying for an Earlobe Piercing License must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required fees;

(3) Submit proof of being 18 years of age. Documentation may include identification listed under OAR 331-030-0000;

(4) Submit proof of having a high school diploma or equivalent;

(5) Submit proof of current blood borne pathogens training from an Agency approved provider;

(6) Submit proof of current basic first aid training from an Agency approved provider;

(7) Submit passing score of Agency approved written examinations in accordance with OAR 331-900-0060(1) and (2) within two years from the date of application;

(8) Upon passage of all required examinations and before issuance of a license, the applicant must pay all license fees.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0020
Standard Body Piercing Temporary Trainee License

(1) A standard body piercing temporary trainee license is valid for one year, and may be renewed one time.

(2) A standard body piercing temporary trainee license holder, licensed under ORS 690.365, may provide standard piercing services under the direct supervision of an Agency approved supervisor pursuant OAR 331-900-0050 and 331-900-0055.

(3) Supervisors of a standard body piercing temporary trainee must adhere to OAR 331-900-0055.

(4) A standard body piercing temporary trainee license holder is prohibited from performing specialty level one genital piercing services defined under OAR 331-905-0000 and specialty level two genital piercing services defined under OAR 331-905-0000.

(5) A standard body piercing temporary trainee license holder is prohibited from piercing the testes, deep shaft (corpus cavernosa), uvula, eyelids or sub-clavicle.

(6) A standard body piercing temporary trainee license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110, 331-900-0115, 331-900-0120, 331-900-0125, 331-900-0130, and all applicable rules listed in OAR 331 division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 2-2013(Temp), f. & cert. ef. 1-16-13 thru 7-14-13; HLA 3-2013, f. 3-12-13, cert. ef. 3-15-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0040
Temporary Standard Body Piercing License

(1) A temporary standard body piercing license, pursuant to ORS 690.365, is a temporary license to perform standard body piercing services on a limited basis, not to exceed 15 consecutive calendar days. A temporary standard body piercing license holder:

(a) May renew the license up to four times, in a 12 month period from the date the Agency receives the initial application. License renewal can be done consecutively with no lapse in active license dates;

(b) Must submit all requests to renew a license on a form prescribed by the Agency. Request to renew a license must be received at least 15 days before standard body piercing services are provided unless otherwise approved by the Agency;

(c) Must submit notification of a change in work location on a form prescribed by the Agency at least 24 hours before services are performed; and

(d) Must work in a licensed facility.

(2) A temporary standard body piercing license holder may only perform standard body piercing services.

(3) A temporary standard body piercing license holder is prohibited from performing specialty level one genital piercing services defined under OAR 331-905-0000 and specialty level two genital piercing services defined under 331-905-0000.

(4) A temporary standard body piercing license holder is prohibited from piercing the testes, deep shaft (corpus cavernosa), uvula, eyelids or sub-clavicle.

(5) A temporary standard body piercing license holder must adhere to all standards within OAR 331-900-0100, 331-900-0105, 331-900-0110, 331-900-0115, 331-900-0120, 331-900-0125, 331-900-0130, and all applicable rules listed in OAR 331 division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0050
Standard Body Piercing Supervisor

(1) An approved standard body piercing supervisor may supervise one standard body piercing temporary trainee per shift.

(2) An approved standard body piercing supervisor must exercise management, guidance, and control over the activities of the standard body piercing trainee and must exercise professional judgment and be responsible for all matters relative to the standard body piercing.

(3) An approved standard body piercing supervisor must document work done by the standard body piercing temporary trainee on a form prescribed by the Agency and maintain training documentation for a minimum of two years following completion of training.

(4) An approved supervisor must notify the Agency in writing within five calendar days if a standard body piercing temporary trainee is no

longer being supervised, and must provide the number of hours of training completed on a form prescribed by the Agency.

(5) Not withstanding any other disciplinary actions, an approved supervisor's authorization to supervise may be withdrawn by the Agency for providing incomplete or inadequate training or falsifying documentation.

(6) Supervisors must provide direct supervision to standard body piercing temporary trainees.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2013(Temp), f. & cert. ef. 1-16-13 thru 7-14-13; HLA 3-2013, f. 3-12-13, cert. ef. 3-15-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0077

Renewal of an Earlobe Piercing License

(1) A licensee is subject to the provisions of OAR chapter 331, division 30 regarding the renewal of a license and provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.

(2) LICENSE RENEWAL: To avoid delinquency penalties, an earlobe piercing license renewal must be made prior to the license entering inactive status. The licensee must submit the following:

(a) Renewal application form; and

(b) Payment of required renewal fee pursuant to 331-940-0000.

(3) INACTIVE LICENSE RENEWAL: An earlobe piercing license may be inactive for up to three years. If a license is inactive the licensee is not authorized to practice. When renewing a license after entering inactive status, the licensee holder must submit the following:

(a) Renewal application form; and

(b) Payment of delinquency and license fees pursuant to OAR 331-940-0000.

(4) EXPIRED LICENSE: An earlobe piercing license that has been inactive for more than three years is expired and the license holder must reapply and meet the requirements listed in OAR 331-900-0015.

(5) LICENSE RENEWAL —A temporary earlobe piercing license holder licensed prior to January 1, 2014 but after January 1, 2012, who is seeking a permanent earlobe piercing license is not required to take the examinations listed in OAR 331-900-0060.

Stat. Auth.: ORS 676.607, 676.615, 690.405 & 2013 OL Ch. 82

Stats. Implemented: ORS 676.607, 690.350, 690.385, 690.405 & 2013 OL Ch. 82

Hist.: HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0085

Continuing Education for Standard Body Piercing License

(1) To maintain licensure, a standard or specialty body piercer license holder must complete a minimum of 10 hours of satisfactory continuing education every year.

(2) A standard or specialty body piercer license holder must document compliance with the continuing education requirement through attestation on the license renewal application. Licensees will be subject to the provisions of OAR 331-900-0090 pertaining to periodic audit of continuing education.

(3) Satisfactory continuing education courses must be obtained as follows:

(a) Five hours must be obtained by participation in or attendance at a course provided by:

(A) Institutions or programs accredited by a federally recognized accrediting agency;

(B) Institutions or programs approved by an agency within the Oregon Higher Education Coordinating Commission;

(C) An organization offering continuing medical education opportunities, including Accreditation Council for Continuing Medical Education;

(D) Any additional board approved professional organization, or association, hospital, or health care clinic offering continuing education related to subject matter listed in (4) of this rule.

(b) Five hours may be self-study, where subject matter meets the requirements under subsection (4) of this rule, which may include the following:

(A) Correspondence courses including online courses through completion and certification by an approved national home study organization;

(B) Review of publications, textbooks, printed material, or audio cassette(s); and

(C) Viewing of films, videos, or slides.

(4) The subject matter of the continuing education must be specifically related to body piercing. As outlined in the approved course of study under OAR 331-900-0005 (3) and (11). Continuing education may include the laws and rules regulating licensed body piercers, health care professional concerns such as safety, emergencies, client consultation, business ethics, and business practices or legalities.

(5) In order to renew, continuing education requirements must be met every year, even if the license is inactive or suspended.

(6) Obtaining and maintaining proof of participation in required continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the agency. Adequate proof of participation is listed under OAR 331-900-0090(3).

(7) Documentation of participation in continuing education requirements must be maintained for a period of five years following renewal, and must be available to the agency upon request.

(8) Current training and certification in CPR, First Aid, and Blood borne pathogens is a condition of renewal and is not eligible for continuing education credit).

(9) A licensee may carry up to 8 hours of excess continuing education hours forward to the next renewal cycle.

(10) For the purpose of this rule continuing education hours mean actual academic, classroom, or course work time, including but not limited to workshops, symposiums, or seminars. Continuing education hours do not include travel time to or from the training site, registration or check-in periods, breaks or lunch periods.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0090

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Agency will audit a select percentage of licenses to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-900-0085.

(3) Evidence of successful completion of the required continuing education must include the following:

(a) Name of continuing education sponsor/provider;

(b) Course agenda — including the date of the training and breakdown of hours for each agenda item, lunch and breaks;

(c) Course outline — including a detailed summary of each topic discussed and the learning objective or training goal of each agenda item; The content of the course must have a direct relationship between the course training and subject matter related to body piercing as set forth in OAR 331-900-0085(4);

(d) Background resume of speakers or instructors; and

(e) Documentation of attendance or successful course completion. Examples include a certificate, transcript, sponsor statement or affidavit attesting to attendance, diploma.

(4) Documentation substantiating the completion of continuing education through self-study must show a direct relation to body piercing as set forth in OAR 331-900-0085(4), be submitted on forms provided by the agency and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audiocassette's, including date of publication, publisher, and ISBN identifier; and

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) If documentation of continuing education is invalid or incomplete, the licensee has 30 calendar days from the date of the deficiency notice to correct the deficiency and submit further documentation of completion of the required continuing education.

(6) Misrepresentations of continuing education or failure to complete continuing education requirements may result in disciplinary action, which

may include, but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0095

Earlobe Piercing Practice Standards and Prohibitions

(1) An earlobe piercing license holder must:

(a) Use an earlobe piercing system that pierces an individual's earlobe by use of a sterile, encapsulated single-use stud with clasp;

(b) Use an earlobe piercing system made of non-absorbent or non-porous material which can be cleaned and disinfected according to manufacturer's instructions;

(c) Use single-use prepackaged sterilized ear piercing studs for each client;

(d) Store new or sterilized ear piercing systems separately from used or soiled instruments; and

(e) Disinfect all parts of the piercing system with a high-level disinfectant.

(2) An earlobe piercer may only pierce with an earlobe piercing system; use of a needle is prohibited.

(3) An earlobe piercing system may only be used to pierce the earlobe. Use of an earlobe piercing system on other parts of the body or ear is prohibited.

(4) Piercing with a manual loaded spring operated ear piercing system is prohibited.

(5) Piercing the earlobe with any type of piercing system which does not use the pre-sterilized encapsulated stud and clasp system is prohibited.

(6) Earlobe Piercing is prohibited:

(a) On a person under 18 years of age unless the requirements of OAR 331-900-0130 are met;

(b) On a person who shows signs of being inebriated or appears to be incapacitated by the use of alcohol or drugs;

(c) On a person who shows signs of recent intravenous drug use; and

(d) On a person with sunburn or other skin diseases or disorders of the skin such as open lesions, rashes, wounds, puncture marks in areas of treatment.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0097

General Standards for Earlobe Piercing

(1) The cleanliness of any common area in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An earlobe piercing license holder licensed to perform earlobe piercing services or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in the facility;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited by the Agency or the FDA for use by earlobe piercing license holders;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed;

(e) Ensure chemicals are stored in labeled, closed containers;

(f) Ensure that single-use disposable paper products and protective gloves are used for each client. Use of towels and linens are prohibited;

(g) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels;

(h) Ensure pets or other animals not be permitted in the facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums;

(i) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business;

(j) Ensure all waste or garbage is disposed of in a covered container with a garbage liner;

(k) Ensure all waste which contains blood or other potentially infectious materials be enclosed and secured in a glove or bag then disposed of in a covered container with a garbage liner immediately following the service;

(l) Ensure disposable sharp objects that come in contact with blood or other potentially infectious materials be disposed of in a sharps container;

(m) Ensure biohazard labels or red biohazard bags are available on the facility premises; and

(n) Adhere to all Centers for Disease Control Standards.

(3) An earlobe piercing licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances shall be dispensed from containers in a manner to prevent contamination of the unused portion.

(5) Single use tubes or containers and applicators shall be discarded following the service.

(6) An earlobe piercing license holder is permitted to have hot and cold running water within a restroom as part of surrounding premises or adjacent to the facility.

(7) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0098

Standards for Client Services for Earlobe Piercing Licensees

(1) An earlobe piercing license holder must observe and adhere to the following hand washing and disposable glove standards when servicing clients:

(a) HAND WASHING: Hands must be washed or treated with an antibacterial hand sanitizer before and after treatment of each client, and before putting on disposable gloves and immediately after disposable gloves are removed; and

(b) Hand washing must include thoroughly washing the hands in warm, running water with liquid soap using friction on all surfaces of the hands and wrists, then rinsing hands and drying hands with a clean, disposable paper towel, or by using an antibacterial hand sanitizer by using friction on all surfaces of the hands and wrists. Use of bar soap is prohibited.

(2) An earlobe piercing license holder must observe and adhere to the following protective disposable glove standards when servicing clients:

(a) PROTECTIVE DISPOSABLE GLOVES: A new pair of disposable gloves must be worn during the treatment of each client;

(b) Hands must be washed in accordance with hand washing instructions listed in Subsection (1) of this rule before putting on disposable gloves and immediately after disposable gloves are removed;

(c) When a treatment session is interrupted disposable gloves must be removed and discarded. Hand washing instructions listed in Subsection (1) of this rule must be followed and a new pair of gloves put on when returning to the procedure service area;

(d) When a licensee leaves the procedure area in the middle of a earlobe piercing procedure, gloves must be removed before leaving the procedure area, hand washing instructions listed in Subsection (1) of this rule must be followed and a new pair of gloves put on when returning to the procedure area;

(e) Disposable gloves must be removed and discarded before leaving the procedure area;

(f) Torn or perforated gloves must be removed immediately, and hand washing instructions listed in Subsection (1) of this rule must be followed and gloves changed following hand washing; and

(g) The use of disposable gloves does not preclude or substitute for hand washing instructions listed in subsection (1) of this rule.

(3) Disposable gloves must be worn during pre-cleaning, cleaning, rinsing, disinfecting and drying of equipment and instruments;

(4) A client's skin must be thoroughly cleaned with an antiseptic solution.

(5) A licensee is prohibited from wearing jewelry under gloves.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0099
Client Records and Information for Earlobe Piercing License Holder

(1) An earlobe piercing license holder is responsible for maintaining and keeping copies of all client records. If client records are maintained by the facility the facility owner must provide the licensee with copies of those client records upon request. The record must include the following for each client:

(a) Name, address, telephone number and date of birth of client;

(b) Date of each service;

(c) Name and license number of the licensee providing service;

(d) Special instructions or notations relating to the client's medical or skin conditions including but not limited to diabetes, cold sores and fever blisters, psoriasis or eczema, pregnancy or breast-feeding/nursing.

(e) Complete list of the client's sensitivities to medicines or topical solutions;

(f) History of the client's bleeding disorders;

(g) Description of complications during procedure(s);

(h) Signature from the client that they have received the following information in writing and verbally:

(A) All information related to the body piercing service including possible reactions, side effects and potential complications of the service and consent to obtaining the body piercing service; and

(B) Information listed in OAR 331-900-0110 regarding informed consent for certain standard body piercing procedures.

(C) After care instructions including care following service, possible side effects and complications and restrictions.

(i) Signature from the client that they have been informed, both verbally and in writing, of all information related to the earlobe piercing services including possible reactions, side effects and potential complications of the service and consent to obtaining the earlobe piercing service; and

(j) Proof of age or consent consisting of one of the following:

(A) If the client is of over 18, a copy of a government issued photographic identification. A copy of the government issued photographic identification must be included in the client record;

(B) If the client is a minor written parental or legal guardian consent is required. The written parental or legal guardian consent must be submitted to the licensee by the parent or legal guardian prior to piercing the minor. The consenting parent or legal guardian must be 18 years of age and present government issued photographic identification at time of written consent. A copy of the government issued photographic identification must be included in the client record.

(C) If the client is an emancipated minor, copies of legal court documents proving emancipation and government issued photographic identification is required.

(2) A licensee may obtain advice from a physician regarding medical Information needed to safeguard client and licensee. Advice from a physician must be documented in the client record.

(3) For the purpose of (1) and (2) of this rule records must be kept at facility premises for a minimum of three years and must be made immediately available to the agency upon request.

(4) Client records must be typed or printed in a legible format. Client records, which are not readable by the Agency, will be treated as incomplete.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-900-0115
General Standards for Standard Body Piercing

(1) The cleanliness of any common in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An individual licensed to perform services in a field of practice or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Agency or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed;

(e) Ensure chemicals are stored in labeled, closed containers;

(f) Ensure that single-use disposable paper products, single-use needles, sterilized jewelry and protective gloves are used for each client. Use of towels and linens are prohibited;

(g) Have unrestricted access or availability to a sink with hot and cold running water, as part of surrounding premises or adjacent to the facility but separate from a restroom;

(h) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels;

(i) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client;

(j) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums;

(k) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business;

(l) Ensure all waste or garbage is disposed of in a covered container with a garbage liner;

(m) Ensure all waste which contains blood or other potentially infectious materials be enclosed and secured in a glove or bag then disposed of in a covered container with a garbage liner immediately following the service;

(n) Ensure disposable sharp objects that come in contact with blood or other potentially infectious materials be disposed of in a sharps container;

(o) Ensure biohazard labels or red biohazard bags are available on the facility premises;

(p) Adhere to all Centers for Disease Control and Prevention Standards;

(q) Ensure that all instruments that come in direct contact with client's skin are handled using gloves; and

(r) Ensure that all jewelry used for initial piercings is sterilized before use on a client in accordance with OAR 331-900-0125.

(3) A licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances must be dispensed from containers in a manner to prevent contamination of the unused portion. Single use tubes or containers and applicators shall be discarded following the service.

(5) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415
Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-905-0020
Application Requirements for Specialty Level One Genital Piercer Licensed as Body Piercer Prior to January 1, 2012

(1) An individual applying for licensure who obtained an Oregon body piercing license before January 1, 2012, to qualify for a specialty level one genital piercing license, that individual must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent;

(g) Submit proof of having a current standard body piercing license which is active with no current or pending disciplinary action;

(h) Submit copies of client records demonstrating proof of having successfully performed a minimum of 36 specialty level one genital piercings listed in OAR 331-905-0005(3). The 36 specialty level one genital

piercings must have been performed before January 1, 2012, if done in Oregon. Client records must demonstrate proof of having performed at least 3 different piercing procedures listed in 331-905-0005(3). Each client record submitted must clearly identify the type of genital piercing procedure by labeling each record with the same descriptive language listed in 331-905-0005(3); and

(i) Pay all licensing fees.

(2) Experience claimed under subsections (1)(g) and (1)(h) of this rule is subject to independent verification by the Agency.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345
Stats. Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35
Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-905-0030
Application Requirements for Specialty Level Two Genital Piercer Licensed as a Body Piercer Prior to January 1, 2012

(1) An individual applying for licensure who obtained an Oregon body piercing license before January 1, 2012, to qualify for a specialty level two genital piercing license, that individual must:

(a) Meet the requirements of OAR 331 division 30;

(b) Submit a completed application form prescribed by the Agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application fees;

(c) Submit proof of current cardiopulmonary resuscitation and basic first aid training from an Agency approved provider;

(d) Submit proof of current blood borne pathogens training from an Agency approved provider;

(e) Submit proof of being 18 years of age documentation may include identification listed under OAR 331-030-0000;

(f) Submit proof of having a high school diploma or equivalent;

(g) Submit proof of having a current specialty level one genital piercing license which is active with no current or pending disciplinary action;

(h) Submit copies of client records demonstrating proof of having successfully performed a minimum of 26 specialty level two genital piercings listed in OAR 331-905-0010(3). The 26 specialty level two genital piercings must have been performed before January 1, 2012, if done in Oregon. Client records must demonstrate proof of having performed at least 3 different piercing procedures listed in OAR 331-905-0010(3). Each client record submitted must clearly identify the type of genital piercing procedure by labeling each record with the same descriptive language listed in OAR 331-905-0010(3); and

(i) Pay all licensing fees.

(2) Experience claimed under subsections (1)(g) and (1)(h) of this rule is subject to independent verification by the Agency.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 345
Stats. Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35
Hist.: HLA 14-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-25-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-905-0052
Specialty Level One Genital Piercing Supervisor

(1) An approved supervisor may supervise one specialty level one genital piercing trainee per shift.

(2) An approved supervisor must exercise management, guidance, and control over the activities of the specialty level one genital piercing and must exercise professional judgment and be responsible for all matters relative to the specialty level one genital piercing trainee.

(3) Supervisors must document work done by the specialty level one genital piercing trainee on a form prescribed by the Agency and maintain training documentation for a minimum of two years following completion of training.

(4) An approved supervisor must notify the Agency in writing within five calendar days if a specialty level one genital piercing trainee is no longer being supervised, and must provide the number of hours of training completed on a form prescribed by the Agency.

(5) Not withstanding any other disciplinary actions, an approved supervisor's authorization to supervise may be withdrawn by the Agency for providing incomplete or inadequate training or falsifying documentation.

(6) Supervisors must provide direct supervision to specialty level one genital piercing trainees.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345
Stats. Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-905-0058
Specialty Level Two Genital Piercing Supervisor

(1) An approved supervisor may supervise one specialty level two genital piercing temporary trainee per shift.

(2) An approved supervisor must exercise management, guidance, and control over the activities of the specialty level two genital piercing temporary trainee and must exercise professional judgment and be responsible for all matters relative to the specialty level two genital piercing trainee.

(3) Supervisors must document work done by the specialty level two genital piercing temporary trainee on a form prescribed by the Agency and maintain training documentation for a minimum of two years following completion of training..

(4) An approved supervisor must notify the Agency in writing within five calendar days if a specialty level two genital piercing temporary trainee is no longer being supervised, and must provide the number of hours of training completed on a form prescribed by the Agency.

(5) Not withstanding any other disciplinary actions, an approved supervisor's authorization to supervise may be withdrawn by the Agency for providing incomplete or inadequate training or falsifying documentation.

(6) Supervisors must provide direct supervision to specialty level two genital piercing temporary trainees.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345
Stats. Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35
Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-905-0095
General Standards for Specialty Body Piercing

(1) The cleanliness of any common in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An individual licensed to perform services in a field of practice or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Agency or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed;

(e) Ensure chemicals are stored in labeled, closed containers;

(f) Ensure that single-use disposable paper products, single-use needles, sterilized jewelry and protective gloves are used for each client. Use of towels and linens are prohibited;

(g) Have unrestricted access or availability to a sink with hot and cold running water, as part of surrounding premises or adjacent to the facility but separate from a restroom;

(h) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels;

(i) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client;

(j) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums;

(k) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business;

(l) Ensure all waste or garbage is disposed of in a covered container with a garbage liner;

(m) Ensure all waste which contains blood or other potentially infectious materials be enclosed and secured in a glove or bag then disposed of in a covered container with a garbage liner immediately following the service;

(n) Ensure disposable sharp objects that come in contact with blood or other potentially infectious materials be disposed of in a sharps container;

(o) Ensure biohazard labels or red biohazard bags are available on the facility premises;

(p) Adhere to all Centers for Disease Control and Prevention Standards; and

(q) Ensure that all instruments that come in direct contact with client's skin are handled using gloves.

(3) A licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Single use tubes or containers and applicators shall be discarded following the service.

(5) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats. Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, OL 2011, Ch. 346, Sec. 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-910-0005

Approved Course of Study for Electrology

To be approved by the agency, a course of study must include, at least 600 hours of training instruction. The course must include at least 235 hours of theory and at least 365 hours of practical experience in the following areas:

(1) Oregon Laws and rules: 15 hours of training in theory.

(2) Bacteriology: 20 hours of training in theory.

(3) Infection control, safety and sterilization: 20 hours of training in theory and 15 hours of practical training.

(4) Anatomy and physiology: 20 hours of training in theory.

(5) Endocrinology: 20 hours of training in theory.

(6) Structure, dynamics and diseases of skin and hair: 30 hours of training in theory.

(7) Circulatory and nervous system: 20 hours of training in theory.

(8) Electricity: 15 hours of training in theory.

(9) Electrolysis (galvanic): 20 hours of training in theory and 115 hours of practical training.

(10) Thermolysis: 20 hours of training in theory and 115 hours of practical training.

(11) Combinations of electrolysis and thermolysis (blend): 20 hours of training in theory and 110 hours of practical training.

(12) Draping and positioning: 5 hours of training in theory and 5 hours of practical training.

(13) Professional ethics and business practices: 10 hours of training in theory and 5 hours of practical training.

(14) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed on the general public.

(15) Training must be conducted by an Oregon licensed electrologist registered as a teacher by the Department of Education, Private Career Schools.

(16) A registered teacher must provide direct supervision of practical training on a one-to-one student/teacher ratio for students performing practical training while the student is working on the general public.

(17) For the purpose of this rule direct supervision means the teacher is present and actively involved in direct oversight and training of students.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-910-0010

Electrology Temporary License

(1) An electrology temporary license pursuant to ORS 690.365 is a temporary license to perform electrology services on a limited basis, not to exceed 15 consecutive calendar days. An electrology temporary license holder;

(a) May renew the license up to four times in a 12 month period from the date the Agency receives the initial application. License renewals can be done consecutively with no lapse in active license dates;

(b) Must submit all requests to revive a license on a form prescribed by the Agency and received 15 days before electrology services are provided unless otherwise approved by the Agency;

(c) Must submit notification of a change in work location at least 24 hours before services are performed on a form prescribed by the Agency; and

(d) Must work in a licensed facility.

(2) An electrology temporary license holder must adhere to standards within OAR 331-910-0065, 331-910-0070, 331-910-0075, 331-910-0080, 331-910-0085 and all applicable rules listed in OAR 331 division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-910-0055

Continuing Education for Electrology License

(1) To maintain licensure, a licensed electrologist must complete a minimum of eight hours of satisfactory continuing education every year.

(2) A licensee must document compliance with the continuing education requirement through attestation on the license renewal application. Licensees will be subject to the provisions of OAR 331-910-0060 pertaining to periodic audit of continuing education.

(3) Satisfactory continuing education must be obtained as follows:

(a) Four hours must be obtained by participation in or attendance at a course provided by:

(A) Institutions or programs accredited by a federally recognized accrediting agency;

(B) Institutions or programs approved by an agency within the Oregon Higher Education Coordinating Commission;

(C) An organization offering continuing medical education opportunities, including Accreditation Council for Continuing Medical Education;

(D) Any additional board approved professional organization, or association, hospital, or health care clinic offering continuing education related to subject matter listed in (4) of this rule.

(b) Four hours may be self-study, where subject matter meets the requirements under subsection (4) of this rule, which may include the following:

(A) Correspondence courses including online courses through completion and certification by an approved national home study organization;

(B) Review of publications, textbooks, printed material, or audio cassette(s);

(C) Viewing of films, videos, or slides;

(4) The subject matter of the continuing education must be specifically related to electrology and as outlined in the approved course of study under OAR 331-910-0005 (1) through (13). Continuing education may include the laws and rules regulating licensed electrologists, infection control and sterilization, and professional ethics and business practices.

(5) In order to renew, continuing education requirements must be met every year, even if the license is inactive or suspended.

(6) Obtaining and maintaining proof of participation in required continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the agency. Adequate proof of participation is listed under OAR 331-910-0060(3).

(7) Documentation of participation in continuing education requirements must be maintained for a period of five years following renewal, and must be available to the agency upon request.

(8) A licensee may carry up to 8 hours of excess continuing education hours forward to the next renewal cycle.

(9) For the purpose of this rule continuing education hours mean actual academic, classroom, or course work time, including but not limited to workshops, symposiums, or seminars. Continuing education hours do not include travel time to or from the training site, registration or check-in periods, breaks or lunch periods.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 2-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-910-0060

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Oregon Health Licensing Agency will audit a select percentage of licenses to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the Agency, within 30 calendar days from the date of the issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-910-0055.

(3) Evidence of successful completion of the required continuing education must include the following:

(a) Name of continuing education sponsor/provider;

(b) Course agenda — including the date of the training and breakdown of hours for each agenda item, lunch and breaks;

(c) Course outline — including a detailed summary of each topic discussed and the learning objective or training goal of each agenda item; The content of the course must have a direct relationship between the course training and subject matter related to electrology as set forth in OAR 331-910-0055(4);

(d) Background resume of speakers or instructors; and

(e) Documentation of attendance or successful course completion. Examples include a certificate, transcript, sponsor statement or affidavit attesting to attendance, diploma.

(4) Documentation substantiating completion of continuing education through self-study, must show a direct relation to electrology as set forth in OAR 331-910-0055(4), be submitted on forms provided by the agency and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audio-recorded material, including date of publication, publisher, and ISBN Identifier; and

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) If documentation of continuing education is invalid or incomplete, the licensee has 30 calendar days from the date of the deficiency notice to correct the deficiency and submit further documentation of completion of the required continuing education.

(6) Misrepresentations of continuing education or failure to complete continuing education requirements may result in disciplinary action, which may include, but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-915-0020

Temporary Tattoo License

(1) A temporary tattoo license pursuant to ORS 690.365 is a temporary license to perform tattooing services on a limited basis, not to exceed 15 consecutive calendar days. A temporary tattoo license holder;

(a) May renew the license up to four times in a 12 month period from the date the Agency receives the initial application. License renewal can be done consecutively with no lapse in active license dates;

(b) Must submit all requests to renew a license on a form prescribed by the Agency. Request to renew a license must be received at least 15 days before tattooing services are provided unless otherwise approved by the Agency;

(c) Must submit notification of a change in work location at least 24 hours before services are performed on a form prescribed by the Agency; and

(d) Must work in a licensed facility.

(2) A temporary tattoo license holder must adhere to all standards under OAR 331-915-0065, 331-915-0070, 331-915-0075, 331-915-0080, 331-915-0085 and all applicable rules listed in OAR 331 division 925.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-915-0055

Continuing Education for Tattoo License

(1) To maintain licensure, a tattoo license holder must complete a minimum of 10 hours of satisfactory continuing education every year.

(2) A tattoo license holder must document compliance with the continuing education requirement through attestation on the license renewal application. Licensees will be subject to the provisions of OAR 331-915-0060 pertaining to periodic audit of continuing education.

(3) Satisfactory continuing education must be obtained as follows:

(a) Five hours must be obtained by participation in or attendance at a course provided by:

(A) Institutions or programs accredited by a federally recognized accrediting agency;

(B) Institutions or programs approved by an agency within the Oregon Higher Education Coordinating Commission;

(C) An organization offering continuing medical education opportunities, including Accreditation Council for Continuing Medical Education;

(D) Any additional board approved professional organization, or association, hospital, or health care clinic offering continuing education related to subject matter listed in (4) of this rule.

(b) Five hours may be self-study, where subject matter meets the requirements under subsection (4) of this rule, which may include the following:

(A) Correspondence courses including online courses through completion and certification by an approved national home study organization;

(B) Review of publications, textbooks, printed material, or audio cassette(s);

(C) Viewing of films, videos, or slides;

(4) The subject matter of the continuing education must be specifically related to tattooing. As outlined in the approved course of study under OAR 331-915-0005(4). Continuing education may include the laws and rules regulating licensed tattooists, safety and sterilization, color theory, design, art and placement, client services, and business operations.

(5) Continuing education is required for renewal, every year, even if the license has been inactive or suspended.

(6) Obtaining and maintaining proof of participation in required continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the agency. Adequate proof of participation is listed under OAR 331-915-0060(3).

(7) Documentation of participation in continuing education requirements must be maintained for a period of five years following renewal, and must be available to the agency upon request.

(8) Current training and certification in CPR, First Aid, and Blood borne pathogens is a condition of renewal and is not eligible for continuing education credit.

(9) A tattoo license holder may carry up to 8 hours of excess continuing education hours forward to the next renewal cycle.

(10) For the purpose of this rule continuing education hours mean actual academic, classroom, or course work time, including but not limited to workshops, symposiums, or seminars. Continuing education hours do not include travel time to or from the training site, registration or check-in periods, breaks or lunch periods.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-915-0060

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Agency will audit a select percentage of licenses to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of the issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-915-0055.

(3) Evidence of successful completion of the required continuing education must include the following:

(a) Name of continuing education sponsor/provider;

(b) Course agenda — including the date of the training and breakdown of hours for each agenda item, lunch and breaks;

(c) Course outline — including a detailed summary of each topic discussed and the learning objective or training goal of each agenda item; The content of the course must have a direct relationship between the course training and subject matter related to tattooing as set forth in OAR 331-915-0055(4);

(d) Background resume of speakers or instructors; and

(e) Documentation of attendance or successful course completion Examples include certificate, transcript, sponsor statement or affidavit attesting to attendance, and diploma.

(4) Documentation substantiating the completion of continuing education through self-study must show a direct relation to tattooing as set forth in OAR 331-915-0055(4), be submitted on forms provided by the agency and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audiocassette's, including date of publication, publisher, and ISBN identifier; and

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) If documentation of continuing education is invalid or incomplete, the licensee has 30 calendar days from the date of the deficiency notice to correct the deficiency and submit further documentation of completion of the required continuing education.

(6) Misrepresentations of continuing education or failure to complete continuing education requirements may result in disciplinary action, which may include, but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-915-0065

Tattoo Practice Standards and Prohibitions

(1) Inks, dyes, or pigments must be purchased from a commercial supplier or manufacturer. Products banned or restricted by the Food and Drug Administration must not be used.

(2) A tattoo license holder must disinfect plastic or acetate stencil used to transfer the design to the client's skin, if not using disposable stencils. If the plastic or acetate stencil is reused the licensee must thoroughly clean and rinse and immerse in a high level disinfectant according to the manufacturer's instructions.

(3) Upon completion of a tattoo service, the following procedures are required:

(a) The skin must be cleansed; excluding the area surrounding the eyes, with a clean single-use paper product saturated with an antiseptic solution;

(b) A clean covering must be placed over designs and adhered to the skin; and

(c) An absorbent material must be incorporated into the covering to prevent the spread of bodily fluids and cross contamination, unless the clean covering listed in subsection (3)(a) of this rule is an impenetrable barrier which prevents the spread of bodily fluids and cross contamination.

(4) Tattooing services may be performed on a person under 18 years of age when authorized or prescribed by a physician's statement.

(5) Tattooing is prohibited:

(a) On a person who shows signs of being inebriated or appears to be incapacitated by the use of alcohol or drugs;

(b) On a person who show signs of intravenous drug use;

(c) On a person with sunburn or other skin diseases or disorders such as open lesions, rashes, wounds, puncture marks in areas of treatment;

(d) On a person under 18 years of age, regardless of parental or legal guardian consent unless the requirements of subsection (4) of this rule are met.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-915-0070

General Standards for Tattooing

(1) The cleanliness of any common area in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.

(2) An individual licensed to perform services in a field of practice or a licensed facility owner must:

(a) Use and maintain appropriate equipment and instruments for providing services in a field of practice at the place of business;

(b) Use equipment and instruments in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;

(c) Use equipment and instruments that are not prohibited for use in a field of practice by the Agency or the FDA;

(d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed;

(e) Ensure chemicals are stored in labeled, closed containers;

(f) Ensure that single-use disposable paper products, single-use needles, and protective gloves are used for each client. Use of towels and linens are prohibited;

(g) Have unrestricted access or availability to a sink with hot and cold running water, as part of the surrounding premises or adjacent to the facility but separate from a restroom;

(h) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels;

(i) Ensure all waste material related to a service in a field of practice be deposited in a covered container following service for each client;

(j) Ensure pets or other animals not be permitted in the business facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums;

(k) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business;

(l) Ensure all waste or garbage is disposed of in a covered container with a garbage liner;

(m) Ensure all waste which contains blood or other potentially infectious materials be enclosed and secured in a glove or bag then disposed of in a covered container with a garbage liner immediately following the service;

(n) Ensure disposable sharp objects that come in contact with blood and/or body fluids be disposed of in a sharps container;

(o) Ensure biohazard labels or red biohazard bags are available on the facility premises;

(p) Adhere to all Centers for Disease Control and Prevention Standards;. and

(q) Ensure that all instruments that come in direct contact with client's skin are handled using gloves.

(3) A licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.

(4) All substances must be dispensed from containers in a manner to prevent contamination of the unused portion. Single use tubes or containers and applicators shall be discarded following the service.

(5) Cross contaminating from touch or air particulates in any procedure area which comes in direct contact with client is prohibited.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 10-2012, f. & cert. ef. 6-25-12; HLA 15-2012(Temp), f. & cert. ef. 10-15-12 thru 4-12-13; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-925-0050

Facility Standards

Facility standards apply to all licensees under ORS 690.350 unless otherwise specified by rule.

(1) A facility license holder licensed under OAR chapter 331, division 925 must:

(a) Require each individual working within the facility premises providing services in a field of practice be licensed with the Agency;

(b) Provide a screened or separated area away from public access and viewing, isolated from a reception or waiting area, when services are conducted upon breasts, nipples, genitals or buttocks;

(c) Allow an agency representative to inspect the facility or conduct an investigation. Obstructing or hindering the normal progress of an inves-

tigation or the inspection, threatening or exerting physical harm, or enabling another individual or employee to impede an investigation or inspection may result in disciplinary action;

(d) Ensure waste from toilets or lavatories be discharged directly into a public sewer or by a method meeting the requirements of ORS Chapter 454;

(e) Have a sterilization area separated from public areas, service areas and restrooms where decontamination and sterilization of reusable instruments is performed. This rule does not apply to electrology license holders and earlobe piercing license holders;

(f) All surfaces in areas where decontamination and sterilization of reusable instruments are performed must be non-porous;

(g) Hand washing accommodations must be provided in work areas where licensees are exposed to hazardous materials, which will have a harmful effect on or be absorbed through the skin if the contamination is not removed;

(h) Maintain washing accommodations in a clean and sanitary condition; and

(i) Ensure all floors, walls and procedure surfaces including counters, tables, and chairs are easily cleanable, non-absorbent and non-porous where services are provided;

(2) When body piercing or tattoo services are provided in a cosmetology facility, body piercing or tattoo services must be separated from cosmetology services by use of a solid barrier to prevent contact with irritants. Electrology services are excluded from this rule.

(3) The facility must comply with all applicable rules and regulations of the Agency and other federal, state, county and local agencies. This includes the following:

(a) Building, fire, plumbing and electrical codes, and with exit and fire standards established by the Building Codes Agency, the Office of the State Fire Marshal;

(b) Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875;

(c) Occupational Safety and Health Act Blood Borne Pathogens Standards under 29 CFR 1910:1030 this includes but is not limited to: individuals providing services in a field of practice, facility owners; and other employees on the facility premises;

(d) ORS Chapter 654 and the Oregon Safe Employment Act if an employee/employer relationship exists; and

(e) All applicable Occupational Safety and Health Act standards if an employee/employer relationship exists.

Stat. Auth.: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415, & 345

Stats. Implemented: ORS 676.607,676.615, 676.625, 690.365, 690.371, 690.385, 690.390, 690.405, 690.407, 690.410, 690.415

Hist.: HLA 3-2012(Temp), f. & cert. ef. 3-1-12 thru 6-25-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-940-0000

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency are as follows:

(a) Application:
(A) Standard Body Piercing — $50.
(B) Specialty Body Piercing Level 1 — $50.
(C) Specialty Body Piercing Level 2 — $50.
(D) Electrology — $50.
(E) Tattoo — $50.
(F) Reciprocity Per Field of Practice — $150.
(G) Facility — $100.
(H) Mobile Facility — $100.
(I) Event Facility — $100.
(J) Temporary Facility License — $100.
(K) Temporary Practitioner Per Field of Practice — $50.
(L) Standard Body Piercing Trainee — $50.
(M) Ear Lobe Piercing— $25.
(b) Examination:
(A) Written — $50.
(B) Practical — $100.
(c) Original Issuance of License:
(A) Standard Body Piercing Trainee — $50.
(B) Standard Body Piercing — $50.
(C) Specialty Body Piercing Level 1 — $50.
(D) Specialty Body Piercing Level 2 — $50.
(E) Electrology — $25.
(F) Tattoo — $50.
(G) License for a Field of Practice by Reciprocity — $50.
(H) Facility — $150.
(I) Mobile Facility — $150.
(J) Event Facility:
(i) Up to 100 booths: $725.
(ii) 101 to 200 booths: $1,450.
(iii) 201 to 300 booths: $2,175.
(iv) 301 to 400 booths: $2,900.
(v) 401 to 500 booths: $3,625.
(K) Temporary Practitioner Per Field of Practice — $20.
(L) Temporary Facility — $50.
(M) Earlobe Piercing— $25.
(d) Renewal of License Online:
(A) Standard Body Piercing — $45.
(B) Electrology — $20.
(C) Tattoo — $45.
(D) Earlobe — $20.
(E) Body Art Facility — $125.
(F) Mobile Facility License — $125.
(e) Renewal of License Over-the-Counter or Through the Mail:
(A) Standard Body Piercing Trainee — $50.
(B) Standard Body Piercing — $50.
(C) Specialty Body Piercing Level 1 — $50.
(D) Specialty Body Piercing Level 2 — $50.
(E) Electrology — $25.
(F) Tattoo — $50.
(G) Earlobe — $25.
(H) Temporary Practitioner Per Field of Practice — $20.
(I) Body Art Facility — $150.
(J) Mobile Facility License — $150.
(f) Other administrative fees:
(A) Delinquency — $50 per year, up to three years.
(B) Replacement License — $25.
(C) Duplicate License — $25 per copy with maximum of three.
(D) Affidavit of Licensure — $50.
(E) Information Packets — $10.
(F) Administrative Processing Fee — $25.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 Sec. 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 4-2012(Temp), f. & cert. ef. 3-5-12 thru 9-1-12; HLA 11-2012, f. & cert. ef. 7-25-12; HLA 8-2013(Temp), f. 6-7-13, cert. ef. 7-1-13 thru 7-8-13; HLA 12-2013, f. 7-3-13, & cert. ef. 7-9-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

331-950-0040

Schedule of Penalties for Board of Body Art Standards Violations

The Agency has adopted the following presumptive penalty schedule for the 1st, 2nd, and 3rd violation of Board of Body Art Standards Violations laws and rules. This schedule applies, except at the discretion of the agency pursuant to OAR 331-020-0060. For the 4th and subsequent offenses, the provisions of 331-020-0060 apply.

(1) Any violation of a Mobile Facility License listed in OAR 331-925-0020:

(a) 1st offense: $500;
(b) 2nd offense: $1,000;
(c) 3rd offense: $2,500.

(2) Any violation of a facility standard listed in OAR 331-925-0050(1) or (2) excluding (1)(a) and (1)(c):

(a) 1st offense: $500;
(b) 2nd offense: $1,000;
(c) 3rd offense: $2,500.

(3) Any violation of a Standard for Facilities Located in Residence listed in OAR 331-925-0055:

(a) 1st offense: $300;
(b) 2nd offense: $500;
(c) 3rd offense: $1000.

(4) Any violation of a General Standard listed in OAR 331-900-0097 for earlobe piercing; 331-900-0115 for standard body piercing; 331-905-0095 for specialty body piercing; 331-910-0080 for electrology; or 331-915-0070 for tattooing;

(a) 1st offense: $500;
(b) 2nd offense: $1,000;
(c) 3rd offense: $2,500.

(5) Any violation of Standards for Client Services listed in OAR 331-900-0098 for earlobe piercing; 331-900-0120 for standard body piercing, 331-905-0100 for specialty body piercing; 331-910-0070 for electrology; or 331-915-0075 for tattooing:

(a) 1st offense: $500;

(b) 2nd offense: $1,000;

(c) 3rd offense: $2,500.

(6) Failing to sterilize all instruments that come in direct contact with a client's skin or are exposed to blood or other potentially infectious materials or use single use needles is a violation of OAR 331-900-0125(1) and (2) for body piercing; 331-905-105(1) and (2) for specialty body piercing; 331-910-0075(1) and (2) for electrology; or 331-915-0080(1) and (2) for tattooing;

(a) 1st offense: $1000;

(b) 2nd offense: $2,500;

(c) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(7) Failing to properly use approved sterilization modes or procedures is a violation of OAR 331-900-0125 excluding (1), (2), (9) and (10) for body piercing; 331-905-0105 excluding (1), (2), (9) and (10) for specialty body piercing; 331-910-0075 excluding (1), (2), and (10) for electrology; or 331-915-0080 excluding (1), (2), (9) and (10) for tattooing:

(a) 1st offense: $1000;

(b) 2nd offense: $2,500;

(c) 3rd offense: Monetary penalty and any other actions allowed by law including revocation of suspended authorization to practice and refusal to issue a new authorization to practice to a revoked authorization holder.

(8) Failing to maintain monthly Biological test results, chemical indicator strips and steam sterilization integrators on the premises of the facility or allow an enforcement officer access to review those records immediately upon request is a violation of OAR 331-900-0125 (9) or (10) for body piercing; 331-905-0105 (9) and (10) for specialty body piercing; 331-910-0075(10) for electrology; or 331-915-0080(9) and (10) for tattooing:

(a) 1st offense: $500;

(b) 2nd offense: $1,000;

(c) 3rd offense: $2,500.

(9) Failing to collect and maintain complete client records for each client on the premises of the facility or allow an enforcement officer access to review client records immediately upon request is a violation of OAR 331-900-0099 for earlobe piercing; 331-900-0130 for standard body piercing, 331-905-0110 for specialty body piercing; 331-910-0085 for electrology; or 331-915-0085 for tattooing:

(a) 1st offense: $500;

(b) 2nd offense: $1,000;

(c) 3rd offense: $2,500.

Stat. Auth: ORS 345, 676.607, 676.615, 676.625, 690.365, 690.370, 690.385, 690.390, 690, 405, 690.407, 690.410 & 690.415

Stats. Implemented: ORS 676.607, 676.608, 676.612, 676.615, 676.625, 690.350, 690.360, 690.365, 690.370, 690.380, 390.385, 690.390, 690.405, 690.407, 690.410, 690.415 & 2011 OL Ch. 346 § 22 & 35

Hist.: HLA 16-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 10-2012, f. & cert. ef. 6-25-12; HLA 1-2013, f. & cert. ef. 1-16-13; HLA 15-2013, f. 12-30-13, cert. ef. 1-1-14

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Rule Caption: Implement changes from SB 107 related polysomnography and align with agency standards.

Adm. Order No.: HLA 16-2013

Filed with Sec. of State: 12-31-2013

Certified to be Effective: 1-1-14

Notice Publication Date: 11-1-2013

Rules Amended: 331-710-0050, 331-710-0060, 331-710-0070, 331-710-0080, 331-710-0090, 331-710-0100, 331-710-0110, 331-720-0010, 331-720-0015, 331-720-0020

Subject: Amend current administrative rules to require models such as self study, rather than post-secondary education, as a pathway for licensure as a temporary direct supervision polysomnographic technologist.

Align continuing education rules with current agency standards including specifying national organizations as approved if providing continuing education within the scope of respiratory and polysomnography care. Also required the documentation to be maintained by the licensee be consistent with documentation required for continuing education audits.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-710-0050

Application Requirements for Polysomnographic Technologist License

(1) An individual applying for licensure to practice polysomnography must:

(a) Meet the requirements of OAR chapter 331 division 30;

(b) Submit a completed application form prescribed by the Agency, containing the information listed in OAR 331-030-0000 and accompanied by payment of the required fees;

(c) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(d) Be at least 18 years of age, and must provide documentation, confirming date of birth, such as a copy of the birth certificate, driver's license or passport;

(e) Submit proof of having a high school diploma or equivalent;

(f) Submit current certification in cardiopulmonary resuscitation by an Agency approved provider; and

(2) Submit documentation of qualification through one of the following pathways:

(a) License Pathway One Academic Degree: — An applicant under pathway one must:

(A) Submit official transcripts defined under OAR 331-705-0050 showing successful completion of an Associate's degree in polysomnography, polysomnographic technology, or sleep technology from an accredited community college, college or university, or successful completion of a polysomnography course of study from a CAAHEP accredited institution. In addition to an official transcript defined under 331-705-0050 an applicant who has obtained education through a CAAHEP accredited institution must submit a statement, signed by the Registrar or a Dean of a college or university and sent directly to the Agency from that college or university, verifying the applicant has successfully completed a polysomnography course of study;

(B) Submit satisfactory evidence of passage a Board approved examination listed under OAR 331-712-0010(1) within two years before the date of application. Examination results must be submitted to the Agency directly from the examination provider; examination results or other documentation provided directly by the applicant are not acceptable;

(C) Submit examination fees;

(D) Submit satisfactory evidence of having passed the Board approved examination listed under OAR 331-712-0010(3) within two years before the date of application; and

(E) Submit licensing fees.

(b) License Pathway Two Polysomnographic Technologist Temporary Licensee: — An applicant under pathway two must applying for permanent licensure must:

(A) Submit documentation showing completion of 18 months of training and work experience pursuant to OAR 331-710-0110, obtained under polysomnographic technologist temporary-DS licensure (See 331-710-0060) and temporary-IS licensure (See 331-710-0080), including verification by an approved supervisor pursuant to 331-710-0100, and certification of successful completion and satisfactory performance of such experience by a qualified medical director for polysomnography, all on forms provided by the Agency;

(B) Submit satisfactory evidence of passage of a Board approved examination listed under OAR 331-712-0010(1) or (2) within two years before the date of application. Examination results must be submitted to the Agency directly from the examination provider; examination results or other documentation provided directly by the applicant are not acceptable;

(C) Submit examination fees;

(D) Submit satisfactory evidence of having passed the Board approved examination listed under OAR 331-712-0010(3) within two years before the date of application; and

(E) Submit licensing fees.

(c) License Pathway Three Reciprocity: — An applicant under pathway three must:

(A) Submit an affidavit of licensure pursuant to OAR 331-030-0040, from every state where the applicant has been licensed as a polysomnographic technologist, including an affidavit of licensure demonstrating proof of a current polysomnographic technologist license from another state, obtained through qualifications substantially equivalent to Oregon's requirements. At least one of the applicant's out-of-state licenses must be active and all of the applicant's out-of-state licenses must not be subject to current or pending disciplinary action, and must be free from disciplinary history for three years before the date of application for Oregon polysomnographic licensure;

(B) Submit satisfactory evidence of having passed the Board approved examination listed under OAR 331-712-0010(3) within two years before the date of application; and

(C) Submit licensing fees.

(d) License Pathway Four Endorsement: An applicant may qualify for licensure by endorsement if the applicant holds a qualifying professional credential in another field. An applicant under pathway four must:

(A) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of a current license, which is active with no current or pending disciplinary action, and no disciplinary history for the three years before the date of application for Oregon polysomnographic licensure, as a:

(B) Physician (Doctor of Medicine or Doctor of Osteopathy) licensed under ORS Chapter 677;

(C) Respiratory therapist licensed under ORS chapter 688 with the RPSGT credential from the BRPT; or

(D) CRT or RRT who holds a Sleep Disorder Specialty credential through NBRC;

(E) Submit examination fees;

(F) Submit satisfactory evidence of having passed the Board approved examination listed under OAR 331-712-0010(3) within two years before the date of application; and

(G) Submit licensing fees.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830
Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830
Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 14-2012, f. 9-12-12, cert. ef. 9-14-12; HLA 4-2013, f. 3-12-13, cert. ef. 4-1-13; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-710-0060

Polysomnographic Technologist Temporary-DS (Direct Supervision) Licensure

(1) A polysomnographic technologist Temporary-DS license authorizes the holder to temporarily practice polysomnography under direct supervision by an approved supervisor.

(2) Direct supervision is supervision of the Temporary-DS licensee by an approved supervisor who is immediately physically present with the Temporary-DS licensee while the Temporary-DS licensee is working, and who exercises direction and control over the Temporary-DS licensee's work.

(3) A polysomnographic technologist Temporary-DS license holder must notify the Agency within 10 calendar days of changes in employment status and changes in supervisor.

(4) A polysomnographic technologist Temporary-DS license is valid for six months and may not be renewed.

Stat. Auth.: ORS 676.615, 676.607, 688.819 & 688.830
Stats. Implemented: ORS 676.607, 676.615, 688.800, 688.815, 688.819 & 688.830
Hist.: HLA 14-2012, f. 9-12-12, cert. ef. 9-14-12; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-710-0070

Application Requirements for Polysomnographic Technologist Temporary-DS License

An applicant for a polysomnographic technologist Temporary-DS license must:

(1) Meet the requirements of OAR chapter 331 division 30;

(2) Submit a completed application form prescribed by the agency, containing the information listed in OAR 331-030-0000 and accompanied by payment of the required application fees;

(3) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(4) Be at least 18 years of age, and must provide documentation confirming date of birth, such as a copy of the birth certificate, driver's license, or passport;

(5) Submit current certification in cardiopulmonary resuscitation from an Agency approved provider;

(6) Submit proof of having a high school diploma or equivalent; and

(7) Submit a certificate of completion for the AASM A-STEP Self Study Modules;

(8) Submit information identifying the applicant's approved supervisor pursuant to OAR 331-710-0100, on a form prescribed by the Agency;

(9) Submit appropriate licensing fees.

Stat. Auth.: ORS 676.615, 676.607, 688.819 & 688.830
Stats. Implemented: ORS 676.607, 676.615, 688.800, 688.815, 688.819 & 688.830
Hist.: HLA 14-2012, f. 9-12-12, cert. ef. 9-14-12; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-710-0080

Polysomnographic Technologist Temporary-IS (Indirect Supervision) Licensure

(1) A polysomnographic technologist Temporary-IS license authorizes the holder to temporarily practice polysomnography under indirect supervision by an approved supervisor.

(2) Indirect supervision is supervision of the Temporary-IS licensee by an approved supervisor who is physically present and onsite, but may not be immediately accessible at the sleep facility when the Temporary-IS licensee is working, who reasonably oversees the work of the Temporary-IS licensee, and who is available for questions and assistance when needed.

(3) A polysomnographic technologist Temporary-IS license holder must notify the agency within 10 calendar days of changes in employment status and changes in supervisor.

(4) A polysomnographic technologist Temporary-IS license obtained under OAR 331-710-0090(6)(a) of this rule is valid for one year and may be renewed once.

(5) A polysomnographic technologist Temporary-IS license obtained under OAR 331-710-0090(6)(b) of this rule is valid for one year and may not be renewed.

(6) A Temporary-IS licensee is prohibited from performing services on persons 12 and under.

(7) A polysomnographic technologist temporary-IS license is invalid after passage of all required written examinations listed under OAR 331-712-0010 for a full polysomnographic technologist license under 331-710-0040.

Stat. Auth.: ORS 676.615, 676.607, 688.819 & 688.830
Stats. Implemented: ORS 676.607, 676.615, 688.800, 688.815, 688.819 & 688.830
Hist.: HLA 14-2012, f. 9-12-12, cert. ef. 9-14-12; HLA 16-2012(Temp), f. & cert. ef. 11-19-12 thru 5-17-13; HLA 4-2013, f. 3-12-13, cert. ef. 4-1-13; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-710-0090

Application Requirements for Polysomnographic Temporary-IS Licensure

An applicant for a polysomnographic technologist Temporary-IS license must:

(1) Meet the requirements of OAR chapter 331 division 30;

(2) Submit a completed application form prescribed by the Agency, containing the information listed in OAR 331-030-0000 and accompanied by payment of all required fees;

(3) Be at least 18 years of age, and provide official documentation confirming the applicant's date of birth, such as a copy of the birth certificate, driver's license, or passport;

(4) Submit current certification in cardiopulmonary resuscitation from an Agency approved provider;

(5) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(6) Submit documentation of meetings qualifications listed in (6)(a) or (6)(b) of this rule;

(a) A Temporary Licensee-DS: applying for Temporary-IS licensure must:

(A) Submit documentation of successful completion of 30 sleep tests as a polysomnographic technologist Temporary-DS licensee, which includes the signatures of an approved supervisor and certification by a qualified medical director for polysomnography of successful completion of 30 sleep studies and satisfactory performance;

(B) Submit examination fees;

(C) Complete and pass the Oregon Laws and Rules examination for polysomnography within two years before the date of registration application;

(D) Submit information identifying the applicant's approved supervisor on a form prescribed by the Agency; and

(E) Submit appropriate licensing fees.

(b) An individual with an Academic Degree: applying for Temporary-IS licensure must:

(A) Submit a statement, signed by the Registrar or a Dean of a college or university and sent directly to the Agency from that college or university, verifying the applicant has completed all work necessary to obtain an associate's degree in polysomnography, polysomnographic technology, or sleep technology from an accredited community college, college or university, or successful completion of a polysomnography course of study from a CAAHEP accredited institution;

(B) Submit examination fees;

(C) Complete and pass the Oregon Laws and Rules examination for polysomnography within two years before the date of registration application;

(D) Submit information identifying the applicant's approved supervisor on a form prescribed by the Agency; and

(E) Submit appropriate licensing fees.

Stat. Auth.: ORS 676.615, 676.607, 688.819 & 688.830
Stats. Implemented: ORS 676.607, 676.615, 688.800, 688.815, 688.819 & 688.830
Hist.: HLA 14-2012, f. 9-12-12, cert. ef. 9-14-12; HLA 16-2012(Temp), f. & cert. ef. 11-19-12 thru 5-17-13; HLA 4-2013, f. 3-12-13, cert. ef. 4-1-13; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-710-0100
Supervision of a Temporary Polysomnographic Technologist

(1) To be approved as a supervisor of a polysomnographic temporary licensee, an individual must:

(a) Hold a valid polysomnographic technologist license under ORS chapter 688 or provide proof of being a "qualified medical director for polysomnography" as defined in ORS 688.800(3);

(b) Have no current or pending disciplinary action imposed by the Agency or other regulatory body; and

(c) Submit proof of having been actively practicing polysomnography for at least three years prior to requesting approval as a supervisor; and

(d) Submit a completed request for approval on a form prescribed by the Agency;

(2) A polysomnography supervisor shall not supervise a temporary licensee until all Agency required documentation has been completed and submitted to the Agency and the supervisor has received Agency approval.

(3) A supervisor may supervise up to four patients per shift; whether they are the supervisor's own patients or patients of temporary DS or IS licensees.

(4) An approved supervisor of a Temporary-DS licensee must be immediately physically present with the Temporary-DS licensee while the Temporary-DS licensee is working, and must exercise direction and control over the Temporary-DS licensee's work.

(5) An approved supervisor of a Temporary-IS licensee must be physically present and onsite, but may not be immediately accessible at the sleep facility when the Temporary-IS licensee is working, and must reasonably oversee the work of the Temporary-IS licensee, and be available for questions and assistance when needed.

(6) An approved supervisor must notify the Agency in writing within 10 calendar days if a temporary polysomnographic technologist licensee is no longer being supervised, and must provide the number of hours of training and work experience completed on a form prescribed by the Agency.

(7) A designated supervisor must exercise management, guidance, and control over the activities of the temporary polysomnographic technologist and must exercise professional judgment and be responsible for all matters related to the polysomnography.

(8) Approval of a temporary polysomnographic technologist's training and work experience under OAR 331-710-0110 must be documented by the handwritten signature of the approved supervisor, the supervisor's license number, and date of supervisor's review, placed beside the temporary polysomnographic technologist's signature, on a form prescribed by the agency.

(9) An approved supervisor's Agency approval may be withdrawn if the supervisor provides incomplete or inadequate training during supervision or falsifies documentation.

(10) This rule is not intended for or required of purely administrative supervisors.

Stat. Auth.: ORS 676.615, 676.607, 688.819 & 688.830
Stats. Implemented: ORS 676.607, 676.615, 688.800, 688.815, 688.819 & 688.830
Hist.: HLA 14-2012, f. 9-12-12, cert. ef. 9-14-12; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-710-0110
Training and Work Experience Requirements for Polysomnography

(1) Training and work experience for polysomnography applicants must involve all of the following:

(a) Patient interaction & professional behavior;

(b) Patient assessment;

(c) Polysomnography theory;

(d) Performing polysomnography preparation and setup;

(e) Performing polysomnography recording and monitoring;

(f) Scoring sleep studies;

(g) Artifacts, and arrhythmias;

(h) Sleep related breathing disorders;

(i) Positive airway pressure and oxygen;

(j) Evaluation of sleepiness;

(k) Movement disorders: disorders involving arousal and seizures;

(l) Scoring waveforms;

(m) Scoring sleep stages;

(n) Scoring respiratory events;

(o) Scoring arousals, electroencephalography abnormalities, movements and cardiac events;

(p) Sleep deprivation;

(q) Insomnia;

(r) Medications and sleep;

(s) Circadian sleep and shift work

(t) Arrhythmia recognition;

(u) Emergency procedures and care;

(v) Patient education and mask fitting;

(w) Pediatric sleep; and

(2) For the purpose of this rule "Artifact" means an extraneous electrical signal in a recording channel on a polysomnograph, which originates from the patient, equipment, or external sources, and which may mask or interfere with the desired signal (E.g., snores that appear on the EEG channel, pulses of hypertensive patients that appear on the chin EMG channel, etc.).

(3) A Temporary-IS licensee is prohibited from performing services on persons 12 and under. See OAR 331-710-0080.

Stat. Auth.: ORS 676.615, 676.607, 688.819 & 688.830
Stats. Implemented: ORS 676.607, 676.615, 688.800, 688.815, 688.819 & 688.830
Hist.: HLA 14-2012, f. 9-12-12, cert. ef. 9-14-12; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-720-0010
Continuing Education Requirements for Respiratory Care

(1) To maintain licensure, a respiratory care practitioner must complete a minimum of seven hours of continuing education every year. At least 2.5 hours of the required continuing education must be related to clinical practice of respiratory care defined under ORS 688.800.

(2) A license holder must document compliance with the continuing education requirement through attestation on the license renewal application. A licensee is subject to provisions of OAR 331-720-0020 pertaining to periodic audit of continuing education.

(3) Satisfactory continuing education must be obtained by participation in or attendance at a course provided by:

(a) An institution of higher education accredited by the Northwest Association of Accredited Schools, the Northwest Commission on Colleges and Universities, the State Board of Higher Education, Oregon Higher Education Coordinating Commission, American Medical Association Committee on Allied Health Education and Accreditation in collaboration with the Committee on Accreditation for Respiratory Care, or its successor, or the Commission on Accreditation for Allied Health Education Programs offering an Associate Degree in Respiratory Care; or

(b) The NBRC, AARC, Oregon Medical Association, the Oregon Osteopathic Association, the American Medical Association Continuing Medical Education, the American Osteopathic Association, the American Nurses Association, or other professional or medical organizations or associations which conduct educational meetings, workshops, symposiums, and seminars where CEU credit is offered and where subject matter meets the requirements under subsection (4) of this rule;

(4) The subject matter of the continuing education must be specifically related to respiratory care as outlined in ORS 688.800(5).

(5) Continuing education may include teaching a course sponsored by a continuing education provider listed in subsection (3) of this rule and where the subject matter meets the requirements under subsection (4) of this rule (provided that no more than half the required hours be in teaching).

(6) Obtaining and maintaining proof of participation in required continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the agency. Adequate proof of participation is listed under OAR 331-720-0020(3).

(7) Documentation of participation in continuing education requirements must be maintained for a period of two years following renewal, and must be available to the agency upon request.

(8) For the purpose of this rule continuing education hours mean actual academic, classroom, or course work time, including but not limited to workshops, symposiums, or seminars. Continuing education hours do not include travel time to or from the training site, registration or check-in periods, breaks or lunch periods.

Stat. Auth.: ORS 676.605, 676.615 & 688.830
Stats. Implemented: ORS 676.605, 676.615 & 688.830
Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 10-2004(Temp), f. & cert.

ef. 11-8-04 thru 3-31-05; HLO 1-2005, f. 2-28-05 cert. ef. 3-1-05; HLA 7-2010, f. & cert. ef. 11-1-10; HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-720-0015
Continuing Education Requirements for Polysomnography

(1) To maintain licensure, a polysomnographic technologist must complete a minimum of seven hours of continuing education every year.

(2) A license holder must document compliance with the continuing education requirement through attestation on the license renewal application. A licensee is subject to provisions of OAR 331-720-0020 pertaining to periodic audit of continuing education.

(3) Satisfactory continuing education must be obtained by participation in or attendance at a course provided by:

(a) An institution of higher education accredited by the Northwest Association of Accredited Schools, the Northwest Commission on Colleges and Universities, the State Board of Higher Education, Oregon Higher Education Coordinating Commission, American Medical Association Committee on Allied Health Education and Accreditation in collaboration with the Committee on Accreditation for Respiratory Care, or its successor, or the Commission on Accreditation of Allied Health Education Programs in Polysomnographic Technology; or

(b) The BRPT, AARC, Oregon Medical Association, the Oregon Osteopathic Association, the American Medical Association Continuing Medical Education, the American Osteopathic Association, the American Nurses Association, American Association of Sleep Technologists and its affiliates, or other professional or medical organizations or associations which conduct educational meetings, workshops, symposiums, and seminars where CEU credit is offered and where subject matter meets the requirements under subsection (4) of this rule;

(4) The subject matter of the continuing education must be specifically related to polysomnography as outlined in ORS 688.800(2).

(5) Continuing education may include teaching a course sponsored by a continuing education provider listed in subsection (3) of this rule and where the subject matter meets the requirements under subsection (4) of this rule (provided that no more than half the required hours be in teaching).

(6) Obtaining and maintaining proof of participation in required continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the agency. Adequate proof of participation is listed under OAR 331-720-0020(3).

(7) Documentation of participation in continuing education requirements must be maintained for a period of two years following renewal, and must be available to the agency upon request.

(8) For the purpose of this rule continuing education hours mean actual academic, classroom, or course work time, including but not limited to workshops, symposiums, or seminars. Continuing education hours do not include travel time to or from the training site, registration or check-in periods, breaks or lunch periods.

Stat. Auth.: ORS 676.605, 676.615 & 688.830
Stats. Implemented: ORS 676.605, 676.615 & 688.830
Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

331-720-0020
Continuing Education: Audit, Required Documentation and Sanctions

(1) The Oregon Health Licensing Agency will audit a select percentage of licenses to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-720-0010, Continuing Education Requirements for Respiratory Care; or 331-720-0015, Continuing Education Requirements for Polysomnography

(3) Evidence of successful completion of the required continuing education must include the following:

(a) Name of continuing education sponsor/provider;

(b) Course agenda — including the date of the training and breakdown of hours for each agenda item, lunch and breaks;

(c) Course outline — including a detailed summary of each topic discussed and the learning objective or training goal of each agenda item; The content of the course must have a direct relationship between the course training and subject matter related to Respiratory Care as set forth in OAR 331-720-0010, or Polysomnography as set forth in 331-720-0015;

(d) Background resume of speakers or instructors; and

(e) Documentation of attendance or successful course completion. Examples include a certificate, transcript, sponsor statement or affidavit attesting to attendance, diploma.

(4) If documentation of continuing education is incomplete, the licensee has 30 calendar days from the date of the deficiency notice to correct the deficiency and submit further documentation of completion of the required continuing education.

(5) Misrepresentations of continuing education or failure to complete continuing education requirements may result in disciplinary action, which may include, but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 676.605, 676.615 & 688.830
Stats. Implemented: ORS 676.605, 676.615 & 688.830
Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 7-2010, f. & cert. ef. 11-1-10; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14

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Oregon Health Licensing Agency, Board of Cosmetology
Chapter 817

Rule Caption: Add requirements for natural hair care certification.
Adm. Order No.: BOC 1-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Adopted: 817-030-0028
Rules Amended: 817-010-0014, 817-030-0065
Subject: Passage of HB 3409 by 2013 Legislature created natural hair care as a new field of practice under the Board of Cosmetology. Adopt application requirements for individuals seeking natural hair care certification. Requirements include completion of the board approved information training modules and passage of an examination at no cost. Individuals seeking certification for natural hair care will be required to access information training module and provide the agency with a Certificate of Completion. The learning objectives within the information training modules relate to safety, infection control, business practices/standards and general information regarding the art of natural hair care. Individuals will be required to come to the Oregon Health Licensing Agency to take the examination, in order to confirm the identity of the individual. Individuals seeking reciprocity will also be required to the complete the information training module and pass the examination.

Amend rule to allow authorization holders only providing natural hair care services within the facility to qualify a sink located in the restroom as a water source.
Rules Coordinator: Samantha Patnode—(503) 373-1917

817-010-0014
Water Supply Requirements and Standards

(1) An adequate and immediate supply of both hot and cold running water and wash basins must be available:

(a) On the facility premises and;

(b) In any work area where hazardous materials are in use, which may have a harmful effect on or be absorbed through the skin if the contamination is not removed.

(2) Sinks located in a restroom do not qualify as a water source for the facility.

(3) If only natural hair care services are provided within the facility a sink located in the restroom qualifies as a water source.

(4) Washing accommodations must be maintained in a clean and sanitary condition.

(5) Hand soap or similar cleansing agents must be available.

(6) Individual towels of cloth or paper must available. Air blowers for drying the hands may be substituted for towels.

(7) Use of bar soap or a common towel is prohibited.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 690.205
Stats. Implemented: ORS 448
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-010-0016(1) & (2) ;BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2013, f. 12-30-13, cert. ef. 1-1-14

817-030-0028

Practitioner Certificate Application Requirements for Natural Hair Care

An individual applying for a certification in natural hair care must:

(1) Meet the requirements of OAR 331 division 30;

(2) Submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required fees;

(3)Submit proof of having completed the informational training modules regarding natural hair care available on the agency Web site; and

(4) Submit proof of having completed and passed a Board approved written examination within two years before the date of application.

Stat. Auth.: ORS 690.065 & 690.165
Stats. Implemented: ORS 690.065 & 690.165
Hist.: BOC 1-2013, f. 12-30-13, cert. ef. 1-1-14

817-030-0065

Written Examination Retake Requirements

(1) Failed sections of a written examination may be retaken as follows:

(a) After first failed attempt — applicant may not retake for seven calendar days;

(b) After second failed attempt — applicant may not retake for seven calendar days;

(c) After third failed attempt — applicant may not retake for 30 calendar days, must submit an official transcript certifying additional training from an educational institution on a form prescribed by the agency, and must pay application fee;

(d) After fourth failed attempt — applicant may not retake for seven calendar days;

(e) After fifth failed attempt — applicant may not retake for seven calendar days;

(f) After sixth failed attempt — applicant may not retake for 30 calendar days, must submit an official transcript certifying additional training from an educational institution on a form prescribed by the agency, and must pay application fee;

(g) After seventh failed attempt — ability to retake, requirements for retake, or both will be determined by the Board on a case-by-case basis.

(2) An applicant retaking the examination must meet the requirements under OAR 331-030-0000.

(3) For natural hair care certification the first two failed attempts may be retaken on the same day by the applicant. After the second failed attempt and after each subsequent failed attempt the applicant may not retake the examination for seven calendar days.

Stat. Auth.: ORS 690.065 & 690.165
Stats. Implemented: ORS 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1983(Temp), f. & ef. 10-4-83; BH 1-1984, f. & ef. 2-13-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1 1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09; BOC 2-2011, f. & cert. ef. 5-5-11; BOC 1-2013, f. 12-30-13, cert. ef. 1-1-14

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

Rule Caption: Align continuing education requirements with law regarding additional hours as a condition for renewal.
Adm. Order No.: DEM 2-2013
Filed with Sec. of State: 12-30-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 332-020-0010, 332-020-0015
Subject: Amend continuing education rule to align with the intent and scope of the law. Require that at the time of renewal a licensed direct entry midwife (LDM) provide the number of births performed during the previous renewal cycle. If that number is fewer than five, then the LDM must obtain 10 additional continuing education hours and attest to those hours on the next renewal cycle. See example below:

The LDM becomes inactive on July 31, 2013 on the renewal the LDM shows that during the previous renewal cycle July 2012 through July 2013 only three births were performed. When the LDM renews the license in 2014 the LDM will be required to attest to having received the additional 10 hours of continuing education.

Align other continuing education rules with current agency standards including specifying national organizations as approved if providing continuing education within the scope of midwifery care. Allow for authorship to be included under self study not to exceed more than half the required hours. Also required the documentation to be maintained by the LDM be consistent with the documentation required for continuing education audits.
Rules Coordinator: Samantha Patnode—(503) 373-1917

332-020-0010

Continuing Education

(1) To maintain licensure LDM license holder must complete the minimum hours of satisfactory continuing education requirements as follows:

(a) Two years from the date of initial licensure and every two years thereafter:

(A) Thirty clock hours relevant to women's health, neonatal, fetal or midwifery knowledge or care, ethics, communication, or professional development.

(B) Eight and a half clock hours pertaining to legend drugs and devices that include the components listed under OAR 332-015-0070 with the exception of neonatal resuscitation under 332-015-0070(e), which is required annually upon renewal. The eight and a half hours pertaining to legend drugs and devices must be taught by a MEAC accredited or pre-accredited school, the Oregon Midwifery Council or by an organization authorized by the board to provide continuing education credits specific to legend drugs and devices.

(i) One hour in pharmacology;

(ii) One half hour in administration of medications through injection;

(iii) One hour in advanced treatment of shock;

(iv) Three hours in intravenous therapy; and

(v) Three hours in suturing.

(b) In accordance with ORS 687.425 a licensee who has attended fewer than five births in the previous year is required to take an additional ten hours of continuing education in subjects listed in subsection (1)(a)(A) of this rule during the next annual renewal cycle.

(2) Continuing Education listed in subsection (1)(a)(A) may be obtained through attendance at lectures, sessions, courses, workshops, symposiums seminars or other presentations offered by:

(a) Institutions or programs accredited by a federally recognized accrediting agency;

(b) Institutions or programs approved by an agency within the Oregon Higher Education Coordinating Commission;

(c) An organization offering continuing medical education opportunities, including Accreditation Council for Continuing Medical Education;

(d) Any additional board approved professional organization, or association, hospital, or health care clinic offering continuing education related to subject matter listed in (1)(a)(A) of this rule.

(3) Continuing education relating to subject matter listed in subsection (1)(a)(A) of this rule may also be obtained through research, authorship or teaching, provided that no more than half the required hours be in teaching.

(4) Up to nine clock hours of continuing education relating to subject matter listed in subsection (1)(a)(A) of this rule may be completed through self study. Documentation substantiating the completion of continuing education through self-study must be submitted on forms provided by the agency and must include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion, and duration in hours in accordance with subsection (8) of this rule;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audiocassette's, including date of publication, publisher, and ISBN identifier; and

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

(5) Obtaining and maintaining proof of participation in continuing education is the responsibility of the licensee. The licensee must ensure that adequate proof of attainment of required continuing education is available for audit or investigation or when otherwise requested by the agency. Adequate proof of participation is listed under OAR 332-020-0015(3).

(6) Documentation of participation in continuing education requirements must be maintained for a period of two years following renewal, and must be available to the agency upon request.

(7) Hours of continuing education that are obtained in excess of the minimum requirements listed in this rule will not be carried forward as credit for the subsequent license renewal reporting cycle.

(8) For the purpose of this rule continuing education must include periods of continuous instruction and education, not to include breaks, rest periods, travel registration or meals.

Stat. Auth.: ORS 676.615, 687.425 & 687.485
Stats. Implemented: ORS 676.615, 687.425 & 687.485
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 2-2008(Temp), f. 9-15-08 cert. ef. 10-1-08 thru 3-30-09; DEM 1-2009, f. 3-31-09, cert. ef. 4-1-09; DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11; DEM 1-2013(Temp), f. 7-10-13, cert. ef. 7-12-13 thru 1-8-14; DEM 2-2013, f. 12-30-13, cert. ef. 1-1-14

332-020-0015
Continuing Education: Audit, Required Documentation and Sanctions

(1) The Agency will audit a select percentage of licenses to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 332-020-0010.

(3) Evidence of successful completion of the required continuing education must include the following:

(a) Name of continuing education sponsor/provider;

(b) Course agenda — including the date of the training and breakdown of hours for each agenda item, lunch and breaks;

(c) Course outline — including a detailed summary of each topic discussed and the learning objective or training goal of each agenda item; The content of the course must have a direct relationship between the course training and subject matter related to Direct Entry Midwifery, as outlined in OAR 332-020-0010;

(d) Background resume of speakers or instructors; and

(e) Documentation of attendance or successful course completion. Examples include a certificate, transcript, sponsor statement or affidavit attesting to attendance, diploma.

(4) If documentation of continuing education is invalid or incomplete, the licensee has 30 calendar days from the date of the deficiency notice to correct the deficiency and submit further documentation to substantiate having completed the required continuing education.

(5) Misrepresentations of continuing education or failure to complete continuing education requirements may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 687.425 & 687.485
Stats. Implemented: ORS 687.425 & 687.485
Hist.: DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11; DEM 2-2013, f. 12-30-13, cert. ef. 1-1-14

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Oregon Housing and Community Services Department
Chapter 813

Rule Caption: Amends and consolidates the common terms, policies and procedures used within department programs and rules
Adm. Order No.: OHCS 18-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 12-1-2013
Rules Adopted: 813-005-0020, 813-005-0030, 813-005-0040, 813-005-0050, 813-005-0060, 813-005-0070
Rules Amended: 813-005-0001, 813-005-0005, 813-005-0016
Rules Repealed: 813-005-0001(T), 813-005-0005(T), 813-005-0016(T), 813-005-0020(T), 813-005-0030(T), 813-005-0040(T), 813-005-0050(T), 813-005-0060(T), 813-005-0070(T)
Subject: The general rules have been amended to include common terms, policies and procedures with respect to the administration of the department and its programs.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-005-0001
General Purpose

OAR chapter 813, division 5, is promulgated to accomplish the purpose of describing certain common terms, policies and procedures with respect to the administration of the Housing and Community Services Department.

Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Hist.: OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 3-2006, f. & cert. ef. 1-31-06; OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

813-005-0005
Definitions

(1) Terms used in OAR chapter 813 have the meanings given them in the Act, in this section, otherwise in OAR chapter 813 or in other applicable law, unless the context indicates to the contrary. Such terms need not be capitalized. Undefined terms are intended to be read consistently with their normal usage unless the context indicates otherwise.

(2) Pursuant to ORS 456.555(5)(b) the Housing and Community Services Department by administrative rule, must identify and distinguish between housing programs and community services programs. Any program administered by the department (as principal and not agent) that is not listed in this subsection, does not principally involve the financing, regulation, maintenance or support of housing or home ownership or otherwise defined in statute or in this chapter as a housing program is a "community service program." Accordingly, the following programs administered by the department are housing programs:

(a) Multi-Unit Housing Program (OAR 813-010);
(b) Rental Housing Program (OAR 813-012);
(c) Oregon Rural Rehabilitation Program (OAR 813-015);
(d) Single-Family Mortgage Program (OAR 813-020);
(e) Elderly Housing Program (OAR 813-030);
(f) Pass-Through Revenue Bond Financing Program (OAR 813-035);
(g) Pre-Development Program (OAR 813-038);
(h) Farmworker Housing Development Account (OAR 813-039);
(i) Seed Money Advance Program (OAR 813-040);
(j) Farmworker Housing Tax Credit Program (OAR 813-041);
(k) Housing Development Program (OAR 813-042);
(l) Housing Loan Guarantee Program (OAR 813-043);
(m) Homeownership Assistance Program (OAR 813-044);
(n) Housing Development Account Program (813-045);
(o) Emergency Housing Program (OAR 813-046);
(p) Housing Revitalization Program (OAR 813-048);
(q) Disabled Housing Program (OAR 813-060);
(r) Home Improvement Loan Program (OAR 813-070);
(s) Mortgage Credit Certificate Program (OAR 813-080);
(t) Low-Income Housing Tax Credit Program (OAR 813-090);
(u) Oregon Affordable Housing Tax Credit Program (OAR 813-110);
(v) Home Investment Partnerships Program (OAR 813-120);
(w) HELP Program (OAR 813-130);
(x) Incentive Fund Program (OAR 813-140);
(y) Subsidized Development Visitability Program (OAR 813-310);
(z) General Guarantee Program (OAR 813-350); and

(aa) Other activities of the department involving the financing, regulation, maintenance or support of housing or home ownership or that otherwise are defined in statute or in this chapter as a housing program.

(3) Pursuant to ORS 456.555, the Housing and Community Services Department is to establish from time to time, by administrative rule, the threshold property purchase price at which a single-family home ownership loan on property must be submitted by the department to the State Housing Council for approval or disapproval as well as the threshold value for a housing grant or other housing funding award for multifamily housing. Presently, the threshold property purchase price for single-family home ownership that obligates the department to obtain State Housing Council review and approval of a proposed single-family loan is that purchase price which, when reduced by costs of purchase other than the department loan, is equal to or greater than$190,000.

(4) "Acquisition loan" means a loan for the purpose of financing the purchase of an existing Project.

(5) "Act" means ORS 456.515 through 456.725 and, given the context, also may include 458.005 through 458.740, 90.800 through 90.840, and 91.886.

(6) "Approved lender" means any person authorized to engage in the business of making loans of the general character of program loans, who meets the qualifications for an approved lender set forth in the applicable program rules and who contracts with the department to make program loans.

(7) "Approved servicer" means any person authorized to engage in the business of servicing loans of the general character of program loans, who meets the qualifications for an approved servicer set forth in the applicable program rules and who contracts with the department to service program loans.

(8) "Bond" means any bond, note or other evidence of indebtedness issued to obtain funds to provide financing for a program of the department as provided in the Act or as further defined by statute.

(9) "Borrower" means an eligible borrower who has received a program loan.

(10) "Break-even occupancy" means the point in time when a project's monthly rental income meets its monthly operating expenses and debt service.

(11) "Commitment" means the written conditional obligation of the department to make, purchase, service or sell a program loan or other funding award.

(12) "Community service programs" are defined in subsection (2) of this section.

(13) "Contingency escrow account" means an account generally not to exceed 3% of the initial principal amount of the program loan, established by the sponsor in the form of a savings account, time certificate of deposit, or irrevocable letter of credit assigned to the department.

(14) "Cooperative" is a consumer housing entity formed according to the provisions of ORS Chapter 62, as amended.

(15) "Department" means the Housing and Community Services Department of the state of Oregon established pursuant to ORS 456.555 originally enacted by enrolled house bill 3377, chapter 739, Oregon Laws 1991.

(16) "Director" means the chief administrative officer of the Housing and Community Services Department established pursuant to ORS 456.555(2).

(17) "Elderly household" means a household residing in the state of Oregon whose head is over the age of 58 or 55, as applicable.

(18) "Eligible borrower" means a person who satisfies the criteria to receive a program loan as set forth in the applicable program rules, statutes or department orders.

(19) "Escrow payments" means the monthly payments made by the sponsor or borrower and placed in an escrow reserve account for the payment of property taxes, insurance premiums and reserve for replacements and other identified costs as required by the department in accordance with the program loan.

(20) "Funding documents" means any and all documents required by the department to document a housing grant or other funding award or reservation commitment including, but not limited to loan agreements, regulatory agreements, operating agreements, reservation letters, guarantees or otherwise.

(21) "Housing Council" or "State Housing Council" means that seven-member body established by ORS 456.

(22) "Housing programs" are defined in subsection (2) of this section.

(23) "Lending department" means a commercial bank, savings and loan association, savings bank, mortgage banker Federal Housing Administration, Farmers Home Administration or other department that provides permanent or construction mortgage loans.

(24) "Loan agreement" means a written agreement, typically executed at loan closing, between the department and a sponsor establishing the terms of any department loan.

(25) "Loan closing" means the disbursement by the department of the program loan proceeds after execution and recording of the loan documents.

(26) "Loan documents" means the written agreements by and between the sponsor and the department or in favor of the department, typically executed at loan closing, and generally including, but not necessarily limited to the promissory note, the loan agreement, the trust deed and the regulatory agreement.

(27) "Mobile home park" means a project consisting of individual lots and mobile homes located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, and which complies with all ordinances, plans and codes in the area.

(28) "NOFA" means a notice of funding availability.

(29) "Operating agreement and declaration of restrictive covenants and equitable servitudes" or "operating agreement" means a written agreement typically executed at loan closing between the department and the sponsor of a project under the department's pass-through revenue bond program and regulating the use of revenues and operation of the project, particularly with respect to tenant income and unit rent compliance by the sponsor.

(30) "Person" means any natural or legal person.

(31) "Procedural guide" means a manual of written procedures adopted by the department to carry out a program.

(32) "Program" means a statutorily authorized plan or order of business conducted by the department.

(33) "Program loan" means a loan made pursuant to a program of the department.

(34) "Program requirements" means the requirements with respect to any department funding program including but not limited to as contained in or arising from applicable administrative rules, solicitation documents, funding documents, department directives, federal, state and local statutes, codes, regulations or determinations and other applicable law.

(35) "Qualified insurer" means the Federal Housing Administration, the Veterans' Administration, or any other person who is authorized to insure or guarantee payment of loans and who is approved by the department.

(36) "Regulatory agreement and declaration of restrictive covenants and equitable servitudes" or "regulatory agreement" means a written agreement typically executed at loan closing between the department and a sponsor regulating the use of revenues and operation of the project for which a department loan is issued, particularly pertinent with respect to compliance by the sponsor with maintaining the status of any involved bond issue.

(37) "Rent-up reserve account" means an account set up by the sponsor and under the control of the department to assure sufficient funds to pay operating expenses and debt service of the project before break-even occupancy.

(38) "Replacement cost reserve account" means an account established to aid in payment for extraordinary maintenance or repair of a project or for replacement of capital items of a project as allowed by the department.

(39) "Seed money advance" means an advance given to a qualified housing sponsor to pay preconstruction costs.

(40) "Single-family residence" means a housing unit intended and used for occupancy by one household and the property on which it is located. This shall be real property located in the state of Oregon. A single-family residence may include a single-family residence, condominium unit, a dwelling in a planned unit development (PUD), or a mobile or manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and is of a kind customarily used at a fixed location.

(41) "Solicitation" means a process by which the department invites applications for a housing grant or other funding award with respect to a project.

(42) "Solicitation documents" means those documents that, inter alia, set forth the terms and conditions of a solicitation.

(43) "Sponsor" means any person meeting the legal, financial, credit and other qualifications to be the borrower on a department loan and to own and operate a project as set forth in the applicable program rules, statutes and department orders.

(44) "Targeted area" means an area in the state designated by the department in compliance with the requirements of Section 143(j) of the Internal Revenue Code of 1986, as amended, and approved by the United States Departments of Treasury and Housing and Urban Development.

(45) "Trustee" means the state treasurer or, with the approval of the department, a private financial institution in Oregon acting pursuant to an indenture of trust or other appropriate instrument.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Stats. Implemented: ORS 456.515 - 456.720

Hist.: 1HD 7-1984, f. & ef. 9-4-84; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; Renumbered from 813-001-0006; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 5-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 3-2006, f. & cert. ef. 1-31-06; OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

813-005-0016

Waiver

The director may waive, suspend or modify any term or provision of OAR 813, unless such waiver, suspension or modification would violate applicable federal or state law.

Stat. Auth.: ORS 91.886, 183 & 456.555

Stats. Implemented: ORS 90.800 - 90.840, 91.886, 456.515, 456.725 & 458.005 - 458.740

Hist.: OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 3-2006, f. & cert. ef. 1-31-06; OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

813-005-0020
General Policy and Guideline Manual

The General Policy and Guideline Manual dated June 21 2013, is incorporated into this division by reference and has application, inter alia, to the solicitation, review, reservation, award and documentation of housing grants and other funding awards with respect to affordable multifamily housing projects as well as to the operation and compliance of such projects with applicable habitability, affordability and other requirements irrespective of the program source of funding.

Stat. Auth.: ORS 91.886, 317.097 & 456.555
Stats. Implemented: ORS 90.800 - 90.840, 91.886, 317.097, 456.515 - 456.725 & 458.005 - 458.740
Hist.: OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

813-005-0030
Contingency of Funding Awards

If the department provides a reservation or otherwise to make a funding award under ORS 90.800 - 90.840, 91.886, ORS 317.097, 456.515 through 456.725 or 458.005 through 458.740, and if the type and amount of subject funding or any other department funding approved by the department that was considered by the department in setting the amount of the subject funding ("complementary funding") meets or exceeds the threshold amounts established in OAR 813-005-0005(3) for review by the State Housing Council, the reservation or other commitment is subject to review and approval by the council of such subject funding and any such complementary funding. The council may approve, deny, modify or further condition funding assistance subject to its review. Based upon any relevant council determination, including with respect to complementary funding, any subject reservation or other commitment may be deemed revoked, or be modified and further conditioned.

Stat. Auth.: ORS 91.886, 317.097 & 456.555
Stats. Implemented: ORS 90.800 - 90.840, 91.886, 317.097, 456.515 – 456.725 & 458.005 - 458.740
Hist.: OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

813-005-0040
Compliance Monitoring

(1) A project receiving any department assistance is subject to such reviews and field inspections that the department determines to be necessary or appropriate including, but not limited to ensuring the funding recipient's and project owner's compliance with any program requirements including, but not limited to applicable administrative rules (including incorporated manuals), department directives, solicitation documents, funding documents, or otherwise. The project owner shall cooperate fully with all reviews and field inspections, comply with any resulting correction directives, and shall make all records available for inspection and copying. The project owner also shall provide such other information as the department may from time to time request.

(2) Project owners shall cooperate fully with department reviews, field inspections and other information requests including, but not limited to allowing the inspection and copying of relevant records as determined by the department.

(3) Project owners shall act promptly to correct any deficiencies identified by the department as a consequence of its reviews, field inspections or otherwise upon notice by the department of same.

(4) Project owners shall retain financial records, supporting documents and all other pertinent records with respect to a project until six years after the project affordability period for the respective source of funding is complete, or after any relevant litigation or audit claim is resolved, whichever is later.

Stat. Auth.: ORS 91.886, 317.097 & 456.555
Stats. Implemented: ORS 90.800 - 90.840, 91.886, 317.097, 456.515 – 456.725 & 458.005 - 458.740
Hist.: OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

813-005-0050
Remedies

(1) If the department determines that there has been any material failure or default with respect to any term, covenant or condition of the applicable solicitation documents or funding documents, applicable rules, directives, or other program requirements, it may exercise any remedy available under OAR chapter 813, the solicitation documents, the funding documents, other program requirements or applicable law. Remedies include, but are not limited to rescission of funding awards, issuance of corrective orders or directives, imposition of sanctions, recapture of any tax credits, recoupment of funding, recovery for damages, specific performance, injunctive relief, declaratory actions, appointment of a receiver for the project, foreclosure of lien interests, debarment from other department funding, and other remedies available at law.

(2) The remedies set forth in this section are cumulative and not exclusive and are in addition to any other rights and remedies available to the department. The department may exercise any or all remedies available to it, and in such manner as it, in its sole discretion, determines appropriate. No failure to exercise a remedy shall be deemed as a waiver or release of such remedy or other remedies or the claims upon which they are based.

(3) Any waiver of a remedy or claim must be in writing and signed by an authorized representative of the department. No waiver shall be continuing in nature or affect any other remedy or claim of the department unless expressly so stated in the signed waiver.

Stat. Auth.: ORS 91.886, 317.097 & 456.555
Stats. Implemented: ORS 90.800 - 90.840, 91.886, 317.097, 456.515 – 456.725 & 458.005 - 458.740
Hist.: OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

813-005-0060
Transfer of Recipient, Assistance or Ownership; Subordinate Liens; Encumbrances

(1) A recipient of any department assistance or owner of a project for which such assistance is provided may not transfer or allow any transfer of any interest in itself, the assistance or the project, allow a subordinate lien or otherwise encumber the project, or any portion or interest therein, unless the department first approves the transfer, subordinate lien or encumbrance in writing. Any such transfer is subject to the payment to the department of a transfer or other approval charge as required by the department. If the recipient effects or allows a transfer, subordinate lien or encumbrance without prior written approval by the department, the transfer, subordinate lien or encumbrance is voidable and remains subject to the approval or disapproval of the department and the recipient or owner responsible for allowing the transfer, subordinate lien or encumbrance and any transferees, jointly and severally, are subject to a charge by the department with respect to its review and treatment of any such event.

(2) The department may condition its approval upon such terms and conditions as it, in its sole discretion, may require. Factors the department may consider in determining whether or not to give approval to a transfer, subordinate lien or encumbrance include, but are not limited to:

(a) The financial investment of the department in the project;

(b) Preservation of existing housing;

(c) The transferee's ability to maintain and manage the project for the needs of the residents, the integrity of the housing and as security for the assistance;

(d) The effect of the transfer, subordinate lien or encumbrance upon the financial integrity of the project, repayment of the assistance, use of the project for its intended purposes, and continuity of the program requirements; and

(e) Continued compliance with program requirements.

Stat. Auth.: ORS 91.886, 317.097 & 456.555
Stats. Implemented: ORS 90.800 - 90.840, 91.886, 317.097, 456.515 – 456.725 & 458.005 - 458.740
Hist.: OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

813-005-0070
Fees and Charges

The department may require the payment of such fees and charges as it determines appropriate with respect to the administration of its housing programs and program requirements including, but not limited to the solicitation, award, documentation and use of department funding assistance and correlation with other funding partners and resources, acquisition, development, construction, rehabilitation and operation of projects assisted with department funding assistance, ongoing compliance monitoring and enforcement of financial, affordability, and habitability requirements, transfers, subordinate liens and encumbrances.

Stat. Auth.: ORS 91.886, 317.097 & 456.555
Stats. Implemented: ORS 90.800 - 90.840, 91.886, 317.097, 456.515 – 456.725 & 458.005 - 458.740
Hist.: OHCS 14-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 18-2013, f. & cert. ef. 12-18-13

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Rule Caption: Amends the procedural rules relating to State Housing Council review and determination for award proposals

Adm. Order No.: OHCS 19-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 12-1-2013
Rules Amended: 813-001-0007
Rules Repealed: 813-001-0007(T)
Subject: The descriptive and procedural rules within chapter 813, division 001, provide an overview of the department and related entities. The proposed amended rules describe the procedure for the State Housing Council's review and approval or disapproval of certain housing grants, loans and other funding awards proposed by the director of the department.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-001-0007
Procedural Rules for State Housing Council Review and Determination with Respect to Certain Housing Loan, Grant and Other Funding Award Proposals by the Director

(1) The director or the director's department designees shall submit proposed loan, grant or other funding award proposals arising under ORS 456.515 to 456.725 programs to the State Housing Council for review and approval if the proposal is for:

(a) A proposed single-family loan on property with a purchase price which, when reduced by costs of purchase other than the department loan, is equal to or greater than $190,000;

(b) A housing loan other than a single-family homeownership loan, if the loan amount exceeds $100,000; or

(c) A housing grant or other housing funding award, if the grant or other funding award amount exceeds $100,000.

(2) The council shall review each loan, grant or other funding award proposal submitted by the director under this section and approves or disapproves the loan, grant or other funding award proposal. An approval by the council of any loan, grant or other funding award may be partial or in full and may contain any conditions that the council may prescribe.

(3) Formal council review of loan, grant or other funding award proposals under this section shall be conducted in a public meeting, whether in person or by telephone or other electronic means. The council may go into executive session, as appropriate, in the course of its review. A council public meeting notice, when required by ORS 192.640, shall include notice of the loan, grant or other funding award proposal review, the names of the applicants, and the subject of the loan, grant or funding award proposal. The council also shall provide notice of any loan, grant or other funding award proposal review to the loan, grant or other funding award applicant not less than five days before the review hearing.

(4) The public may contact the department for available information with respect to prospective council review of loan, grant or other funding award proposals by telephoning 503.986-2000 or addressing written correspondence to: Oregon Housing and Community Services Department, 725 Summer Street NE, Suite B, Salem OR 97301.

(5) Procedural rules addressing other programs administered by the department are included, where applicable, in other divisions of this chapter. Additional procedural rules with respect to the review and approval of housing grants, loans and other funding awards also may be included, where applicable, in other divisions of the chapter.

Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Hist.: OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 2-2006, f. & cert. ef. 1-31-06; OHCS 8-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 19-2013, f. & cert. ef. 12-18-13

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Rule Caption: Amends the process for soliciting and administering funding awards for the Low-Income Weatherization Program
Adm. Order No.: OHCS 20-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 813-205-0082, 813-205-0145, 813-205-0150
Rules Amended: 813-205-0000, 813-205-0020, 813-205-0030, 813-205-0040, 813-205-0050, 813-205-0051, 813-205-0052, 813-205-0060, 813-205-0070, 813-205-0080, 813-205-0085, 813-205-0100, 813-205-0110, 813-205-0120, 813-205-0130
Rules Repealed: 813-205-0010, 813-205-0140, 813-205-0000(T), 813-205-0020(T), 813-205-0030(T), 813-205-0040(T), 813-205-0050(T), 813-205-0051(T), 813-205-0052(T), 813-205-0060(T), 813-205-0070(T), 813-205-0080(T), 813-205-0082(T), 813-205-0085(T), 813-205-0100(T), 813-205-0110(T), 813-205-0120(T), 813-205-0130(T), 813-205-0145(T), 813-205-0150(T)
Subject: The Low-Income Weatherization Program carries out the department's role in administering state and federal weatherization assistance programs at the local level. The department has completed a significant reorganization as to how it solicits and administers funding awards for this program as part of the restructure. These rule changes are designed to reflect the significant reorganization.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-205-0000
Purpose and Objectives

OAR chapter 813, division 205, is promulgated to carry out the department's role in administering state and federal weatherization programs. Additional policies and instructions for such programs are outlined in the Low Income Weatherization Assistance Program Manual dated June 21, 2013 (the "LIWP Manual" or "Manual"), incorporated herein by reference. The Manual may be accessed online at the department's website. Weatherization assistance is provided under programs at the local level as follows:

(1) The Low Income Weatherization Program for Rental Housing, included herein, through developers of affordable rental housing; and

(2) The Low Income Weatherization Assistance Program, including all other low income weatherization assistance, which is provided through a network of service-provider agencies.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0020
Funding Application; Administration

(1) An agency must submit biennially the funding application required by OAR 813-205-0060 for the Low Income Weatherization Assistance Program. Funding under the program may come from a grant or other sources. The application must include a work plan that:

(a) Outlines the manner in which the agency determines its needs;

(b) Describes the forum the agency uses to solicit input and who participates;

(c) Summarizes the needs of the agency's service area and the goals and outcome-based objectives of the agency;

(d) Requires quarterly reporting; and

(e) Such other information as the department may require.

(2) An agency providing services under the program may be a community action agency, a limited purpose organization, an area agency on aging, an organization formed to serve the specific needs of an identified segment of the population or any other organization approved by the department for the purpose.

(3) An agency under this section must follow the procedures in the applicable Oregon State Plan developed as a requirement of federal funding, except when specific rules relating to a particular grant to the agency may override the applicable Oregon State Plan. The specific rules relating to a particular grant may include, but are not limited to identification of potential applicants, certification of eligibility and provision of weatherization services to eligible dwelling units within the service area of the agency.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0030
Eligible Applicants

(1) A household is eligible to receive assistance under the Low Income Weatherization Assistance Program if the department determines the household meets all requirements of the applicable Oregon State Plan not obviated by specific grant rules, including but not limited to household income guidelines.

(2) A household is eligible for assistance under the program regardless of whether the household rents or owns its dwelling. Households in similar circumstances must receive similar benefits.

(3) An agency may not use a person's race, color, national origin or sex as a basis for excluding the person from participating in any activity funded in whole or in part with funds made available from the program, for denying the benefits of any such activity or for subjecting the person to discrimination under any activity. An agency must provide assurances to the Department that the agency complies with any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973.

(4) An agency shall create a waiting list of applicants for receiving program weatherization services and shall establish criteria for determining applicant priority on the waiting list. The agency shall maintain the criteria in its files and shall file the criteria with the department. An agency must use the priority consistently for all applicants except with respect to any department-sanctioned special project in which the agency is involved. An agency's criteria may include factors that encourage leveraging additional resources or the potential for energy savings. An agency shall give priority to at least the following:

(a) Individuals who are 60 years of age or older;

(b) Individuals who are disabled; and

(c) Households with children of less than six years of age.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 458.505, 757.612

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0040

Eligible Services

(1) An agency may provide any one of the following services to an eligible applicant under the Low Income Weatherization Assistance Program:

(a) Any general weatherization measure including, but not limited to general heat waste, insulation, heating system repair and replacement, health and safety inspections and improvements, baseload measures, and educational activities and instruction designed to help low income clients make appropriate decisions and lifestyle changes to effectively reduce energy consumption; and

(b) Any measure that is necessary for effective energy savings performance or preservation of weatherization materials.

(2) Except as otherwise specified by the grantor of funds, the department may allocate no more than five percent of the program's funds for training and technical assistance activities designed to maintain or increase the efficiency, quality and effectiveness of the program at all levels. Training and technical assistance activities may include, but are not limited to those maximizing energy savings, minimizing production costs, improving program management and reducing the potential for waste, fraud and abuse.

(3) An agency may request technical assistance from the department to improve the agency's management of program activities and increase the effectiveness of its customer service efforts.

(4) A property owner may sell multifamily business energy tax credits generated through the weatherization of investment property or assign said tax credits to the agency that provided the weatherization services.

(5) An agency may weatherize a building with five or more separate living quarters that pay space rent if 66 percent of the living quarters are occupied by income eligible households.

(6) An agency may weatherize a building with five or more separate living quarters if the owner pays 10 percent or more of the total cost of weatherization and if at least 50 percent of the occupants meet income eligibility guidelines. An agency may not use the 50 percent income eligibility exception unless the agency first submits a work plan to the department and has received the department's approval.

(7) An agency shall practice lead safe work practices on each dwelling constructed prior to 1978 unless the agency can prove to the department's satisfaction that a lead hazard does not exist.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 458.505 757.612

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0050

Allocation of Federal Funds

(1) The department may set aside up to three percent of the federal funds from the Low Income Weatherization Assistance Program funds for native american populations to either provide direct funding to native american tribes or allocate funds to an agency with recognized native american populations.

(2) If any such funds remain after department expenditures for administrative costs, for set-aside purposes or for training and technical assistance activities designed to maximize energy savings, minimize production costs, improve program management or reduce the potential for waste, fraud or abuse, the remaining funds are subject to allocation to agencies by the department on the basis of an allocation formula that is in the applicable Oregon State Plan and is based on the percentage of poverty low-income households in a service area and on heating degree days.

(3) The department may move grant funds from an agency that is not spending allocated funds in a timely manner to an agency that has expended its funds before the end of the grant period. An agency is subject to at least annual department reviews of the agency's spending patterns for the purpose of reallocating funds.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 458.505 767.612

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0051

Allocation of State Funds from Energy Conservation Helping Oregonians (ECHO)

(1) State funds in the Low Income Weatherization Assistance Program that are received from the Energy Conservation Helping Oregonians (ECHO) Program are subject to allocation by the department on the basis of the number of residential meters of a participating utility within the service territory of an agency as a percentage of the utility's total residential meters statewide.

(2) On July 1of each year, each utility shall furnish the department a residential meter count for each county, for use in adjusting allocations to agencies participating in weatherization activities.

(3) This rule applies only to households that receive electric service from Pacific Power or Portland General Electric. A household that uses hard wired electrical systems as its primary heat source is eligible to receive weatherization, baseload and educational services only.

(4) Funds from the Bonneville Power Administration may not be used in conjunction with the state funds to which this rule applies.

(5) The department may move grant funds from an agency that is not spending allocated funds in a timely manner to an agency that expended its funds before the end of the grant period. An agency is subject to at least annual department reviews of the agency's spending patterns for the purpose of reallocating funds.

(6) Funds under this rule are subject to reallocation for special projects and pilots to programs other than those operated by agencies, once the funding needs of all agencies have been met.

(7) An agency shall follow the approved ECHO Weatherization Guidelines when delivering services under this rule. The Advisory Committee on Energy shall review the guidelines annually and amend them as appropriate.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 458.505 767.612

Hist.: OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0052

Allocation of Other Funds

The department shall, at its reasonable discretion, allocate funds in the Low Income Weatherization Assistance Program that were received from legal settlements or otherwise in order to improve and address the energy needs of low income households.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 458.505 767.612

Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0060

Authorization of Weatherization Projects

(1) An agency may not provide weatherization assistance under the Low Income Weatherization Assistance program unless the owner of a

dwelling first gives written permission to the agency. The permission must include the following information:

(a) The street address of the dwelling;

(b) The name of the owner or of the eligible tenant, whichever is applicable; and

(c) A description of the specific work to be done.

(2) If the dwelling to be weatherized is a rental unit, the agency shall:

(a) Ensure that the unit will not be weatherized unless the agency has first obtained the written permission of the owner of the individual unit or multiunit dwelling of which the unit is a part; and

(b) Establish procedures and obtain the department's approval thereof, to ensure that:

(A) The residence considered for weatherization is not currently for sale by the owner of the property or designated for acquisition, clearance or foreclosure under a federal, state or local program;

(B) The benefits of weatherization assistance accrue primarily to the low-income resident renting the unit;

(C) The rent of the unit will not be raised as a result of the weatherization assistance;

(D) No undue or excessive increase in the value of the unit will occur as a result of the weatherization assistance and that, if the multiunit dwelling of which the unit is a part is sold within one year after the unit is weatherized, the agency may require the seller to reimburse the agency for the actual cost of weatherization on a prorated basis, determined according to the energy cost buyback of measures; and

(E) Weatherization assistance will not be provided for a unit for which the tenant pays the cost of energy as part of their rent, unless the landlord agrees to reduce rent to account for the reduction in fuel costs associated with the weatherization, or unless health or safety reasons justify weatherization.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.505 767.612
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0070
Required Authorization, Audits and Fiscal Controls

The following provisions apply to an agency that receives funding from the department under the Low Income Weatherization Assistance Program:

(1) An agency may not purchase a vehicle or equipment with grant funds, regardless of the cost of the vehicle or equipment, or purchase or lease one or more acquisitions when the cost of the purchase or lease exceeds $5,000, unless the agency first receives authorization from the department.

(2) An agency shall enter all program applicant and job cost information into a department-approved data system.

(3) An agency shall provide the following reports to the department, according to form and substance requirements of the department, as follows:

(a) Not later than the 20th day after the end of each calendar quarter, a program report that describes the progress made by an agency toward the program's objectives, and all administrative and program expenditures.

(b) Not later than the 90th day after the close of the agency's fiscal year, an annual audit of the weatherization funds that is conducted by a certified public accountant.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0080
Monitoring

(1) An agency's annual audit is subject to monitoring by the department under OAR 813-205-0080 so that the department, inter alia, may verify information received in the quarterly reports and so that questions raised by the department, the agency or the auditor may be answered.

(2) An agency's quarterly reports and program data entered into the statewide database as specified by the department are subject to monitoring by the department so that the department may determine the agency's compliance with program requirements, monitor spending patterns and chart changes in the program. An agency is subject to an on-site review by the department if the department determines that irregularities or questions raised by the department's in-house review are sufficient to warrant the onsite review.

(3) An agency and the owner of any project approved for program assistance is subject to such monitoring and on-site reviews by the department as it may require. The department may examine matters including, but not limited to the following in its off-site and on-site reviews and auditing functions:

(a) Financial records;

(b) The inventory system;

(c) Client files;

(d) Work completed;

(e) Agency post-installation inspection;

(f) Agency review; and

(g) Records of training and technical assistance provided by the agency.

(4) An agency also is subject to evaluations by the department of the agency's performance under the program, including but not limited to the level of service provided, ease of access to applicants, error rate and compatibility with other community service programs. These evaluation functions may be performed separately or in conjunction with other auditing and review functions by the department.

(5) An agency shall cooperate fully with all department audit, review and evaluation requests and activities.

(6) An agency and the owner of a project receiving program assistance shall retain related financial records, supporting documents and all other pertinent records for six years after the receipt of assistance or after any litigation or audit claim is resolved, whichever is later.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0082
Charges; Transfers

(1) The department may charge for reasonably anticipated costs of program administration including, but not limited to monitoring costs and transfer review costs.

(2) The owner of a project approved for assistance under this program shall not transfer any assistance, any interest in the project or any interest in itself without the prior written approval of the department. Unapproved transfers are voidable by the department.

(3) The department may require payment of a transfer review charge:

(a) From an owner of a project approved for assistance under this program that requests a transfer; or

(b) From such a former owner or the transferee with respect to an unapproved transfer.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0085
Program Administration, Authority

OAR 813-205-0085 to 813-205-0150 address protocols, standards and requirements with respect to the Low Income Weatherization Program for Rental Housing. Additional policies and instructions for this program are outlined in the LIWP Manual. The department allocates funds for this program through developers of affordable rental housing. Such funds are directed to the department under ORS 757.612(7) to carry out weatherization needs of low income households pursuant to the department's authority to provide crisis assistance with funding available from the Energy Crisis Trust Fund under ORS 758.510 for antipoverty programs.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0100
Eligible Applicants

(1) Any of the following may apply to the department for approval of a project under the Low Income Weatherization Program for Rental Housing:

(a) A for-profit business,

(b) A local government entity including but not limited to a city, county or housing authority;

(c) A not-for-profit organization, including but not limited to a not-for-profit community organization, a regional or statewide not-for-profit entity, a private individual or a not-for-profit corporation.

(2) An applicant under subsection (1) of this section or a principal representative of the applicant as approved by the department must enter into a financial assistance agreement with the department, satisfactory to the department, and record such agreement against the real property of the project so as to create restrictive covenants running with such real property that assure continuing compliance with all habitability and affordability requirements of the program.

Stat. Auth.: ORS 46.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0110
Eligible Projects

The provisions of this section, in addition to the requirements of the department's bond programs, the open, competitive process for distributing grant and tax credit funds for affordable multi-unit low income rental housing development and other application processes and charges, apply to all projects under the Low Income Weatherization Program for Rental Housing as follows:

(1) State funding from the Energy Conservation Helping Oregonians Program is limited to projects located in the PacifiCorp and Portland General Electric service areas. Projects that use hard wired electrical systems as their primary heat source are eligible to receive funding from the Act for weatherization, and baseload services. Projects in PaciCorp and Portland General Electric service areas that heat with other fuels may receive baseload measures only.

(2) Applications for weatherization funding for projects located outside PacifiCorp and Portland General Electric service areas are subject to acceptance by the department only when funds from sources other than PacifiCorp or Portland General Electric funds are available.

(3) The following projects are eligible under the program:

(a) New construction projects which specify higher than code minimums on insulation, windows, appliances and lighting; and

(b) Acquisition/rehabilitation projects that specify upgrades from original levels of insulation, windows, appliances and lighting.

(4) Households that are low-income are eligible for the program. A household is low income for the purpose of the program if the household income is at or below 60 percent of an area's median income. At least one-half of the units in the project must be rented to households whose income is at or below 60 percent of the area median income as defined by the U.S. Department of Housing and Urban Development (HUD).

(5) The project must remain affordable for a minimum of 10 years, unless superseded by other department resource requirements.

(6) The department may require more extensive or enduring affordability requirements than those required in subsections (4) and (5) of this section.

(7) An applicant may be subject to prevailing wage requirements with the use of public funds under the Low-Income Weatherization Program for Rental Housing. An applicant is advised to consider contacting the applicant's legal representative or the Oregon Bureau of Labor and Industries for the requirements of the state program.

Stat. Auth.: ORS 46.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0120
Eligible Activities

(1) Under the Low-Income Weatherization Program for Rental Housing, an eligible applicant may provide services and applications including, but not limited to one or more of the following:

(a) A general weatherization measure that includes, but is not limited to general heat waste, insulation, heating and cooling system repair, replacement or installation, health and safety improvements, baseload measures, alternative energy applications, and various energy efficient technology; and

(b) Any repair measure that the department determines appropriate for effective energy savings performance or preservation of energy efficient applications.

(2) To be eligible under this section, an activity must demonstrate measurable cost-effective energy conservation to the department's satisfaction. An energy-efficient application for the program must show first year savings based on a pre-determined number of kilowatts, therms or other units of power measurements for each conservation dollar invested.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.505, 757.612
Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0130
Fund Uses

(1) The department may award funds under the Low-Income Weatherization Program for Housing as a grant or a loan, including as requested by the applicant or sponsor of a project.

(2) If the amount of a grant or loan proposal meets or exceeds the threshold amount established in OAR 813-001-0007(1) for review by the State Housing Council for a rental housing development, the department may award the grant or loan on an as-needed basis, when the maximum power savings can be demonstrated and if adequate resources are available. An award under this section is subject to review by the State Housing Council for approval or disapproval under OAR 813-001-0007(1).

(3) An applicant may use not more than ten percent of funds available from the state Energy Conservation Helping Oregonians Program and from Low-Income Weatherization Program award for each project to make general repairs if the department determines that adequate resources are available.

Stat. Auth.: ORS 456.515 - 456.725, 458.505 - 458.545
Stats. Implemented: ORS 458.505 - 458.515
Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07; OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0145
General Administrative and Monitoring Requirements

(1) An applicant or owner of a project approved for program assistance shall timely submit to the department such information as the department may require for the purpose, inter alia, of compliance monitoring by same.

(2) An applicant or owner of a project approved for program assistance is subject to reviews and field inspections that the department determines to be necessary or appropriate including, but not limited to ensuring the applicant's and project owner's compliance with program requirements. The applicant and project owner shall cooperate fully with all reviews and field inspections, timely comply with any resulting correction directives, and make all records available for inspection and copying.

(3) A recipient of program assistance or owner of a project receiving such assistance shall retain related financial records, supporting documents and all other pertinent records for six years after the receipt of assistance or after any litigation or audit claim is resolved, whichever is later.

Stat. Auth.: ORS 456.515 - 456.725, 458.505 - 458.545
Stats. Implemented: ORS 458.505 - 458.515
Hist.: OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

813-205-0150
Charges; Transfers

The department may charge for the reasonably anticipated costs of its administration of the Low-Income Weatherization Program for Rental Housing. Such charges may include, but are not limited to the following:

(1) A non-refundable application charge, from an applicant under OAR 813-205-0100.

(2) A supplemental application charge, from an owner of a project approved by the department under the program who requests additional resources for a project that is funded by the department.

(3) A transfer application charge from an owner of an approved project who requests the department's approval of a change in project ownership, or from the transferee of ownership.

(4) A transfer review charge from an owner of an approved project who effects a change in project ownership without prior written department approval, or from the transferee of ownership.

Stat. Auth.: 456.555
Stats. Implemented: ORS 458.505, 458.510, 757.612
Hist.: OHCS 16-2013(Temp), f. & cert. ef. 6-21-13 thru 12-17-13; OHCS 20-2013, f. & cert. ef. 12-18-13

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Rule Caption: Amends the process for soliciting and administering funding awards for the HELP Program
Adm. Order No.: OHCS 21-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013

Rules Amended: 813-130-0000, 813-130-0010, 813-130-0020, 813-130-0030, 813-130-0040, 813-130-0050, 813-130-0060, 813-130-0070, 813-130-0080, 813-130-0090, 813-130-0100, 813-130-0110, 813-130-0120, 813-130-0150
Rules Repealed: 813-130-0130, 813-130-0140, 813-130-0000(T), 813-130-0010(T), 813-130-0020(T), 813-130-0030(T), 813-130-0040(T), 813-130-0050(T), 813-130-0060(T), 813-130-0070(T), 813-130-0080(T), 813-130-0090(T), 813-130-0100(T), 813-130-0110(T), 813-130-0120(T), 813-130-0150(T)
Subject: The HELP program provides financial assistance for the construction, acquisition and/or rehabilitation of multifamily rental housing for individuals and families of very low income in order to expand the supply of affordable, decent, safe and sanitary housing in Oregon. The department has completed a significant reorganization on how it solicits and administers funding awards for this program as part of the restructure.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-130-0000
Purpose and Objectives

OAR chapter 813, division 130, is promulgated to carry out the provisions of the HELP Program. The department receives HELP funds from the U.S. Department of Housing and Urban Development (HUD) under Section 1012 of the Steward B. McKinney Homeless Assistance Act ("the McKinney Act") of 1988. The HELP program is funded by monies realized from the HUD-authorized refunding of existing bonds issued by the department, the proceeds of which were originally used to finance housing projects, pursuant to an agreement between the department and HUD under HUD's Financing Adjustment Factor (FAF) program. Under the FAF program, HUD shares such monies realized from these refundings on an equal basis with bond issuers such as the department, and attaches certain restrictions and requirements upon the use of funds realized from such refunding. The HELP program's purpose is to provide financial assistance for the construction, acquisition and/or rehabilitation of multifamily rental housing for individuals and families of very low income in order to expand the supply of affordable, decent, safe and sanitary housing in Oregon. Additional program policies and instructions are outlined in the HELP Program Policies and Guidelines Manual dated June 21, 2013 (the "HELP Manual" or "Manual"), incorporated herein by reference. The Manual may be accessed online on the department's website.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0010
Definitions

Certain terms used in OAR chapter 813, division 130, are defined in the Act, 813-005-0005, and herein. Other terms may be identified in the text of this division (including by incorporation), otherwise in chapter 813, or applicable law. As used in OAR chapter 813, division 130, unless the context indicates otherwise:

(1) "Affordability period" means the period during which a project assisted with HELP funds must remain affordable to very low income residents, which period shall be at least 10 years from the date of the use agreement executed in favor of the department.

(2) "Annual household income" means the anticipated total income from all sources received by the family head and by each additional member of the family of 18 years of age and over, including all net income derived from assets for the twelve-month period following the effective date of certification of income, in accordance with HUD regulations, 24 CFR 813.

(3) "Applicant" means an applicant for HELP funds.

(4) "Household" means one or more persons occupying a housing unit.

(5) "HUD" means the U.S. Department of Housing and Urban Development.

(6) "Low income" means annual household income that does not exceed 80 percent of the median household income for the area, as determined by HUD, with allowances for family size.

(7) "Nonprofit organization" means:

(a) An organization that has obtained tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is established under the provisions of ORS Chapter 65,

(b) A community development corporation as defined in ORS 458.210,

(c) A housing authority as defined in ORS 456.005,

(d) A community action agency established pursuant to the federal Economic Opportunity Act of 1964, which meets the requirements of ORS 458.505(4), or

(e) Other nonprofit entity satisfactory to the department and representing or seeking to serve the housing, human services and community economic revitalization needs of a clearly-defined population and area.

(8) "Program" means the HELP program.

(9) "Project" means a multifamily rental housing development assisted or to be assisted, in part, with HELP program funds.

(10) "Recipient" means a recipient of HELP funds to be used for project assistance.

(11) "Use agreement" means the Financing Adjustment Factor Savings Funds Use Agreement between a recipient and the department.

(12) "Very low income" means annual household income that does not exceed 50 percent of the median household income for the area, as determined by HUD, with allowances for family size.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0020
Eligible Applicants for HELP Funds

Eligible recipients for HELP funds include units of general local government and nonprofit organizations that propose to construct, acquire and/or rehabilitate projects with rental housing units for very low income tenants.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0030
Eligible Activities for HELP Funds

HELP funds provided by the department shall be used for the construction, acquisition and/or rehabilitation of projects with rental housing units for very low income tenants.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0040
Eligible Costs for HELP Funds

Project costs eligible for HELP assistance are costs that promote housing affordability and include, but are not limited to:

(1) Development hard costs, such as the actual costs of constructing or rehabilitating rental housing;

(2) Costs of acquiring improved or unimproved real property;

(3) Pre-development costs which have been pre-approved by the department;

(4) Soft development costs associated with the construction, acquisition, or rehabilitation, including fees and interest studies; and

(5) Other uses identified in the HELP manual.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0050
HELP Affordability Requirements

(1) A use agreement executed by the department and a recipient shall include covenants and restrictions running with land (that will be binding upon the recipient and any successors in title to the project) that require such project to remain affordable to very low income residents during the affordability period.

(2) Use agreements, inter alia, will require recipients or other project owners to obtain resident income certifications at the time of initial occupancy of the HELP-assisted units and on an annual basis thereafter during the affordability period to document to the department that units assisted with HELP funds continue to serve very low income tenants.

(3) Use agreements, inter alia, may provide that a tenant household with very low income at the time of initial occupancy will remain eligible despite the rise of household income and will not be displaced by reason of ceasing to qualify as a very low income family or person if the owner exercises reasonable efforts to lease the next available similar unit in the project to a family or person of very low income.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0060
Program Requirements

The department has developed policies and guidelines for the HELP program, which supplement division 120 and 24 CFR 813. These policies and guidelines are contained in the HELP manual and further address application procedures, project eligibility, project selection criteria, financial assistance available, and other applicable information. Other applicable chapter 813 rules, department directives, and the terms of required funding documents also apply.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559 & 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0070
Distribution of Funds

The department may distribute HELP funds consistent with OAR chapter 813 and pursuant to relevant solicitation documents including, but not limited to a Notice of Funding Availability ("NOFA") or as otherwise determined by the department.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0080
Application Procedure and Requirements

(1) The process to obtain HELP assistance typically will be spelled out in the solicitation documents issued by the department. In addition to, or in lieu of formal solicitation documents, the department may provide other means for accessing HELP assistance. Additional direction and guidance may be found in the HELP Manual and General Manual.

(2) The department may require payment of a non-refundable application charge from any applicant requesting HELP funds through a formal solicitation or otherwise.

(3) The department may require payment of other charges with respect to its reasonably anticipated costs in processing applications, coordinating programs or with other project participants, providing funding, negotiating documents, monitoring compliance, evaluating and documenting transfers, or otherwise. The department may require payment of a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the department.

(4) The department may refuse to process applications or terminate processing if it determines an application to be incomplete or that it fails to satisfy threshold standards for further processing.

(5) An applicant shall submit to the department, on the application form and in accordance with the application process prescribed by the department, such information as the department may require, including but not limited to:

(a) Name, address and telephone number of applicant;

(b) Type of assistance requested;

(c) A written description of the project, including the number of units, unit mix, proposed rents, site location, amenities, and any other information requested by the department.

(d) A statement of project purpose indicating the housing type and residents to be housed, and the length of the affordability period;

(e) One or more pro formas of project income and expenses;

(f) The amount of funding requested and total project development costs, including a description and documentation of all project funding sources and uses;

(g) A narrative of the applicant's experience in developing affordable housing, including the experience of all members of the project development team;

(h) A narrative of the experience of the applicant's management team or agent as it relates to operating affordable housing projects;

(i) A description of resident services to be provided;

(j) A narrative of the applicant's experience in providing resident services, including the experience of any relevant project team members;

(k) A description of the applicant's readiness to proceed with project activities; and

(l) A schedule for completion of project activities.

(6) The department may restrict the amount and/or type of assistance available in any solicitation or other provision of assistance and restrict the type or number of applicants or recipients eligible for assistance in a particular funding process.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0090
Application Review

(1) An application for assistance from the HELP program is subject to the department's evaluation and approval or disapproval according to criteria in the solicitation documents or otherwise that may include, but are not limited to the following:

(a) The amount of available funds in the HELP program;

(b) The availability of other sources of assistance;

(c) The applicant's efforts to leverage other public or private funds;

(d) Whether the project is financially feasible and the financial strength and history of the prospective recipient;

(e) The location of the project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services and such other facilities and services that best serve the residents;

(f) Availability of street, sewer, water, utilities and other public services;

(g) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;

(h) Whether or not the project will include fee ownership of the real property;

(i) Compliance with applicable local comprehensive plan and land use regulations, housing codes and other applicable standards;

(j) Market demand;

(k) The target population to be served;

(l) The experience of the developer, contractors, architects, consultants and management agent in developing, constructing and operating housing projects;

(m) The department's experience with and the reputation, experience, capacity, legal history and status of the applicant and its agents, representatives, employees and contractors;

(n) Whether the project in comparison to others best achieves the purposes of the HELP program; and

(o) Other factors that the department determines to be relevant including, but not limited to any evaluation criteria in the solicitation documents, HELP Manual, General Manual, or otherwise.

(2) If the department approves an application in whole or in part and if the amount of the HELP assistance or any other department funding approved by the department that was considered by the department in setting the amount of HELP assistance to be provided ("Complementary Funding") meets or exceeds the threshold amount established in OAR 813-001-0007(1) for review by the State Housing Council, the approval of HELP assistance by the department is subject to review and approval by the council of such HELP funding and any such complementary funding. The council may approve, deny, modify or further condition funding subject to its review. Based upon any relevant council determination, including with respect to complementary funding, approval of HELP funding may be deemed revoked, or be modified and further conditioned.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07;

OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0100
Form of Assistance; Documentation

(1) The department may provide HELP funds in the form of a grant or a loan, or a combination of both. Loan rates and terms, if applicable shall be determined by the department based on a project's needs and cash flow, other funding resources, market conditions and an applicant's capacity to repay HELP funds. Preference will be given to those applicants requesting loans that show sufficient project cash flow to repay the loan. The department normally will notify an applicant in a written reservation letter as to the amount and form of HELP assistance, if any, to be provided, together with notable conditions. Such reservation commitments remain subject to department rules, solicitation requirements, applicable law, and the negotiation, execution and recording (if required) of documents satisfactory to the department.

(2) Each recipient shall, inter alia, execute a use agreement, containing such terms regarding fees, interest rates, repayment terms, performance criteria, reporting requirements, restrictive covenants, and other terms as the department or HUD considers appropriate or necessary for the type and use of assistance provided. Each use agreement must be:

(a) (If the recipient owns the project property at the time of disbursement) recorded as an encumbrance on the project property before any HELP funds are advanced; or

(b) If the recipient does not own the project property at the time of disbursement HELP funds, at the discretion of the department, may be placed in escrow in an escrow account established by the recipient satisfactory to the department, and subject to such further conditions as the department may require, including the recording of restrictive covenants running with the project property for the applicable affordability period with appropriate lien priority and taking effect upon close of escrow.

(3) The department may require a recipient to execute and record such documents satisfactory to the department as it considers appropriate in its sole discretion.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0110
General Administrative and Monitoring Requirements

(1) The department and HUD may perform such reviews or field inspections, including review and copying of documents, as they deem appropriate, inter alia, to ensure program compliance. Project owners must cooperate reasonably with all reviews and field inspections. The department and HUD may require that a recipient take such remedial actions as they determine to be appropriate.

(2) Financial records, supporting documents, and all other pertinent records shall be retained by a project owner for five years after the project affordability period is complete, or after any litigation or audit claim is resolved, whichever is later. The department, HUD, the Inspector General, the General Accounting Office, the Oregon Secretary of State and their representatives shall have access to all books, accounts, documents, records and other property belonging to or in use by the recipient and project owner that relate to the use of HELP funds.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0120
Remedies

(1) If the department determines that there has been any material failure or default with respect to any term, covenant or condition of the solicitation or funding documents, applicable rules, directives, other program requirements, or otherwise, it may exercise any remedy available to it under OAR chapter 813 (including, but not limited to the HELP Manual and General Manual), relevant solicitation or funding documents, or applicable law. Remedies include, but are not limited to corrective orders or directives, rescission, termination of funding, recoupment of HELP funds and other department funding already disbursed with respect to a project — including with applicable interest, recovery for damages, specific performance, injunctive relief, declaratory actions, appointment of a receiver for the project, foreclosure of lien interests, debarment from other department funding, and other remedies available at law.

(2) A material default has occurred, inter alia, if:

(a) The recipient or project owner has not commenced any significant aspect of the project activities within six months after the award of project funding;

(b) The recipient or project owner has not entered into any necessary third party agreement related to the project within ninety (90) days of the award of project funding;

(c) The recipient or project owner has used HELP funds for activities not approved in these rules, solicitation or funding documents, or other HELP program requirements;

(d) The recipient or project owner has not completed activities required by these rules, solicitation or funding documents, or other HELP program requirements in a timely manner;

(e) The recipient or project owner has not complied with any and all affordability, habitability and monitoring compliance obligations required in these rules, solicitation or funding documents, or other HELP program requirements; or

(f) The recipient or project owner lacks continued capacity to carry out any and all obligations under these rules, solicitation or funding documents, or other HELP program requirements.

(3) The remedies set forth in this section are cumulative and not exclusive and are in addition to any other rights and remedies provided in this division, other department rules, the solicitation or funding documents, or otherwise available at law or otherwise. The department may exercise any or all remedies available to it, and in such manner as it, in its sole discretion, determines appropriate.

(4) A recipient or project owner shall take all action necessary to enforce all terms of any agreement with a third party in furtherance of its obligations to the department where such third party materially fails to comply with the terms of such agreement and shall act to recover on behalf of the department any costs, expenses and damages that may arise as a result of the breach of the agreement. The recipient, by its execution of its funding documents with the department regardless of whether the agreement expressly so states, acknowledges and agrees that the department at its sole discretion may:

(a) Enforce the terms of any agreement the recipient has with a third party regarding the program or project; or

(b) Recover any sums that become due as the result of a breach of the agreement.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

813-130-0150
Transfer of Recipient, Assistance or Ownership; Subordinate Liens; Encumbrances

(1) A recipient of assistance under the HELP program or owner of a project for which such assistance is provided may not transfer or allow any transfer of any interest in itself, the assistance or the project, allow a subordinate lien or otherwise encumber the project, or any portion or interest therein, unless the department first approves the transfer, subordinate lien or encumbrance in writing. Any such transfer is subject the payment to the department of a transfer charge as established by the department. If the recipient effects or allows a transfer, subordinate lien or encumbrance without prior written approval by the department, the transfer, subordinate lien or encumbrance is voidable and remains subject to the approval or disapproval of the department and the recipient or owner responsible for allowing the transfer, subordinate lien or encumbrance and any transferees, jointly and severally, are subject to a charge by the department with respect to its review and treatment of any such event.

(2) The department may condition its approval upon such terms and conditions as it, in its sole discretion, may require. Factors the department may consider in determining whether or not to give approval to a transfer, subordinate lien or encumbrance include, but are not limited to:

(a) The financial investment of the department in the project;

(b) Preservation of existing housing;

(c) The transferee's ability to maintain and manage the project for the needs of the residents, the integrity of the housing and as security for the assistance;

(d) The effect of the transfer, subordinate lien or encumbrance upon the financial integrity of the project, repayment of the assistance, use of the project for its intended purposes, and continuity of the program; and

(e) Continued compliance with applicable state and federal laws, rules and regulations.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555, 456.559, 456.625
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07; OHCS 15-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 21-2013, f. & cert. ef. 12-18-13

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Rule Caption: Amends the process for soliciting and administering funding awards for Oregon Affordable Housing Tax Credits
Adm. Order No.: OHCS 22-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 813-110-0026, 813-110-0027, 813-110-0032, 813-110-0034, 813-110-0037, 813-110-0045
Rules Amended: 813-110-0005, 813-110-0010, 813-110-0013, 813-110-0015, 813-110-0020, 813-110-0021, 813-110-0022, 813-110-0025, 813-110-0030, 813-110-0035, 813-110-0040
Rules Repealed: 813-110-0012, 813-110-0023, 813-110-0033, 813-110-0050, 813-110-0005(T), 813-110-0010(T), 813-110-0013(T), 813-110-0015(T), 813-110-0020(T), 813-110-0021(T), 813-110-0022(T), 813-110-0025(T), 813-110-0026(T), 813-110-0027(T), 813-110-0030(T), 813-110-0032(T), 813-110-0034(T), 813-110-0035(T), 813-110-0037(T), 813-110-0040(T), 813-110-0045(T)
Subject: The Oregon Affordable Housing Tax Credits Program encourages the creation or preservation of safe, sanitary and affordable housing for lower income Oregonians. The department has completed a significant reorganization on how it solicits and administers funding awards for this program as part of the restructure.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-110-0005
Purpose

OAR chapter 813, division 110, is promulgated to carry out the provisions of ORS 317.097 under which the department certifies affordable multifamily rental housing development projects sponsored by government entities, nonprofit corporations and certain persons (“sponsoring entities or “sponsors”) so as to enable a lending institution to claim Oregon affordable housing tax credits (“OAHTC” or” tax credits”) against Oregon taxes with respect to loans for the construction or acquisition, and rehabilitation of such projects.. The purpose of the tax credits is to encourage the creation or preservation of safe, sanitary and affordable housing for lower-income Oregonians. Additional policies and instructions are outlined in the Oregon Affordable Housing Tax Credits (OAHTC) Manual dated June 21, 2013 (the “OAHTC Manual” or “Manual”), incorporated herein by reference. The manual may be accessed online at the department’s website.

Stat. Auth.: ORS 317.097, 456.555
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.625 & 456.722
Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0010
Definitions

Certain terms used in this division are defined in ORS chapter 317, the Act, OAR 813-005-0005, and herein. Other terms may be identified in the text of this division (including by incorporation), otherwise in chapter 813, or applicable law.

(1) “Cap” means the maximum amount of tax credits as set by the Legislature in ORS 317.097(6).

(2) “Certification” means the written verification by the department to a lender that a project is a qualified project for which the lending institution may claim a tax credit under the provisions of the Act.

(3) “Firm commitment of financing” means an agreement by a lending institution to make a loan to a specific borrower on a specific property and which will contain all of the terms and conditions that the borrower has to satisfy before said loan can be funded. Payment of a commitment charge by the borrower to the lending institution may be required as a condition precedent to issuance of such an agreement.

(4) “Lending institution” means any insured institution, as defined in ORS 706.008, any mortgage company that maintains an office in this state, or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(5) “Preservation project” means housing that was previously developed as affordable housing with a contract for rental assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity. The contract for project-based rental assistance must cover at least 25 percent of all units in the project.

(6) “Project,” except as defined under “manufactured dwelling park” or “preservation project,” means one or more units of housing, that has been acquired, constructed, developed, or rehabilitated, including refinanced housing, which will be rented to or owned by households whose incomes are less than 80 percent of area median income. The use of a project for eligible occupants shall be maintained for the term of the credit, in accordance with the Act, unless terminated at the discretion of the department. If there is a foreclosure, deed-in-lieu, or an involuntary transfer where title transfers to the lending institution, that lending institution may dispose of the property at its sole discretion.

(7) “Rent reduction” means the amount rents are reduced from the rents charged at the market interest rate as a result of the Oregon Affordable Housing Tax Credit (OAHTC) subsidy.

(8) “Rent pass through” means the amount of rent reduction made available to the tenants because of the reduced interest rate attributable to the OAHTC subsidy.

Stat. Auth.: ORS 317.097, 456.555
Stats. Implemented: ORS 317.097, 456.625
Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 1-2009(Temp), f. & cert. ef. 2-9-09 thru 8-7-09; OHCS 2-2009, f. & cert. ef. 8-5-09; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0013
Loan Requirements

In order to be eligible for the tax credit, the loan shall be:

(1) Made to an individual or individuals who own the dwelling, who participate in an owner-occupied community rehabilitation program, and are certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income.

(2) Made to a qualified borrower;

(a) Used to finance construction, development, acquisition, or rehabilitation of housing; and,

(b) Accompanied by a written certification by the department that the:

(A) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and,

(B) Full amount of the savings, from the reduced interest rate provided by the lending institution, is or will be passed on to the tenants in the form of reduced housing payments, regardless of other subsidies provided to the housing project, or

(3) Made to a qualified borrower;

(a) Used to finance construction, development, acquisition, or acquisition and rehabilitation of housing consisting of a manufactured dwelling park;

(b) The housing created by the loan is or will be occupied by a significant number of households, defined as more than 30% of all households at initial tenant qualification, earning less than 80 percent of the area median income; and,

(c) Accompanied by a written certification by the department that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed, or

(4) Made to a qualified borrower;

(a) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a preservation project; and,

(b) Accompanied by a written certification by the department that the housing preserved by the loan:

(A) Is or will be occupied by households earning less than 80 percent of the area median income; and

(B) Has a rent assistance contract with the United States Department of Housing and Urban Development (HUD) or the United States Department of Agriculture that will be maintained by the qualified borrow-

er. The contract must provide rental assistance to households in at least 25% of the project units.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720
Stats. Implemented: ORS 317.097
Hist.: OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; Suspended by OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0015
Application Requirements

(1) For the purpose of enabling a lending institution to obtain a reservation of OAHTC under ORS 317.097, a sponsoring entity may apply to the department for certification of a qualified loan for the allocation of OAHTC consistent with OAR Chapter 813 pursuant to relevant solicitation documents issued by the department including, but not limited to a Notice of Funding Availability ("NOFA"), or as otherwise determined by the department. The application shall provide information satisfactory to the department including but not limited to:

(a) The name, address and telephone number of the sponsoring entity;

(b) Proof as required by the department that the sponsoring entity is a qualified borrower;

(c) The relevant background of the qualified borrower and its management agent and their expertise with housing for low-income persons, if applicable;

(d) A firm commitment of financing by the lending institution to the sponsoring entity for the property that is the subject of the tax credits claim containing all of the terms and conditions that the sponsoring entity has to satisfy before the loan will be funded and including an estimated comparable market interest rate for the proposed loan, the estimated reduced interest rate and the estimated amount of savings or a letter of intent for the purpose of a reservation under OAR 813-110-0030;

(e) The name, address and contact person of the lending institution making the loan;

(f) A description of the project, including the type of housing or program involved, the number and type of housing units to be provided, the number of bedrooms, the address where the project is or will be located, and the federal, state and local agencies or organizations involved in financing or managing the project;

(g) A certification that includes, at a minimum, the statement that all information in the application is true, complete and accurately describes the project; and,

(h) An agreement by the sponsoring entity to execute restrictive covenants satisfactory to the department to which covenants will be recorded at the time of loan closing.

(i) A demonstration relating to occupancy of the units in the project, as required by section (2) of this section;

(j) A demonstration that the project meets the minimum requirements of any other department program used by the project, as required by subsection (3) of this section;

(k) Any additional information or actions requested by the department; and

(l) A certification by the sponsoring entity that includes, at a minimum, the statement that all information in the application is true, complete and accurately describes the project.

(2) The following provisions apply to the demonstration relating to occupancy of units that is required in subsection (1) of this section:

(a) A demonstration for a project other than a manufactured dwelling park must show that units constructed or rehabilitated with OAHTC will be occupied by households earning less than 80 percent of adjusted area median income at the time of initial occupancy.

(b) In the case of a preservation project or a manufactured dwelling park awarded after September 27, 2007, pass-through is not required for a certification produced on or after September 27, 2007.

(c) For a project other than a project to which paragraph (b) of this subsection applies, the demonstration must show that at the time the project is initially rented or purchased, and thereafter for the term of the OAHTC or twenty years, whichever is longer, the sponsor will pass the benefits of the project's reduced loan interest rate to tenant or homeowner households whose earnings are less than 80 percent of area median income at the time of initial tenant or homeowner qualification.

(d) A demonstration for a manufactured dwelling park must show that the project meets the occupancy requirements applicable to manufactured dwelling parks in ORS 317.097.

(3) Because the OAHTC Program is intended to lower rents below the level that would obtain after all other subsidies have been applied, a project that uses one or more other department programs must demonstrate that the project meets or will meet the minimum requirements of those other programs before application of the OAHTC subsidy rent reduction. For example, if an applicant has applied for tax credits under the Low Income Housing Tax Credits (LIHTC) program and that application indicated a target of 60 percent of area median income rents, the application under this rule must show the project is feasible at the targeted 60 percent median rents without the OAHTC subsidy. The OAHTC subsidy must be applied to reduce rents below the 60 percent level and must be passed on directly to the OAHTC qualified tenants or homeowners in its entirety although the pass-through need not be distributed evenly among the units.

(4) Rental units covered by section 8 project based assistance are not eligible to be used to demonstrate pass-through savings for the OAHTC program because the rent reductions related to the OAHTC subsidy typically would not be on to the tenants in the form of a rent reduction from what the tenants would otherwise pay, and therefore, would not achieve pass-through savings. Projects that are partially covered with project based assistance may qualify to use OAHTC on the remaining units by, inter alia, demonstrating pass-through interest savings that result in appropriate as rent reductions to the OAHTC qualified tenants.

(5) The department may require more extensive and enduring affordability covenants than provided in subsections (2) through (4) as may be reflected in relevant solicitation documents or otherwise.

(6) The department may require a non-refundable application charge and may assess such other charges as it deems reasonable to cover anticipated costs of processing the application, coordinating with other funding or project partners, negotiating and recording required documents or additional administration. Certain other charges are identified later in these rules.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0020
Application Review

(1)(a) Applications for a reservation of OAHTC, or for an OAHTC certification of award if conditions are met as required under OAR 813-110-0015, are subject to department review:

(b) Any resulting reservation or certification of award may include modifications to the application and may be rescinded if conditions subsequent are not satisfied, including but not limited to the requirement to timely acquire a qualified funder who will appropriately use the tax credits.

(2) When a reservation or certification of award is made through a solicitation process, the reservation or certification of award will be subject to conditions identified in the solicitation documents that may differ from or supplement OAR 813-110-0021. When a reservation or certification of award is made outside of a solicitation process, the department may specify additional conditions that may differ from or supplement OAR 813-110-0021.

(3) Criteria that the department may apply in considering an application include but are not limited to the following:

(a) The experience of the sponsoring entity, property management agent and other involved person in providing low-income housing;

(b) Estimated rents that would have to be charged or the purchase price that would be required in order to make the project financially feasible, for the type and location of housing to be provided;

(c) The dollar amount of estimated savings from the reduction in rents from the estimated rents under paragraph (b) of this subsection, or the reduction in purchase price, owing to the OAHTC subsidy;

(d) The estimated rent reduction or purchase price reduction under paragraph (c) of this subsection;

(e) How long the tax credits are needed to meet the sponsoring entity's goals of long- term safe, sanitary and affordable housing;

(f) Except for manufactured dwelling park or preservation projects awarded after September 27, 2007, the sponsoring entity's statement that the proposed rent reduction or reduced purchase price will be maintained for or offered to households whose annual incomes are less than 80 percent of area median income;

(g) Restrictive covenants that provide for, but are not limited to, appropriate habitability, income and rent restrictions;

(h) A certifying statement from the agent for the lending institution of a local owner-occupied community rehabilitation program, if applicable;

(j) The target population to be served;

(j) The need for such affordable housing in the area to be served;

(k) Consistency with the comprehensive housing plan for the state or community;

(l) The location of the project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services and such other facilities and services that best serve the residents;

(m) Availability of street, sewer, water, utilities and other public services;

(n) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;

(o) Compliance with applicable local comprehensive plan and land use regulations, housing codes and other applicable standards;

(p) The experience of the developer, contractors, architects, consultants and management agents in developing, constructing and operating housing projects; and

(q) The department's experience with and the reputation, experience and capacity of the sponsoring entity, project owner and developer and their representatives, employees and contractors.

(4) Applications are subject to review by the department under this rule according to a process that may include, but need not be limited to an invitation only, a first-come first-reviewed or a competitive review process.

(5) The amount of a reservation or certification of award made pursuant to an application under this division, together with the total outstanding tax credits, may not exceed the maximum allowable amount of tax credits for a project established under program requirements including, but not limited to those established in ORS 317.097.

Stat. Auth.: ORS 317.097

Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0021

Reservation in Lieu of Certification

(1) For a reservation granted under OAR 813-110-0020:

(a) Except as provided in subsection (2) of this section, the reservation is valid for 180 days and is subject to extension by the department at its sole discretion; and

(b) Is a confirmed reservation unless the lending institution modifies the original letter of intent or there is a failure to comply with material terms of the reservation.

(2) A reservation for a sponsoring entity that is a local government entity providing a community rehabilitation program or rental project may be made for the period of proposed financing and may be extended at the discretion of the department.

(3) A sponsor that furnishes the department a firm commitment of financing prior to the expiration of a reservation is eligible, subject to other program requirements, for issuance of a certification.

(4) A sponsor to which a reservation has been issued shall notify the department of any change in the lending institution as well as any failure to comply with a material term of the reservation.

Stat. Auth.: ORS 317.097

Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722

Hist.: HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0022

Set-Aside

(1) A portion of the maximum amount of tax credits established in ORS 317.097 is subject to either or both of the following:

(a) A set-aside by the department for projects that meet department identified goals under the OAHTC program.

(b) One or more set-asides established by the department from time to time, when directed by the State Housing Council, to meet housing needs in various economic or geographic regions of the state.

(2) At the department's direction, a sponsoring entity that does not qualify for a set-aside under subsection (1) of this section may request that the department approve a set-aside on alternate grounds as provided in this subsection. The sponsoring entity must demonstrate to the department that the sponsoring entity meets criteria similar to those used in the needs assessment in Oregon's plan that is approved by the U.S. Department of Housing and Urban Development (HUD) and that describes the needs, resources, priorities and proposed activities to be undertaken with respect to programs of that department. The department may approve or deny a set-aside on the basis of its consideration of a request under this subsection.

Stat. Auth.: ORS 317.097

Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722

Hist.: HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0025

Certification of Eligible Projects

(1) When the department determines that it may issue a certification to a lending institution as authorized by ORS 317.097, the certification will include, inter alia, the following as applicable:

(a) The proposed borrower is an eligible sponsor;

(b) The proposed borrower has demonstrated that the required benefits will be passed on to households earning less than 80 percent of area median income, except for manufactured dwelling park projects, according to program requirements including, but not limited to those in ORS 317.097 and this division.

(c) The length of the period eligible for tax credits; and

(d) The loan does not exceed the maximum limitation for total loan balances.

(2) A certification is based on information provided by the sponsoring entity in the application and accumulated from the lending institution's annual reports required by OAR 813-110-0030 and conditioned, inter alia, upon the accuracy of such information.

(3) A certification is valid for the purpose of the tax credit only if the information on which the certification is based, other than estimates based on interest rates and other changes made with the approval of the department, is unchanged when the loan is closed for the project and when funding documents satisfactory to the department including, but not limited to an appropriate declaration of restrictive covenants have been executed and, as required by the department, recorded in the official records of the appropriate counties.

(4) To establish the use of a certificate for a fixed rate term loan, a lending institution shall, inter alia, complete the loan closing information section of the certificate and send the original to the department along with evidence satisfactory to the department that an appropriate declaration of restrictive covenants has been recorded or will be recorded at the close of permanent financing (as required by the department) against the project property.

(5) When the department approves a tax credit for a construction loan, the lending institution shall complete the loan closing information section of the certificate and send the original to the department, and may record the restrictive covenants.

Stat. Auth.: ORS 317.097

Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0026

Reservations, Certifications and Other Commitments Subject to State Housing Council Approval

If the department provides a reservation, certification of award or otherwise commits to an award of OAHTC under this division and if the amount of any related tax credits or any other department funding approved by the department that was considered by the department in setting the amount of the tax credits ("Complementary Funding") meets or exceeds the threshold amount established in OAR 813-001-0007(1) for review by the State Housing Council, the reservation, certification or other commitment is subject to review and approval by the council of such tax credit assistance and any such complementary funding. The council may approve, deny, modify or further condition funding assistance subject to its review. Based upon any relevant council determination, including with respect to complementary funding, any subject reservation, certification or other commitment may be deemed revoked, be modified or be further conditioned.

Stat. Auth.: ORS 317.097

Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.625 and 456.722

Hist.: OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0027
Certification Request by Lending Institution

(1) A sponsor shall submit a separate application for each certification of a sponsoring entity requested under the Oregon Affordable Housing Tax Credits program.

(2) A sponsor shall pay a charge to the department as assessed by the department for each application for a certification.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0030
Monitoring and Reporting Requirements

(1) A lending institution claiming state tax credits under ORS 317.097 is subject to monitoring by the department. A lending institution shall submit to the department by May 1 of each year a report satisfactory to the department in which the lending institution affirms that the lending institution has met all requirements imposed by law to qualify for the tax credits. The report must be submitted on a form furnished by the department and signed by an officer of the lending institution, and:

(a) May not include any representation as to the performance by the sponsoring entity; and

(b) Shall include, at a minimum, the name and address of the institution, the name and phone number of a contact person, the number of loans for which tax credits will be claimed, the amount of credit claimed, the annual charge payment, the dates the loans were closed, the location of the projects financed by those loans, the amount loaned for each project, the outstanding balances of all loans, and the average annual balance for each loan.

(2) A project receiving OAHTC is subject to reviews and field inspections that the department determines to be necessary or appropriate including, but not limited to ensuring the sponsoring entity's and project owner's compliance with program requirements including, but not limited to OAR chapter 813 (including the OAHTC Manual and General Manual), department directives, relevant documents, applicable law or otherwise. The project owner shall cooperate fully with all reviews and field inspections, comply with any resulting correction directives, and shall make all records available for inspection and copying.

(3) A project owner shall retain financial records, supporting documents and all other pertinent records for six years after the project affordability period is complete, or after any litigation or audit claim is resolved, whichever is later.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0032
Supplemental Application Charge

A sponsoring entity of a project under the OAHTC program shall pay a supplemental application charge, as established by the department from time to time, when the sponsoring entity requests additional resources for a project that has already been funded under the program.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605 and 456.722
Hist.: OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0034
Transfer of Loan, Owner, or Project

(1) An owner of a project that has received OAHTC assistance or recipient of a loan subsidized by such assistance shall not transfer or allow any transfer of any interest in itself, the loan or the project or otherwise encumber the project, or any portion or interest therein, unless the department first approves the transfer or encumbrance in writing. Any such transfer is subject to payment to the department by the borrower or owner, as applicable, of a transfer charge as required by the department. If the borrower or owner effects or allows a transfer without prior written approval by the department, the transfer is voidable and remains subject to the approval or disapproval of the department and the borrower or owner and transferees, jointly and severally, are subject to a transfer review charge by the department.

(2) The department may condition its approval upon such terms and conditions as it, at its sole discretion, may require. Factors the department may consider in determining whether or not to give approval to a transfer include but are not limited to:

(a) The financial investment of the department in the project;

(b) Preservation of existing housing;

(c) The proposed owner's ability to maintain and manage the property for the needs of the residents, the integrity of the housing and as security for the loan;

(d) The effect of the transfer upon the financial integrity of the project, repayment of the loan, use of the project for its intended purposes, and continuity of the program; and

(e) Continued compliance with applicable program requirements including, but not limited to terms and conditions of funding documents and state and federal laws, rules and regulations.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0035
Community Rehabilitation Project Certification

(1) A local government or its designated agent that certifies a participant in a community rehabilitation program shall certify to the department that the tax credits for the community rehabilitation program fall within the maximum amount of tax credits authorized in ORS 317.097.

(2) A participant in a community rehabilitation program includes any individual, nonprofit corporation or unit of local government that re-loans proceeds to an individual participating in the community rehabilitation program.

(3) A local government entity shall certify to the department that the local community rehabilitation standards will be met for all relending of proceeds from a certified loan.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720
Stats. Implemented: ORS 317.097
Hist.: HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0037
Use of Project; Transfer of Title

(1) The sponsoring entity and the owner of a project, including any successors, assigns or transferees shall maintain operate and maintain the project in a manner consistent with program requirements including, but not limited to its use for eligible occupants, for the term of the tax credits or twenty years, whichever is longer.

(2) If the title to a project transfers to the lending institution because of a foreclosure, a deed-in-lieu of foreclosure or an involuntary transfer under a bankruptcy proceeding, the lending institution may dispose of the property at its sole discretion.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605 and 456.722
Hist.: OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0040
Monitoring

(1) If the department determines that the owner of a project under the OAHTC program is not complying with any applicable rule, law, document or other OAHTC program requirement, the department may notify the lending institution, the owner and the sponsoring entity. In the notice, the department will describe the matter of noncompliance, the required correction and the date by which correction must be made. The owner and sponsoring entity may comment on the notice within the period specified by the department and submit any accompanying explanation and documentation.

(2) The owner of a project shall correct the noncompliance, if possible, and pay a penalty established by the director for noncompliance under subsection (1) of this section and any further penalties assessed by the department if the noncompliance is not corrected to the satisfaction of the director within the period established by the department. In assessing a penalty under this section, the department shall take into consideration any comments submitted by the owner and sponsoring entity with respect to the noncompliance and their correction efforts, if any.

(3) Penalties assessed under this rule may not exceed three times the amount of the eligible tax credit per year.

(4) Any penalties assessed under this rule are the liability of the owner and not the liability of the lending institution.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

813-110-0045
Remedies

(1) If the department determines that there has been any material failure or default with respect to any term, covenant or condition of the applicable solicitation or funding documents, applicable rules, directives, other program requirements, or otherwise, it (or as applicable, the department of Revenue) may exercise any remedy available under OAR chapter 813 (including, but not limited to sanctions provided in OAR 813-110-0040, and remedies available in the OAHTC Manual and General Manual), relevant solicitation or funding documents, or applicable law. Remedies include, but are not limited to corrective orders or directives, sanctions, recapture of OAHTC, recovery for damages, specific performance, injunctive relief, declaratory actions, appointment of a receiver for the project, foreclosure of lien interests, debarment from other department funding, and other remedies available at law.

(2) The remedies set forth in this section are cumulative and not exclusive and are in addition to any other rights and remedies provided in this division, other department rules, the solicitation or funding documents, or otherwise available at law or otherwise. The department may exercise any or all remedies available to it, and in such manner as it, in its sole discretion, determines appropriate.

Stat. Auth.: ORS 314.097, 456.555
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605 and 456.722
Hist.: OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13

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Rule Caption: Amends the process for soliciting and administering funding awards for the General Housing Account
Adm. Order No.: OHCS 23-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 813-055-0065, 813-055-0095
Rules Amended: 813-055-0001, 813-055-0010, 813-055-0020, 813-055-0040, 813-055-0050, 813-055-0075, 813-055-0085, 813-055-0105, 813-055-0115
Rules Repealed: 813-055-0060, 813-055-0100, 813-055-0110, 813-055-0001(T), 813-055-0010(T), 813-055-0020(T), 813-055-0040(T), 813-055-0050(T), 813-055-0065(T), 813-055-0075(T), 813-055-0085(T), 813-055-0095(T), 813-055-0105(T), 813-055-0115(T)
Subject: The General Housing Account carries out the allocation of monies deposited in the General Housing Account by meeting the critical housing needs, building the organizational capacity of affordable housing partners throughout the state, and requires equitable distribution of resources over time based on objective measures of need. The department has completed a significant reorganization as to how it solicits and administers funding awards for this program. These rule changes are designed to reflect the significant reorganization.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-055-0001
Purpose

OAR chapter 813, division 55, is promulgated to carry out the allocation of monies deposited in the General Housing Account and to carry out the account's purpose of meeting critical housing needs, building the organizational capacity of affordable housing partners throughout the state, and requiring equitable distribution of resources over time based on objective measures of need. Additional policies and instructions are outlined in the General Housing Account Program (GHAP) Manual dated June 21, 2013 (the "GHAP Manual" or "Manual"), incorporated herein by reference. The Manual may be accessed online at the department's website.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0010
Definitions

Certain terms used in this division are defined in the Act, OAR 813-005-0005, and herein. Other terms may be identified in the text of this division (including by incorporation), otherwise in chapter 813, or applicable law. As used in this division:

(1) "Low income household" means a household that receives more than 50 percent and not more than 80 percent of the median family income for the area, subject to adjustments for family size and for areas with unusually high or low incomes or housing costs, all as determined according to information from the U.S. Department of Housing and Urban Development.

(2) "Very low income household" means a household that receives 50 percent or less of the median family income for the area, subject to adjustments for family size and for areas with unusually high or low incomes or housing costs, all as determined according to information from the U.S. Department of Housing and Urban Development.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0020
Distribution of GHAP Funds; Eligibility

(1) The department may distribute GHAP program funds consistent with OAR chapter 813 pursuant to relevant solicitation documents including, but not limited to a Notice of Funding Availability ("NOFA") or as otherwise determined by the department. Funding may take the form of a grant, loan or otherwise as the department determines necessary or appropriate, for either or both of the following purposes:

(a) For financing assistance with respect to the construction, acquisition, rehabilitation or operation of affordable multifamily rental housing developments for low income households or very low income households.

(b) For expanding or building affordable housing development capacity, by enhancing the capacity of non-profit entities and housing authorities to develop affordable housing.

(2) Subject to the limitations of any specific solicitation or distribution, any of the following persons or entities may apply for GHAP assistance with respect to the financing of affordable multifamily rental housing developments:

(a) A nonprofit corporation established under ORS chapter 65;

(b) A housing authority established under ORS 456.055 to 456.235;

(c) A local government as defined in ORS 197.015;

(d) A manufactured dwelling park cooperative as established under ORS 62.800 to 62.815;

(e) A for-profit entity;

(f) A Native-American tribe; or

(g) An individual.

(3) Subject to the limitations of any specific solicitation or distribution, any person or entity including, but not limited to those identified in subsection (2) is eligible to apply for GHAP assistance to enhance the capacity of non-profit entities and housing authorities to develop affordable housing.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0040
Application Procedure and Requirements

(1) The process to obtain GHAP assistance typically will be spelled out in the solicitation documents issued by the department. In addition to, or in lieu of formal solicitation documents, the department may provide other means for accessing GHAP assistance. Additional direction and guidance may be found in the GHAP Manual and General Manual.

(2) The department may require payment of a non-refundable application charge from any applicant requesting GHAP funds through a formal solicitation or otherwise.

(3) The department may require payment of other charges with respect to its reasonably anticipated costs in processing applications, coordinating programs or with other project participants, providing funding, negotiating documents, monitoring compliance, evaluating and documenting transfers, or otherwise. The department may require payment of a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the department.

(4) The department may refuse to process applications or terminate processing if it determines an application to be incomplete or that it fails to satisfy threshold standards for further processing.

(5) An applicant shall submit to the department, on the application form and in accordance with the application process prescribed by the department, such information as the department may require, including but not limited to:

(a) The name, address and telephone number of applicant;

(b) The type of assistance requested;

(c) A written description of the project, including the number of units, unit mix, proposed rents, site location, amenities, and any other information requested by the department.

(d) A statement of project purpose indicating the housing type and residents to be housed, and the length of the affordability period;

(e) A pro forma of project income and expenses;

(f) The amount of funding requested and total project development costs, including a description and documentation of all project funding sources and uses;

(g) A narrative of the applicant's experience in developing affordable housing, including the experience of all members of the project development team;

(h) A narrative of the experience of the applicant's management team or agent as it relates to operating affordable housing projects;

(i) A description of resident services, if any, to be provided;

(j) A narrative of the applicant's experience in providing resident services, including the experience of any relevant project team members;

(k) A description of the applicant's readiness to proceed with project activities;

(l) A schedule for completion of project activities;

(m) The need of a nonprofit or housing authority to build its capacity to develop and operate housing serving low income and very low income populations; and

(n) How the nonprofit or housing authority would employ GHAP assistance to build its capacity to develop and operate housing serving low income and very low income populations.

(6) The department may restrict the amount and/or type of assistance available in any solicitation or other provision of assistance and restrict the type or number of applicants or recipients eligible for assistance in a particular funding process.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0050
Application Review

(1) An application for assistance from the GHAP program is subject to the department's evaluation and approval, disapproval or modification according to criteria in the solicitation documents or otherwise that may include, but are not limited to the following:

(a) The amount of available funds in the GHAP program;

(b) The availability of other sources of assistance;

(c) The applicant's efforts to leverage other public or private funds;

(d) Whether the project is financially feasible and the financial strength and history of the prospective recipient;

(e) The location of the project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services and such other facilities and services that best serve the residents;

(f) Availability of street, sewer, water, utilities and other public services;

(g) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;

(h) Whether or not the project will include fee ownership of the real property;

(i) Compliance with the consolidated plan, applicable local comprehensive plan, land use regulations, housing codes and other applicable standards;

(j) Market demand;

(k) The target population to be served;

(l) The experience of the developer, contractors, architects, consultants and management agent in developing, constructing and operating housing projects;

(m) The department's experience with and the reputation, experience, capacity and legal history and status of the applicant and its agents, representatives, employees and contractors;

(n) Whether the project in comparison to others best achieves the purposes of the GHAP program;

(o) The need of a nonprofit or housing authority to build its capacity to develop and operate housing serving low income and very low income populations;

(p) How the nonprofit or housing authority proposes to use GHAP funds to build its capacity to develop and operate housing serving low income and very low income populations;

(q) Other factors that the department determines to be relevant including, but not limited to any evaluation criteria in the solicitation documents, GHAP Manual, General Manual, or otherwise.

(2) If the department approves an application in whole or in part and if the amount of the GHAP assistance or any other department funding approved by the department that was considered by the department in setting the amount of GHAP assistance to be provided ("Complementary Funding") meets or exceeds the threshold amount established in OAR 813-001-0007(1) for review by the State Housing Council, the approval of GHAP assistance by the department is subject to review and approval by the council of such GHAP funding and any such complementary funding. The council may approve, deny, modify or further condition funding subject to its review. Based upon any relevant council determination, including with respect to complementary funding, approval of GHAP funding may be deemed revoked, or be modified and further conditioned.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0065
Form of Assistance; Documentation

(1) The department may provide GHAP funds in the form of a grant or a loan, or a combination of both. Loan rates and terms, if applicable shall be determined by the department based on a project's or applicant's needs and cash flow, other funding resources, market conditions and an applicant's capacity to repay GHAP funds. Preference may be given to those applicants requesting loans that show sufficient project cash flow to repay the loan. The department normally will notify an applicant in a written reservation letter as to the amount and form of GHAP assistance, if any, to be provided, together with notable conditions. Such reservation commitments remain subject to department rules, solicitation requirements, applicable law, and the negotiation, execution and recording (if required) of documents satisfactory to the department.

(2) Each recipient of project development assistance shall, inter alia, execute funding agreements satisfactory to the department including, but not limited to a project use agreement, containing such terms regarding fees, interest rates, repayment terms, performance criteria, reporting requirements, restrictive covenants, and other terms as the department considers appropriate or necessary for the type and use of assistance provided. Each relevant funding agreement, including the use agreement, must be:

(a) (If the recipient owns the project property at the time of disbursement) recorded as an encumbrance on the project property before any GHAP funds are advanced; or

(b) (If the recipient does not own the project property at the time of disbursement) at the discretion of the department, placed in an escrow account established by the recipient satisfactory to the department and subject to such further conditions as the department may require, including the recording of restrictive covenants running with the project property for the applicable affordability period, with appropriate lien priority and taking effect upon close of escrow.

(3) The department may require a recipient to execute and record such funding documents satisfactory to the department as it considers appropriate in its sole discretion.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.559, 456.620, 456.625, 458.650, 458.665
Hist.: OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0075
Distribution and Expenditure of Funds

(1) The department may distribute GHAP funds pursuant to relevant solicitation documents including, but not limited to a NOFA, or otherwise under this division, and pursuant to relevant funding documents.

(2) Distribution of GHAP funds, whether for multifamily affordable housing development or affordable housing capacity building is subject to a general formula developed by the department that provides for an equitable distribution of resources statewide over time based on objective measures of need, including, but not limited to:

(a) The number and percentage of low and very low-income households in an area;

(b) The estimated need for affordable housing as determined by the department and the State Housing Council; and

(c) The need of a nonprofit or housing authority to build its capacity to develop and operate housing serving low- and very- low-income populations.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.559, 456.620, 456.625, 458.650, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; Renumbered from 813-055-0030, OHCS 7-2013, f. & cert. ef. 6-21-13; OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0085
Charges

(1) An applicant requesting General Housing Account funds shall pay an application fee or charge as may be required by the department.

(2) An applicant or owner of a multifamily affordable housing development project that receives GHAP assistance shall pay a monitoring fee or charge as may be required by the department.

(3) The applicant or owner of a project that receives GHAP assistance shall pay such other charges with respect to the department's anticipated costs and expenses of administration as the department may require.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 to 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; Renumbered from 813-055-0070, OHCS 7-2013, f. & cert. ef. 6-21-13; OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0095
Transfer of Recipient, Assistance or Ownership; Subordinate Liens; Encumbrances

(1) A recipient of GHAP assistance or owner of a project for which such assistance is provided may not transfer or allow any transfer of any interest in itself, the assistance or the project, allow a subordinate lien or otherwise encumber the project, or any portion or interest therein, unless the department first approves the transfer, subordinate lien or encumbrance in writing. Any such transfer is subject to a payment to the department of a fee or charge as may be required by the department. If the recipient effects or allows a transfer, subordinate lien or encumbrance without prior written approval by the department, the transfer, subordinate lien or encumbrance is voidable and remains subject to the approval or disapproval of the department and the recipient or owner responsible for allowing the transfer, subordinate lien or encumbrance and any transferees, jointly and severally, are subject to a charge by the department with respect to its review and treatment of any such event.

(2) The department may condition its approval upon such terms and conditions as it, in its sole discretion, may require. Factors the department may consider in determining whether or not to give approval to a transfer, subordinate lien or encumbrance include, but are not limited to:

(a) The financial investment of the department in the project or recipient;

(b) Preservation of existing housing;

(c) Preservation of affordable housing development capacity;

(d) The transferee's ability to maintain and manage the project for the needs of the residents, the integrity of the housing and as security for the assistance;

(e) The effect of the transfer, subordinate lien or encumbrance upon the financial integrity of the project, repayment of the assistance, use of the project for its intended purposes, and continuity of the program; and

(f) Continued compliance with applicable state and federal laws, rules and regulations.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0105
General Administrative and Monitoring Requirements

(1) A recipient of GHAP funds shall submit to the department annually a report satisfactory to the department for the purpose, inter alia, of compliance monitoring by same. The recipient shall submit such other information as the department may from time to time require.

(2) A recipient of GHAP funds is subject to reviews and field inspections that the department determines to be necessary or appropriate including, but not limited to ensuring the recipient's and project owner's compliance with program requirements including, but not limited to OAR chapter 813 (including the GHAP Manual and General Manual), department directives, funding documents, or otherwise. The recipient and project owner shall cooperate fully with all reviews and field inspections, timely comply with any resulting correction directives, and make all records available for inspection and copying.

(3) A recipient of GHAP assistance or owner of a project receiving such assistance shall retain financial records, supporting documents and all other pertinent records for six years after the project affordability period is complete, or after any litigation or audit claim is resolved, whichever is later.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; Renumbered from 813-055-0080, OHCS 7-2013, f. & cert. ef. 6-21-13; Renumbered from 813-055-0080, OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

813-055-0115
Remedies

(1) If the department determines that there has been any material failure or default with respect to any term, covenant or condition of the solicitation or funding documents, applicable rules, directives, other program requirements, or otherwise, it may exercise any remedy available to it under any program requirements including, but not limited to OAR chapter 813 (including, but not limited to the GHAPManual and General Manual), relevant solicitation or funding documents, or applicable law. Remedies include, but are not limited to corrective orders or directives, rescission, termination of assistance, recoupment of GHAP funds and other department assistance already disbursed with respect to a project — including with applicable interest, recovery for damages, specific performance, injunctive relief, declaratory actions, appointment of a receiver for the project, foreclosure of lien interests, debarment from department assistance, and other remedies available at law or otherwise.

(2) A material default has occurred, inter alia, if:

(a) The recipient or project owner has not commenced any significant aspect of the project activities within six months after the award of project funding;

(b) The recipient or project owner has not entered into any necessary third party agreement related to the project within ninety (90) days of the award of project funding;

(c) The recipient or project owner has used GHAPfunds for activities not approved in these rules, solicitation or funding documents, or other GHAPprogram requirements;

(d) The recipient or project owner has not completed activities required by these rules, solicitation or funding documents, or other GHAP program requirements in a timely manner;

(e) The recipient or project owner has not complied with any and all affordability, habitability and monitoring compliance obligations required in these rules, solicitation or funding documents, or other GHAPprogram requirements; or

(f) The recipient or project owner lacks continued capacity to carry out any and all obligations under these rules, solicitation or funding documents, or other GHAP program requirements.

(3) The remedies set forth in this section are cumulative and not exclusive and are in addition to any other rights and remedies provided in this division, other department rules, the solicitation or funding documents, or otherwise available at law or otherwise. The department may exercise any or all remedies available to it, and in such manner as it, in its sole discretion, determines appropriate.

(4) A recipient or project owner shall take all action necessary to enforce all terms of any agreement with a third party in furtherance of its obligations to the department where such third party materially fails to comply with the terms of such agreement and shall act to recover on behalf of the department any costs, expenses and damages that may arise as a result of the breach of the agreement. The recipient, by its execution of its funding documents with the Department regardless of whether the agreement expressly so states, acknowledges and agrees that the department at its sole discretion may:

(a) Enforce the terms of any agreement the recipient has with a third party regarding the program or project; or

(b) Recover any sums that become due as the result of a breach of the agreement.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; Renumbered from 813-055-0090, OHCS 7-2013, f. & cert. ef. 6-21-13; Renumbered from 813-055-0090, OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13

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Rule Caption: Amends the requirements and process for public contracts and procurements

Adm. Order No.: OHCS 24-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Adopted: 813-006-0040
Rules Amended: 813-006-0005, 813-006-0010, 813-006-0015, 813-006-0020, 813-006-0025, 813-006-0030
Rules Repealed: 813-006-0005(T), 813-006-0010(T), 813-006-0015(T), 813-006-0020(T), 813-006-0025(T), 813-006-0030(T), 813-006-0035, 813-006-0040(T)
Subject: The rules establish the process and procedures for public contracts and procurement activities by the department. The department completed a significant reorganization as to how it solicits and administers funding awards for department programs as part of an internal restructure. The rule changes are designed to reflect the significant reorganization of the department.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-006-0005
Purpose

OAR chapter 813, division 006 is promulgated to establish the procedures for public contracts and procurements by the Department as well as its other contracting and procurement activities. The Department is exempt from all provisions of the Oregon Public Contracting Code as contained in ORS chapters 279A, 279B and 279C, except with respect to certain aspects relating to the procurement of goods and services under ORS chapter 279B. And, the Department has all authority to procure or supervise the procurement, inter alia, of goods, services and personal services for which it is subject to ORS chapter 279B. Also, most contracting by the Department is not covered by the Oregon Public Contracting Code even if it were applicable to the Department. Accordingly, the Department has chosen to fashion its own standards, considerations and procedures with respect to its procurement and contracting activities.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650
Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740
Hist.: HSG 14-1987, f. & ef. 12-21-87; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13

813-006-0010
Basic Policy and Approach

(1) The model rules of the Attorney General adopted pursuant to ORS 279A.065 do not apply to the Department. The Department will, however, consider the Attorney General's model rules for guidance in exercising its contracting and procurement discretion, particularly with respect to procurements of goods and services under ORS chapter 279B. Other factors that the Department may consider include, but are not limited to:

(a) The subject matter of the proposed contract and appropriate means to ensure successful performance at competitive costs where practical;

(b) Specificity with respect to communication and reservation of rights in any procurement;

(c) Clarity in the naming and description of parties as well as consideration of appropriate preferences;

(c) Ascertaining and obtaining appropriate representations and warranties as to the qualifications of parties;

(d) Specificity with respect to consideration and applicable time periods;

(e) Specificity with respect to terms and covenants, particularly as to standards applicable to the performance of all work or delivery of goods;

(f) Identification of remedies and their suitability to protect Department and program interests;

(g) Identification of insurance and other risk mitigation terms and the appropriate balance of such measures with potential risks and costs;

(h) Requirements for compliance with applicable laws, including those applicable to funding sources and nondiscrimination;

(i) Use of appropriate terms with respect to standard provisions such as governing law, venue, waiver, exhibits, merger, etc.

(2) Contracting and procurement procedures, requirements and standards with respect to program loans and similar extensions or advances of funds or other funding awards are set forth in the divisions of OAR chapter 813 that specifically address those programs. Relevant general procedures, requirements and standards are set forth in Divisions 001 – 005, particularly Division 005.

(3) Contracting and procurement procedures related to the investment of Department funds and other financial transactions that cannot practically be established, including with resort to the competitive contractor selection procedures of ORS 279B.050 to 279B.085, will be accomplished in consultation with financial advisors, legal counsel and other appropriate professionals. As a general standard, the Department will seek to employ procedures as are practical to introduce competitive efficiencies and sound selections given the particular circumstances, complex regulations and governing law applicable to such financial and investment transactions.

(4) In contracting for consultant or other personal services, as well as goods or other services, the Department will consider factors including those described above in subsection (1) and employ the following procedures as applicable, except when the Director determines that an emergency or other good cause exists to excuse the Department from one or more of those procedures, such as when the personal services contract involves data processing services. The Department will comply with Executive Department OAR 122-031-0005 or 122-036-0005 for data processing personal services contracts.

(5) The Department will contract for consultant and other personal services: (i) when the specialized skills, knowledge, and resources are not available within the Department; (ii) when the work cannot be done in a reasonable time within the Department's own work force; (iii) when an independent and impartial evaluation of a situation is required by a consultant or other provider with recognized professional expertise and stature in a field; (iv) when it will be less expensive to contract for the work; (v) when the Department is directed by statute or otherwise to contract for services; or (vi) when the Department otherwise determines that contracting for a consultant or other personal services will best serve the purpose of fulfilling its statutory or other duties. The Department may contract for other goods and services necessary or appropriate for the operation of the Department. Contracts will be awarded only after the approval of the Director or his/her designee, subject to minimum limit exceptions.

(6) Agreements for the services of a contractor who is a member of the Public Employees' Retirement System and who is employed in another public department usually will be by interagency agreement. Exceptions may be granted by the Director or his/her designee when such an agreement is impractical and when the work will be done on the contractor's own time. Such exceptions normally will be processed as a personal services contract.

(7) The Department will seek to ensure competition and include performance standards to the maximum extent practicable when awarding personal services contracts as well as financial assistance agreements designed, inter alia, to obtain services in furtherance of a Department-supervised program.

(5) In selecting between two or more equally qualified bidders, preference will be given to individuals residing in Oregon and businesses that have an office in Oregon.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650
Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740
Hist.: HSG 14-1987, f. & ef. 12-21-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 6-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13

813-006-0015
Definitions

(1) Terms used in OAR chapter 813, division 6 have meanings as defined in the Act, in 813-005-0005 and herein.

(2) As used in these rules, unless otherwise indicated by the context:

(a) "Consultant" means an individual or firm that has been found qualified to do specified types of work for the agency and with whom the Department may contract;

(b) "Competitive Procurement" is a formal procurement method whereby proposals or applicants are requested from a number of sources and the Request for Proposals or other solicitation document is widely published or otherwise distributed;

(c) "Noncompetitive Procurement" is procurement through solicitation of a proposal from only one source or on a first- come first-served basis;

(d) "Small Purchase Procurement Procedures" are those relatively simple and informal procurement methods whereby price or rate quotations are obtained from a number of sources and selection made on the basis of costs and other applicable criteria.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650
Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740

Hist.: HSG 14-1987, f. & ef. 12-21-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 6-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13

813-006-0020
Procurement Method

(1) The department will comply with the requirements of ORS 200.035.

(2) The department may allow for preference of or limit competition for a public contract for goods and services or for any other public contract estimated to cost $50,000 or less, to contracting entities owned or controlled by persons described in subsection (1) of ORS279A.100.

(3) The department may participate in, sponsor, conduct, or administer cooperative procurements pursuant to ORS 279A.200 through 279A.225.

(4) Small Purchase Procurement Procedures as outlined in OAR 813-006-0030 may be used for the procurement of goods and services estimated to cost not more than $10,000 per agreement per fiscal year. Price or rate quotations will be sought from at least three qualified sources, if practical. This procedure does not govern program solicitations.

(5) Competitive Procurement procedures as outlined in OAR 813-006-0025 will be used for goods and services, as well as personal service contracts, estimated to cost in excess of $10,000 per agreement per fiscal year. Competitive Procurement may be used for contracts of less than $10,000 whenever the Department determines that it would be prudent and advantageous to do so. Exceptions may be granted to accommodate one or more of the conditions described in section (3) of this rule with the approval of the Director.

(6) Noncompetitive Procurement procedures may be used for goods and services, as well as personal services contracts if:

(a) The item or service is available only from a single source, or the sole source has special skills or special characteristics that are reasonably only available from that source or based upon the particular provider's expertise, experience or situation;

(b) Public need or emergency weighs against the delay incurred by competitive solicitation;

(c) After solicitation of a number of sources, competition is determined inadequate; or

(d) The contract is a renewal of an existing contract, subject to approval by all required parties.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650
Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740
Hist.: HSG 14-1987, f. & ef. 12-21-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 6-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13

813-006-0025
Competitive Procurement Procedures

(1) A Request for Proposals (RFP) or similar solicitation (collectively, RFP) will be prepared for the contracts for which Competitive Procurement procedures will be used. The RFP will normally include, at a minimum, the following information:

(a) Date and hour by which proposals or other responses must be received;

(b) Return address where proposals or other responses must be received;

(c) Description of work;

(d) Evaluation criteria; and

(e) Department project manager's name, address and phone number.

(2) The Department will notify persons who have indicated a desire to be notified of contracting opportunities or that have indicated expertise in the subject area, and any other persons deemed necessary, of projects for which an RFP may be issued. Notification of the project for which an RFP may be issued may be announced to the public and may be advertised in appropriate periodicals. The RFP will be sent to all persons responding to the notification in the required manner.

(3) Exceptions to section (2) of this rule may be granted by the Director or his/her designee when the RFP is preceded by a Request for Information (RFI). When an RFI is widely distributed to solicit information and interest in a proposed contract, eligibility for the subsequent RFP may be limited to parties responding to the RFI.

(4) Proposals will be evaluated in accordance with the evaluation criteria included in the RFP. An objective rating system will be used in the evaluation process. Records pertaining to the procurement process and selection of the consultant shall be maintained in the Department's files.

(5) Exceptions to the notification procedures in sections (2) and (3) of this rule may be granted by the Director or his/her designee if warranted by time, cost, or other relevant considerations.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650
Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740
Hist.: HSG 14-1987, f. & ef. 12-21-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 6-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2012(Temp), f. & cert. ef. 4-2-12 thru 9-28-12; Administrative correction 10-29-12; OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13

813-006-0030
Small Purchase Procurement Procedures

(1) A Statement of Work and request for price or rate quotation shall be developed and submitted to prospective contractors with which the Department has had previous successful experience or which are believed by the Department to be qualified to offer the needed services. The Statement of Work and request for quotation may be communicated orally or in writing.

(2) At least three price quotations shall be obtained from qualified sources unless there are fewer than three qualified sources interested in the contract.

(3) Contractor selection shall be made on the basis of the cost estimate and other pertinent information such as qualifications, experience, reference check and project approach.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650
Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740
Hist.: HSG 14-1987, f. & ef. 12-21-87; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13

813-006-0040
Discretionary Action

(1) As it deems necessary or appropriate for its purposes, the Department may waive or deviate from the foregoing provisions of this Division to the extent the Department's statutory authority to employ its own procurement and contracting procedures allow. Factors that the Ddepartment may consider in waiving or deviating from such provision or in determining what other procurement or contracting procedures it will apply in a particular circumstance may include, but are not limited to:

(a) Serving program or other Department purposes;

(b) Collaborating with reputable and effective partners;

(c) Leveraging past resources, experience, or services;

(d) Efficiently and effectively using department resources;

(e) Addressing exigent or unusual circumstances;

(f) Advancing the department or maintenance of safe, sanitary, and affordable housing;

(g) Advancing the delivery and effectiveness or community services;

(h) Building or sustaining the capacity of department partners;

(i) Promoting the coordination of relevant skills, resources, and efforts;

(j) Educating persons and entities concerning housing and community services needs and opportunities; and

(k) Ensuring compliance with department or other applicable standards.

(2) Included within this authority to waive or deviate from such procedures, or to apply other procurement or contracting procedures in particular circumstances, the Department may amend an existing contract without additional competition, inter alia, to extend its term, to modify the compensation, to delete services, or to add any services or goods within the scope of the relevant procurement provided the amendment, in the Department's determination, is consistent with relevant factors identified in the subsection or consistent with factors otherwise relevant to such action.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–456.725 & 458.210 – 458.650
Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651 & 458.005 –458.740
Hist.: OHCS 12-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 24-2013, f. & cert. ef. 12-18-13

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Rule Caption: Amends the definition for net worth and adds a definition for pension account.
Adm. Order No.: OHCS 25-2013(Temp)
Filed with Sec. of State: 12-18-2013

Certified to be Effective: 12-18-13 thru 6-16-14
Notice Publication Date:
Rules Amended: 813-300-0010
Subject: Amends the definition for net worth and adds a definition for pension account.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-300-0010
Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Account holder" means a member, age 12 or older, of a lower income household that has a net worth of less than $20,000 who is the named depositor of an individual development account.

(2) "Contributor" means a person or entity contributing funds to the Department or to a fiduciary organization for the purpose of matching IDA deposits by an account holder or for funding program plan operations.

(3) "Department" means the Housing and Community Services Department established in ORS 456.555 and, where applicable, its designee.

(4) "Designated beneficiary" means a minor-age member of the account holder's household who is the beneficiary of an IDA used to pay the member's extracurricular non-tuition expenses designed to prepare the member for post-secondary education or job training.

(5) "Fiduciary organization" means a non-profit, fund raising organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on January 1, 1999, or a federally recognized Oregon Indian tribe that is located, to a significant degree, within the boundaries of this state, as selected by the department under these rules.

(6) "Fiduciary organization program plan" or "program plan" means a mission statement by a fiduciary organization and the corresponding detailed plan by it for the solicitation of contributions (tax credit or otherwise) and prospective account holders, the management of IDA's and their associated personal development plans, and the operation of the fiduciary organization itself — all as approved by the Department and with such modifications as the Department may require. A prospective program plan must accompany any application to the Department for its approval of a fiduciary organization.

(7) "Financial institution" means an organization regulated under ORS Chapters 706 to 716, 722 or 723, or in the case of an account established for the purpose described in 458.685(1)(c) related to college savings plans, a financial institution as defined in 348.841.

(8) "Individual development account (IDA)" or "account" means a contract between an account holder and a fiduciary organization for the deposit of funds into a financial institution by the account holder, and the deposit of matching funds into a financial institution by the fiduciary organization, to allow the account holder to accumulate assets for use toward achieving a specific purpose approved by the fiduciary organization.

(9) "Lower income household" means a household having an income equal to or less than the greater of the following:

(a) 80 percent of the median household income for the area as determined by the Department., In making the determination, the Department shall give consideration to any data on area household income published by the United States Department of Housing and Urban Development.

(b) 200 percent of the poverty guidelines as determined by the Department. In making the determination, the Department shall give consideration to poverty guidelines published by the United States Department of Health and Human Services or may consider other income data periodically published by other federal or Oregon agencies.

(10) "Median Household Income" means, for the appropriate household size, the higher of:

(a) The median family income for the Metropolitan Statistical Area or county as published annually by the United States Department of Housing and Urban Development, or

(b) The statewide median family income for Oregon as published annually by the United States Department of Housing and Urban Development.

(11) "Net worth" means the value of all assets owned in whole or part by household members excluding equity in a residence and one vehicle, and excluding holdings in pension accounts, as defined by the Housing and Community Services Department by rule, that are valued at less than $60,000, minus the total debts and obligations of household members, all as measured at the time the prospective account holder applies to establish the IDA.

(12) "Oregon individual development account tax credit" or "tax credit" means a credit against taxes otherwise due under ORS Chapter 316, 317, or 318, as allowed in return for contributions to a fiduciary organization for eventual distribution to individual development accounts established under ORS 458.685.

(13) "Pension Account" means an account that is funded by an employee and/or the employer specifically to provide a retirement income, and in which the account is structured so that the funds in the account are either inaccessible to the employee until he/she terminates employment or reaches retirement or are accessible with an early withdrawal penalty.(14) "Personal development plan" means a written plan developed jointly by the fiduciary organization and the prospective account holder for an IDA that is designed to provide the account holder with appropriate financial and asset training, counseling, career or business planning and other services that will increase the self-reliance of the account holder and his/her household through achievement of the IDA's approved purposes. The personal development plan must be in conformance with ORS 458.680, these rules and other requirements of the Department.

(15) "Related funds" means contributions to fiduciary organizations for IDA program purposes that do not qualify for tax credits and supplemental funding from the Department for IDA program purposes.

(16) "Resident of this state" has the meaning given in ORS 316.027

(17) "Reverted funds" means matching IDA deposits that devolve to a fiduciary organization because of the termination or revocation of a person as an account holder or unused tax credit contributions or supplemental funds upon termination or revocation of a fiduciary organization or at the expiration of its program plan.

(18) "Supplemental funding" means funds provided by the Department to fiduciary organizations for program plan purposes.

(19) "Tax credit contributor" means a contributor who receives a corresponding tax credit as allowed in ORS 315.271.

(20) "Tax credit contributions" means funds obtained from tax credit contributors who, in return, earn a tax credit.

(21) "Trust Land" means all lands held in trust by the United States on behalf of an Indian Tribe or individual Indian.

Stat. Auth.: ORS 456.555, 456.625 & 458.700
Stats. Implemented: ORS 315.271 & 458.670 - 458.700
Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 9-2003, f. & cert. ef. 12-19-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08; OHCS 3-2010, f. & cert. ef. 1-7-10; OHCS 25-2013(Temp), f. & cert. ef. 12-18-13 thru 6-16-14

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Oregon Medical Board
Chapter 847

Rule Caption: Compliance with Board investigations and agreements
Adm. Order No.: OMB 1-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Adopted: 847-001-0024
Subject: The new rule states that failure to comply with a Board investigation or failure to comply with a Board Agreement violates ORS 677.190(17) and is grounds for disciplinary action.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-001-0024
Compliance

(1) Licensees and applicants must comply with a Board investigation, including responding to inquiries and providing requested materials within the time allowed and complying with a subpoena. Failure to comply with a Board investigation violates ORS 677.190(17) and is grounds for disciplinary action.

(2) Licensees and applicants must comply with the terms of all Board Orders and Agreements, including Corrective Action Agreements and Consent Agreements. Failure to comply with the terms of a Board Order or Agreement violates ORS 677.190(17) and is grounds for disciplinary action.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.190, 677.205, 677.270 & 677.320
Hist.: OMB 1-2014, f. & cert. ef. 1-14-14

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Rule Caption: Recognizes continuing medical education in cultural competency

Adm. Order No.: OMB 2-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Amended: 847-008-0070
Subject: The rule amendment allows participation in cultural competency education to be counted toward the mandatory continuing education required of all Board licensees.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-008-0070
Continuing Medical Competency (Education)

The Oregon Medical Board is committed to ensuring the continuing competence of its licensees for the protection, safety and well being of the public. All licensees must engage in a culture of continuous quality improvement and lifelong learning.

(1) Licensees renewing registration who had been registered with Active, Administrative Medicine Active, Locum Tenens, Telemedicine Active, Telemonitoring Active, or Teleradiology Active status for the previous registration period must demonstrate ongoing competency to practice medicine by:

(a) Ongoing participation in maintenance of certification by an American Board of Medical Specialties (ABMS) board, the American Osteopathic Association's Bureau of Osteopathic Specialists (AOA-BOS), the American Board of Podiatric Medicine (ABPM), the American Board of Podiatric Surgery (ABPS), the National Commission on Certification of Physician Assistants (NCCPA), or the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM); or

(b) 60 hours of continuing medical education (CME) per two years relevant to the licensee's current medical practice, or 30 hours of CME if licensed during the second year of the biennium, as follows:

(A) American Medical Association (AMA) Category 1;

(B) American Osteopathic Association (AOA) Category 1-A or 2-A;

(C) American Podiatric Medical Association's (APMA) Council on Podiatric Medical Education approved sponsors of continuing education; or

(D) American Academy of Physician Assistants (AAPA) Category 1 (pre-approved); or

(c) 30 hours of NCCAOM-approved courses per two years relevant to the licensee's current practice, or 15 hours if licensed during the second year of the biennium.

(2) Licensees renewing registration who had been registered with Emeritus status for the previous registration period must demonstrate ongoing competency by:

(a) Ongoing participation in re-certification by an ABMS board, the AOA-BOS, the ABPM, the ABPS, the NCCPA, or the NCCAOM; or

(b) 15 hours of CME per year as follows:

(A) AMA Category 1 or 2;

(B) AOA Category 1-A, 1-B, 2-A or 2-B;

(C) APMA-approved continuing education; or

(D) AAPA Category 1 or 2; or

(c) 8 hours of NCCAOM-approved courses.

(3) Licensees who have lifetime certification without participation in maintenance of certification with the ABMS, AOA-BOS, ABPM, ABPS, or NCCPA must submit the required CME in section (1) (b) of this rule or section (2)(b) of this rule if renewing with Emeritus status.

(4) Licensees who have lifetime certification without participation in maintenance of certification with the NCCAOM must submit the required CME in section (1)(c) of this rule or section (2)(c) of this rule if renewing with Emeritus status.

(5) CME in cultural competency is considered relevant CME for the current practice of all licensees and may be used toward satisfying the required CME hours.

(6) Licensees who perform Level II office-based surgical procedures and who are not eligible or maintaining certification with an ABMS, AOA-BOS, ABPM, ABPS or NCCPA specialty board, must obtain 50 hours of CME each year. The CME hours must be relevant to the surgical procedures to be performed in the office-based facility and must be accredited as described in section (1)(b) of this rule. This requirement may not be satisfied with cultural competency CME or other CME that is only generally relevant to the licensee's practice.

(7) The Board may audit licensees for compliance with CME. Audited licensees have 60 days from the date of the audit to provide course certificates. Failure to comply or misrepresentation of compliance is grounds for disciplinary action.

(8) As the result of an audit, if licensee's CME is deficient or licensee does not provide adequate documentation, the licensee will be fined $250 and must comply with CME requirements within 120 days from the date of the audit.

(a) If the licensee does not comply within 120 days of the date of the audit, the fine will increase to $1000; and

(b) If the licensee does not comply within 180 days of the date of the audit, the licensee's license will be suspended for a minimum of 90 days.

(9) The following licensees are exempt from this rule:

(a) Licensees in residency training;

(b) Licensees serving in the military who are deployed outside Oregon for 90 days or more during the reporting period; and

(c) Volunteer Camp licensees.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265
Hist.: BME 2-2009, f. & cert. ef. 1-22-09; BME 16-2009, f. & cert. ef. 10-23-09; OMB 7-2011, f. & cert. ef. 4-25-11; OMB 23-2012, f. & cert. ef. 8-3-12; OMB 2-2014, f. & cert. ef. 1-14-14

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Rule Caption: Eliminates the Limited License, Special
Adm. Order No.: OMB 3-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Amended: 847-010-0060
Rules Repealed: 847-010-0053, 847-050-0026, 847-070-0036
Subject: The rule amendment and rule repeals eliminate the Limited License, Special because this license is no longer offered and is specific to the former process of issuing licenses, which only occurred at the quarterly Board meetings. Licenses are now issued weekly, eliminating the need for the Limited License, Special.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-010-0060
Limited License, SPEX/COMVEX, and Limited License, Postgraduate

A physician who is granted a Limited License, SPEX/COMVEX, or Limited License, Postgraduate in the State of Oregon is entitled to apply for and obtain a federal narcotic stamp.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.132
Hist.: ME 17, f. 5-2-68; ME 10-1986, f. & ef. 7-31-8; ME 3-1988(Temp), f. & cert. ef. 1-29-88; ME 6-1988, f. & cert. ef. 4-20-88; BME 11-1999, f. & cert. ef. 7-23-99; BME 3-2008, f. & cert. ef. 1-22-08; OMB 3-2014, f. & cert. ef. 1-14-14

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Rule Caption: Compliance with personal interview requests
Adm. Order No.: OMB 4-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Amended: 847-020-0110
Subject: The rule amendment states that failure to appear for a personal interview is a violation of ORS 677.190(17), and the applicant may be subject to disciplinary action.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-020-0110
Application for Licensure

(1) Any person who wishes to practice medicine in this state beyond the first post-graduate training year must apply for an Oregon license to practice medicine.

(2) When applying for licensure, the applicant must submit to the Board the completed application, fees, documents and letters.

(3) A person applying for licensure under these rules who has not completed the licensure process within a 12 month consecutive period must file a new application, documents, letters and pay a full filing fee as if filing for the first time.

(4) The applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the application. Unless excused in advance, failure to appear before the Board for a personal interview violates ORS 677.190(17) and may subject the applicant to disciplinary action.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100 & 677.190

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 4-2007, f. & cert. ef. 1-24-07; OMB 9-2013, f. & cert. ef. 4-5-13; OMB 4-2014, f. & cert. ef. 1-14-14

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Rule Caption: Changes name of the Limited License, Postgraduate to Limited License, Pending Examination
Adm. Order No.: OMB 5-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Amended: 847-050-0020, 847-050-0023
Subject: The rule amendments change the name of the Limited License, Postgraduate to Limited License, Pending Examination to properly reflect that the limited licensee is not in a postgraduate training program but instead is awaiting the national certification exam before applying for a full, unlimited license.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-050-0020
Qualifications

On or after January 25, 2008, an applicant for licensure as a physician assistant in this state must possess the following qualifications:

(1) Have successfully completed a physician assistant education program which is approved by the American Medical Association Committee on Allied Health Education and Accreditation (C.A.H.E.A.), the Commission on Accreditation for Allied Health Education Programs (C.A.A.H.E.P.), or the Accreditation Review Commission on Education for the Physician Assistant (A.R.C.P.A.).

(2) Have passed the Physician Assistant National Certifying Examination (PANCE) given by the National Commission on Certification of Physician Assistants (N.C.C.P.A.).

(a) The applicant may take the PANCE once in a 90-day period or three times per calendar year, whichever is fewer.

(A) The applicant has no more than four attempts in six years to pass the PANCE. If the applicant does not pass the PANCE within four attempts, the applicant is not eligible for licensure.

(B) An applicant who has passed the NCCPA certification exam, but not within the four attempts required by this rule, may request a waiver of this requirement if he/she has current certification by the NCCPA.

(b) Those who have met the requirements of section (1) of this rule may make application for a Limited License, Pending Examination before passing the PANCE examination with the stipulation that if the examination is not passed within one year from the date of application, the Board withdraws its approval.

(3) Applicants seeking prescription privileges must meet the requirements specified in OAR 847-050-0041.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265 & 677.512
Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1993, f. & cert. ef. 4-22-93; ME 17-1994, f. & cert. ef. 10-25-94; BME 1-1998, f. & cert. ef. 1-30-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 1-2001, f. & cert. ef. 1-25-01; BME 6-2003, f. & cert. ef. 1-27-03; BME 6-2008, f. & cert. ef. 1-22-08; BME 10-2010(Temp), f. & cert. ef. 4-26-10 thru 10-15-10; BME 14-2010, f. & cert. ef. 7-26-10; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12; OMB 5-2014, f. & cert. ef. 1-14-14

847-050-0023
Limited License, Pending Examination

(1) An applicant for a Physician Assistant license who has successfully completed a physician assistant education program approved by the American Medical Association Council on Allied Health Education and Accreditation (C.A.H.E.A.), or the Commission on Accreditation for Allied Health Education Programs (C.A.A.H.E.P.), or the Accreditation Review Commission on Education for the Physician Assistant (A.R.C.P.A.) but has not yet passed the Physician Assistant National Certifying Examination (PANCE) given by the National Commission for the Certification of Physician Assistants (N.C.C.P.A.) may be issued a Limited License, Pending Examination, if the following are met:

(a) The application file is complete with the exception of certification by the N.C.C.P.A; and

(b) The applicant has submitted the appropriate form and fee prior to being issued a Limited License, Pending Examination.

(2) A Limited License, Pending Examination may include prescriptive privileges for Schedules III through V if the supervising physician specifies these prescription privileges for the physician assistant in the practice agreement;

(3) A Limited License, Pending Examination may be granted for one year, and may not be renewed.

(4) Upon receipt of verification that the applicant has passed the N.C.C.P.A. examination, and if their application file is otherwise satisfactorily complete, the applicant will be considered for a permanent license.

(5) The Limited License, Pending Examination will automatically expire if the applicant fails the N.C.C.P.A. examination.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.132 & 677.535
Hist.: ME 5-1993, f. & cert. ef. 4-22-93; ME 9-1995, f. & cert. ef. 7-28-95; BME 14-2002, f. & cert. ef. 10-25-02; BME 13-2003, f. & cert. ef. 7-15-03; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12; OMB 5-2014, f. & cert. ef. 1-14-14

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Rule Caption: Compliance with personal interview requests
Adm. Order No.: OMB 6-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Amended: 847-050-0025
Subject: The rule amendment allows a personal interview for applications subsequent to initial licensure with the Board (such as reactivation) and states that failure to appear for a personal interview is a violation of ORS 677.190(17), and the applicant may be subject to disciplinary action.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-050-0025
Interview and Examination

(1) In addition to all other requirements for licensure, the Board may require the applicant to appear for a personal interview regarding information received in the application process. Unless excused in advance, failure to appear before the Board for a personal interview violates ORS 677.190(17) and may subject the applicant to disciplinary action.

(2) The applicant is required to pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and Oregon Administrative Rules (OAR) chapter 847, division 050. If an applicant fails the open-book examination three times, the applicant's application will be reviewed by the Physician Assistant Committee of the Oregon Medical Board. An applicant who has failed the open-book examination three times must also attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the examination, before being given a fourth and final attempt to pass the examination. If the applicant does not pass the examination on the fourth attempt, the applicant may be denied licensure.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265
Hist.: ME 23(Temp), f. & ef. 1-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979. f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 9-1995, f. & cert. ef. 7-28-95; BME 11-1998, f. & cert. ef. 7-22-98; BME 13-2003, f. & cert. ef. 7-15-03; BME 13-2006, f. & cert. ef. 5-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12; OMB 6-2014, f. & cert. ef. 1-14-14

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Rule Caption: Changes name of the Limited License, Postgraduate to Limited License, Pending Examination
Adm. Order No.: OMB 7-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Amended: 847-070-0037
Subject: The rule amendments change the name of the Limited License, Postgraduate to Limited License, Pending Examination to properly reflect that the limited licensee is not in a postgraduate training program but instead is obtaining clinical training while awaiting the national certification exam before applying for a full, unlimited license.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-070-0037
Limited License, Pending Examination

(1) An acupuncturist who meets all requirements for Oregon acupuncture licensure but has not yet passed the acupuncture certification examination given by the National Certification Commission on Acupuncture and Oriental Medicine (N.C.C.A.O.M.) may be issued a Limited License, Pending Examination for the purpose of obtaining clinical training in Oregon under the supervision of a Board approved clinical supervisor for a period of one year if the following criteria are met:

(a) The application file is complete.

(b) Certification by the N.C.C.A.O.M. is pending.

(c) The clinical supervisor approved to supervise the applicant meets the qualifications in OAR 847-070-0017 and is on-site and available to supervise at all times when the applicant is training.

(d) The applicant has submitted the appropriate form and fee prior to being issued a Limited License, Pending Examination.

(2) Any person obtaining clinical training under a Limited License, Pending Examination must identify themselves to patients as an acupuncture trainee and wear a name tag identifying themselves as a trainee.

(3) A Limited License, Pending Examination may be granted for one year and may not be renewed.

(4) Upon receipt of verification that the applicant has passed the acupuncture certification examination given by the N.C.C.A.O.M., and if the applicant's application file is otherwise satisfactorily complete, the applicant shall be scheduled for approval of permanent licensure.

(5) The Limited License, Pending Examination will automatically be canceled if the applicant fails the acupuncture certification examination given by the N.C.C.A.O.M..

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.759
Hist.: BME 5-1999, f. & cert. ef. 4-22-99; BME 19-2007, f. & cert. ef. 10-24-07; OMB 7-2014, f. & cert. ef. 1-14-14

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Rule Caption: Compliance with personal interview requests
Adm. Order No.: OMB 8-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Amended: 847-070-0019
Subject: The rule amendment allows personal interviews to occur at a time other than at the biannual Acupuncture Committee meetings and states that failure to appear for a personal interview is a violation of ORS 677.190(17), and the applicant may be subject to disciplinary action.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-070-0019
Interview and Examination

(1) In addition to all other requirements for licensure, the Board may require an applicant to appear for a personal interview regarding information received in the application process. Unless excused in advance, failure to appear before a Committee of the Board for a personal interview violates ORS 677.190(17) and may subject the applicant to disciplinary action.

(2) If there is reasonable cause to question the qualifications of an applicant, or if an applicant has not practiced as an acupuncturist for a period of twenty-four (24) or more consecutive months prior to application for Oregon licensure, the Board in its discretion may require the applicant to do one or more of the following:

(a) Pass the N.C.C.A.O.M. Acupuncture Certification Examinations.

(b) Pass an evaluation which may be written, oral, practical, or any combination thereof.

(c) Provide documentation of current N.C.C.A.O.M. Acupuncture certification.

(d) Document 15 hours of continuing education acceptable to the Board for every year the applicant has ceased practice prior to application for Oregon licensure. Continuing education that meets N.C.C.A.O.M.'s recertification requirements would qualify as Board approved continuing education.

(e) As a condition of licensure, complete a mentorship of no less than 20 hours under a Board approved clinical supervisor who must individually supervise the applicant. The clinical supervisor must report the successful completion of the mentorship to the Board.

(3) An applicant shall be required to pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and Oregon Administrative Rules (OAR chapter 847, division 70).

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.175 & 677.759
Hist.: BME 12-2005, f. & cert. ef. 10-12-05; BME 21-2006, f. & cert. ef. 10-23-06; BME 5-2009, f. & cert. ef. 1-22-09; OMB 8-2014, f. & cert. ef. 1-14-14

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Rule Caption: Compliance with personal interview requests
Adm. Order No.: OMB 9-2014
Filed with Sec. of State: 1-14-2014
Certified to be Effective: 1-14-14
Notice Publication Date: 11-1-2013
Rules Amended: 847-080-0002
Subject: The rule amendment states that failure to appear for a personal interview is a violation of ORS 677.190(17), and the applicant may be subject to disciplinary action.
Rules Coordinator: Kimberly Fisher—(971) 673-2667

847-080-0002
Application for Licensure

(1) When applying for licensure the applicant must submit to the Board the completed application, fees, documents and letters.

(2) A person applying for licensure under these rules who has not completed the licensure process within a 12 month consecutive period must file a new application, documents, letters and pay a full filing fee as if filing for the first time.

(3) The applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the application. Unless excused in advance, failure to appear before the Board for a personal interview violates ORS 677.190(17) and may subject the applicant to disciplinary action.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.190, 677.265, 677.810 & 677.840
Hist.: ME 6-1986, f. & ef. 4-23-86; ME 3-1990, f. & cert. ef. 1-29-90; BME 8-2007, f. & cert. ef. 1-24-07; OMB 20-2013, f. & cert. ef. 7-12-13; OMB 9-2014, f. & cert. ef. 1-14-14

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Oregon Military Department, Office of Emergency Management Chapter 104

Rule Caption: OEM's Notice of Permanent Rule to Amend OAR Chapter 104-Division 20
Adm. Order No.: OEM 1-2013
Filed with Sec. of State: 12-17-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 11-1-2013
Rules Amended: 104-020-0000, 104-020-0010, 104-020-0020, 104-020-0030, 104-020-0040
Subject: Permanent rule to amend Oregon Administrative Rules Chapter 104-Division 20, regarding earthquake preparedness drills, pursuant to legislative requirements within HB 2183 (2013 session).
Rules Coordinator: Cherie Cline—(503) 378-2911, ext. 22221

104-020-0000
Purpose

The purpose of the rule is to provide guidance for all private, state, local government agencies and non-governmental employers with 250 or more full-time employees to conduct mandatory annual earthquake drills for employees located within office buildings.

Stat. Auth.: Ch. 366, OL 2001
Stats. Implemented: Ch. 366, OL 2001
Hist.: OEM 1-2002, f. & cert. ef. 4-15-02; OEM 1-2013, f. 12-17-13, cert. ef. 1-1-14

104-020-0010
Definitions

(1) "State and local agency" means a state or local government office, department, division, bureau, board, or commission that is assigned, renting, leasing, owning or controlling office space for carrying out its duties either in one or multiple locations. 'State or local agency' includes the legislative assembly (i.e. legislators) when in regular session.

(2) "Employers with 250 or more full-time employees" mean employers with 250 or more full time employees in Oregon, who are not state and local agencies.

(3) "Office Building" means a building whose primary function is office work. It does not include those non-office buildings whose primary function is manufacturing, assembly, warehouse, laboratory, maintenance,

or other non-office situations. Employers are encouraged to hold drills in non-office environments.

(4) "Earthquake drill", as outlined in guidelines established by Oregon Office of Emergency Management.

Stat. Auth.: Ch. 366, OL 2001
Stats. Implemented: Ch. 366, OL 2001
Hist.: OEM 1-2002, f. & cert. ef. 4-15-02; OEM 1-2013, f. 12-17-13, cert. ef. 1-1-14

104-020-0020
Drill Requirements

Those required to conduct the drill are certain office employees of state and local agencies and certain office employees of other employers who have 250 or more full-time employees.

(1) State and local agencies

(a) State and local agencies fall under the drill requirement regardless of the type (full and part time) and number of employees and number of works sites.

(b) All office employees are required to drill, except where there is a mix of office and non-office employees at a work site. If the office employees at a mixed work site are in the majority they are required to drill. If not, they are not required to drill. If an agency has more than one work site, each work site is evaluated separately according to this majority rule. A work site is defined as a site that has one street address, which may contain one or more buildings.

(2) Private and non-governmental employers with 250 or more full time employees

(a) Employers with 250 or more full time employees fall under the drill requirement regardless of the number of work sites. The 250 or more full-time employees include all full time employees.

(b) All office employees (including both full and part time) are required to drill, except where there is a mix of office and non-office employees at a work site. If the office employees at the mixed work site are in the majority they are required to drill. If not, they are not required to drill. If an employer has more than one work site, each work site is evaluated separately according to this majority rule. A work site is defined as a site that has one street address, which may contain one or more buildings.

Stat. Auth.: Ch. 366, OL 2001
Stats. Implemented: Ch. 366, OL 2001
Hist.: OEM 1-2002, f. & cert. ef. 4-15-02; OEM 1-2013, f. 12-17-13, cert. ef. 1-1-14

104-020-0030
Drill Guidelines

(1) The earthquake drill shall be the drop, cover and hold on, or if not possible, other protective action. Written information on pre-designated evacuation routes and procedures for exiting the building shall be made available to employees.

(2) The employer, state, or local agency may drill earthquake response procedures in addition to "drop, cover, and hold on" when it is determined on scientific evaluation of specific engineering and structural issues related to a building and with the consultation of state and local emergency management, that "drop, cover, and hold on" may not be the most effective earthquake emergency response procedure to prevent or limit injury or loss of life.

(3) Entities are encouraged to participate in the annual state-wide "drop, cover, and hold on" earthquake drill.

(4) Guidelines for the drill and evacuation procedures are posted on the web sites of Oregon Office of Emergency Management (OEM) and the Oregon Department of Geology and Mineral Industries (DOGAMI).

Stat. Auth.: Ch. 366, OL 2001
Stats. Implemented: Ch. 366, OL 2001
Hist.: OEM 1-2002, f. & cert. ef. 4-15-02; OEM 1-2013, f. 12-17-13, cert. ef. 1-1-14

104-020-0040
Drill Records

(1) Each state and local agency and employer with 250 or more full-time employees shall maintain a file that documents the date the earthquake drill was conducted. The file can be either maintained at one central location, for those agencies or employers that have multiple locations, or maintained at each location. If maintained at a central location, the record shall be kept in the office of the agency or company head. If maintained at each agency location, then the record shall be kept in the office of the manager at that site.

(2) For those agencies, companies and organizations that fit the drill criteria, drill waivers may be granted each year in exceptional circumstances and for good cause. Petitions must be submitted by the executive head of the state agency, local agency, company, or organization requesting the waiver to the Earthquake Program Coordinator, Oregon Emergency Management, P. O. Box 14370, Salem, OR 97309-5062.

Stat. Auth.: Ch. 366, OL 2001
Stats. Implemented: Ch. 366, OL 2001
Hist.: OEM 1-2002, f. & cert. ef. 4-15-02; OEM 1-2013, f. 12-17-13, cert. ef. 1-1-14

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Oregon State Lottery
Chapter 177

Rule Caption: Clarifies that the Keno Multiplier does not apply to the Jackpot Bonus prizes; Housekeeping changes
Adm. Order No.: LOTT 7-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 12-1-2013
Rules Amended: 177-099-0095
Subject: The Oregon Lottery has amended the Keno Multiplier Option rule to clarify that the Keno Multiplier does not apply to the Jackpot Bonus prizes. Other amendments included housekeeping changes.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-099-0095
Keno Multiplier Option

(1) **General**: When the Keno Multiplier option is selected on a winning Keno or Special Keno game ticket, the prize amount is multiplied by the Keno Multiplier number. The Keno Multiplier number (1, 2, 3, 5, or 10) is randomly selected prior to each drawing.

(2) **Probability**: The following table sets forth the probability of the various Keno Multiplier numbers being selected during a single Keno Multiplier drawing: [Table not included. See ED. NOTE.]

(3) **Applicability**: A prize multiplied by the Keno Multiplier is subject to all Keno or Special Keno rules applicable to the particular prize won. The Keno Multiplier does not apply to the Keno Jackpot Bonus prizes.

(4) **Director's Authority**: The Director, in the Director's sole discretion, is authorized to initiate and terminate the Keno Multiplier option.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461.200
Hist.: LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03; LOTT 7-2013, f. 12-20-13, cert. ef. 1-1-14

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Oregon State Marine Board
Chapter 250

Rule Caption: Repeal Division 19: Procedures for Adopting, Amending and Repealing Local and Special Rules
Adm. Order No.: OSMB 1-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14
Notice Publication Date: 12-1-2013
Rules Repealed: 250-019-0010, 250-019-0020, 250-019-0030, 250-019-0040, 250-019-0050, 250-019-0060, 250-019-0070, 250-019-0080
Subject: The agency repealed Division 019. Definitions and procedures previously outlined in Division 019 were amended and included, as necessary, within Division 001.
Rules Coordinator: June LeTarte—(503) 378-2617

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Rule Caption: Amend petition request procedure, consolidate definitions, define scope and authority, reference Attorney General's Model Rules
Adm. Order No.: OSMB 2-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14
Notice Publication Date:
Rules Adopted: 250-001-0040, 250-001-0050, 250-001-0060
Rules Amended: 250-001-0000, 250-001-0005
Subject: The agency adopted and amended rules in Division 001 to establish a procedure for submitting and accepting public petitions to modify or request boating regulations, identify authority, consolidate terms and definitions, and streamlined its rulemaking notification procedure.
Rules Coordinator: June LeTarte—(503) 378-2617

250-001-0000
Notice of Proposed Rule

Prior to adopting, amending, or repealing a permanent rule, the State Marine Board will give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule.

(2) By mailing or emailing notice to persons on the State Marine Board's interested parties list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule.

(3) By emailing a copy of the notice to the legislators as specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

(4) By sending notice to the following persons and organizations:

(a) State and federal agencies, if affected;

(b) Port and park and recreation districts in the area affected; and

(c) City and county officials in the area affected.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 183.335
Hist.: MB 72, f. & ef. 11-4-75; MB 2-1985, f. & ef. 1-29-85; MB 7-1994, f. & cert. ef. 6-1-94; OSMB 2-2014, f. & cert. ef. 1-15-14

250-001-0005
Model Rules of Practice and Procedure

The 2012 edition of the Oregon Attorney General's Model Rules and Uniform Rules of Procedure are by this reference adopted as the rules of practice and procedure of the Marine Board.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Marine Board.]
Stat. Auth.: ORS 830
Stats. Implemented: ORS 183.341
Hist.: MB 68, f. 5-19-75, ef. 6-11-75; MB 78, f. & ef. 8-27-76; MB 3-1978, f. & ef. 4-5-78; MB 1-1982, f. & ef. 3-1-82; MB 4-1984, f. & ef. 1-19-84; MB 4-1986, f. 4-15-86, ef. 4-18-86; OSMB 2-2014, f. & cert. ef. 1-15-14

250-001-0040
Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

The filing of petitions for rulemaking action by the Board shall be in accordance with the Attorney General's Uniform Rule of Procedure set forth in OAR 137-001-0070.

Stat. Auth.: ORS 830
Stats. Implemented: ORS 183.390
Hist.: OSMB 2-2014, f. & cert. ef. 1-15-14

250-001-0050
Policy

(1) It is the policy of the State Marine Board to promote multiple use and enjoyment of waters of the state for a variety of boating activities. The Board recognizes and will uphold to the extent practicable the universal right of the public to navigate and use the waters of the state for boating.

(2) The Board is authorized to regulate through administrative rules boating in specific locations or on specific waterways in the interest of protecting public safety, property, water quality, fish and wildlife resources or for the purpose of reducing excessive congestion and conflict between users, and promoting uniformity of laws pertaining to such use.

(3) The Board will seek to resolve problems arising from or between boating activities on a waterway by using a variety of management measures including education, information, signing, voluntary restrictions or increased law enforcement of existing laws before acting to restrict public use and enjoyment of boats.

(4) It is the policy of the Board to exercise its regulatory authority based upon sufficient information, public testimony or evidence that establishes a demonstrated need to enact administrative rules.

(5) The Board will seek the concurrence and recommendations of affected local jurisdictions and authorities before adopting regulations for local waterways.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.175
Hist.: OSMB 2-2014, f. & cert. ef. 1-15-14

250-001-0060
Scope of Rules

(1) The Board may regulate watercraft on all waters of this state. The Board's primary interest lies in waterways where public access for boating is provided, available, allowed, or reasonably accomplishable and is commonly or frequently used by the general boating public.

(2) The Board will not normally regulate waters of this state which are surrounded exclusively by privately owned lands, are sufficiently small so as to preclude access or severely limit public boating use, or are inaccessible to the general boating public by ordinary and usual means.

(3) Restrictions on boats and boat operations adopted by the Board in compliance with statutory authorization shall apply to all watercraft including boats used for commercial activities, excluding:

(a) Watercraft used for the law enforcement activities of authorized public safety agencies;

(b) Search and rescue activities conducted by or under the direction of these agencies; and

(c) Watercraft used for administrative or management functions performed by public agencies with jurisdiction over the subject waters or adjacent lands.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.175
Hist.: OSMB 2-2014, f. & cert. ef. 1-15-14

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Rule Caption: Move the western deadline of the wake-enhancing device exclusion zone on the Willamette River.
Adm. Order No.: OSMB 3-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14
Notice Publication Date: 9-1-2013
Rules Amended: 250-020-0032, 250-020-0385
Subject: The agency modified the rule to shorten the wake enhancing device exclusion zone area by moving the deadline from the Hwy. 219 Bridge to RM 47. This rule is effective May 1, 2014 and will sunset October 31, 2014
Rules Coordinator: June LeTarte—(503) 378-2617

250-020-0032
Boat Operations on the Willamette River in Clackamas County

(1) No person shall operate a motorboat in excess of 10 MPH in the following areas:

(a) Between the southern shore of Hog Island and the mainland;

(b) Within 100 feet of the west shore, between RM 30.0 and 30.5.

(2) No person shall operate a boat:

(a) Downstream from Oregon City Falls in an area from the base of the falls to a line across the river between the northeast corner of the Crown Zellerbach's Mill A Grinder Room on the west bank of the river to the southwest corner of Publisher's Paper Company Power Plant on the east bank of the river as marked;

(b) In the area commonly known as the "cul-de-sac" or the Simpson Paper Company tailrace; beginning at the mouth of the tailrace on the south bank then extending across the tailrace following the line established by the bridge across the tailrace to the north bank, then in a westerly, southerly, and easterly direction around the bank of the tailrace to the place of beginning.

(c) Exceptions:

(A) Boats of any federal, state, county, or local governmental agency and Portland General Electric Sullivan Plant and Crown Zellerbach Corporation Mill maintenance crews may operate in the closed area when on official business;

(B) Boats used in taking lamprey under a permit issued by the State Department of Fish and Wildlife may operate in the closed area subject to the conditions specified in the permit.

(3) No person shall operate a boat at a speed in excess of a "Slow — No Wake" maximum 5 MPH speed on the following waters:

(a) Cedar Island lagoon;

(b) From the north point of the eastern spit of Cedar Island 100 yards due north and thence due west to the shore line;

(c) Within 200 feet of a designated public launching ramp and/or marked swimming area;

(d) Within 200 feet of shore adjacent to George Rogers Park (Lake Oswego), from the southern bank of Sucker Creek north along the west bank of the Willamette, to a point 200 yards north of the boat ramp, as posted;

(e) From the I-5 Boones Bridge west approximately 1,700 feet to the Railroad Bridge.

(4) No person shall operate a personal watercraft in continuous operation on the Willamette River between Hog Island and the Union Pacific Railroad Bridge during the period from May 1 through September 30, except to transit through this zone.

(5) On the Willamette River from the Hwy 219 Bridge at RM 48.5 to the upper end of Willow Island at RM 31.5, the following rules apply:

(a) No person shall operate a motorboat at a speed in excess of a "Slow — No Wake" maximum 5 mph speed within 100 feet of private

docks, boathouses or moorages legally permitted by the Oregon Department of State Lands.

(b) No person shall use wake-enhancing devices, including ballast tanks, wedges or hydrofoils or other mechanical devices, or un-even loading of persons or gear, to artificially operate bow-high.

(c) Effective 12:01 am, May 1, 2014 and ending October 31, 2014, 11:59 pm, the use of wake-enhancing devices from the Hwy 219 Bridge at RM 48.5 to RM 47 are allowed.

Stat. Auth.: ORS 830
Stats. Implemented: ORS 830.110 & 830.175
Hist.: MB 26, f. 7-20-64; MB 80, f. & ef. 4-19-77; MB 83, f. & ef. 4-22-77; Renumbered from 250-020-0142; MB 9-1982, f. 10-13-82, ef. 10-15-82; MB 6-1986, f. & ef. 5-23-86; MB 1-1987, f. & ef. 2-4-87; MB 13-1987, f. & ef. 6-15-87; MB 3-1996, f. & cert. ef. 2-22-96; OSMB 5-2000, f. & cert. ef. 10-30-00; OSMB 5-2007(Temp), f. & cert. ef. 6-18-07 thru 12-13-07; Administrative correction 12-20-07; OSMB 5-2008, f. & cert. ef. 7-11-08; OSMB 9-2008, f. 10-22-08, cert. ef. 1-1-09; OSMB 3-2014, f. & cert. ef. 1-15-14

250-020-0385
Boat Operations in Yamhill and Marion Counties

(1) No person shall operate a motorboat in excess of 5 MPH during July and August between river miles 44.5 and 45.0, as marked during the hours of 7–10 p.m. Thursdays through Sundays, during evenings on which the historic Champoeg Pageant is performed.

(2) On the Willamette River from the Hwy 219 Bridge at RM 48.5 to the upper end of Willow Island at RM 31.5, the following rules apply:

(a) No person shall operate a motorboat at a speed in excess of a "Slow-No-Wake" maximum 5 mph speed within 100 feet of private docks, boathouses or moorages legally permitted by the Oregon Department of State Lands.

(b) No person shall use wake-enhancing devices, including ballast tanks, wedges or hydrofoils or other mechanical devices, or un-even loading of persons or gear, to artificially operate bow-high.

(c) Effective 12:01 am, May 1, 2014 and ending October 31, 2014, 11:59 pm, the use of wake-enhancing devices from the Hwy 219 Bridge at RM 48.5 to RM 47 are allowed.

Stat. Auth.: ORS 830
Stats. Implemented: ORS 830.110 & 830.175
Hist.: MB 9-1987, f. 4-20-87, ef. 5-1-87; OSMB 9-2008, f. 10-22-08, cert. ef. 1-1-09; OSMB 3-2014, f. & cert. ef. 1-15-14

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Rule Caption: Amend Guide Advisory Committee membership rules and maintain Columbia River reciprocity
Adm. Order No.: OSMB 4-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14
Notice Publication Date: 12-1-2013
Rules Adopted: 250-016-0090
Rules Amended: 250-016-0080
Subject: This rule established a new process of Guide Advisory Committee membership appointment and maintained reciprocal operations on the Columbia River with the state of Washington in compliance with 2013 Oregon Legislative action, HB 2039.
Rules Coordinator: June LeTarte—(503) 378-2617

250-016-0080
Reciprocity Provisions for Outfitters and Guides on the lower Columbia River downstream of the bridge at Longview — Rainier

(1) The purpose of this rule is to give outfitters and guides operating on the lower Columbia River downstream of the Lewis and Clark Bridge at Longview — Rainier the opportunity to share in the reciprocity between Oregon and Washington regarding the licensing of charter vessels. Reciprocity avoids the conflict, confusion and difficulty of attempting to find the exact location of the state boundary in or on the waters of the Columbia River downstream of the bridge at Longview — Rainier while operating on the lower Columbia River.

(2) ORS 830.435(2) allows persons with a license or registration issued by the State of Washington to engage in the business of carrying passengers for hire for angling, sightseeing or other recreational purposes in Oregon ocean waters north of Cape Falcon or in the Columbia River as long as the State of Washington maintains provisions that allow vessels with an Oregon charter guide registration to engage in these activities in Washington ocean waters south of Leadbetter Point and in the Columbia River.

(3) The Revised Code of Washington RCW 77.65.010(3) provides authority for reciprocity between Washington charter boat licenses and equivalent Oregon licenses on the Columbia River, if the director of the Washington Department of Fish and Wildlife identifies what Oregon licenses are equivalent to a Washington charter boat license, and if Oregon recognizes as valid the equivalent Washington license.

(4) ORS 704.025(1) provides that the State Marine Board may adopt rules that exempt persons possessing a valid Washington license, permit or registration from the outfitter and guide registration required under Chapter 704, if the Board determines the license, permit or registration requirements of Washington are comparable to those of Oregon. Washington has decided to grant reciprocity to Oregon Ocean Charter boats on the lower Columbia River (WAC 220-20-005).

(5) The Marine Board finds that a Washington charter license issued under RCW 77.65.150 is comparable to an Oregon Ocean Charter license and a charter guide registration for the carrying of passengers for hire for angling purposes on the lower Columbia River downstream of the Lewis and Clark bridge at Longview-Rainier.

(6) The reciprocity provisions of this rule, and those of the State of Washington, do not authorize the launching, pick-up or discharge of passengers for any purpose in a state other than the state where the outfitter and guide is registered or charter vessel is licensed.

Stat. Auth.: ORS 830.110 & 830.435
Stats. Implemented: ORS 704.025
Hist.: OSMB 15-2011, f. & cert. ef. 11-1-11; OSMB 4-2014, f. & cert. ef. 1-15-14

250-016-0090
Guide Advisory Committee; Charter Representation

(1) The Guide Advisory Committee (GAC) shall be composed of eight members from seven active organizations that represent or include licensed outfitters and guides.

(2) Two GAC members shall be from the organization of outfitters and guides with the most documented members active at the time of appointment.

(3) An active organization is one that:

(a) Convened and recorded at least one meeting of the general membership in the previous 12 month period;

(b) Has a verifiable roster of members that includes currently registered outfitters and guides; and

(c) Has a charter or bylaws by which it conducts its regular business.

(4) Members shall represent outfitters and guides but do not need to be a currently licensed outfitter and guide.

(5) GAC members shall serve no more than two consecutive four-year terms.

(6) Vacancies shall be filled through a process described by a GAC charter agreement and will include a process to limit annual turnover to less than half the GAC.

(7) One of the three public members selected by the Board for the GAC may represent charter boats as defined in ORS 830.430.

(8) The GAC will be chaired by a non-voting employee of the Oregon State Marine Board.

(9) The GAC will have no fewer than two meetings annually; timing will be determined through GAC charter agreement.

Stat. Auth.: ORS 830.110, 830.435, 830.430 & 830.440
Stats. Implemented: ORS 704.525
Hist.: OSMB 4-2014, f. & cert. ef. 1-15-14

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Rule Caption: Amend Ocean Charter Vessel License requirements, update definitions and eliminate duplicity with statutory language.
Adm. Order No.: OSMB 5-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14
Notice Publication Date: 12-1-2013
Rules Adopted: 250-015-0035
Rules Amended: 250-015-0001, 250-015-0002, 250-015-0005, 250-015-0006, 250-015-0008, 250-015-0010, 250-015-0022, 250-015-0026
Rules Repealed: 250-015-0011, 250-015-0015, 250-015-0016, 250-015-0017, 250-015-0019, 250-015-0020, 250-015-0021, 250-015-0023, 250-015-0024, 250-015-0025, 250-015-0027, 250-015-0028, 250-015-0029, 250-015-0031, 250-015-0032, 250-015-0033
Subject: The rule amendments updated definitions, eliminated statutory language duplicity, removed state-specific carriage requirements and established consistency with US Coast Guard license requirements in compliance with the 2013 Oregon Legislative action, Senate Bill 25
Rules Coordinator: June LeTarte—(503) 378-2617

250-015-0001
Definitions

As used in this Division:

(1) "Approved" means those items accepted and formally approved for use by the U.S. Coast Guard.

(2) "Inland Charter Boat" means a vessel used in the business of carrying passengers for hire for angling, sightseeing or other recreational purposes solely on state waters.

(3) "Open Boat(s)" means motorboats with engine and fuel tank compartments and other spaces so constructed as to be open to the atmosphere thereby preventing entrapment of flammable gases.

(4) "Passenger Vessel" has the meaning prescribed in Title 46.70.10-1 of the Code of Federal Regulations (CFR), effective January 1, 2014.

(5) "Small Passenger Vessel" has the meaning prescribed in Title 46.170.055(y) of the Code of Federal Regulations (CFR), effective January 1, 2014.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460
Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 4-2008(Temp), f. & cert. ef. 5-7-08 thru 10-31-08; Administrative correction 11-18-08; OSMB 5-2014, f. & cert. ef. 1-15-14

250-015-0002
Applicability

(1) This division is applicable to all charter boats, carrying passengers for hire, on waters of this state.

(2) The rules in this Division are in addition to and not in lieu of any other applicable federal laws or regulations.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460
Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 5-2014, f. & cert. ef. 1-15-14

250-015-0005
License Application and Fees

(1) An owner shall make application to the Board by completing and signing the Charter Boat License application as provided by the Board.

(2) The applicant must certify in the space provided that the boat complies with the equipment requirements established by the Board.

(3) The completed application must be accompanied by copies of:

(a) The current U.S. Coast Guard "Certificate of Inspection" (if an inspected boat); or

(b) Documents prescribed in OAR 250-015-0035.

(4) The charter boat operator must be in possession of a valid USCG Operators License appropriate for the area of operation.

(5) Upon approval of the application a charter boat license, decal and validation sticker shall be provided to the applicant:

(a) The Oregon charter boat license issued shall identify the applicant, the boat, whether or not the boat operates within 20 or less miles from shore, the license expiration and such other items as deemed appropriate by the Board. It shall be carried on board and made available upon demand of a peace officer;

(b) The charter boat decals shall be of such size and color as designated by the Board and shall be displayed in any visually unobstructed location on the boat's port and starboard cabin sides or windows, or in the case of an open boat, at or near the operator's position, port and starboard, in as highly visible a location as possible. The validation sticker shall be affixed to this decal in the space provided.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460
Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 5-2014, f. & cert. ef. 1-15-14

250-015-0006
Reciprocity Provisions for Charter Boats on the Columbia River

(1) The purpose of this rule is to implement reciprocity between Oregon and Washington regarding the licensing of charter boats on the Columbia River downstream of the bridge at Longview, Washington. Reciprocity avoids the conflict, confusion and difficulty of attempting to find the exact location of the state boundary in or on the waters of the Columbia River when carrying passengers for hire for angling, sightseeing or other recreational purposes on licensed charter boats.

(2) The reciprocity provisions of this rule and the reciprocity provisions adopted by the State of Washington, do not authorize the launching, pick-up or discharge of passengers for any purpose in a state other than the state where the charter boat is licensed.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 704.025 & 830.435
Hist.: OSMB 3-2007, f. & cert. ef. 3-21-07; OSMB 5-2014, f. & cert. ef. 1-15-14

250-015-0008
License Transfer, Cancellation or Suspension

(1) When a licensed charter boat is sold or otherwise transferred to new ownership the former owner(s) must notify the Board within 15 days of such ownership change by completing the license transfer portion of the charter boat license and submitting it to the Board with the application.

(2) The license transfer portion shall contain such information as is needed to determine whether the valid charter boat license:

(a) Is transferred to the new owner upon sale or transfer of the boat;

(b) Remained with the former owner and will be assigned to a replacement boat; and

(c) The identifying number of such replacement boat.

(3) It shall be the responsibility of the former owner to remove or have removed the assigned charter boat license decals and validation stickers when the license is not transferred with the boat.

(4) Upon determination of the license disposition a new or replacement license will be issued to the appropriate licensee.

(5) A charter boat license may be suspended when a licensee fails to maintain, in full force and effect, the required liability insurance.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460
Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 5-2014, f. & cert. ef. 1-15-14

250-015-0010
Equipment Requirements

(1) The following Titles and Parts of the Code of Federal Regulations (CFR), that are in effect on January 1, 2014, are by this reference hereby adopted and made part of this rule Title 46 CFR Parts 15.401; Title 46 CFR Parts 25.25-1, 25.25 -5, 25.30-10(d), 25.30-20(a), 25.35-1 & 25.40; Title 46 CFR Part 26.20-1Title 46 CFR Part 130.330; Title 46 CFR Part 160.054-4; Title 46 CFR Parts 180.15, 180.64 & 180.70; Title 46 CFR Parts 182.520, [182.520(a) & 180] 182.530; Title 46 CFR Parts 184.300, 184.402, 184.404 & 184.410; Title 47 CFR Parts 80.905(a)(1) & (2), 80.933(b) & 80.1051.

(2) Specific safety equipment requirements are dependent upon a vessel's operational distance from shore. All required equipment shall be in proper working order. The Code of Federal Regulations is available online.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460
Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 3-2005, f. & cert, ef, 1-24-05; OSMB 5-2014, f. & cert. ef. 1-15-14

250-015-0022
Navigation Equipment

Each vessel shall have installed a RADAR or a GLOBAL POSITIONING SYSTEM (GPS) navigation system. It shall be capable of providing the operator with rapid, reliable vessel positioning information. Portable or hand-held GPS is allowable on uninspected vessels less than 26 feet of open construction as an alternative means of compliance.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.450
Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; MB 5-1994, f. & cert. ef. 4-28-94; OSMB 5-2014, f. & cert. ef. 1-15-14

250-015-0026
Light/Smoke Flares

Vessels operating in ocean or coastal waters and bays/rivers, with an opening to the seas of 2 miles or more, are required to carry light and or smoke flares as follows:

(1) One electronic distress light, or 3 approved flares; and

(2) One distress flag or 3 approved flares or 3 approved smoke signals.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460
Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05; OSMB 5-2014, f. & cert. ef. 1-15-14

250-015-0035
Charter Boats Operating on Sole State Waters

(1) A Charter boat may not be operated on sole state waters unless the vessel is:

(a) Licensed by the US Coast Guard and is operated within the specifications of the vessel's Certificate of Inspection; or

(b) Licensed as an Inland Charter Boat by the Oregon State Marine Board.

(c) Operated by a USCG-licensed mariner with an Operator's License appropriate to the type of operation conducted.

(2) An Inland Charter License will not be issued until the following documents, in addition to the charter boat application documents, have been provided and approved by the Marine Board:

(a) A Marine Survey conducted by a person certified by the National Association of Marine Surveyors (NAMS) or accredited by the Society of Marine Surveyors (SAMS).

(A) The Marine Survey must be complete as per NAMS or SAMS professional standards.

(B) Marine Survey will be completed out of water except by special exemption of the Board and must include a sea trial.

(C) All issues, problems, concerns or recommendations noted in the Marine Survey must be addressed to the satisfaction of the Surveyor before the Marine Board can approve the Marine Survey.

(D) Marine Survey report shall include internal and external pictures of the vessel, its machinery and furnishings.

(b) A stability test and capacity designation signed by a certified Naval Architect who is a registered professional engineer, except as provided in paragraphs (2)(b)(A) and (2)(b)(B) of this section.

(A) The stability test may be dispensed with, or a deadweight survey may be substituted for the stability test, if the Marine Board has a record of, or is provided with, the approved results of a stability test of a sister vessel.

(B) The stability test of a vessel may be dispensed with if the Marine Surveyor determines that an accurate estimate of the vessel's lightweight characteristics can be made and that locating the precise position of the vessel's vertical center of gravity is not necessary to ensure that the vessel has adequate stability in all probable loading conditions.

(3) The Marine Survey for an Inland Charter License must be successfully completed every three years before a new charter license will be issued.

(4) A dock-side inspection will be conducted annually by a Marine Board designated law enforcement officer to ensure the vessel complies with life jacket, sound-making device, fire extinguisher and vessel lighting requirements.

(5) Before getting underway on a voyage or as soon as practicable thereafter, the operator of an Inland Charter shall ensure that suitable public announcements are made informing all passengers of the following:

(a) The location of emergency exits, survival craft embarkation areas, and ring life buoys;

(b) The stowage location(s) of life jackets;

(c) The proper method of donning and adjusting life jackets of the type(s) carried on the vessel including a demonstration of the proper donning of a life jacket;

(d) The location of the instruction placards for life jackets and other lifesaving devices; and

(e) That all passengers will be required to don life jackets when possible hazardous conditions exist as directed by the operator.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460
Hist.: OSMB 5-2014, f. & cert. ef. 1-15-14

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Oregon State Treasury
Chapter 170

Rule Caption: Tightens language assuring repayment by school districts under Oregon School Bond Guaranty Program
Adm. Order No.: OST 1-2014(Temp)
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14 thru 7-14-14
Notice Publication Date:
Rules Amended: 170-063-0000
Subject: The proposed rule tightens the qualifications and clarifies various aspects of state aid intercept related to the OSBG program for school and community college district General Obligation bonds, including amendments that:

(1) Tighten procedures surrounding qualification for the program for schools and community college districts. In the future, a district's combined projected future annual guaranteed debt service cannot exceed 80% of its annual State aid unless it provides additional collateral as security or bond insurance to reimburse the State Treasury for any debt service payments made on its behalf.

(2) Require districts to affirmatively pledge their taxing power and full faith and credit to repay Oregon State Treasury for any payments made on the district's behalf.

(3) Modify filing dates for submission of materials to Oregon State Treasury (OST) in order to allow a thorough financial analysis prior to receiving Oregon School Bond Guaranty qualification and guaranty confirmation.

Rules Coordinator: Dan McNally—(503) 373-1028

170-063-0000
Oregon School Bond Guaranty Program

(1) Definitions. For purposes of this rule, the following definitions shall apply:

(a) "OST" means the Office of the State Treasurer.

(b) The "Act" means the Oregon School Bond Guaranty Act set forth in ORS 328.321 to 328.356.

(c) "Authorized District Official" means the chairperson of the board, the superintendent, president, or business administrator for the School District, or other designee of the board.

(d) "Business Day" means any day on which the offices of the State Treasurer are open to the public for the conduct of substantially all of the powers and duties of the agency. Saturdays, Sundays, or state holidays or any other day recognized by state government as a holiday or a day on which the State Treasurer's offices are officially closed to the public shall not be considered a Business Day.

(e) "Certificate of Qualification" means a letter from OST pursuant to Section 4 of the Act.

(f) "Determination of Ineligibility" means a letter from OST pursuant to Section 5 of the Act.

(g) "Guaranty Program" means the school bond guaranty program established by the Act.

(h) "Nationally Recognized Bond Counsel Firm" means a bond counsel firm listed in the most recent publication of The Bond Buyer's Municipal Market Place.

(i) "Qualified Bonds" means bonds that are originally issued as tax credit bonds under the Internal Revenue Code and any bonds resulting from a conversion of such tax credit bonds to an interest bearing format over and above interest payments that may be due and payable under the original terms of such tax credit bonds.

(j) "Qualified Paying Agent" means a paying agent acceptable to OST who agrees to comply with the applicable requirements of the Act and provides a letter to OST acknowledging as much.

(k) "School District" or "District" means a common or union high school district, an education service district, or a community college district.

(l) Terms not otherwise specifically defined herein shall have the meanings given in the Act.

(2) Request for Certificate of Qualification to Participate in Guaranty Program. School Districts may request a Certificate of Qualification at any time during the year by filing a Request for Certificate of Qualification. Such requests, however, must be submitted no less than 15 business days prior to sale of the bonds for which the guaranty, if granted, will apply. Requests, and all other written communications pursuant to the Guaranty Program, shall be submitted to OST as provided in OAR 170-055-0001(4), and shall include:

(a) The name, county, and district number (if applicable) of the requesting School District;

(b) The name of the business administrator or other contact person for the requesting School District;

(c) The mailing address, phone number, fax number, and e-mail address (if applicable) of the requesting School District;

(d) A statement of whether any of the School District's previously issued debt is covered by the Guaranty Program;

(e) A copy of the requesting School District's most recent audited financial statements, audit opinion, and management letter; and a statement by an Authorized District Official that they have not been contacted and are not participating in any investigation by an oversight agency or, alternatively, documentation of any conclusions reached by such agency regarding their activities.

(f) A listing of outstanding debt and associated debt service schedules, for debt issued by the School District since the date of its most recent financial audit;

(g) A certificate, signed by an Authorized District Official:

(A) Stating whether the requesting School District has ever failed to pay debt service on any of its bonds, certificates of participation, or other financial obligations when due, and explaining the circumstances and resolution of any such defaults or failures;

(B) Describing current lawsuits against the School District challenging the ability or authority of the School District to issue bonds or that may

materially affect the ability of the School District to make scheduled debt service payments on its bonds when due;

(C) Stating that the requesting School District has filed its current budget document(s) with the Oregon Department of Education, and in accordance with Oregon Local Budget Law;

(D) Stating the amount of debt the School District is authorized by law to incur, and stating that the requesting School District is within this limit;

(E) Describing the possible repayment structure of all bonds the School District may issue during the period of the requested Certificate of Qualification, including any Qualified Bonds. Such repayment structure shall cover the estimated debt service schedule and, for Qualified Bonds, include any scheduled deposits to a sinking fund and the interest rate to which such bonds may be converted, if they may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of such bonds;

(F) Attesting to the accuracy and completeness of the materials provided; and

(G) Stating that the School District has engaged a Qualified Paying Agent, who, under the terms of the agreement between the two parties (the "Paying Agent Agreement"), has agreed to provide the School District with a written notification by January 15 of each year of the required debt service amounts (including any scheduled deposits to a sinking fund for Qualified Bonds) which are due in the then-current fiscal year and the following two fiscal years, such that the School District may have the proper information to levy adequate amounts for such payments coming due in the following fiscal years.

For example, a notification provided by January 15, 2010 shall include information on debt service due in the current FY 2010 year (July 1, 2009 through June 30, 2010), the FY 2011 year (July 1, 2010 through June 30, 2011), and FY 2012 year (July 1, 2011 through June 30, 2012).

(h) A non-refundable application processing fee as set forth in OAR 170-061-0015;

(i) An authorizing resolution of the School District that expressly authorizes the District to participate in the Guaranty Program and that affirmatively pledges the taxing power and full faith and credit of the District to payment of any payments made by the State Treasurer pursuant to ORS 328.341; and

(j) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program.

(3) Review of Request for Certificate of Qualification. Upon receipt of a request for a Certificate of Qualification, OST shall determine whether all items listed in section (2) of this rule have been provided, whether such items are current, and whether such items demonstrate that the requesting School District is likely to be able to repay any amounts paid by OST under ORS 328.341. To make its determination, OST may request additional information from the School District, as well as from any other person or entity that collects information pertaining to the financial well-being of the requesting School District.

(a) Any District submitting debt service schedules under Section 2 that indicate the amount of periodic debt service paid, or projected to be paid, by the District on all of its outstanding debt, including but not limited to the Oregon School Bond Guarantee program, fund diversion agreements for pension bonds, other state loans, and any additional debt anticipated at the time its request is submitted to OST, is equal to eighty (80) percent or more of the amount of funds transferred to, or projected to be transferred to, the District by the State of Oregon in any fiscal year that the requested guaranty would be in effect, will be considered a repayment risk by OST and OST will require the requesting District to pledge revenues or property to secure its repayment obligation to the State of Oregon or to purchase bond insurance or another form of credit enhancement acceptable to OST as a condition to issuance of a Certificate of Qualification;

(b) If after its review, OST determines that a District does not fall within the parameters set forth in paragraph (a) of this section but, due to other factors, the fiscal stability of the District may not be sufficiently strong to assure repayment to the State of Oregon of any amounts paid by OST under ORS 328.341, OST may require the requesting District to pledge additional revenues or property to secure its repayment obligation to the State of Oregon or to purchase bond insurance or another form of credit enhancement acceptable to OST as a condition to issuance of a Certificate of Qualification.

(4) Issuance of Certificate of Qualification. Upon determining that a School District is eligible to participate in the Guaranty Program, OST shall issue a Certificate of Qualification to the School District. A Certificate of Qualification will not apply to Qualified Bonds unless the School District indicated in its request for a Certificate of Qualification that it planned to issue Qualified Bonds under the Certificate of Qualification. The Certificate of Qualification:

(a) Shall evidence the School District's immediate qualification for the Guaranty Program contingent upon compliance with section (5) and all other sections of this rule for each bond issue contemplated for guaranty under the Act;

(b) Be valid for one year from the date of its issuance;

(c) May be applied to any or all general obligation bonds or general obligation refunding bonds issued by the School District during such one-year period that comply with this rule and the Act, except Qualified Bonds for which specific approval must be noted as set forth in OAR 170-061-0015(4)(d). A bond shall be considered issued as of its dated date.

(d) Will specifically state whether it applies to Qualified Bonds issued by the School District during the period of its validity.

(5) A School District that has received a Certificate of Qualification, but did not request Qualified Bonds to be included under the Certificate of Qualification, may submit an amended request at least one month prior to the scheduled issuance date for any Qualified Bonds requesting an amended Certificate of Qualification that specifically covers the Qualified Bonds, which request shall include the information required for such bonds in OAR 170-063-0000(2). OST shall act upon such request within five business days.

(6) School Districts to Provide Information Specific to Each Bond Issued Under the Program. A School District which has received a Certificate of Qualification may, while the Certificate of Qualification is in effect, obtain the state's guaranty of a series of its bonds under the Guaranty Program, by:

(a) Fully complying with Oregon Administrative Rule 170-61-0000 (Notice and Reporting Requirements by Public Bodies When Issuing Bonds), including providing notification on MDAC Form 1 to OST at least 10 business days prior to the marketing of any bonds referencing participation in the Guaranty Program, for the bonds which will be guaranteed (this may be submitted simultaneously with information described in section (2) of this rule);

(b) Submitting the following documents to OST at least five business days prior to the closing of the bonds to which the guaranty will apply:

(A) A copy of a resolution adopted by the board or governing body of the School District, authorizing the School District to issue the bonds and participate in the Guaranty Program;

(B) An opinion from a Nationally Recognized Bond Counsel Firm that the bonds, when issued, will be general obligation bonds as defined in the Act, and will be valid and binding obligations of the issuer;

(C) A certificate stating that no litigation is pending or threatened against the School District, questioning the authority of the School District to issue the bonds or levy taxes to pay the bonds;

(D) A specific statement as to whether any of the bonds will be Qualified Bonds; and

(E) Any additional materials that may be required by OST in support of the request for participation in the Guaranty Program, including but not limited to, any information or agreement requested by OST with respect to creation of sufficient debt service funds, assurance that any bond insurance, pledge of security or other credit enhancement required for issuance of the Certificate remains in effect and available, or other repayment mechanisms to pay any Qualified Bonds or to repay OST when payment is due.

(7) Letter of Confirmation. Not later than the day on which the bonds are scheduled to close, OST shall, if the Certificate of Qualification is in effect and the School District has complied with Section (5)(a) and (5)(b) of this rule, issue a letter of confirmation identifying the series of bonds to which the guaranty shall apply, and stating that the guaranty shall apply to that series of bonds if the series of bonds closes within 15 business days after the date of the letter, and there is filed with bond counsel a certificate, signed by an Authorized District Official and dated the date of the closing, stating that no litigation is pending or threatened against the School District which questions the authority of the District to issue the bonds or levy taxes to pay the bonds. If the series of bonds described in the letter of confirmation is closed within that 15 business day period, and the non-litigation certificate is filed with bond counsel as required by this Section, the series of bonds shall be guaranteed under the Guaranty Program, and the guarantee shall not be affected by any denial or revocation pursuant to Section 9 of this rule.

(8) Guaranty Fees. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee as set forth in OAR 170-061-0015.

(9) Ratings. OST will undertake to have the Oregon School Bond Guaranty Program rated by one or more of the major debt rating agencies.

School Districts may contact the Debt Management Division of OST to determine which agencies have rated the program. School Districts proposing to issue bonds under the Guaranty Program may:

(a) Engage, at their own expense, one or more of the rating agencies to apply the rating of the Guaranty Program to their bonds; and

(b) At their discretion, and at their own expense, choose to obtain an underlying rating on the bonds.

(10) Denial or Revocation of Qualification/Determination of Ineligibility. OST may deny a School District's request for a Certificate of Qualification, or revoke a previously issued Certificate of Qualification, and issue a Determination of Ineligibility in accordance with the Act, if:

(a) The School District fails to meet the provisions outlined in the Act or any of the requirements outlined in this rule;

(b) The State has ever paid, pursuant to the Guaranty Program, any principal of or interest on any of the School District's bonds; or

(c) OST has reason to question the financial integrity of the School District, including but not limited to, whether sufficient funds exist to repay any outstanding Qualified Bonds when payment is due or to repay to the State of Oregon for any payments made by OST under ORS 328.341.

(11) Guaranty Final Upon Issuance. Pursuant to ORS 328.336, issuance of a Determination of Ineligibility shall not affect the validity of the state's guaranty of any outstanding bonds issued under a letter of confirmation pursuant to Section (6) of this rule.

(12) Reference to Guaranty. School Districts with a valid Certificate of Qualification, and that have complied with section (5) and all other sections of this rule, shall evidence the State's guaranty of the School District's bonds by:

(a) Referencing the guaranty on the cover of the preliminary official statement(s) and official statement(s), or other offering document(s), for the applicable bond(s);

(b) Referencing the guaranty on the face of the School District's applicable bond(s); and

(c) Including language describing the guaranty (to be provided by OST) in the School District's preliminary official statement(s) and official statement(s), or any other offering document(s), for the applicable bond(s). Language supplied by OST must be used in its entirety and may not be modified or amended.

(13) School Districts to Report Changes Affecting Qualification. School Districts who have had bonds guaranteed under the Guaranty Program shall promptly notify OST if at any time there are material changes or occurrences that might affect the School District's eligibility to qualify or maintain its qualification to participate in the Guaranty Program, including but not limited to:

(a) Failure to adopt a resolution or ordinance that formally adopts the budget, sets appropriations, and if needed, levies property taxes in accordance with Oregon local budget law;

(b) Failure to pay debt service on any outstanding bond, certificate of participation, or similar financial obligation; or

(c) Failure to establish or levy for debt service scheduled (including any sinking fund deposits) for Qualified Bonds or a material change in any other repayment mechanism for Qualified Bonds.

(14) Notice to OST of debt service payments. School Districts who are unable to transfer scheduled debt service payments to the paying agent 15 days prior to the payment date and Qualified Paying Agents who have not received sufficient funds 10 days prior to the payment date, shall provide notice to OST as provided in OAR 170-055-0001(4) and by telephone to (503) 378-4930 or email to DMD@ost.state.or.us.

(15) Notice to OST of sinking fund deposits. School Districts shall provide written verification that they have made any required sinking fund deposits for Qualified Bonds by May 1 of each year to their Qualified Paying Agents and such Qualified Paying Agent shall promptly notify OST if they do not receive such annual verification.

(16) Repayment. Respective School Districts are responsible for paying all of their obligations guaranteed by the State under the Guaranty Program and for the advance funding of any debt service fund established for such obligations. Any funds paid by the State on behalf of a School District under the Guaranty Program shall be recovered by OST in a manner consistent with the Act.

(17) Reporting on Debt Service Fund. Any School District with outstanding Qualified Bonds guaranteed under the Guaranty Program shall report to the OST at least annually the amount of moneys paid into the School District's debt service fund to pay the Qualified Bonds together with a calculation demonstrating that such advance payments are scheduled to be fully funded and sufficient to repay the Qualified Bonds in full when payment is due. To the extent moneys are not scheduled to be paid into the debt service fund on an annual basis, the School District in its notification shall demonstrate that current balances in the debt service fund, along with any future deposits, will be sufficient to repay the Qualified Bonds in full when due. School Districts with outstanding Qualified Bonds that are subject to conversion to taxable interest bearing bonds and any Qualified Paying Agents for such Qualified Bonds shall promptly notify OST of such conversion as provided in OAR-170-055-0001(4) and by telephone to (503) 378-4930 or email to DMD@ost.state.or.us.

(18) Interest. OST will charge interest in connection with the recovery of funds under the Act. Any interest charged will be in a manner consistent with the Act.

(19) Penalty. In addition to charging interest, OST may impose a penalty on a School District for which the State made a payment under the Guaranty Program. Any penalty imposed will be consistent with the Act.

(20) Exceptions. OST may waive any or all provisions of this rule to the extent provided by law.

(21) This rule shall be effective on the date that is adopted by OST and filed with the Secretary of State and its requirements shall apply to any Certificates of Qualification that are in effect on such date.

Stat. Auth.: ORS 328.321 - 328.356
Stats. Implemented: ORS 328.321 - 328.356 & 328.331
Hist.: OST 3-1998(Temp), f. 12-14-98, cert. ef. 1-2-99 thru 6-30-99; OST 2-1999, f. 6-22-99, cert. ef. 7-1-99; OST 1-2000(Temp) f. 10-31-00, cert. ef. 10-31-00 thru 4-27-01, Administrative correction 6-7-01; OST 7-2008, f. & cert. ef. 12-29-08; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010 f. & cert. ef. 1-15-10; OST 1-2014(Temp), f. & cert. ef. 1-15-14 thru 7-14-14

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Oregon University System, Oregon State University
Chapter 576

Rule Caption: Sets fees/charges at Oregon State University for the balance of fiscal year 2013-2014.
Adm. Order No.: OSU 5-2013
Filed with Sec. of State: 12-18-2013
Certified to be Effective: 12-18-13
Notice Publication Date: 11-1-2013
Rules Amended: 576-010-0000
Subject: The rule updates fees and charges for designated services at Oregon State University for January 1, 2014 through June 30, 2014. The rule states: "The University hereby adopts by reference a list of fees and charges for January 1, 2014 – June 30, 2014. This List of Fees and Charges is available at the Oregon State University Valley Library, and is hereby incorporated by reference in the rule."
Rules Coordinator: Beth Giddens—(541) 737-2449

576-010-0000
Fees and Charges

The University hereby adopts by reference a list of fees and charges for January 1, 2014–June 30, 2014. This List of Fees and Charges is available at the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.

Stat. Auth.: ORS 351.070, 352.360 & OAR 580-040-0010
Stats. Implemented: ORS 351.070 & 352.360
Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997; f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 1-2005, f. 6-13-05, cert. ef. 7-1-05; OSU 1-2006, f. 6-23-06, cert. ef. 7-1-06; OSU 1-2007, f. 6-18-07, cert. ef. 7-1-07; OSU 3-2008, f. 6-27-08, cert. ef. 7-1-08; OSU 2-2009, f. 6-16-09, cert. ef. 7-1-09; OSU 1-2010, f. 6-30-10, cert. ef. 7-1-10; OSU 1-2011, f. 6-13-11, cert. ef. 7-1-11; OSU 8-2011, f. & cert. ef. 12-27-11; OSU 3-2012, f. 6-6-12, cert. ef. 7-1-12; OSU 7-2012, f. 12-24-12, cert. ef. 1-1-13; OSU 4-2013, f. 6-7-13, cert. ef. 7-1-13; OSU 5-2013, f. & cert. ef. 12-18-13

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Oregon Youth Authority
Chapter 416

Rule Caption: Amending youth offender foster care certification rules adding cleanliness standard, clarifying definitions, deleting procedural language.
Adm. Order No.: OYA 1-2014
Filed with Sec. of State: 1-15-2014
Certified to be Effective: 1-15-14

Notice Publication Date: 10-1-2013
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Subject: Amending youth offender foster care certification rules to clarify definitions, foster parent responsibilities, adding a cleanliness standard and requirement for CPR/first aid certification. Agency procedural language is deleted.
Rules Coordinator: Winifred Skinner—(503) 373-7570

416-530-0000
Purpose

(1) OYA seeks to ensure community safety, youth offender accountability and youth offender reformation by providing youth offender foster care as an integral part of its continuum of services. OYA provides foster care for youth offenders who are 12 years of age through the age of 24. These rules establish OYA foster care standards for:

(a) The certification and re-certification process for foster parents;

(b) The standards that foster parents must meet while providing youth offender foster care services under the OYA Foster Care Program; and

(c) The process by which a certification to maintain a youth offender foster home may be placed on inactive referral status, terminated, suspended, or revoked.

(2) These rules apply to applicants seeking OYA certification, certified foster parents and respite providers, and Private Child-caring Agency proctor parents unless otherwise specified.

Stat. Auth.: ORS 420A.025, 420.892
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0010
Definitions

The following definitions apply to terms used in OAR chapter 416, division 530.

(1) Applicant: A person who applies for youth offender foster home certification to operate and maintain a foster home for youth offenders.

(2) Case plan: A formal plan with prescribed interventions and documentation requirements and a tool to assist staff in managing cases, setting goals and reviewing youth offenders' interventions and progress.

(3) Certification process: The process of initial application or recertification to operate and maintain a youth offender foster home.

(4) Computerized criminal records check: The access and use of automated or manual files, or associated systems available to OYA as a criminal justice agency through the Law Enforcement Data Systems (LEDS) including online information from the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC), the Department of Human Services Child Welfare Information System (OR-Kids), and the National Law Enforcement Telecommunications System (NLETS).

(5) Criminal records check: The process used by OYA to conduct criminal records background checks on persons pursuant to these rules and OAR chapter 416, division 800, including computerized and fingerprint-based processes.

(6) Deadly weapon: Any instrument, article or substance specifically designed for, and presently capable of, causing death or serious physical injury.

(7) Denial: An action by OYA to deny youth offender foster home certification or re-certification.

(8) Discipline: A process by which foster parents and OYA sanction youth offenders for non-compliance with established rules of the foster home and conditions of probation or parole. Such sanctions assist youth offenders in developing the self-control and self-direction necessary to assume responsibilities, make appropriate daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(9) Domestic animals: Any of various animals domesticated so as to live and breed in a tame condition as household pets. Examples of domestic animals include but are not limited to dogs, cats, and horses.

(10) Foster care maintenance payment: A monthly payment to the foster parent to defray expenses such as the youth offender's room, board, clothing, allowance, personal incidentals, transportation, respite services, educational supplies, and other costs approved by OYA.

(11) Foster Home Certifier: The OYA staff member responsible for the recruitment, training, certification, support and supervision of OYA foster homes.

(12) Foster parent: A person certified by OYA who is unrelated to a youth offender by blood or marriage and demonstrates special competence to supervise youth offenders with serious social or behavioral maladaptive characteristics in a youth offender foster home setting.

(13) Frequent visitor: A person who regularly visits a foster home more than five hours a week when youth offenders placed in the foster home are present.

(14) Home study: An assessment, conducted prior to issuance of a Youth Offender Foster Home Certificate, to determine an applicant's ability and suitability to provide foster care services to youth offenders

(15) Inactive referral status: A temporary change in the terms of youth offender foster home certification that precludes new referrals of youth offenders to the home.

(16) Information required: All information requested by OYA, including information used to conduct criminal records checks.

(17) Juvenile Probation/Parole Officer (JPPO): The OYA case manager who works with the youth offender and the youth offender's family and the community while the youth offender is in OYA custody.

(18) Mechanical restraint: Any apparatus, device, or contraption applied or affixed to a youth offender to limit movement.

(19) Member of the household: Any person, other than a youth offender, who lives in the youth offender foster home, on the property where the youth offender foster home is located, is a frequent visitor to the foster home or who assists in the care provided to a youth offender.

(20) Multidisciplinary Team (MDT): A group of persons including, but not limited to, OYA staff, the youth offender's biological and foster family and service providers responsible for developing, reviewing and revising comprehensive case plans for youth offenders.

(21) Psychotropic medications: Medication prescribed with the intent to affect or alter thought processes, mood, or behavior, including but not limited to, anti-psychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(22) Records: Any information in written or electronic form, pictures, photographs, charts, graphs, recordings, or documents pertaining to a youth offender's case.

(23) Respite care: A temporary arrangement between a foster parent and an OYA-certified respite provider to allow the foster parent(s) time away from a youth offender.

(24) Respite provider: An individual, at least 21 years of age and certified by OYA, who temporarily assists with supervision of one or more youth offenders when the foster parent is not available or is spending time away from a youth offender.

(25) Revocation: An action taken by OYA to rescind a Youth Offender Foster Home Certificate based on non-compliance with statute, administrative rule or the Youth Offender Foster Home Agreement.

(26) Second-hand smoke: Smoke that is exhaled by a smoker, or originates from a tobacco product that a person is using to which a second person is exposed, and includes smoke from a cigarette, cigar, pipe, or other tobacco material.

(27) Structured supervision: Supervision and knowledge of the approved whereabouts of a youth offender by a certified foster parent while the youth offender engages in daily living activities or recreation.

(28) Suspension: A temporary withdrawal of a youth offender foster home certification by OYA pending determination of the foster parent's non-compliance with statute, administrative rule or the Youth Offender Foster Home Agreement.

(29) Termination: An action taken by OYA or the foster parent to terminate the Youth Offender Foster Home Agreement.

(30) Volunteer: Any person who is not a foster parent or member of the household and who assists youth offenders in the home with activities for no compensation and under foster parent supervision.

(31) Youth offender: A person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

(32) Youth offender foster home: A home in the community that is maintained and lived in by an OYA-certified foster parent who provides supervision, food, and lodging for a youth offender in that home.

(33) Youth Offender Foster Home Agreement: A written agreement between OYA and the foster parent stating mutual expectations of the parties.

(34) Youth Offender Foster Home Certificate: A certificate of approval, issued by OYA, granting approval to operate and maintain a youth offender foster home or provide respite care.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 15-2004, f. & cert. ef 11-12-04; OYA 5-2005, f. & cert. ef. 3-9-05; OYA 14-2005, f. & cert. ef. 6-13-05; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06; OYA 5-2006, f. & cert. ef. 3-20-06; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0020
Certification Process

(1) OYA seeks to recruit individuals who meet or exceed the qualifications described in these rules to provide foster care services to youth offenders. OYA further seeks to retain qualified foster parents who continue to provide an important component of the OYA service delivery system to youth offenders. In order to accomplish these objectives and to ensure that youth offenders receive services in a safe, respectful, rehabilitative, and positive atmosphere, OYA has developed a thorough certification process.

(2) The certification process is a partnership between the applicant or foster parent and OYA. The process allows for individuals interested in providing youth offender foster care services to ask questions about foster care standards, foster parent qualifications, foster home qualifications, and supervision of youth offenders and it allows OYA to assess the willingness, abilities, and suitability of applicants to provide such foster care services. The process also allows foster parents to review the prior year during the re-certification process and allows OYA to re-assess the foster parent's continued qualification, willingness and ability to provide services.

(3) The granting of a Youth Offender Foster Home Certificate is not a guarantee that youth offenders will be placed in the foster home.

(4) OYA has a responsibility to Oregonians to manage its resources within available funds. When the OYA Director or designee determines that funding for these resources is jeopardized or otherwise not available, the OYA Director may suspend recruitment of new foster home resources in areas where the availability of foster homes exceeds the need for placements.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0030
Application Process

Applicants for initial certification must:

(1) Complete and submit all forms required by OYA;

(2) Participate in home studies as required by OYA; and

(3) Provide all information required by OYA to verify compliance with these rules, including, but not limited to:

(a) Name(s), gender, address, birth date, social security number, and Oregon driver's license number of all applicants and members of the household;

(b) Names and addresses of at least four persons, three of whom are unrelated to the applicant, who have known the applicant for two years or more and who can attest to the applicant's ability to provide care and supervision to youth offenders. If applicants are applying for joint certification, each applicant must provide at least two different references unrelated to the applicant, who have known the applicant for two or more years, and who can attest to the applicant's ability to provide care and supervision to youth offenders;

(c) A statement as to whether the applicant or any member of the household has ever operated or currently is operating a licensed or certified care facility or foster home and reasons for the termination or closure of that license or certification;

(d) Documentation from the applicant and all members of the household regarding all criminal arrests, all charges, and all convictions including juvenile delinquency arrests, adjudications, and charges, the dates of offenses, and the resolution of those matters;

(e) Documentation from the applicant and all members of the household regarding all allegations or charges of abuse or neglect, with dates, locations, and resolutions of those matters;

(f) A statement fully disclosing all information or conditions which may disqualify the applicant or applicant's home from certification; and

(g) Proof of sufficient income to meet the needs and ensure the stability and financial security of the members of the household, independent of the foster care maintenance payment. OYA will request copies of pay stubs, W-2 forms, or recent tax returns as proof of income.

(4) Applicants must participate in a criminal records check process, as defined by these rules and OAR chapter 416, division 800.

(a) OYA requires a criminal records check, including fingerprints, for applicants and other members of the household 18 years of age and older.

(b) OYA requires a computerized criminal records check for members of the household 12 through 17 years of age.

(c) OYA may conduct criminal records checks anytime that OYA deems it necessary for the safety of youth offenders in the home.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0035
Application Process for Re-certification

A foster parent applying for re-certification must:

(1) Complete and submit all forms required by OYA;

(2) Provide information as requested by OYA to verify compliance with these rules;

(3) Participate in home studies as required by OYA;

(4) Provide documentation from the foster parent and all members of the household regarding all criminal arrests, all charges, and all convictions during the preceding year including juvenile delinquency arrests, adjudications, or charges, the dates of offenses, and the resolution of those matters;

(5) Provide documentation from the foster parent and all members of the household regarding all allegations or charges of abuse or neglect, with dates, locations, and resolutions of those matters;

(6) Provide proof of sufficient income to meet the needs and ensure the stability and financial security of the members of the household, independent of the foster care maintenance payment for the preceding year. OYA will request copies of pay stubs, W-2 forms, or recent tax returns as proof of income; and

(7) Participate in a criminal records check process, as defined by these rules and OAR chapter 416, division 800.

(a) OYA requires a criminal records check of all members of the household 18 years of age and older.

(b) The criminal records check of new members of the household must occur prior to the new member of the household establishing the foster home as a residence.

(c) OYA requires a computerized criminal records check for members of the household 12 through 17 years of age.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0040
Foster Parent Qualifications

Applicants must:

(1) Be at least 21 years of age;

(2) Meet the qualifications and standards described in these rules and OAR chapter 416, division 800;

(3) Certify in writing that the applicant meets the qualifications and standards described in these rules and OAR chapter 416, division 800 and has disclosed all potentially disqualifying information to OYA;

(4) Be a citizen or legal resident of the United States;

(5) Demonstrate the following personal qualifications:

(a) Be a responsible, stable, emotionally mature adult who exercises sound judgment and displays the capacity to meet the mental, physical and emotional needs of youth offenders placed in foster care.

(b) Understand the behaviors of youth offenders.

(c) Have knowledge and understanding of non-punitive discipline and ways of helping a youth offender build positive personal relationships, self-control, and self-esteem.

(d) Have respect for persons with differing values, lifestyles, philosophies, religious, and cultural identity and heritage.

(e) Be able to realistically evaluate which youth offenders they can accept, work with, and integrate into their family.

(f) Have supportive ties with family, friends, the neighborhood, and the community.

(g) Provide appropriate supervision to ensure community safety.

(6) Be physically and mentally able to perform the duties of foster care;

(a) OYA may require a medical statement from a physician verifying that the applicant or any member of the household is physically capable of supervising and caring for youth offenders.

(b) OYA may require the applicant to consent to the release of psychological, medical or physical, drug and alcohol, or other reports and eval-

uations to OYA for the consideration of the applicant's ability to supervise and care for youth offenders

(c) In the case of alcohol or substance abuse, the applicant must be able to provide evidence that the applicant has been substance-free and sober for at least two years prior to making application for certification.

(7) Be free from a professional or personal conflict of interest and unrelated by blood or marriage to youth offenders placed in their home. If the applicant is an OYA staff or works in a professional capacity which may contribute to a conflict of interest, the application and home study must be approved by the OYA Community Services Assistant Director, or designee; and

(8) Not have any documented incidents of abuse or neglect that resulted in a founded disposition by the Department of Human Services (DHS). OYA will conduct OR-Kids, checks at the time of certification and re-certification, at the time a foster home certified by another agency wishes to serve OYA youth offenders, and when OYA deems it necessary for the safety of youth offenders in the home.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef 11-12-04; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06; OYA 5-2006, f. & cert. ef. 3-20-06; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0050
Certification

(1) The selection of individuals to provide foster care services to youth offenders is based on a number of criteria, not the least of which is the criminal records check on each foster parent, foster parent applicant, and member of the household. Certain criminal or other records will automatically preclude any further certification steps.

(a) Such records include but are not limited to a founded disposition of child abuse or neglect documented in OR-Kids.

(b) Applicants denied foster care certification or recertification as a result of a criminal record check will be provided written notice and may request a contested case hearing described in OAR 416 division 800.

(2) OYA may consider other available information when selecting individuals to provide foster care services to youth offenders, including information collected from the application, reference checks, interview results, safety checks of the proposed foster home, and any other information including information about other members of the household. Applicants denied foster care certification or recertification will be provided with written notice and may request a contested case hearing as described in these rules.

(3) OYA will determine which applicants undergo a complete certification process and which applicants are certified based on how well each applicant meets the requirements set forth in these rules.

(4) OYA will review the application and supporting documentation to determine compliance with these rules before making a decision to grant or deny an application for certification or re-certification.

(5) In addition to the application information, OYA may contact other relevant sources, including, but not limited to, schools, employers, and other persons such as the applicant's adult children.

(6) OYA will make its decision regarding certification within 90 days of the receipt of the application and all supporting documentation. OYA will make its decision regarding re-certification prior to the expiration of the current certification. OYA will not review the application for certification or re-certification unless all materials have been submitted by the applicant and received by OYA.

(7) OYA will issue a certificate only after an applicant successfully completes the application and certification process and satisfies all requirements.

(8) Certificates must state:

(a) The period of time for which it is issued;

(b) The name of the foster parents or respite provider;

(c) The address of the residence; and

(d) The number of youth offenders the home is certified to serve.

(9) Upon certification, the foster parent and OYA will enter into a Youth Offender Foster Home Agreement before youth offenders are placed in the foster home.

(10) OYA may deny certification or re-certification if:

(a) The applicant fails to meet the qualifications in these rules;

(b) The applicant falsifies information, either knowingly or inadvertently, by providing inaccurate information or by omitting information; or

(c) The applicant or any member of the household fails to meet the requirements of OAR chapter 416, division 800 or these rules.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0060
Foster Parent Duties and Responsibilities

(1) Governance

(a) Foster parents must comply with the standards of these rules and OYA procedures, including rules applicable to applicants.

(b) Foster parents must abide by the responsibilities described in the OYA Youth Offender Foster Home Agreement. This agreement will be signed at the time of initial certification and annually, thereafter.

(c) Foster parents must provide care and supervision in accordance with the youth offender's individual case plan.

(d) Foster parents must not leave youth offenders unsupervised in the foster home, except with prior written approval by the youth offender's JPPO and Foster Home Certifier specifying circumstances and length of time youth offender may be unsupervised.

(e) Foster parents must allow OYA access to the home, youth offenders, and foster care records, for the purpose of ongoing compliance monitoring.

(2) Training

(a) An applicant must complete an OYA-mandated pre-service training before the applicant is approved for certification.

(b) Foster parents must have a valid CPR/First Aid certificate. CPR/First Aid courses count toward the annual minimum training requirement.

(c) On an annual basis, thereafter, each foster parent must complete a minimum of 10 hours of training.

(d) All training must be provided or approved by OYA and must include educational opportunities designed to enhance the foster parent's knowledge, skills, and abilities to meet the special needs of youth offenders.

(A) If youth offenders are in the home and the annual training hours have not been completed, the youth offender foster home certification will be placed on inactive referral status. No additional youth offender referrals will be made until the training hours are completed.

(B) OYA may suspend a certificate if no youth offenders are currently in placement and the training requirements have not been met.

(3) Foster parents will work with OYA staff, by:

(a) Participating in Multidisciplinary Team (MDT) reviews;

(b) Implementing changes in care and supervision only as guided by the supervising Juvenile Parole/Probation Officer (JPPO) and the youth offender's case plan;

(c) Providing a youth offender with the opportunity for regular contacts and private visits or telephone calls with the youth offender's JPPO; and

(d) Notifying the Foster Home Certifier, or designee, of changes likely to impact the life and circumstances of the foster family, including but not limited to the following situations:

(A) Immediate notification to OYA of any circumstance involving the youth offender, foster parent, or other members of the household which may have a serious impact on the health, safety, physical or emotional well being of the youth offender. This includes, but is not limited to, injury, illness, accident, law violation, or unauthorized absence;

(B) Immediate notification of any visitor remaining in the home overnight who has not received prior approval by OYA. Foster parents and the Foster Home Certifier will collaborate to ensure the safety of the youth offender and visitor(s);

(C) Prior notification when a change in address is anticipated. In the case of an emergency (e.g., fire), foster parents must provide this information as soon as possible after the change of address occurs; and

(D) Prior notification when a change in the membership of the household is anticipated. In the event of an emergency, foster parents must provide this information as soon as possible after the change occurs.

(e) Foster parents must have prior written approval from OYA to take a youth offender out of state.

(4) Foster parents will respect and support the youth offender's relationship with the youth offender's family by:

(a) Assisting OYA staff in planning and implementing visits between the youth offender and the youth offender's family as indicated by the youth offender's case plan;

(b) Allowing a youth offender opportunities to have at least one phone call weekly with the youth offender's family; and

(c) Informing the JPPO if the youth offender chooses to decline family visits.

(5) Confidentiality

(a)Youth offender information and records are confidential. Foster parents must maintain information relating to youth offenders including but not limited to information relating to a youth's health, education, and placement progress in a manner sufficient to prevent unauthorized access.

(b) Foster parents must not disclose youth offender records, or the names of persons involved in the youth offender's case plan, without authorization from OYA.

(c) Youth offender records may be disclosed only when necessary to provide for the safety and wellbeing of youth offenders and with prior approval of OYA.

(d) Unauthorized disclosure of youth offender records may lead to suspension of certification.

(6) Records

(a) Foster parents must, for the duration of the youth offender's placement in the foster home, maintain records, including, but not limited to, information relating to the youth offender's health (including immunizations), education, and placement progress.

(b) All records pertaining to the youth offender belong to OYA. The foster parent must make all records available to OYA upon request. The foster parent must immediately provide all records to the youth offender's JPPO or designee when the youth offender leaves the foster home. Any records request by foster parents after the records have been returned to OYA will be handled in accordance with OAR chapter 416, division 105.

(7) Youth offender reformation and supervision

(a) Foster parents must provide structure, accountability, and supervision designed to promote the physical, social, intellectual, spiritual, and emotional development of youth offenders, while providing for community protection.

(b) In accordance with a youth offender's case plan, foster parents must:

(A) Treat each youth offender with respect and dignity;

(B) Help the youth offender develop skills and perform tasks that promote independence and self-sufficiency; and

(C) Ask youth offenders to assume household chores appropriate to the youth offender's age and ability, and commensurate with those expected of the foster parent's own children.

(8) Household composition

(a) No more than three OYA youth offenders may reside in any given foster home at one time. In addition, no more than five total children (including the foster parent's own children under the age of 18) may reside in one foster home.

(b) Children of foster parents age 18 and older will not be counted toward the limitation of five children in the foster home.

(c) Members of the household age 18 and older who remain in or return to the home after becoming 18 years of age are subject to a criminal records check, including a fingerprint records check. The foster parent must notify OYA when a member of the household remains in or returns to the home after becoming 18 years of age.

(d) Foster parents must not care for unrelated adults on a commercial basis, accept children for day care, or accept any person for placement from any source other than OYA without prior OYA written approval.

(9) Respite care

(a) A respite care provider may not provide care to youth offenders in the respite provider's own home without a current and valid OYA Certificate that specifically authorizes the respite care provider to provide respite care to youth offenders in the respite care provider's home.

(b) When all foster parents are absent from providing supervision of youth offenders in a foster home, an OYA-certified respite provider at least 21 years of age, capable of assuming foster care responsibilities, must be present. Other adults at least 21 years of age may provide supervision for three hours or less with prior approval from the foster parent, JPPO and Foster Home Certifier.

(c) When all foster parents anticipate being absent from providing supervision of youth offenders for overnight or longer, the foster parents must give OYA advance notice and the foster parents must receive approval from OYA before the foster parents may be absent. The foster parents must provide the following information: the dates of absence; the telephone number where the foster parents can be reached; and the name, telephone number, and home address of the OYA-certified respite provider who will provide care during the foster parent's authorized absence.

(d) The total number of youth offenders per foster home may be increased to no more than five to provide foster parents short-term respite from foster care responsibilities.

(e) Any respite care exceeding 10 days requires prior review and approval by the OYA Community Resources Manager.

(10) Food and nutrition

(a) On a daily basis, foster parents must provide each youth offender three well-balanced meals and appropriate snacks.

(b) Foster parents must accommodate a youth offender's special and cultural dietary needs, including those ordered by a physician.

(11) Clothing and personal belongings

(a) Foster parents must provide each youth offender with clean clothing that is appropriate to the youth offender's age, gender, and individual needs.

(b) Youth offenders must be allowed to participate in choosing their own clothing.

(c) Youth offenders may bring and acquire appropriate personal belongings as approved by the JPPO.

(d) Foster parents must provide a weekly allowance to youth offenders in a fair and consistent manner.

(e) Foster parents must develop house rules that include, but are not limited to, youth offender money and youth offender accounts.

(f) Foster parents must provide each youth offender with individual items necessary for personal hygiene and grooming.

(12) Discipline and guidance

(a) Foster parents must work with a youth offender's JPPO to develop a behavior management plan that sets clear expectations, limits, and consequences of behavior through use of adequate and appropriate structure and supervision.

(A) Foster parents must provide clearly-stated basic rules, a system of incentives and rewards, graduated sanctions when necessary to hold youth offenders accountable, supervision, and guidance.

(B) Discipline must be designed to guide youth offenders with kindness and understanding, while holding the youth offender accountable for personal behaviors.

(b) No youth offender or other person(s) in a foster home will be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury or threats of harm.

(13) Health care

(a) Foster parents must work with OYA to ensure that a youth offender's physical and mental health care needs are met, including but not limited to:

(A) Scheduling appointments and arranging transportation to medical, dental, or counseling appointments or assisting youth offenders in doing so if age appropriate.

(B) Ensuring that immunizations are current.

(C) Reporting to OYA when a youth offender needs corrective or follow-up medical, mental health or dental care, and arranging necessary care.

(D) Arranging for necessary consents from OYA for a youth offender's medical treatment that is not routine, including surgery.

(E) Obtaining emergency medical care, when necessary.

(b) Medication Administration

(A) Foster parents must comply with applicable provisions of OAR chapter 416, division 340.

(B) A youth offender may refuse any medication. When this occurs, the foster parent must document the refusal and immediately notify the youth offender's JPPO.

(C) A foster parent may administer prescription medications to a youth offender only when ordered by a physician.

(D) All medications must be stored in locked storage sufficient to prevent unauthorized access.

(E) Foster parents must inform a youth offender's JPPO within one working day if any psychotropic medication is prescribed or changed for the youth offender.

(c) Medical information:

(A) Youth offender medical information must be kept confidential and in a secure location.

(B) Medical information may be shared only in compliance with Oregon Revised Statutes, and OYA administrative rules.

(C) Foster parents must provide OYA with copies of youth offender medical information.

(14) Religious, cultural, and ethnic heritage. Foster parents must respect the ethnic heritage, religion, cultural identity, and language of a youth offender and the youth offender's family by:

(a) Providing reasonable and meaningful opportunities for a youth offender to develop relationships with others of like cultural and ethnic background;

(b) Providing a youth offender opportunities to attend religious services of the youth offender's choice; and

(c) Not requiring a youth offender to participate in religious activities or events contrary to the youth offender's beliefs.

(15) Education

(a) Within five days of placement in the foster home, the foster parent must enroll a youth offender in an appropriate educational or vocational program, as outlined in the youth offender's case plan.

(b) Foster parents must be actively involved in a youth offender's educational or vocational programs.

(c) Foster parents must allow a youth offender adequate time each evening to complete homework in a location conducive to study and provide assistance as needed.

(d) Foster parents will work with school personnel when issues arise at school, and report to a youth offender's JPPO any situation that may require OYA involvement.

(16) Recreation

(a) Foster parents must provide recreational activities appropriate to the age and abilities of a youth offender, as described in OAR chapter 416, division 500.

(b) Foster parents must encourage a youth offender to participate in community activities both with the foster family and on the youth offender's own, in accordance with the case plan.

(c) Foster parents must provide opportunities for a youth offender to pay restitution and perform community service obligations as directed by the case plan.

(17) Restrictions:

(a) No mechanical restraints, other than car seat belts, may be used on OYA youth offenders by foster parents.

(b) Foster parents and members of the household may not provide tobacco products in any form to youth offenders.

(c) Youth offenders may use private home swimming pools and hot tubs only under supervision of a foster parent or certified respite provider.

(d) All alcoholic beverages must be stored and locked in a manner sufficient to prevent access by youth offenders.

(18) Safety. Foster parents must:

(a) Be aware of a youth offender's location at home and in the community at all times;

(b) Have an adequate system for monitoring youth offenders during the night;

(c) Ensure that keys to locked storage and motor vehicles are secured at all times;

(d) Inspect a youth offender's room on regular basis to prevent the offender from possessing contraband;

(e) Comply with OYA health and safety requirements for the prevention of accidents and injuries;

(f) Understand and implement suicide prevention techniques and reporting requirements; and

(g) Be knowledgeable about boundaries, inappropriate sexual behavior, monitoring and other aspects of youth offender care at the level appropriate for supervising youth offenders that are placed in the home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0070

Standards for the Foster Home

(1) General:

(a) Schools, recreation, churches, medical care, and community facilities must be accessible from the foster home. The foster home and its premises must be comparable in appearance to other homes in the community in which it is located.

(b) If care is to be provided to one or more developmentally disabled or physically impaired youth offenders, OYA must consult with the relevant professionals to identify necessary accommodations to the foster home and ask the foster parent to implement the necessary accommodations prior to placement.

(A) OYA will coordinate the accommodations to the foster home.

(B) If the foster parent refuses to make the necessary accommodations, the youth offender will not be placed into the foster home.

(c) Foster homes must have a working telephone with service. Foster parents must secure an alternative phone service within 24 hours of any disruption of existing phone service and communicate the new telephone number to the Foster Home Certifier.

(2) Kitchen:

(a) Foster homes must have the equipment necessary for the safe preparation, storage, serving and cleanup of meals.

(b) Foster parents must ensure that all cooking and refrigeration equipment is sanitary and in working condition.

(c) Foster parents must ensure that meals are prepared and served in a safe and sanitary manner minimizing the possibility of food poisoning or food contamination.

(3) Living areas:

(a) The foster home must have sufficient living or family room space that is comfortably furnished and accessible to all members of the household, including youth offenders.

(b) Foster homes must be well-heated and well-ventilated.

(4) Bedrooms:

(a) Bedrooms occupied by youth offenders must:

(A) Be safe and have adequate living space for each youth offender;

(B) Have windows that open and provide sufficient natural light and ventilation;

(C) Have a bed for each youth offender, with clean bed linens, blankets (as appropriate to the season), and pillows; and

(D) Have a functioning smoke alarm.

(b) Youth offender(s) age 18 or older may not share a bedroom with a youth offender under age 18 without the prior approval of the OYA Community Resources Manager.

(c) Children of foster parents are prohibited from sharing a bedroom with a youth offender.

(d) The Foster Home Certifier must determine the maximum number of youth offenders allowed to occupy each bedroom based on room size and the availability of adequate personal space for each youth offender. Placement of more than the determined maximum number of youth offenders allowed to occupy each bedroom is prohibited.

(e) Each youth offender must be provided with adequate storage space in or near the bedroom he or she occupies for personal belongings and a designated space for hanging clothes.

(f) Foster parents must allow flexibility in the decoration of sleeping areas to accommodate the personal tastes and expressions of the youth offenders in care.

(g) Bedroom doors must not have locks.

(h) Youth offenders with a history of inappropriate sexual behavior or adjudicated for a sexual offense may not share a bedroom with non-sex-offenders. Sex offenders preferably will occupy a bedroom either individually, or in a group of three sex offenders. The assignment of two sex offenders to one bedroom must be authorized by the OYA Community Resources Manager, in consultation with OYA Community Services staff.

(i) Bedrooms used by youth offenders that are located in basements or above the ground floor must have safe and direct emergency exits to the ground.

(5) Domestic animals:

(a) Foster parents must restrict access to potentially dangerous animals.

(b) Only domestic animals allowed by local ordinances may be kept as pets.

(c) Domestic animals must be properly cared for, supervised, and otherwise maintained in compliance with local ordinances.

(d) Rabies vaccination for pets must be kept current as required by law. Foster parents must provide proof of rabies vaccination to OYA upon request.

(6) Deadly weapons:

(a) Foster parents must immediately notify the Foster Home Certifier anytime a deadly weapon is brought to the foster home.

(b) Deadly weapons must be stored in a locked compartment behind a locked door that prohibits access and is not visible to youth offenders.

(c) Firearms:

(A) Any foster parent or member of the household who possesses a concealed weapon permit must:

(i) Give OYA a copy of the permit; and

(ii) Give OYA a written plan regarding how the foster parent or member of the household will keep concealed weapons secure from youth offenders.

(B) Firearms must remain unloaded and stored in a locked gun safe or behind double locks that prohibit access and visibility to youth offenders. For purposes of this rule, a double lock may be a locked compartment within a locked room. Ammunition must be stored in a separate locked com-

partment, separate from any firearm. Trigger locks and glass front display cabinets are not adequate.

(C) Except for law enforcement personnel, no person in any vehicle transporting a youth offender may carry a loaded firearm.

(7) Safety:

(a) Swimming pools and hot tubs must be maintained in a safe and clean condition, and must comply with local safety regulations and ordinances.

(b) Any safety hazard identified by OYA staff or a qualified trade service provider must immediately be remedied by the foster parent.

(c) An emergency access must be available to any room that has a lock.

(d) Stairways must be equipped with handrails.

(e) All hazardous chemicals, cleaning materials, solvents and combustibles must be stored in locked storage sufficient to prevent unauthorized access.

(f) In addition to section (4)(a)(D) of this rule, at least one functioning smoke alarm must be placed on each floor of the foster home.

(g) At least one unexpired and operable class 2-A-10BC or higher rated fire extinguisher must be available and maintained on each floor in each foster home.

(h) Outdoor tools and equipment and machinery must be stored in a manner sufficient to prevent unauthorized access.

(i) A written home evacuation plan must be available to all youth offenders.

(A) Foster parents must practice the evacuation plan with each youth offender at the time of placement and at least once a year to ensure all youth offenders understand the procedures.

(B) The evacuation plan, including evacuation diagram, must be posted in a clearly visible and conspicuous location.

(j) The use of space heaters are limited to electric space heaters equipped with tip-over protection, or propane space heaters equipped with approved venting. No extension cords may be used with such heaters or in place of permanent wiring. Kerosene space heaters are not allowed.

(k) Foster homes must have two unrestricted emergency exits in case of fire.

(A) A sliding door or window that can be used to evacuate youth offenders may be considered a usable emergency exit.

(B) Barred windows used as possible emergency exit in case of fire must be fitted with operable quick release mechanisms.

(8) Sanitation and health:

(a) The foster home must be kept clean and free of hazards to the health and physical well being of the family. All areas of the foster home must meet sanitation criteria as described in OYA Cleanliness Standards.

(b) Measures must be taken to keep the house and premises free of vermin.

(c) First aid supplies must be stored in an easily accessible place.

(d) A continuous supply of safe, clean drinking water must be available.

(A) Private water sources and septic tank systems must be kept safe and functioning properly.

(B) Private water sources must be tested and approved by an appropriate official upon OYA request.

(e) Only pasteurized milk, juices, or powdered milk may be used for youth offender consumption.

(f) All plumbing must be kept in working order, and an adequate supply of hot water for bathing and dish washing must be available.

(g) Water heaters must be accessible for inspection and equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(h) The foster home must have a minimum of one flush toilet, one washbasin with running water, and one bath or shower with hot and cold water.

(i) Pending weekly removal, garbage and refuse must be stored appropriately, with no accumulation of garbage, debris, or rubbish that emits offensive odors.

(j) Youth offenders in the foster home may not be subjected to secondhand smoke.

(9) Transportation safety:

(a) All vehicles used to transport youth offenders must have, at a minimum, liability insurance coverage in accordance with Oregon law.

(b) Foster parents and other members of the household who transport youth offenders must be licensed and insured drivers, and 21 years of age or older.

(c) At least one foster parent or member of the household must possess a valid license to drive.

(d) The driver must ensure that all passengers use seat belts during the transport.

(e) Youth offenders may not operate a vehicle owned by a foster parent, member of the household, or volunteer if the vehicle requires a state license to be operated on public roads.

(f) Youth offenders may engage in driver's education provided by public school or driver training delivered by a licensed provider in accordance with the youth offender's case plan.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2009, f. & cert. ef. 2-2-09; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0080
Exceptions

(1) Any exceptions to OAR 416-530-0000 through 416-530-0090 must be reviewed and approved or denied by the OYA Community Services Assistant Director.

(a) A Foster Home Certifier must submit a written exception request, state the need for the exception, and sign the request.

(b) The OYA Community Services Assistant Director will evaluate each request for an exception on its own merits to determine whether the exception is supported by a written plan adequate to ensure the safety of youth offenders in the placement. Granting an exception does not set a precedent that must be followed by the OYA Community Services Assistant Director when evaluating subsequent requests for exceptions.

(c) In evaluating a request for an exception, the OYA Community Services Assistant Director will consider, among other factors, the ratio of adults to youth offenders; the level of supervision available; the foster parent's skill level; and the needs of other children in the home.

(2) No exceptions may be made for rules relating to life safety.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0090
Denial, Suspension, and Revocation of Youth Offender Foster Home Certification or Re-Certification; Inactive Referral Status

(1) Denial:

(a) OYA may deny an application for a youth offender foster home certification or re-certification if an applicant or foster parent fails to meet any of the criteria set forth in these rules, or does any of the following:

(A) Falsifies an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) Fails to provide information requested by OYA within the time frame set by OYA; or

(C) Fails to inform OYA of conditions that could disqualify the foster parent or the foster home from certification.

(b) If OYA proposes to deny an application for a foster home certification or re-certification, OYA will provide the applicant or foster parent with a written Notice of Proposed Denial of Youth Offender Foster Home Certification or Re-certification and a proposed Order Denying Certification or Recertification, mailed to the applicant or foster parent by certified or registered mail, or personally served upon the applicant or foster parent, and stating the reason(s) for the proposed denial.

(c) An applicant or foster parent has 60 days from the date of mailing or service of the Notice of Proposed Denial of Youth Offender Foster Home Certification or Re-certification to request a hearing. The request for hearing must be received by OYA within the 60-day period.

(d) An applicant or foster parent who has been denied certification or re-certification may not re-apply for or hold a foster home certification for a period of five years from the effective date of the Final Order Denying Youth Offender Foster Home Certification or Re-certification.

(2) Suspension:

(a) OYA may suspend a youth offender foster home certification without a prior hearing if OYA finds a serious danger to the public health or safety, including the health or safety of a youth offender or the community. In the event of a suspension, youth offenders will be removed from the foster home and no further referrals will be made to the foster home unless and until the suspension is lifted.

(b) A foster parent has 90 days from the date of mailing or service of the Notice of Suspension to request a hearing on the emergency suspension. The request for hearing must be received by OYA within the 90-day period.

(c) The Notice of Suspension must be mailed by certified mail or personally served on the foster parent.

(d) If within 10 days from the date of mailing of the Notice of Suspension the foster parent does not enter into a written agreement containing a corrective action plan with OYA, OYA will initiate proceedings to revoke the youth offender foster home certification. The 10-day period may be extended upon prior written approval of OYA.

(e) If the suspension will exceed 180 days or the expiration date of the current certification, OYA will terminate the Youth Offender Foster Home Agreement with the foster parent until such time as the suspension has been resolved as set out in this rule. The foster parent will be placed on inactive referral status and will not receive youth offender referrals until the matter is resolved

(3) Revocation:

(a) OYA may revoke a youth offender foster home certification after considering any of the following:

(A) The severity of any alleged violation of these rules;

(B) The number of similar or related violations;

(C) Whether the violations, including the alleged violation, were willful or intentional;

(D) The prior history of violations; or

(E) Any other mitigating or aggravating circumstance determined by OYA to be relevant to the alleged violation, or to the appropriate response to the alleged violation.

(b) OYA may revoke a youth offender foster home certification if a foster parent fails to meet any of the criteria set forth in OAR chapter 416, division 530, or does any of the following:

(A) The foster parent falsified an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) After certification, the foster parent fails to provide information requested by OYA in the timeframe set by OYA;

(C) The foster parent fails to inform OYA of conditions that could disqualify the foster parent or the foster home from certification; or

(D) The foster parent fails to comply with a corrective action plan within the time frame set by OYA and the foster parent remains in violation of any of these rules.

(c) If OYA initiates revocation proceedings of a youth offender foster home certification, OYA will provide a written Notice of Proposed Revocation of Youth Offender Foster Home Certification and proposed Order Revoking Youth Offender Foster Home Certification. The Notice of Proposed Revocation and proposed Order will be mailed, by certified or registered mail, or personally delivered, to the foster parent stating the reason(s) for revocation proceedings.

(d) A foster parent has 10 days from the date of mailing of the Notice of Proposed Revocation of Youth Offender Foster Home Certification to request a hearing. The request for hearing must be received by OYA within the 10-day period.

(e) A foster parent whose certificate has been revoked may not reapply for or hold a foster home certification for five years from the effective date of the Final Order Revoking Youth Offender Foster Home Certification, unless a lesser time or specific condition is stated in the Final Order.

(4) Inactive Referral Status:

(a) Inactive referral status, provider-initiated: A foster parent may ask to be placed on inactive referral status for up to 12 months.

(A) In order for inactive referral status to be granted, there can be no unresolved matters relating to non-compliance with certification rules.

(B) Prior to a return to active referral status, a foster parent must be in compliance with all certification rules, including training requirements.

(b) Inactive referral status, OYA-initiated

(A) OYA may place a foster parent on inactive referral status due to changes in the foster parent's family or foster home including, but not limited to, death; divorce; a new member joining the household; significant disabling health condition; the arrest of a foster parent or member of the household; initiation of a law enforcement investigation or criminal prosecution of a foster parent or member of the household; or other circumstances that OYA determines will put additional stress or pressure on the family or may pose a serious risk to the health, safety, or physical or emotional well being of a youth offender. Prior to placing a foster parent on inactive referral status, OYA may discuss the status change with the foster parent. OYA will notify the foster parent in writing of the change in referral status and the expected duration of that change.

(B) OYA-initiated inactive status may last for up to 180 days, during which time no additional youth offenders will be placed in the home. OYA may continue the inactive status for more than 180 days under any of the following circumstances:

(i) OYA and the foster parent do not enter into an agreement that addresses the issues that led to the change to inactive status;

(ii) The foster parent is not in compliance with all certification rules, including training requirements; or

(iii) A law enforcement investigation or criminal proceeding involving a foster parent or member of the household has been initiated and has not concluded.

(5) Contested case hearings. Pursuant to the provisions of ORS 183.341, OYA adopts the Attorney General's Model Rules of Procedure OAR 137-003-0001 to 137-003-0091 and 137-003-0580, effective January 2012, as procedural rules for contested case hearings.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 183.341, 183.430 & 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 6-2009, f. 12-15-09, cert. ef. 12-16-09; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0100
Purpose

These rules set forth standards specific to OYA's relationship with Private Child-caring Agencies that contract with OYA and offer residential care programs in a foster home model, hereafter called "proctor homes."

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0110
Definitions

(1) Child-caring Agency: An agency or organization providing residential care including, but not limited to, foster care or residential treatment for children; outdoor youth programs, or other similar services for children, as defined in OAR chapter 410, division 170.

(2) Private Child-caring Agency employee: An individual applying for a position with a Private Child-caring Agency or having a position and being considered for an assignment within a Private Child-caring Agency.

(3) Proctor home: A home in the community that is co-certified by OYA and a Private Child-caring Agency and supervised by the Private Child-caring Agency.

(4) Proctor parent: A person co-certified by OYA and a Private Child-caring Agency in accordance with the provisions of OAR 416-530-0100 through 416-530-0170 and employed by the Private Child-caring Agency.

(5) Proctor parent agreement: A written agreement between the Private Child-caring Agency and the proctor parent stating mutual expectations of the parties.

(6) Private Child-caring Agency Volunteer: An individual working on assignments for a Private Child-caring Agency, or applying for or requesting to work on assignments for a Private Child-caring Agency on an unpaid basis.

(7) Private Child-caring Agency: A Child-caring Agency that is not owned, operated, or administered by any governmental agency or unit.

(8) Youth offender proctor care: Includes care, food, and lodging provided on a 24-hour basis for youth offenders in a home approved by OYA and the Private Child-caring Agency, as defined by OAR chapter 416, divisions 335, 530, 550 and 800.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0125
Certificate of Approval

(1) Proctor parents are recruited, trained, paid and supported in their efforts by a Private Child-caring Agency and monitored by a Private Child-caring Agency's professional staff. Proctor parents are co-certified by OYA and the Private Child-caring Agency.

(2) A Private Child-caring Agency must not place youth offenders in a proctor home without a current, valid youth offender proctor home certification issued by OYA.

(3) In addition to compliance with OAR chapter 416, division 530, Private Child-caring Agencies and their proctor homes must comply with the following provisions:

(a) Licensing standards of the Oregon Department of Human Services, or other agency recognized by the state of Oregon to issue a license for services.

(b) Contractual agreements between the Private Child-caring Agency and OYA.

(c) Intergovernmental agreements between OYA and other agencies, as applicable.

(d) In order to ascertain and obtain compliance with the standards of OAR chapter 416, division 530, OYA may examine the records and files of the Private Child-caring Agency, inspect and observe the physical premises of the proctor home, and interview youth offenders, Private Child-caring Agency employees, proctor parents, and persons in the community.

(4) Private Child-caring Agencies may not employ or use employees or volunteers whose presence may jeopardize the health, safety or welfare of youth offenders. When making a determination about a person's suitability to work with youth offenders, the Private Child-caring Agency must follow the provisions of OAR chapter 416, division 800 and all other information described in OAR chapter 416, division 530 to judge the person's fitness to work with youth offenders.

(5) If the applicant meets the requirements of OAR chapter 416, division 530, OYA will issue a Youth Offender Foster Home Certificate to operate a proctor home under contract with a Private Child-caring Agency.

(a) This certificate will specify the type of care to be provided by the proctor parent, the address of the premises to which the certification applies, the name of the Private Child-caring Agency under which the certification is valid, and other information deemed necessary by OYA.

(b) Youth offender foster home certification will automatically terminate in these situations:

(A) Upon the closure of the Private Child-caring Agency;

(B) When the agreement between the Private Child-caring Agency and the proctor parent is terminated; or

(C) When the contract between OYA and the Private Child-caring Agency is terminated.

(c) The Private Child-caring Agency must immediately notify OYA in writing if either (A) or (B) above occurs.

(6) The Private Child-caring Agency is responsible for ensuring that the proctor home and proctor parents continue to meet the standards set out in these rules, and correct deficiencies when they are noted by OYA. OYA will determine final approval or disapproval of any exceptions to these rules.

(7) If a proctor home fails to comply with these rules, OYA may deny an application, place the home on inactive referral status, or suspend or revoke the youth offender proctor home certification, in accordance with the provisions of OAR 416-530-0090. The proctor parent may appeal this decision in accordance with the provisions of 416-530-0090.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010, 420.888 - 420.892
Hist.: OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0130
General Provisions for Proctor Parents

(1) The Private Child-caring Agency must ensure that its proctor parents meet the standards set out in these rules and OAR chapter 416, division 800.

(2) The Private Child-caring Agency must provide or cause to be provided structured supervision twenty-four (24) hours per day, seven days a week, to youth offenders placed in proctor homes. The Private Child-caring Agency must provide specific proctor parent support services that enhance a proctor parent's ability to successfully meet the supervision needs of youth offenders placed by OYA.

(3) The Private Child-caring Agency must ensure that no more than three OYA youth offenders reside in any given proctor home at one time. In addition, no more than five total children, including the proctor parent's own children, may reside in one proctor home.

(4) Under no circumstances may OYA youth offenders reside with youth served under the Private Child-caring Agency's other programs, including private pay placements and placements of youth from out-of-state, except for youth offenders placed through Interstate Compact with courtesy supervision provided by OYA.

(5) The total number of youth offenders per home may be increased to no more than five, to provide proctor parents a short-term respite from proctor care responsibilities.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010, 420.888 - 420.892
Hist.: OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0140
Youth Offender Proctor Home Requirements

(1) The Private Child-caring Agency must ensure that its youth offender proctor homes meet the standards of OAR chapter 416, divisions 335, 500, 530 and 800.

(2) The Private Child-caring Agency must develop and maintain written agreements with proctor parents providing proctor care. These agreements must be approved by OYA prior to placement of OYA youth offenders in the proctor home and must address the following:

(a) Supervision responsibilities

(A) Proctor parents may, with the Private Child-caring Agency's prior written consent, schedule 48 hours per month of time away from youth offender care responsibility.

(B) At least one certified proctor parent or certified respite provider must be on premises at all times that youth offenders are present in the home.

(b) Reporting requirements

(A) Proctor parents must maintain daily required documentation and submit reports to Private Child-caring Agency as required on each youth offender in placement.

(B) Proctor parents with whom youth offenders are placed must contact Private Child-caring Agency staff immediately in the case of emergencies.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010, 420.888 - 420.892
Hist.: OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0150
Combination of Care

(1) The Private Child-caring Agency or its proctor homes may not combine the care of youth offenders in OYA custody with boarding, day care, nursing, foster, or convalescent care for adults or children, except as authorized in writing by OYA.

(2) If such combination of care is approved, the provisions of interagency agreements must be met in addition to the applicable statutes, administrative rules, and policies of all agencies involved.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010, 420.888 - 420.892
Hist.: OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0160
Enforcement

In order for OYA to monitor for continued compliance with these standards, the Private Child-caring Agency must ensure that OYA has the right of entry, privilege of inspection, and access to staff and all records of the Private Child-caring Agency and the youth offender proctor home.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010, 420.888 - 420.892
Hist.: OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0170
Exceptions

(1) Any exceptions to OAR 416-530-0100 through 416-530-0170 must be reviewed and approved or denied by the OYA Community Services Assistant Director.

(2) A Foster Home Certifier must submit a written exception request, state the need for the exception, and sign the request.

(3) Each request for an exception must be accompanied by a written plan showing how the safety of the youth offenders in placement will be ensured while the exception is in effect.

(4) The OYA Community Services Assistant Director will evaluate each request for an exception on its own merits to determine whether the exception is supported by a written plan adequate to ensure the safety of youth offenders in placement. Granting an exception does not set a precedent that must be followed by the OYA Community Services Assistant Director when evaluating subsequent requests for exceptions.

(5) In evaluating a request for an exception, the OYA Community Services Assistant Director will consider, among other factors, the ratio of adults to youth offenders; the level of supervision available; the skill level of the foster parent; and the needs of other children in the home.

(6) No exceptions may be made for rules relating to life safety.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010, 420.888 - 420.892
Hist.: OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14

416-530-0200

Certification Standards for Transitional Care Providers

(1) This rule establishes standards for OYA transitional care providers and their homes that offer specific independent living and transitional services for youth offenders 18 through 24 years of age.

(2) Definitions listed under OAR 416-530-0010 apply to this rule with the following additions and modifications:

(a) Frequent Visitor: a person who regularly visits a transitional care home more than five hours per week when a youth offender placed in the transitional care home is present.

(b) Member of the household: Any person, other than a youth offender, who lives in the transitional care home or on the property where the transitional care home is located, is a frequent visitor to the transitional care home, or assists in the care provided to the youth offender.

(c) Respite care: A temporary arrangement between a transitional care provider and an OYA-certified respite care provider to allow the transitional care provider time away from a youth offender.

(d) Transitional care respite provider: An individual, certified by OYA, and who temporarily assists with supervision of youth offenders when the transitional care provider is not available.

(e) Transitional care home: A Youth Offender Foster Home in the community that is maintained and lived in by an OYA-certified transitional care provider who provides supervision, food, lodging and transitional services for one or more youth offenders 18 through 24 years of age in that home.

(f) Transitional care provider: A foster parent certified by OYA who has been authorized by OYA supervise youth offenders 18 through 24 years of age in a youth offender transitional care home setting, and is unrelated to a youth offender by blood or marriage .

(3) Unless otherwise specified in this rule, the provisions of OAR 416-530-0000 through 416-530-0090 and OAR chapter 416, divisions 335 and 800, apply to transitional care provider applicants, transitional care providers and transitional care homes.

(4) Certification:

(a) Foster care certifiers must evaluate each transitional care home and surrounding property to determine which persons qualify as members of the household.

(b) Members of the household identified by the foster care certifier must complete criminal records checks pursuant to OAR division 800.

(c) Transitional care homes certified according to this rule must receive a certificate specifically providing that the home may provide services to youth offenders 18 through 24 years of age.

(5) Transitional care provider qualifications:

(a) Transitional care providers must be at least 25 years of age due to the age of the youth offenders in transitional care.

(b) Transitional care providers must be able to realistically evaluate which youth offenders they can accept and supervise.

(c) Transitional care providers must demonstrate competence in supervising youth offenders 18 through 24 years of age and promote the independent living skills of youth offenders as they transition toward independence.

(6) A transitional care provider must:

(a) Abide by the responsibilities described in the OYA Transitional Care Provider Agreement. This agreement must be signed at the time of initial certification and annually thereafter;

(b) Establish a system for a youth offender to notify the youth offender's transitional care provider of the youth offender's whereabouts at all times;

(c) Be accessible to youth offenders 24 hours per day so a youth offender may contact the transitional care provider in case of an emergency or other needs; and

(d) Respect and support the youth offender's relationship with his or her family by assisting OYA staff and the youth offender in planning and implementing visits between the youth offender and the youth offender's family as indicated by the youth offender's case plan.

(7) A transitional care provider must provide structure, accountability, and supervision designed to promote the development of independent living skills as identified in the youth offender's case plan.

(8) Respite transitional care

(a) A respite care provider who provides care in his or her own home must have a current and valid OYA Certificate that specifically authorizes the individual to provide transitional care and serve youth offenders in his or her home.

(b) When transitional care providers are absent from supervising youth offenders at home during the day, youth offenders may remain in the transitional care home unsupervised if approved by the youth offender's JPPO, foster home certifier and the transitional care provider. If a youth offender's JPPO, foster home certifier, or transitional care provider determines that supervision is required, an OYA-certified respite care provider who is at least 25 years of age and capable of assuming transitional care responsibilities must be present to supervise the youth offender. Any adult who is at least 25 years of age and has obtained prior approval from the transitional care provider, JPPO, and foster home certifier may provide supervision of a youth offender in a transitional care home for three hours or less.

(c) When a transitional care provider plans to be absent from supervising youth offenders overnight or longer, the transitional care provider must provide OYA advance notice, and a respite care provider must supervise the youth offenders during the absence. The transitional care provider must provide the following information to OYA when providing OYA with such notice: the dates of absence; the telephone number where the transitional care provider may be reached; and the name, telephone number, and home address of the OYA-certified respite care provider.

(9) Food and nutrition. A transitional care provider must:

(a) Provide an appropriate quantity and quality of food. Transitional care providers are not required to provide prepared meals to youth offenders;

(b) Assist youth offenders with meal planning, and may provide meal preparation instruction;

(c) Provide youth offenders daily access to kitchen facilities to prepare meals and snacks; and

(d) Assist youth offenders to meet any special or cultural dietary needs of the youth offenders, including those ordered by a physician.

(10) Clothing and personal belongings. A transitional care provider must:

(a) Ensure each youth offender has adequate clothing that is appropriate to the youth offender's age, gender, and individual needs;

(b) Help facilitate youth offenders' money management skills to prepare for independent living and to meet any court-ordered financial obligations; and

(c) Provide each youth offender with individual items necessary for personal hygiene and grooming until the youth offender gains employment and has adequate funds to purchase such items.

(11) Transitional care providers must ensure youth offenders have access to necessary transportation.

(12) Transitional care providers must report to OYA when a youth offender needs corrective or follow-up medical, mental health, or dental care, and assist youth offenders in arranging necessary care.

(13) Transitional care providers must assist youth offenders in understanding the purpose of medications, medication side effects, and how to manage their medications. Either a transitional care provider or the youth offender may administer the youth offender's daily dosage of medication. If the youth offender self-administers the daily dosage, the transitional care provider must verify that the youth offender self-administered the correct dosage. Youth offenders placed in transitional care homes may have access to over-the-counter medications.

(14) Transitional care providers must assist youth offenders in pursuing educational and vocational interests and opportunities in accordance with the youth offender's case plan.

(15) Transitional care providers must encourage youth offenders to develop and participate in prosocial leisure and community activities.

(16) Youth offenders in transitional care homes may have unsupervised access to swimming pools and hot tubs if approved by the transitional care provider and JPPO.

(17) Bedroom doors in transitional care homes may have locks if approved by the foster care certifier. A transitional care provider must have access to any locked room.

(18) A youth offender in a transitional care home may have access to domestic cleaning supplies. The transitional care provider must instruct youth offenders in the proper use of such supplies.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.888 - 420.892
Hist.: OYA 5-2009, f. 10-27-09, cert. ef. 11-2-09; OYA 1-2014, f. & cert. ef. 1-15-14

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of Rule Changes Regarding Eligibility for OTAP and Other RSPF Rule Changes.
Adm. Order No.: PUC 7-2013
Filed with Sec. of State: 12-20-2013

Certified to be Effective: 12-20-13
Notice Publication Date: 10-1-2013
Rules Adopted: 860-033-0110
Rules Amended: 860-033-0001, 860-033-0005, 860-033-0006, 860-033-0007, 860-033-0010, 860-033-0030, 860-033-0035, 860-033-0040, 860-033-0045, 860-033-0046, 860-033-0050, 860-033-0100, 860-033-0530, 860-033-0535, 860-033-0536, 860-033-0537, 860-033-0540
Rules Repealed: 860-033-0055, 860-033-0001(T), 860-033-0005(T), 860-033-0006(T), 860-033-0007(T), 860-033-0010(T), 860-033-0030(T), 860-033-0035(T), 860-033-0040(T), 860-033-0045(T), 860-033-0046(T), 860-033-0050(T), 860-033-0100(T), 860-033-0110(T), 860-033-0530(T), 860-033-0536(T), 860-033-0537(T), 860-033-0540(T), 860-033-0535(T)
Subject: These rule amendments change Residential Service Protection Fund (RSPF) Rules to meet several federal requirements related to the provision of telecommunication subsidies to qualifying low income customers, implement new and revised reporting requirements for eligible telecommunications carriers (ETCs), minimize the effect on the RSPF of exponential growth of recipients, ensure the quality of information ETCs disseminate to the public, and make clarifying and correcting changes.
Rules Coordinator: Diane Davis—(503) 378-4372

860-033-0001
Applicability

(1) The rules in this Division apply to all telecommunications providers including, but not limited to cellular, wireless, or other radio common carriers that offer service in Oregon with access to the Oregon Telecommunications Relay Service and to the applicants for and recipients of RSPF benefits.

(2) Upon request or its own motion, the Commission may waive any of the division 33 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040 & 1987 OL Ch. 290
Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 6-2011, f. & cert. ef. 9-14-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0005
Definitions

For the purpose of this division:

(1) "Basic Service" means "basic telephone service" as defined in OAR 860-032-0190. For qualifying low-income recipients, basic service also includes access to toll-limitation services.

(2) "Competitive Provider" means a competitive telecommunications provider as defined in ORS 759.005(1) that provides services authorized under 759.020.

(3) "Cooperative" means a cooperative corporation or association that provides local exchange telecommunications service within its own exchanges, is organized under ORS Chapter 62, and is certified under 759.025(2).

(4) "Duplicate Support" means a customer is receiving OTAP or Lifeline supported services on two or more single lines or single line equivalents concurrently, or two or more customers in a household are receiving OTAP or Lifeline supported services concurrently.

(5) "Economic unit" means all individuals contributing to and sharing in the income and expenses of a household, including individuals with no income who benefit from another individual's financial support.

(6) "Eligible Telecommunications Carrier" means a provider of telecommunications service, including a cellular, wireless, or other radio common carrier, that is certified by order of the Commission as eligible to receive federal universal service support throughout a designated service area by having met the eligibility criteria set forth in 47 C.F.R. § 54 Subpart C (2012) and in orders of the Commission.

(7) "Eligible Telecommunications Provider" means a provider of telecommunications service, including a cellular, wireless, or other radio common carrier, that is certified by order of the Commission as eligible to provide OTAP to its qualifying customers throughout a designated service area by having met the following eligibility criteria:

(a) Offers services under 47 C.F.R. § 54 Subpart E (2013) using either its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another Eligible Telecommunications Carrier throughout the service area). Under 47 C.F.R. § 54 Subpart C (2012), the requirement of using its "own facilities" includes, but is not limited to, purchasing unbundled network elements from another carrier;

(b) Advertises the availability of and the charges for such services using media of general distribution; and

(c) Demonstrates that it will comply with OAR 860-033-0005 through 860-033-0110.

(8) "Household" means any individual or group of individuals who are living together at the same address as one economic unit.

(9) "Income" means all income actually received by all members of a household. This includes but is not limited to salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, and lottery winnings. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as babysitting or lawn mowing, and the like.

(10) "Lifeline" means a program established by the Federal Communications Commission as defined in 47 C.F.R. § 54 Subpart E (2013).

(11) "Lifeline Household Worksheet" means a form that the Commission sends to an applicant when the Commission is unable to determine if an applicant and a current OTAP or Lifeline customer are part of a separate economic unit or household.

(12) "Local Exchange Service" means a "local exchange telecommunications service" as defined in ORS 759.005(3).

(13) "Low-income customer" means an individual who demonstrates eligibility for Lifeline supported services or the Oregon Telephone Assistance Program in OAR 860-033-0030.

(14) "Marketing materials" means all media, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage, that describe the OTAP or Lifeline supported service offering.

(15) "Oregon Telephone Assistance Program" or "OTAP" means a program established by the Commission that offers reduced local exchange rates to eligible low-income residential customers. OTAP establishes the requirements for Eligible Telecommunications Carriers to offer Lifeline supported services in Oregon and may provide benefits that are in addition to those offered in Lifeline.

(16) "Oregon Telecommunications Relay Service" or "OTRS" means a facility authorized by the Commission to provide telecommunications relay service.

(17) "Outstanding Accounts" means amounts owing to the Commission including current accounts receivable and accounts that the Commission has written off through appropriate legal procedures. The term does not include amounts owing to the Commission that have been lawfully discharged through bankruptcy proceedings or amounts that are the subject of a proceeding pending before the Commission.

(18) "Remittance Report" means the reporting form identified by that title that is available on the Commission's website at http://www.oregon.gov/puc/Pages/telecom/rspf/index.aspx.

(19) "Residential Service Protection Fund" or "RSPF" means a legislatively approved fund in the Oregon State Treasury that supports the Oregon Telephone Assistance Program, the Telecommunication Devices Access Program and the Oregon Telecommunications Relay Service.

(20) "RSPF Surcharge" means a specified amount up to 35 cents per month collected from each paying retail subscriber who has telecommunications service with access to the telecommunications relay service, except as provided in OAR 850-033-0006(2).

(21) "RSPF Surcharge Exception Form" means the reporting form identified by that title that is available on the Commissions website at http://www.oregon.gov/puc/Pages/telecom/rspf/index.aspx.

(22) "Telecommunication Devices Access Program" or "TDAP" means a program established by the Commission that provides Assistive Telecommunication Devices or Adaptive Equipment at no additional cost beyond telephone service for customers who are deaf, hard of hearing, speech-impaired, deaf-blind or have a disability.

(23) "Telecommunications provider" includes competitive providers, cooperatives and telecommunications utilities.

(24) "Telecommunications service" means the offering of telecommunications as defined in 47 C.F.R. 54.5 (2012) for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(25) "Telecommunications utility" means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

(26) "Toll Limitation Service" means a service provided by an Eligible Telecommunications Provider that allows an OTAP recipient to choose to block the completion of outgoing toll calls (toll blocking) or to specify a certain toll usage that may be incurred per month or per billing cycle (toll control).

(27) "Tribal Lifeline" means a Lifeline service for eligible residents of Tribal lands as defined in 47 C.F.R. § 54 Subpart E (2013).

(28) "Tribal Link Up" means a federal assistance program for eligible residents of Tribal lands as defined in 47 C.F.R. § 54 Subpart E (2013).

(29) "Universal Service Administrative Company" means an independent, not-for-profit corporation designated by the Federal Communications Commission as the administrator of the universal service fund.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 7-1995(Temp), f. & cert. ef. 8-17-95 (Order No. 95-860); PUC 14-1995, f. & cert. ef. 12-20-95 (Order No. 95-1328); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 18-2000, f. & cert. ef. 10-24-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0006

Monthly RSPF Surcharge: General Provisions, Remittance Reports and Payment

(1) The surcharge rate and the balance in the RSPF are reviewed annually by the Commission each October. The Commission may adjust the amount of the surcharge to ensure the fund has adequate resources but does not exceed six months of projected expenses. A rate adjustment ordered by the Commission following the annual review becomes effective January 1 of the year following the review.

(2) The surcharge imposed by 1987 Oregon Laws Chapter 290, Section (7)(1) does not apply to entities upon which the state is prohibited from imposing the surcharge by the Constitution or laws of the United States or the Constitution or laws of the State of Oregon including, but not limited to:

(a) Counties and political subdivisions.

(b) Federal, state and municipal government bodies or public corporations. For purposes of this rule, "public corporation" means a corporation formed by a state or local government authority for the public's benefit or for a public purpose. A regional housing authority qualifies as a public corporation.

(c) Federally chartered corporations specifically exempt from state excise taxes by federal law.

(d) Federally recognized Native-American Tribes, and tribal members who live within federally recognized Indian country and are enrolled members of the tribe with sovereignty over that Indian country.

(e) Foreign government offices and representatives that are exempt from state taxation by treaty provisions.

(f) Interconnection between telecommunications utilities, telecommunications cooperatives, competitive telecommunications services providers certified under ORS 759.020, radio common carriers and interexchange carriers.

(g) Any other agency, organization or person claiming an exemption is required to identify the authority for its claim to a provider. If a telecommunications provider is unable to determine the status of a subscriber the Commission will determine whether the subscriber is exempt.

(3) Collection of RSPF Surcharge.

(a) Each telecommunications provider must collect the RSPF surcharge by charging the specified amount to each retail subscriber with access to the telecommunications relay service, including OTAP eligible subscribers. The RSPF surcharge is applied on a telecommunications circuit designated for a particular subscriber.

(A) One subscriber line is counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premises equipment connected to each circuit.

(B) For providers of central office based services, the surcharge is applied to each line that has unrestricted connection to the telecommunications relay service. For central office based service lines that have restricted access to the OTRS, the surcharge is charged based on software design.

(b) Each cellular, wireless, or other radio common carrier must collect the RSPF surcharge by charging the specified amount to each retail subscriber with access to the telecommunications relay service, including OTAP eligible subscribers. The surcharge is applied on a per-instrument basis.

(c) Each telecommunications provider and each cellular, wireless, or other radio common carrier must identify the surcharge on each retail customer's bill as a separate line item named "RSPF Surcharge."

(4) A telecommunications provider or a cellular, wireless, or other radio common carrier may remit surcharges due to the Commission by electronic transfer, mail or in person.

(5) The Remittance Report and surcharges are due to the Commission on or before the 21st calendar day after the close of each month and must be received in the Commission's offices no later than 5 p.m. Pacific Standard Time on the due date. A surcharge remittance or Remittance Report postmarked on the due date does not meet the requirements of this section and will not be considered as timely submitted.

(6) Each telecommunications provider and each cellular, wireless, or other radio common carrier must submit the Remittance Report and surcharge with no exceptions. If no surcharge is collected, the telecommunications provider or the cellular, wireless, or other radio common carrier must still submit its monthly Remittance Report specified in section (5) of this rule.

(7) For each billing period that a telecommunications provider or a cellular, wireless, or other radio common carrier fails to submit the surcharge fees in full on or before the due date required by these rules, the telecommunications provider or the cellular, wireless, or other radio common carrier must pay a late payment fee in accordance with OAR 860-001-0050.

(8) If the telecommunications provider or the cellular, wireless, or other radio common carrier fails to remit the surcharge in full on or before the due date, the telecommunications provider or the cellular, wireless, or other radio common carrier must pay interest in accordance with OAR 860-001-0050.

(9) If a telecommunications provider or a cellular, wireless, or other radio common carrier fails to file a Remittance Report as required by these rules, the telecommunications provider or the cellular, wireless, or other radio common carrier must pay a late report fee in accordance with OAR 860-001-0050.

(10) If the amount shown due on a Remittance Report is not paid by the due date, the Commission may issue a proposed assessment to set the sum due. The Commission may waive the late report fee, the late payment fees and the interest on the unpaid surcharge fees, or any combination thereof, if the telecommunications provider or the cellular, wireless, or other radio common carrier files a written waiver request and provides evidence showing that the telecommunications provider or the cellular, wireless, or other radio common carrier submitted the Remittance Report and surcharge fees late due to circumstances beyond its control.

(11) The telecommunications provider or the cellular, wireless, or other radio common carrier must pay a fee in accordance with OAR 860-001-0050 for each payment returned for non-sufficient funds.

(12) The telecommunications provider or the cellular, wireless, or other radio common carrier is responsible for and must pay all costs incurred by the Commission to collect a past-due RSPF surcharge from the telecommunications provider or the cellular, wireless, or other radio common carrier.

(13) Remittance Report Records: A telecommunications provider and a cellular, wireless, or other radio common carrier must keep all records supporting each Remittance Report for three years, or if a Commission review or audit is pending, until the review or audit is complete, whichever is later.

(14) In addition to any other penalty, obligation, or remedy provided by law, the Commission may suspend or cancel the telecommunications provider's certificate of authority to provide telecommunications service in Oregon for its failure to file its Remittance Report or its failure to remit the surcharge in full.

(15) Except as otherwise provided by law, if after an audit or review the Commission determines that the telecommunications provider or the cellular, wireless, or other radio common carrier has remitted an excessive amount, the Commission will provide the telecommunications provider or the cellular, wireless, or other radio common carrier a credit in that amount against sums subsequently due from that telecommunications provider or that cellular, wireless, or other radio common carrier.

(16) A telecommunications provider or a cellular, wireless, or other radio common carrier must submit any revisions to a Remittance Report no later than three years from the due date of the Remittance Report. If the Commission concludes that a telecommunications provider or cellular, wireless, or other common carrier remitted an excessive amount and that

refunding the excess would have a material and adverse financial impact on the RSPF, the Commission may enter into an agreement with the telecommunications provider or the cellular, wireless, or other radio common carrier to spread payments of the refunds over a period not to exceed three years.

(17) The RSPF Surcharge Exception Form is due annually by March 15. A telecommunications provider or a cellular, wireless, or other radio common carrier that qualifies for the exception must submit the completed form (in person, electronically, or by mail) so that it is received in the Commission's offices no later than 5 p.m. Pacific Standard Time on March 15.

(18) In computing any period of time prescribed or allowed by these rules, the first day of the act or event is not included. The last day of the period is included, unless the last day is a Saturday or legal holiday; then the period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 1-2010, f. & cert. ef. 5-18-10; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0007
Estimated Report

(1) For any period for which a telecommunications provider, or a cellular, wireless, or other radio common carrier fails to file a Remittance Report and remit the surcharge payments as required by these rules, the Commission may determine a proposed assessment based upon any information available to the Commission.

(2) The proposed assessment may not cover a period longer than three years prior to the date of the proposed assessment and must include:

(a) An estimated surcharge amount owed;

(b) A late payment fee equal to 9 percent of the estimated surcharge amount owed, up to a maximum of $500 for that reporting period;

(c) Interest on the estimated surcharge amount owed at the rate of 9 percent per annum from the day the surcharge amount was originally due; and

(d) A late report fee per 860-001-0050(3)(e).

(3) Notwithstanding section (2) of this rule, if the telecommunications provider did not hold a certificate of authority, if one was required by law, the Commission has an unlimited time to propose an assessment for the period represented by the non-filed Remittance Report. The proposed assessment must include all late payment fees as specified in this rule.

(4) During the 30-day period allowed for filing a petition for a hearing, the telecommunications provider, or the cellular, wireless, or other radio common carrier may file its Remittance Report and pay the surcharge, late report fee, late payment fee, and interest. The Commission will accept the Remittance Report, surcharge payment, late report fee, late payment fee and interest if correctly calculated in accordance with the original due date for the subject period's Remittance Report and payment.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 1-2010, f. & cert. ef. 5-18-10; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0010
OTAP and Lifeline Applicability

(1) The Oregon Telephone Assistance Program (OTAP) is designed to provide a reduced rate or discount for an Eligible Telecommunications Provider's basic service, whether sold separately or in combination with other services, to low-income customers who meet eligibility requirements.

(2) An Eligible Telecommunications Provider must offer to all low-income customers who meet eligibility requirements OTAP discounts with all service offerings that include basic telephone service. Reduced rates or discounts apply to the single line, or service that is functionally equivalent to a single line, serving the eligible customer's principal residence in Oregon. An Eligible Telecommunications Provider may not decline to provide the OTAP and the Lifeline discount to an eligible customer for wireless service on the basis the customer has an out-of-state telephone number.

(3) Eligible Telecommunications Providers and the Commission must treat OTAP and Lifeline data as confidential information, to the extent allowed by law, and OTAP and Lifeline data may be used only for OTAP and Lifeline purposes.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0030
OTAP and Lifeline Eligibility

(1) A low-income customer demonstrates eligibility for OTAP and Lifeline by application to the Commission on a Commission-approved form demonstrating compliance with this rule.

(2) To be eligible, the customer, one or more of the customer's dependents or the customer's household must:

(a) Receive benefits from one of the following public assistance programs: Medicaid under Title XIX and XXI of the Social Security Act; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance Program; National School Lunch Program's free lunch program; or Temporary Assistance for Needy Families; or

(b) Receive benefits from another Commission-approved low-income public assistance program for which eligibility requirements do not exceed 135 percent of the applicable Federal Poverty Guidelines.

(c) Have income that is at or below 135 percent of the applicable Federal Poverty Guidelines for a household of that size.

(3) The Commission may require a low-income customer to submit documentation demonstrating that he or she qualifies under the program or income based eligibility requirements.

(a) Acceptable documentation of program eligibility includes the current or prior year's statement of benefits from a public assistance program, a notice or letter of participation in a public assistance program, program participation documents, or another official document demonstrating that the customer, one or more of the customer's dependents or the customer's household receives benefits from a qualifying assistance program.

(b) Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement or pension statement of benefits; an Unemployment or Workers' Compensation statement of benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information. If the customer presents documentation of income that does not cover a full year, such as current pay stubs, the customer must present the same type of documentation covering three consecutive months within the previous twelve months.

(4) The customer may be required to furnish his or her social security number and the social security number of the member of the customer's household upon whom eligibility is based before OTAP and Lifeline eligibility can be determined or verified. Failure to do so may result in denial of benefits.

(5) The customer must sign a written authorization on a Commission-approved form permitting the Commission to release necessary information to an Eligible Telecommunications Provider and, as necessary, to the following: Federal Communications Commission, Universal Service Administrative Company, Department of Human Services, and the applicant's personal representative or legal guardian.

(6) An applicant or customer may not use a post office box as his or her residential address. The Commission may accept a P.O. Box or General Delivery address as a billing address, but not a residential address.

(7) The OTAP or Lifeline benefit is limited to one single line, or single line equivalent, per economic unit at the customer's principal residence in Oregon.

(a) If the Commission is unable to determine that an applicant and a current OTAP or Lifeline customer are part of a separate household, the applicant must complete and submit to the Commission the Lifeline Household Worksheet.

(b) The Commission may verify annually that the customer continues to be part of a separate household.

(c) If the customer fails to respond within 30 days of the Commission's attempts to verify that the customer continues to be part of a separate household, the Commission will notify the Eligible Telecommunications Provider to de-enroll the customer from OTAP and the Lifeline program.

(8) The name of the OTAP or Lifeline applicant must appear on the billing statement or account for the telecommunications service in order for that for that applicant to qualify for OTAP or Lifeline benefits.

(9) The Commission may require an Eligible Telecommunications Provider to provide up to three months of OTAP or Lifeline benefits cred-

ited to the customer's account if the customer does not receive benefits after applying for benefits and demonstrating eligibility. The qualifying customer may be required to submit documentation demonstrating that he or she qualified under the program or income based eligibility requirements in section (2) or (3) of this rule.

(10) The Commission will verify a customer's continuing eligibility. Continuing OTAP and Lifeline eligibility is based on monthly, quarterly, or annual verification by the Commission.

(a) The Commission will allow a customer 30 days following the date of the notice of termination or de-enrollment to demonstrate continued eligibility. A customer may be required to submit proof of continued eligibility to the Commission.

(b) The Eligible Telecommunications Provider must de-enroll the customer from the OTAP and Lifeline program within five business days of notice from the Commission that the customer is no longer eligible for OTAP and the Lifeline program.

(c) After the Commission determines that the customer is not eligible or no longer eligible, the customer may file a written request for a hearing to appeal the determination as specified in the notice of determination.

(d) At the hearing, the customer must provide to the Commission documentation demonstrating that he or she qualifies under the program or income based eligibility requirements listed in section (2) or (3) of this rule.

(11) If the Commission identifies that a customer or household is receiving duplicate support from more than one Eligible Telecommunications Provider, the Commission will attempt to contact the customer to determine the customer's preferred provider and thereafter, based on the available information, select which Eligible Telecommunications Provider must de-enroll the customer.

(12) If a customer does not use the OTAP or Lifeline supported service that the Eligible Telecommunications Provider offers at no charge for 60 consecutive days, the Eligible Telecommunications Provider must provide the customer 30 days' notice, using plain language, that the customer's failure to use the OTAP or Lifeline supported service within the 30-day notice period will result in de-enrollment from OTAP or the Lifeline program. If the customer uses the OTAP or the Lifeline supported service within the 30-day notice period, the Eligible Telecommunications Provider may not terminate the customer's OTAP or Lifeline supported service.

(13) When the customer switches to a different Eligible Telecommunications Provider, the customer must submit to the Commission an application for OTAP or the Lifeline program on a Commission-approved form.

(14) If, in a span of 30 days, the customer disconnects and reconnects service with the same Eligible Telecommunications Provider, the customer is not required to reapply for the OTAP or Lifeline benefits.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & ef. 2-14-92 (Order No. 92-238); PUC 11-1995, f. & ef. 11-27-95 (Order No. 95-1217); PUC 6-1997, f. & ef. 1-10-97 (Order No. 97-005); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0035
OTAP and Lifeline Benefits

(1) A residential customer qualifying for the OTAP and Lifeline benefit pays a reduced monthly rate, as established by the Commission, for basic service, whether sold separately or in combination with other services, provided by an Eligible Telecommunications Provider. The monthly OTAP benefit includes:

(a) The federal Lifeline program support in accordance with 47 C.F.R. §54.403; and

(b) The State of Oregon support of $3.50.

(2) OTAP and Lifeline benefits become effective on the date the Commission receives from an eligible customer the signed application on a Commission-approved form.

(3) An Eligible Telecommunications Provider that offers OTAP or Lifeline supported service at no charge to the low-income customer must require the customer to call the Eligible Telecommunications Provider to activate the OTAP or Lifeline supported service. The Eligible Telecommunications Provider must require the low-income customer to provide the last four digits of his or her social security number or Tribal identification number before activating the OTAP or Lifeline supported service.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 2-2002, f. & cert. ef. 2-5-02; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0040
OTAP Alternatives

(1) In lieu of OTAP participation, a public utility, cooperative corporation or unincorporated association providing local exchange telecommunication service may apply to the Commission for authority to provide low-income telephone assistance through an alternative plan. The application must demonstrate that:

(a) Customers eligible for OTAP will receive a benefit under the alternative plan at least equal to the OTAP benefit;

(b) Customers eligible for OTAP will be eligible under the alternative plan; and

(c) Administrative costs for an alternative plan will be less than or equal to the administrative costs of participation in OTAP.

(2) A public utility, cooperative corporation or unincorporated association providing low-income telephone assistance under an alternative plan must inform the Commission monthly of the number of customers receiving the benefit and the total dollar amount in benefits provided under the under the alternative plan.

(3) Eligible customers must continue receiving benefits under OTAP until the alternative plan is approved by the Commission and implemented by the public utility, cooperative corporation or unincorporated association.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0045
OTAP Compensable Expenses

(1) The Eligible Telecommunications Provider may be compensated for the State of Oregon benefit provided to each customer enrolled in OTAP by the Commission Compensation may include the revenue the Eligible Telecommunications Provider foregoes by providing the State of Oregon benefit to eligible customers.

(2) To receive compensation, an Eligible Telecommunications Provider must submit a monthly reimbursement form no later than 21 calendar days after the end of the billing period. The Eligible Telecommunications Provider's reimbursement form must indicate the number of eligible customers who were enrolled during the billing period, the number of customers who received the OTAP benefit during the billing period, and the amount of revenue foregone during that same period.

(3) If the Commission overcompensates an Eligible Telecommunications Provider, the Eligible Telecommunications Provider must immediately return the excess RSPF funds once it notifies the Commission or is notified by the Commission of the overcompensation.

(a) If the Commission overcompensates the Eligible Telecommunications Provider as a result of Commission error and the Eligible Telecommunications Provider upon notification of the overcompensation immediately returns the excess RSPF funds, the Eligible Telecommunications Provider is not required to pay interest on the excess RSPF funds.

(b) If the Commission overcompensates the Eligible Telecommunications Provider as a result of Commission error and upon notification the Eligible Telecommunications Provider does not immediately return the excess RSPF funds, the Eligible Telecommunications Provider must pay interest on the excess RSPF funds at the rate set forth in OAR 860-001-0050.

(c) If the Commission overcompensates the Eligible Telecommunications Provider as a result of actions by the Eligible Telecommunications Provider, including, but not limited to, the filing of an incorrect reimbursement form, then upon notification the Eligible Telecommunications Provider must immediately return the excess RSPF funds and pay interest on the excess RSPF funds at the rate set forth in OAR 860-001-0050.

(4) Notice of Proposed Assessment:

(a) If the Eligible Telecommunications Provider is overcompensated and does not timely return the excess RSPF funds as described in section (3) of this rule, the Commission may issue a written proposed assessment for the amount due.

(b) Within 30 days of the service date of the notice of proposed assessment, the Eligible Telecommunications Provider may pay the proposed assessment in full or may file a written petition for a hearing. The

written petition for a hearing must clearly specify all the reasons the Eligible Telecommunications Provider disputes the assessment.

(A) If the Eligible Telecommunications Provider pays the proposed assessment in full within 30 days of the service date of the notice of proposed assessment, the Commission will accept the payment and discontinue any further collection activities for that assessment.

(B) If the Eligible Telecommunications Provider timely files a written petition for a hearing under subsection (b) of this section, the Commission will grant the Eligible Telecommunications Provider a hearing and provide at least 10 days notice of the time and place of the hearing. The Commission will conduct the hearing under its rules governing hearings and proceedings.

(5) Commission Order: The Commission will enter an order if the Eligible Telecommunications Provider does not respond to the notice of proposed assessment within 30 days of the service date of the notice of proposed assessment or after considering the testimony presented at hearing. Any charges assessed by the Commission in its order become due and payable on the tenth day after the service date of the Commission's order.

(6) If the Eligible Telecommunications Provider does not respond to the Commission order, then the account may be referred to the Department of Revenue or to a collection agency for collection. The Eligible Telecommunications Provider is responsible for and must pay all costs incurred by the Commission to collect a past-due assessed amount from the Eligible Telecommunications Provider.

(7) An Eligible Telecommunications Provider must submit any revisions to a previously filed reimbursement form no later than three years from its due date. If the Commission concludes that refund is due to an Eligible Telecommunications Provider and that the refund would have a material adverse financial impact on the RSPF, the Commission may enter into an agreement with the Eligible Telecommunications Provider to spread payment of the refund over a period of time not to exceed three years.

(8) The Commission may determine the compensation amount based on the costs an Eligible Telecommunications Provider would reasonably incur to accomplish each task referred to in section (1) of this rule. The Commission disburses funds from the RSPF to the Eligible Telecommunications Provider within 45 calendar days after the Commission receives a properly completed reimbursement form.

(9) Each public utility, cooperative corporation or unincorporated association providing low-income telephone assistance under a Commission-approved alternative plan may be compensated for the State of Oregon benefit costs. However, compensation from the RSPF may not be greater than the compensation that would have been received through participation in OTAP.

(10) Governmental agencies contracting with the Commission to certify the eligibility requirements of individuals or to perform other administrative functions authorized by these rules are compensated based on the terms of the contract.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0046
OTAP and Lifeline Accounting, Reporting and Auditing

(1) Based upon accounting procedures approved by the Commission, Eligible Telecommunications Providers must maintain accounting records so that costs associated with OTAP and Lifeline can be separately identified. Records must be provided to the Commission upon request.

(2) Active OTAP and Lifeline Customer Report: The Active OTAP and Lifeline Customer Report is a listing of all customers receiving the OTAP or Lifeline benefit. The listing may include the customers' telephone numbers, addresses or Commission-assigned OTAP Identification Number. Each Eligible Telecommunications Provider must submit monthly to the Commission in an electronic format accessible by the Commission, an Active OTAP and Lifeline Customer Report. The Active OTAP and Lifeline Customer Report must be received by the Commission on or before the close of business on the 21st calendar day of the following month.

(3) Order Activity Report: The Order Activity Report is a listing of all OTAP or Lifeline customers whose phone service was disconnected, who voluntarily de-enrolled or were de-enrolled for failure to use the OTAP or Lifeline supported service that the Eligible Telecommunications Provider offers at no charge, and a listing of all OTAP or Lifeline customers whose telephone numbers or addresses have changed. Each Eligible Telecommunications Provider must submit monthly to the Commission in an electronic format accessible by the Commission an Order Activity Report. The Order Activity Report must be received by the Commission on or before the close of business on the 21st calendar day of the following month.

(4) No Match Report: When the Commission notifies the Eligible Telecommunications Provider of customers who meet eligibility criteria, the Eligible Telecommunications Provider must notify the Commission of any discrepancy that prevents a customer from receiving the OTAP or Lifeline benefit. Notification of discrepancies must be submitted electronically in a format accessible by the Commission.

(5) The Commission reserves the right to audit the records of an Eligible Telecommunications Provider that provides OTAP or Lifeline benefits.

(6) OTAP and Lifeline Records: Each Eligible Telecommunications Provider must keep all OTAP and Lifeline records and supporting documentation for three years, or if a Commission review or audit is pending, until the review or audit is complete, whichever is later.

(a) An Eligible Telecommunications Provider must produce for inspection or audit upon request of the Commission or its authorized representative all OTAP and Lifeline records and supporting documentation. The Commission, or its representative, must allow the Eligible Telecommunications Provider a reasonable time to produce the records for inspection or audit.

(b) In addition to any other penalty allowed by law, the Commission may suspend or cancel an Eligible Telecommunications Provider's certificate of authority to provide telecommunications service for its failure to produce for inspection or audit the records required by this rule.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0050
Tribal Lifeline and Tribal Link-Up

(1) The Commission must determine if a prospective Tribal Lifeline or Tribal Link Up recipient who has executed a certification pursuant to 47 C.F.R. § 54 Subpart E (2013) has previously received a Tribal Lifeline or Tribal Link Up benefit at the residential address provided by the prospective subscriber to prevent duplicative support. An eligible resident of Tribal lands may receive the benefit of the Tribal Link Up program for a second or subsequent time only for otherwise qualifying commencement of telecommunications service at a principal place of residence with an address different from the address for which Tribal Link Up assistance was previously provided.

(2) Within five business days of a request for Tribal Lifeline or Tribal Link Up benefit, the Eligible Telecommunications Provider must submit to the Commission in an electronic format accessible by the Commission the Tribal Lifeline or Tribal Link Up applicant's full name, residential address, date of birth, telephone number associated with the application for Tribal Lifeline or Tribal Link Up benefit, and last four digits of his or her social security number or Tribal identification number. Each Eligible Telecommunications Provider must obtain, from each new and existing subscriber, consent to transmit the information as specified in this section of this rule. Prior to obtaining consent, the Eligible Telecommunications Provider must describe to the subscriber, using plain language, the specific information being submitted, that the information is being submitted to the Commission to ensure proper administration of the Tribal Lifeline and Tribal Link Up program, and that failure to provide consent will result in the subscriber being denied the Tribal Lifeline or Tribal Link Up benefit.

(3) If the Commission notifies the Eligible Telecommunications Provider that a prospective subscriber is receiving a Tribal Lifeline benefit or has received a Tribal Link Up benefit at the residential address provided by the subscriber, the Eligible Telecommunications Provider may not seek universal service support reimbursement for duplicate service.

(4) When two or more Eligible Telecommunications Providers submit the information required in section (2) of this rule for the same subscriber, only the Eligible Telecommunications Provider whose information was received and processed by the Commission first, as determined by the Commission, will be entitled to reimbursement from the universal service fund for that subscriber.

(5) Tribal Lifeline and Tribal Link Up Order Activity Report: The Tribal Lifeline and Tribal Link Up Order Activity Report is a listing of all Tribal Lifeline and Tribal Link Up customers whose phone service was disconnected, who voluntarily de-enrolled or were de-enrolled for failure to use the Tribal Lifeline service which the Eligible Telecommunications Provider offers at no charge and a list of all Tribal Lifeline and Tribal Link

Up customers whose telephone numbers or addresses have changed. Each Eligible Telecommunications Provider must submit monthly to the Commission in an electronic format accessible by the Commission on or before the close of business on the 21st calendar day of the following month.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 8-1989, f. & cert. ef. 6-8-89 (Order No. 89-724); PUC 5-1992, f. & ef. 2-14-92 (Order No. 92-238); PUC 2-1996, f. & ef. 4-18-96 (Order 96-102); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 2-2002, f. & cert. ef. 2-5-02; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0100
Toll Limitation Service and Prohibited Charges

(1) Upon request and availability, an OTAP or Lifeline customer is entitled to Toll Limitation Service from an Eligible Telecommunications Provider at no additional charge.

(2) An Eligible Telecommunications Provider may not charge the OTAP or Lifeline customer:

(a) The federal universal service fund fee on the local service portion of the phone bill;

(b) The local number portability fee; or

(c) The access recovery fee.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0110
Advertising, Marketing and Outreach

(1) An Eligible Telecommunications Provider may not conceal or misstate a material fact about OTAP or the Lifeline program in advertising, marketing materials or other outreach to Oregon consumers.

(2) An Eligible Telecommunications Provider must explain in plain language and disclose in OTAP and Lifeline marketing materials:

(a) That the Eligible Telecommunications Provider's offering is an OTAP and Lifeline supported service;

(b) That OTAP and Lifeline are government assistance programs. This disclosure must be conspicuous;

(c) The name of the Eligible Telecommunications Provider offering the OTAP and Lifeline supported service;

(d) That only eligible low-income customers may enroll in OTAP and Lifeline supported programs;

(e) That proof of eligibility may be necessary for enrollment;

(f) That OTAP and Lifeline supported services are limited to one benefit per household, consisting of either wireline or wireless service; and

(g) That OTAP and Lifeline supported services are non-transferable.

(3) The Eligible Telecommunications Provider must provide to the Commission copies of OTAP and Lifeline marketing materials to be released in the State of Oregon at least five business days prior to release.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0530
TDAP Eligibility

(1) A person may apply to receive an Assistive Telecommunication Device or Adaptive Equipment from the Commission. The application must be submitted using the form provided by the Commission. The TDAP application form is available online at http://www.puc.state.or.us/PUC/rspf/tdapapp.pdf, from the Commission and from certain community resources.

(2) A TDAP applicant must provide the Commission with:

(a) Evidence of regular access to a specific telephone number in Oregon;

(b) Evidence of current residency in Oregon; and

(c) A properly completed application including a statement that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired, or has a disability that requires adaptive equipment or an assistive telecommunication device to communicate effectively on the telephone. This statement must be signed by:

(A) A licensed physician who may certify that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired or has a disability;

(B) An audiologist or a hearing aid specialist who may certify only that the applicant is deaf or hard of hearing;

(C) A speech pathologist who may certify only that the applicant is speech impaired;

(D) A vocational rehabilitation counselor from the Oregon Office of Vocational Rehabilitation Services who may certify that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired or has a disability;

(E) A nurse practitioner who may certify that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired, or has a disability; or

(F) A rehabilitation instructor from the Oregon Commission for the Blind who may certify only that the applicant has a vision impairment.

(d) For a person under 18 years of age, or an adult who is determined to require a legal guardian, a parent or a guardian must apply on that person's behalf and assume full responsibility for the Assistive Telecommunication Device or Adaptive Equipment and services. An emancipated minor is considered an adult. If the application is signed by a person asserting power of attorney for the applicant or by a legal guardian, the person signing the application may be required to provide the Commission with evidence of the power of attorney or legal guardianship.

(3) The Commission may only approve applications for persons certified as deaf, deaf-blind, hard of hearing, speech or vision impaired or who have a disability and cannot use a telephone for expressive or receptive communication.

(4) The Commission may provide one Assistive Telecommunication Device or one Adaptive Equipment unit per eligible person. The one device or unit provided may also include an accessory device such as a loud ringer or signal device, as applicable. More than one Assistive Telecommunication Device or Adaptive Equipment unit may be provided to a household if more than one eligible person permanently resides in the household.

(5) If the Commission purchases new devices that may benefit a TDAP recipient more than the equipment currently provided by the Commission to the recipient, the Commission may allow the recipient to use both the current and new device for a 60-day trial period. The recipient must return the less beneficial equipment to the TDAP within five business days after the end of the trial period. If the recipient fails to return the equipment, the recipient is responsible for paying the Commission for the cost of the more expensive equipment.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 18-1989, f. & cert. ef. 12-14-89 (Order No. 89-1602); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0535
Ownership of and Conditions for Use of Assistive Telecommunication Devices or Adaptive Equipment

(1) All Assistive Telecommunication Devices or Adaptive Equipment purchased by the Commission remain the property of the State of Oregon. The Authorized Distributors must record the serial number of each Assistive Telecommunication Device or Adaptive Equipment unit. An Authorized Distributor's failure to comply may terminate the distributor's contract with the State of Oregon.

(2) Before receiving an Assistive Telecommunication Device or Adaptive Equipment, a recipient must sign the Conditions of Acceptance. A recipient who received TDAP equipment when under the age of 18 must sign a new Conditions of Acceptance form within 30 calendar days after becoming 18 years of age. Similarly, if there is a change in legal guardian for an adult recipient, the new guardian must sign a Conditions of Acceptance form within 30 calendar days of the change in guardianship. Failure to do so will result in the Commission billing the parent or guardian of record for the device.

(3) Before the requested equipment is distributed, an applicant or recipient must pay in full all outstanding accounts with the Commission.

(4) Any Assistive Telecommunication Device or Adaptive Equipment distributed to an eligible recipient under this program may not be sold, loaned, or otherwise transferred from the possession of the original recipient. Unauthorized transfers subject the recipient to repossession of the Assistive Telecommunication Device or Adaptive Equipment, prosecution, or liability for the full purchase price of the equipment.

(5) A recipient who moves to a different address within Oregon must report the new address to the Commission within 30 calendar days of the move. A recipient who moves out of Oregon must return all Assistive Telecommunication Devices or Adaptive Equipment received through the

Commission to an Authorized Distributor or the Commission before moving out of Oregon. A recipient who is no longer receiving telephone services must return all Assistive Telecommunication Devices or Adaptive Equipment received through the Commission to an Authorized Distributor or the Commission within 30 calendar days after termination of Local Exchange Service.

(6) A recipient may take Assistive Telecommunication Devices or Adaptive Equipment on travel outside Oregon. The recipient must obtain written permission from the Commission if the travel will be for more than 90 calendar days.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97 860-033-0535(5) Renumbered to 860-033-0536; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0536
TDAP Recipients' Liability

(1) The recipient is financially responsible for any damage to the equipment that is not caused by normal wear and tear, acts of nature, or disasters. To avoid financial responsibility for damaged equipment, the recipient must prove to the Commission that the damage was caused by normal wear and tear or acts of nature or disasters. The recipient is also financially responsible for the full replacement cost of the equipment if the recipient loses the equipment or moves out of Oregon without returning the equipment.

(2) Stolen Equipment or Equipment Damaged by Acts of Nature or Disasters:

(a) If the equipment is stolen, a recipient must notify the local law enforcement agency within 24 hours of the time the recipient discovers the theft. A recipient must forward a copy of the police report to the Commission within five business days of the date the theft was reported. If the local law enforcement agency does not respond to the recipient's theft report, the recipient must notify the Commission within five business days after the theft was reported. The recipient must forward a written report to the Commission that describes the theft and includes any witnesses' names, addresses, and telephone numbers.

(b) If the equipment is stolen outside the United States, the recipient must submit a copy of the police report to the Commission within five business days of the date the theft was reported. If the local law enforcement agency does not respond to the recipient's theft report, the recipient must notify the Commission within five business days after returning to Oregon. The recipient must forward to the Commission a written report that includes any witnesses' names, addresses, and telephone numbers; and describes the theft.

(c) If the equipment is damaged due to acts of nature or disasters, including, but not limited to floods, storms or fire, the recipient must submit an insurance claim, fire department report, police report, or other equivalent documentation about the event within five business days after the date the event occurred.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97 Renumbered from 860-033-0535(5); PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0537
Holding Recipients Financially Responsible for Damaged, Lost, or Otherwise Not Returned Assistive Telecommunication Devices or Adaptive Equipment

(1) Invoices:

(a) The Commission will mail an invoice indicating the amount of and the reason for such invoice to the responsible recipient at the last known address. The recipient has 30 calendar days from the service date of the invoice to respond.

(b) The invoiced recipient may submit a written response to the Commission in an attempt to resolve the invoice. At the Commission's discretion, further investigation may be initiated. If the investigation finds that the invoice was issued in error (for example, there is no verifiable reason for the invoice having been sent), the invoice may be canceled.

(c) If the Commission does not receive payment, the Commission may begin the collection activities.

(d) Incorrect address: When an invoice or notice of proposed assessment is returned with an incorrect address and the invoiced recipient has not notified the Commission of an address change as required by the Conditions of Acceptance for TDAP Equipment, the amount billed to the recipient becomes a liquidated debt.

(2) Notice of Proposed Assessment:

(a) If the recipient does not respond to the invoice within 30 days from the service date of the invoice, the Commission may issue a written proposed assessment for the amount due.

(b) The recipient may pay the assessment in full within 30 days of the service date of the notice of proposed assessment or may file a written petition for a hearing within 30 days of the service date of the notice of proposed assessment. A written petition for a hearing must clearly specify all the reasons the recipient disputes the proposed assessments.

(A) If the recipient pays the proposed assessment in full within the 30 days of the service date of the notice of proposed assessment, the Commission will accept the payment and discontinue any further collection activities for that assessment.

(B) If the recipient timely files a written petition for a hearing as set forth in subsection (b) of this section of this rule, the Commission will grant the recipient a hearing and give at least 10 days notice of the time and place of the hearing. The Commission will conduct the hearing under its rules governing hearings and proceedings.

(3) Commission Order:

(a) The Commission will enter an order if the recipient does not respond to the notice of proposed assessment within 30 days of the service date of the notice of proposed assessment or after considering the testimony presented at hearing. Any charges assessed by the Commission in its order become due and payable on the tenth day after the service date of the Commission's order.

(b) If the recipient does not respond to the order assessing charges, the account may be referred to the Department of Revenue or a collection agency for collection. The recipient is responsible for and must pay all costs incurred by the Commission to collect a past-due invoice amount from the recipient.

(4) Collection procedures for a recipient with two or more Assistive Telecommunication Devices or Adaptive Equipment units:

(a) The Commission will mail a letter to the recipient asking the recipient to return the equipment within 30 calendar days, and

(b) If the Commission does not receive a response, the Commission will send an invoice to the recipient. If the recipient does not pay the amount billed, the Commission may take the necessary action against the recipient to either regain possession of the State of Oregon's equipment or receive the full replacement value of such equipment.

(5) When the Commission receives notice that a recipient is deceased, the Commission will request that the estate return the equipment. The Commission may bill the estate for the cost of replacing the equipment if it has not been returned, or if it is returned in damaged condition.

(6) If the lost, damaged, or otherwise not returned equipment is obsolete or is no longer offered by the TDAP, the Commission may waive the recipient's financial responsibility.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-033-0540
Distribution Procedures for Assistive Telecommunication Devices or Adaptive Equipment

(1) Subject to appropriation and approval of expenditures for Assistive Telecommunication Devices or Adaptive Equipment and services purchased by the Commission, the Commission may contract with any governmental agency or other entity to establish an Authorized Distributor network and an Authorized Maintenance Center network.

(2) If demand exceeds supply, the Commission may distribute Assistive Telecommunication Devices or Adaptive Equipment to customers on a first-come first-serve basis.

(3) Each Authorized Distributor must inform the Commission in writing of all incoming and outgoing shipments of Assistive Telecommunication Devices or Adaptive Equipment. The written information must include the serial numbers engraved by the Authorized Distributor.

(4) Upon notice from the Commission, the Authorized Distributor must distribute Assistive Telecommunication Devices or Adaptive Equipment to eligible applicants.

(5) The Authorized Distributor must require each recipient, including the parent or legal guardian, to sign the Conditions of Acceptance form supplied by the Commission before providing an Assistive Telecommunication

Device or Adaptive Equipment unit. The Authorized Distributor and Authorized Maintenance Center must forward all forms to the Commission.

(6) If needed, the Commission may contract with an agency or individual to provide training on Assistive Telecommunication Devices or Adaptive Equipment to specialized populations.

(7) Recipients of Assistive Telecommunication Devices or Adaptive Equipment are responsible for replacement paper for the Assistive Telecommunication Device or Adaptive Equipment, the payment of the recipient's monthly telephone bill, the purchase or lease cost of recipient's telephone, the cost of replacement light bulbs for signal devices and batteries for the equipment.

(8) The Commission may require the Authorized Distributor to provide each recipient a copy of the OTAP application form, mailing forms for purchasing TTY paper, and telecommunications relay service information handouts.

(9) The recipient must return defective or damaged equipment to the Commission, at the Commission's expense, prior to receiving repaired or replacement equipment. The Commission will decide whether to replace or to repair the damaged or defective equipment. The requirement to return defective or damaged equipment prior to receiving repaired or replaced equipment may be waived by the Commission.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 18-1989, f. & cert. ef. 12-14-89 (Order No. 89-1602); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

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Rule Caption: Amendments to OAR 860-001-0310, Agency Representation by Officer or Employee
Adm. Order No.: PUC 1-2014
Filed with Sec. of State: 1-9-2014
Certified to be Effective: 1-9-14
Notice Publication Date: 12-1-2013
Rules Amended: 860-001-0310
Subject: These rule changes reconcile OAR 860-001-0310 with the Attorney General's recommendations in its letter reauthorizing our use of agency representatives for two types of hearings: (1) to recover amounts to pay for the replacement or repair of telecommunications assistive devices; and (2) to deny or terminate Oregon Telephone Assistance Program benefits.
Rules Coordinator: Diane Davis—(503) 378-4372

860-001-0310
Representation and Ethical Conduct

(1) All persons appearing in proceedings in a representative capacity must conform to the standards of ethical conduct required of attorneys appearing before the courts of Oregon. If a person does not conform to these standards, then the Commission may decline to permit the person to appear in a representative capacity in any proceedings.

(2) Except for Staff, a party to contested case proceedings may be represented by an authorized representative who is not an attorney.

(a) A party's initial pleading in the proceedings must designate the party's authorized representative.

(b) The ALJ has authority to limit an authorized representative's presentation of evidence, examination, and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record. The ALJ may not allow an authorized representative who is not an attorney to present legal argument except to the extent authorized in ORS 183.457.

(c) Changes to the designation of authorized representative must be made by written notice to the Commission with copies served on the other parties to the proceedings.

(3) Staff may represent the Commission in a contested case hearing in the following proceedings:

(a) Actions initiated by the Commission to recover telecommunications assistive devices, the value of devices which the recipients fail to return, or the cost of repairing equipment that the recipient returned in a damaged condition; and

(b) Denial or termination of Oregon Telephone Assistance Program benefits.

(4) Staff acting under the provisions of section (3) may not give legal advice to the Commission and may not present legal argument in contested case hearings, except to the extent authorized by this section.

(a) "Legal Argument" includes arguments on:

(A) The jurisdiction of the Commission to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Commission

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions to the Commission in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the hearing.

(5) If the ALJ determines that statements or objections made by Staff appearing under section (3) involve legal argument as defined in this rule, the ALJ will provide reasonable opportunity for Staff to consult with the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 756.040 & 756.060
Stats. Implemented: ORS 183.452-183.458, 756.040 & 756.500 - 756.575
Hist.: PUC 5-2010, f. & cert. ef. 10-22-10; PUC 1-2014, f. & cert. ef. 1-9-14

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Secretary of State, Corporation Division
Chapter 160

Rule Caption: Oregon License Directory
Adm. Order No.: CORP 3-2013
Filed with Sec. of State: 12-20-2013
Certified to be Effective: 1-1-14
Notice Publication Date: 10-1-2013
Rules Adopted: 160-010-0700, 160-010-0701, 160-010-0710, 160-010-0720
Subject: These rules govern the maintenance of the Oregon License Directory, which contains information about licenses, permits and registrations for which fees are imposed on small businesses by local and state agencies in Oregon.
Rules Coordinator: Ginger Spotts—(503) 986-2333

160-010-0700
Oregon License Directory

The maintenance and development of the Oregon License Directory are implemented by these rules (OAR 160-010-0700 – 160-010-0720), as required by Ch. 580, Oregon Laws 2013.

Stat. Auth.: 2013 OL Ch. 580, Sec. 1(4)
Stats. Implemented: 2013 OL Ch. 580
Hist.: CORP 3-2013, f. 12-20-13, cert. ef. 1-1-14

160-010-0701
Definitions

For the purposes of OAR 160-010-0700 through 160-010-0720:

(1) "Fee" means any set or variable dollar amount charged by the issuing agency.

(2) "Fee-related regulations" means fees that are incurred due to requirements by the license, permit or registration provisions that are not directly charged by the issuing agency. These fees include charges associated with required insurance, performance bonds, and inspections. These fees are incurred solely to do business, and are not generally applicable, such as building permits and utility fees.

(3) "Group Administrator" means a representative of the group or agency who is responsible for entering and editing that agency's License Directory information and manages users for their group.

(4) "Small Business" means a prospective, new or established business with 100 or fewer employees that is or will be located in Oregon, in accordance with ch. 580, Oregon Laws 2013, section 1.

Stat. Auth.: 2013 OL Ch. 580, Sec. 1(4)
Stats. Implemented: 2013 OL Ch. 580
Hist.: CORP 3-2013, f. 12-20-13, cert. ef. 1-1-14

160-010-0710
License Directory Information

(1) Scope.

(a) All state and local agencies that issue licenses, permits and registrations for which fees and fee-related regulations are imposed on small businesses must report the information designated in this section to the Secretary of State.

(b) All state and local agencies that issue licenses, permits and registrations for which fees and fee-related regulations are imposed on any business may report the information designated in this section to the Secretary of State.

(c) Additional relevant information may also be reported.

(2) Directory information will be formatted and organized in a database maintained by the Secretary of State. Group Administrators may select some information from choices presented by the Oregon License Directory application.

(3) Required Information. The information for licenses, permits and registrations shall include:

(a) "Name." The name of the license, permit or registration.

(b) "Start Date." The date this license, permit or registration will first be seen by the public in the license directory.

(c) "License Category." The type of field the license, permit or registration applies to.

(d) "Group." The group or agency associated with this license, permit or registration.

(e) "Description of license." This is a description of the duties/activities that the license covers and often includes definitions.

(f) "Duration." The length of time the license, permit or registration will be effective. The duration of renewals is also required.

(g) "Fee." The dollar amount of fees normally associated with the license, permit or registration, including application fee, exam fee, et cetera.

(A) Non-normative fees, such as late fee or expedite fee are not included.

(B) Renewal fees, duplicate fees, and other fees occurring after the initial issuance of the license.

(h) "Processing Time." The average time to process and issue the license, permit or registration on July 1st.

(i) "License Count." The number of active licenses, permits or registrations as of July 1st.

(j) "Bonding Requirements." The conditions where a bond may be required and the amount of the bond.

(k) "Insurance Requirements." The amount and type of insurance required for the license, permit or registration.

(4) The information for licenses, permits and registrations may include:

(a) "Fee exemption." Conditions where all or part of the license fee may be waived.

(b) "Examination Information." Information about testing or examination requirements.

(c) "Continuing Education Requirements." Additional education required to renew the license.

(d) "Prerequisites." Additional requirements, such as education or work experience, in order to get the license, permit or registration.

(e) "Required Documentation." Information about documentation necessary to get the license, permit or registration.

(f) " Application Form Name." The name of the application form for this license, permit or registration.

(g) "License Renewal Information." Information about requirements for renewal, such as timing of notices, requirements for inspections, and other information not covered elsewhere. The renewal duration and continuing education requirements may also be noted.

(h) "Duplicate License." The information required to get a duplicate license, permit or registration.

(i) "Statutes, Administrative Rules or Ordinances." Any applicable law relating to the issuance of the license, permit or registration.

(j) Other relevant information may be provided.

Stat. Auth.: 2013 OL Ch. 580, Sec. 1(4)
Stats. Implemented: 2013 OL Ch. 580
Hist.: CORP 3-2013, f. 12-20-13, cert. ef. 1-1-14

160-010-0720
License Information Reporting

(1) Each agency identified in OAR 160-010-0710(1)(a) must report the information required by that section to the Secretary of State annually.

(2) The information for a given year shall be reported at any time from June 1 through August 31 of that year.

(3) All information that is reported for a given year must be valid for July 1st of that year.

Stat. Auth.: 2013 OL Ch. 580, Sec. 1(4)
Stats. Implemented: 2013 OL Ch. 580
Hist.: CORP 3-2013, f. 12-20-13, cert. ef. 1-1-14

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Rule Caption: Oregon License Directory
Adm. Order No.: CORP 1-2014
Filed with Sec. of State: 1-3-2014
Certified to be Effective: 1-3-14
Notice Publication Date: 10-1-2013
Rules Adopted: 160-010-0700, 160-010-0701, 160-010-0710, 160-010-0720
Subject: These rules govern the maintenance of the Oregon License Directory, which contains information about licenses, permits and registrations for which fees are imposed on small businesses by local and state agencies in Oregon. This rule is being refilled due to a missed Legislative Counsel deadline. The rule was effective January 1, 2014.
Rules Coordinator: Ginger Spotts—(503) 986-2333

160-010-0700
Oregon License Directory

The maintenance and development of the Oregon License Directory are implemented by these rules (OAR 160-010-0700 – 160-010-0720), as required by Ch. 580, Oregon Laws 2013.

Stat. Auth.: 2013 OL Ch. 580, Sec. 1(4)
Stats. Implemented: 2013 OL Ch. 580
Hist.: CORP 3-2013, f. 12-20-13, cert. ef. 1-1-14; CORP 1-2014, f. & cert. ef. 1-3-14

160-010-0701
Definitions

For the purposes of OAR 160-010-0700 through 160-010-0720:

(1) "Fee" means any set or variable dollar amount charged by the issuing agency.

(2) "Fee-related regulations" means fees that are incurred due to requirements by the license, permit or registration provisions that are not directly charged by the issuing agency. These fees include charges associated with required insurance, performance bonds, and inspections. These fees are incurred solely to do business, and are not generally applicable, such as building permits and utility fees.

(3) "Group Administrator" means a representative of the group or agency who is responsible for entering and editing that agency's License Directory information and manages users for their group.

(4) "Small Business" means a prospective, new or established business with 100 or fewer employees that is or will be located in Oregon, in accordance with ch. 580, Oregon Laws 2013, section 1.

Stat. Auth.: 2013 OL Ch. 580, Sec. 1(4)
Stats. Implemented: 2013 OL Ch. 580
Hist.: CORP 3-2013, f. 12-20-13, cert. ef. 1-1-14; CORP 1-2014, f. & cert. ef. 1-3-14

160-010-0710
License Directory Information

(1) Scope.

(a) All state and local agencies that issue licenses, permits and registrations for which fees and fee-related regulations are imposed on small businesses must report the information designated in this section to the Secretary of State.

(b) All state and local agencies that issue licenses, permits and registrations for which fees and fee-related regulations are imposed on any business may report the information designated in this section to the Secretary of State.

(c) Additional relevant information may also be reported.

(2) Directory information will be formatted and organized in a database maintained by the Secretary of State. Group Administrators may select some information from choices presented by the Oregon License Directory application.

(3) Required Information. The information for licenses, permits and registrations shall include:

(a) "Name." The name of the license, permit or registration.

(b) "Start Date." The date this license, permit or registration will first be seen by the public in the license directory.

(c) "License Category." The type of field the license, permit or registration applies to.

(d) "Group." The group or agency associated with this license, permit or registration.

(e) "Description of license." This is a description of the duties/activities that the license covers and often includes definitions.

(f) "Duration." The length of time the license, permit or registration will be effective. The duration of renewals is also required.

(g) "Fee." The dollar amount of fees normally associated with the license, permit or registration, including application fee, exam fee, et cetera.

(A) Non-normative fees, such as late fee or expedite fee are not included.

(B) Renewal fees, duplicate fees, and other fees occurring after the initial issuance of the license.

(h) "Processing Time." The average time to process and issue the license, permit or registration on July 1st.

(i) "License Count." The number of active licenses, permits or registrations as of July 1st.

(j) "Bonding Requirements." The conditions where a bond may be required and the amount of the bond.

(k) "Insurance Requirements." The amount and type of insurance required for the license, permit or registration.

(4) The information for licenses, permits and registrations may include:

(a) "Fee exemption." Conditions where all or part of the license fee may be waived.

(b) "Examination Information." Information about testing or examination requirements.

(c) "Continuing Education Requirements." Additional education required to renew the license.

(d) "Prerequisites." Additional requirements, such as education or work experience, in order to get the license, permit or registration.

(e) "Required Documentation." Information about documentation necessary to get the license, permit or registration.

(f) "Application Form Name." The name of the application form for this license, permit or registration.

(g) "License Renewal Information." Information about requirements for renewal, such as timing of notices, requirements for inspections, and other information not covered elsewhere. The renewal duration and continuing education requirements may also be noted.

(h) "Duplicate License." The information required to get a duplicate license, permit or registration.

(i) "Statutes, Administrative Rules or Ordinances." Any applicable law relating to the issuance of the license, permit or registration.

(j) Other relevant information may be provided.

Stat. Auth.: 2013 OL Ch. 580, Sec. 1(4)
Stats. Implemented: 2013 OL Ch. 580
Hist.: CORP 3-2013, f. 12-20-13, cert. ef. 1-1-14; CORP 1-2014, f. & cert. ef. 1-3-14

160-010-0720
License Information Reporting

(1) Each agency identified in OAR 160-010-0710(1)(a) must report the information required by that section to the Secretary of State annually.

(2) The information for a given year shall be reported at any time from June 1 through August 31 of that year.

(3) All information that is reported for a given year must be valid for July 1st of that year.

Stat. Auth.: 2013 OL Ch. 580, Sec. 1(4)
Stats. Implemented: 2013 OL Ch. 580
Hist.: CORP 3-2013, f. 12-20-13, cert. ef. 1-1-14; CORP 1-2014, f. & cert. ef. 1-3-14

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Secretary of State, Elections Division
Chapter 165

Rule Caption: Removes References to Spot Checks from the Penalty Matrix for Other Campaign Finance Violations
Adm. Order No.: ELECT 1-2014
Filed with Sec. of State: 1-2-2014
Certified to be Effective: 1-2-14
Notice Publication Date: 12-1-2013
Rules Amended: 165-013-0010
Subject: This proposed rule amendment removes references to "spot checks", which were eliminated by the 2013 Legislative Assembly.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0010
Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2) Mitigating Circumstances. The only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. A valid personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity. This mitigating circumstance is not available to the candidate or treasurer who was the perpetrator of the wrongdoing described above;

(d) The violation is the direct result of fire, flood, utility failure or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax); or

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) Omitted or insufficient information for a violation of ORS 260.039(4), 260.042(4) or 260.118(3) submitted prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% reduction of the penalty. If a public hearing is requested, the omitted or insufficient information may be submitted up to the date of the hearing. In such an event, the candidate or treasurer will be entitled to a 50% reduction of the assessed penalty.

(c) For the purpose of issuing a proposed penalty notice and subsequent imposition of a civil penalty for any violation in Appendix A of this rule, the candidate of a principal campaign committee, the treasurer of a political action committee, or the chief petitioner of a petition committee, is the party named in a proposed penalty notice and is the party responsible for the payment of any civil penalty if a penalty is assessed.

(d) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendix referenced is available from the agency.]
Stat. Auth.: ORS 246.150, 260.200
Stats. Implemented: ORS 260.200, 260.215, 260.232, 260.995
Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 1-2004, f. & cert. ef. 2-13-04; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 10-2006(Temp), f. & cert. ef. 7-6-06 thru 1-2-07; ELECT 17-2006, f. & cert. ef. 12-29-06; ELECT 14-2007, f. & cert. ef. 12-31-07; ELECT 30-2009, f. & cert. ef. 12-31-09; ELECT 9-2011, f. & cert. ef. 4-8-11; ELECT 6-2012, f. & cert. ef. 1-3-12; ELECT 1-2013, f. & cert. ef. 2-4-13; ELECT 1-2014, f. & cert. ef. 1-2-14

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Rule Caption: Adopts 2014 Campaign Finance Manual and amends process for administratively discontinuing a political committee
Adm. Order No.: ELECT 2-2014
Filed with Sec. of State: 1-2-2014
Certified to be Effective: 1-2-14
Notice Publication Date: 12-1-2013
Rules Amended: 165-012-0005, 165-012-0240

Subject: 165-012-0005: This rule adopts the 2014 Campaign Finance Manual and associated forms to comply with changes made by the 2013 Legislative Assembly.

165-012-0240: This rule raises the amount of money a committee's ending cash balance can have in order to be administratively discontinued from $3,000 to $3,500, in addition to other non-substantive grammatical changes.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-0005

Designating the Campaign Finance Manual and Forms; Late Penalty Matrix

(1) Pursuant to ORS 260.156, the Secretary of State designates the *2014 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

[Publications: Publications and Forms referenced are available from the agency.]

Stat. Auth.: ORS 246.120, 246.150, 260.156 & 260.200

Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200

Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05; ELECT 1-2007, f. & cert. ef. 1-5-07; ELECT 2-2007(Temp), f. & cert. ef. 5-2-07 thru 10-29-07; ELECT 4-2007(Temp), f. & cert. ef. 7-16-07 thru 12-31-07; ELECT 13-2007, f. & cert. ef. 12-31-07; ELECT 8-2009, f. & cert. ef. 5-4-09; ELECT 16-2009, f. & cert. ef. 7-30-09; ELECT 27-2009, f. & cert. ef. 12-31-09; ELECT 3-2010, f. & cert. ef. 4-22-10; ELECT 8-2011, f. & cert. ef. 4-8-11; ELECT 12-2011, f. & cert. ef. 7-12-11; ELECT 21-2011(Temp), f. & cert. ef. 9-30-11 thru 12-30-11; ELECT 5-2012, f. & cert. ef. 1-3-12; ELECT 2-2-14, f. & cert. ef. 1-2-14

165-012-0240

Administrative Discontinuation of a Political Committee

(1) The Elections Division may administratively discontinue a political or petition committee when:

(a) The committee has not filed any transactions under ORS 260.057 for one calendar year; and

(b) The committee's ending cash balance reflected in ORESTAR is not more than $3500.

(2) Not later than 30 days before administratively discontinuing a committee under this section, the Elections Division shall attempt to notify the committee of the proposed discontinuation.

(a) For a candidate committee:

(A) By first class mail sent to the mailing address reported on the most recent Statement of Organization for the candidate and by first class mail to the most recent mailing address for the candidate reported in the Oregon Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent; and

(B) By first class mail to the mailing address reported on the most recent Statement of Organization for the treasurer, if applicable.

(b) For a political committee notice will be sent by first class mail sent to the mailing address reported on the most recent Statement of Organization for the treasurer and by first class mail to the most recent mailing address for the treasurer reported in the Oregon Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent.

(c) For a petition committee:

(A) By first class mail sent to the mailing address reported on the most recent Statement of Organization for the chief petitioner(s) and by first class mail to the most recent address for the chief petitioner(s) in the Oregon Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent; and

(B) By first class mail to the mailing address reported on the most recent Statement of Organization for the treasurer, if applicable.

(3) The notice shall inform the committee that it will be discontinued by the Elections Division unless the committee informs the Elections Division of reasons why the committee does not meet the criteria of this rule for administrative discontinuation. The committee must inform the Elections Division in writing of the reasons not later than 20 days after the service date of the letter. The written notice shall also include:

(a) Notification that the statement of organization will be administratively discontinued 30 days from the date of the letter; and

(b) The applicable reasons for discontinuation listed in subsection (1) of this section.

Stat. Auth.: ORS 246.150, 260.046

Stats. Implemented: ORS 260.046

Hist.: ELECT 14-2005, f. & cert. ef. 12-30-05; ELECT 6-2007, f. & cert. ef. 8-27-07; ELECT 29-2009, f. & cert. ef. 12-31-09; ELECT 5-2012, f. & cert. ef. 1-3-12; ELECT 2-2-14, f. & cert. ef. 1-2-14

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Rule Caption: Propose for Repeal Notice of Local Measure Election Forms

Adm. Order No.: ELECT 3-2014

Filed with Sec. of State: 1-2-2014

Certified to be Effective: 1-2-14

Notice Publication Date: 12-1-2013

Rules Repealed: 165-020-0025

Subject: This rule is proposed for repeal because the SEL 801, SEL 802 and SEL 803 Notices of Measure Election for county, city and districts are included in the 2014 Referral Manual adopted by OAR 165-014-0005.

Rules Coordinator: Brenda Bayes—(503) 986-1518

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Rule Caption: Clarifies Method Of Filing Exceptions To Proposed Orders

Adm. Order No.: ELECT 4-2014

Filed with Sec. of State: 1-2-2014

Certified to be Effective: 1-2-14

Notice Publication Date: 12-1-2013

Rules Amended: 165-001-0050

Subject: The rule is proposed for amendment to provide clarity on when and how exceptions to a proposed order may be filed with the Elections Division.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-001-0050

Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order

(1) The administrative law judge shall prepare a proposed order and serve the proposed order on the agency and each party. The proposed order shall be served not later than 30 calendar days after the hearing is adjourned. The proposed order shall also include information about when and where written exceptions to the proposed order must be filed to be considered by the agency.

(2) The exceptions must be received by the Elections Division not later than 30 calendar days after the service date of the proposed order. The date of service is the day the proposed order is mailed, not the date the party receives the proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order. When the agency serves an amended proposed order on the party, the agency shall, at the same time notify the party when and where written exceptions for the amended order must be filed to be considered by the agency.

(4) The agency decision maker, after considering any of the written exceptions may adopt the proposed order, amended proposed order or prepare a new order.

Stat. Auth.: ORS 183.090, 183.470, 246.150, 260.232 & 260.995

Stats. Implemented: ORS 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 10-2011, f. & cert. ef. 7-12-11; ELECT 4-2014, f. & cert. ef. 1-2-14

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Rule Caption: Adopts the 2014 Initiative and Referendum Manuals, Recall Manual and Referral Manual

Adm. Order No.: ELECT 5-2014

Filed with Sec. of State: 1-2-2014

Certified to be Effective: 1-2-14

Notice Publication Date: 12-1-2013

Rules Amended: 165-014-0005

Subject: This proposed rule amendment designates the 2014 State Initiative and Referendum Manual; 2014 Recall Manual; and the 2014 County, City and District Initiative and Referendum Manual and associated forms as the procedures and forms to be used for the

initiative, referendum and recall processes. In addition this proposed rule amendment designates the 2014 County, City and District Referral Manual to be used for the local referral process.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0005
Designating the Initiative, Referendum and Recall Manuals and Forms

(1) The Secretary of State designates the *2014 State Initiative and Referendum Manual* and associated forms as the procedures and forms to be used for the state initiative and referendum process.

(2) The Secretary of State designates the *2014 Recall Manual* and associated forms as the procedures and forms to be used for the recall process.

(3) The Secretary of State designates the *2014 County, City and District Initiative and Referendum Manual* and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the county initiative and referendum process.

(4) The Secretary of State designates the *2014 County, City and District Referral Manual* and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local referral process.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 264.120, 246.150 & 250.015
Stats. Implemented: ORS 246.120, 246.150 & 250.015
Hist.: SD 120, f. & ef. 12-21-77; SD 7-1979(Temp), f. & ef. 11-5-79; SD 31-1980, f. & ef. 3-6-80; SD 10-1984, f. & ef. 6-19-84; SD 21-1984(Temp), f. & ef. 10-8-84; SD 4-1986, f. & ef. 2-26-86; ELECT 33-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1989(Temp), f. & cert. ef. 8-11-89; ELECT 4-1991 (Temp), f. & cert. ef. 3-18-91; ELECT 10-1992(Temp), f. & cert. ef. 4-9-92; ELECT 19-1992(Temp), f. & cert. ef. 7-1-92; ELECT 39-1992, f. & cert. ef. 12-17-92; ELECT 3-1993 (Temp), f. & cert. ef. 1-22-93; ELECT 10-1993, f. & cert. ef. 3-25-93; ELECT 35-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 20-2003, f. & cert. ef. 12-5-03; ELECT 10-2005, f. & cert. ef. 12-14-05; ELECT 3-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07; Administrative correction 11-17-07; ELECT 16-2007, f. & cert. ef. 12-31-07; ELECT 32-2009, f. & cert. ef. 12-31-09; ELECT 7-2012, f. & cert. ef. 1-3-12; ELECT 5-2014, f. & cert. ef. 1-2-14

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Rule Caption: Updating Candidate and Minor Party Manuals and Proposes for Repeal Write-In Acceptance Form
Adm. Order No.: ELECT 6-2014
Filed with Sec. of State: 1-2-2014
Certified to be Effective: 1-2-14
Notice Publication Date: 12-1-2013
Rules Amended: 165-010-0005
Rules Repealed: 165-010-0080
Subject: 165-010-0005: This rule adopts the 2014 Candidates Manual and associated forms to comply with changes made by the 2013 Legislative Assembly. In addition this rule designates the 2014 Minor Political Party Manual as the procedures and forms to be used to form a Minor Political Party and nominate candidates for elective office.

165-010-0080: This rule is proposed for repeal because the form and associated process are included in the 2014 Candidates Manual.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-010-0005
Designating the State Candidates Manuals, County Candidate's Manual and Forms

(1) The Secretary of State designates the *2014 Candidate's Manual* and associated forms as the procedures and forms to be used by candidates filing and running for elective office.

(2) The Secretary of State designates the *2014 Minor Political Party Formation and Candidate Nomination* and associated forms as the procedures and forms to be used to form a Minor Political Party and nominate candidates for elective office.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 246.120, 246.150 & 249.009
Stats. Implemented: ORS 246.120, 246.150 & 249.009
Hist.: SD 35-1980, f. & ef. 3-6-80; SD 31-1983, f. & ef. 12-20-83; SD 5-1986, f. & ef. 2-26-86; ELECT 9-1992(Temp), f. & cert. ef. 4-9-92; ELECT 32-1992, f. & cert. ef. 10-8-92; ELECT 33-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 18-2003, f. & cert. ef. 12-5-03; ELECT 2-2004(Temp), f. & cert. ef. 4-9-04 thru 10-6-04; Administrative correction 10-22-04; ELECT 9-2005, f. & cert. ef. 12-14-05; ELECT 11-2007, f. & cert. ef. 12-31-07; ELECT 25-2009, f. & cert. ef. 12-31-09; ELECT 1-2011, f. & cert. ef. 2-4-11; ELECT 16-2011(Temp), f. & cert. ef. 8-16-11 thru 12-31-11; ELECT 4-2012, f. & cert. ef. 1-3-12; ELECT 6-2014, f. & cert. ef. 1-2-14

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Rule Caption: Clarifies signature verification processes
Adm. Order No.: ELECT 7-2014
Filed with Sec. of State: 1-7-2014
Certified to be Effective: 1-7-14
Notice Publication Date: 9-1-2013
Rules Amended: 165-014-0030
Subject: OAR 165-014-0030 is proposed for amendment to clarify that statistical sampling will only be conducted on additional submission of signatures if the number of unverified signatures accepted for inclusion in the sample are equal to or greater than the remaining required number of signatures. Additionally reference is added to specify that the handwriting characteristics and factors set forth in the Vote by Mail Procedures Manual adopted under OAR 165-007-0030 will be used to evaluate and determine whether the signature on a petition matches signatures contained in the voter's registration record.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0030
Statistical Sampling Procedures for State Petition

(1) This rule is adopted to implement ORS 250.045(1) and ORS 250.105(5).

(2) The pre-processing of petition signature sheets is conducted by the Elections Division.

(3) Verification of sampled signature lines against voter registration records may be conducted by either the Elections Division or county elections officials.

(4) The handwriting characteristics and factors set forth in the Vote by Mail Procedures Manual adopted under OAR 165-007-0030 will be used to evaluate and determine whether the signature on any sampled signature line matches signatures contained in the voter's registration record.

(a) Only a signature possessing obvious and predominantly matching characteristics with signatures contained in the voter's registration record may be determined to be a match.

(b) A signature possessing more non-matching than matching characteristics with signatures contained in the voter's registration record shall be reviewed by at least two different signature verification staff members before it is rejected as a non-matching signature.

(5) A random sample for any prospective initiative, initiative or referendum petition submittal, will only be selected if the Elections Division determines the petition signature sheets accepted for inclusion in the sample contain a number of unverified signatures equal to or greater than the required number of signatures necessary to accept the petition.

(6) After receiving the signature sheets from the chief petitioners, the Elections Division utilizes the process outlined in (7) through (18) of this rule to determine if the prospective initiative petition, which is also referred to as the sponsorship petition or submittal, contains the signatures of at least 1,000 electors.

(7) No more than 2,000 signatures will be accepted for verification at any one time. Signatures submitted in excess of this requirement are void and will not be included for sampling nor returned to the chief petitioner.

(8) Two signature samples may be selected in order to determine if the petition contains the required number of valid signatures. The sample size determination and statistical formula used to determine if a prospective initiative petition contains the required number of valid signatures is contained in Appendix 1, which is incorporated into this rule by reference. [Appendix not included. See ED. NOTE.]

(9) Prior to verification, each cover and signature sheet is reviewed and removed if:

(a) The text of the prospective initiative petition is not incorporated into the cover sheet and copied onto the back or stapled to the prospective initiative petition signature sheet.

(b) The circulator certification is insufficient as defined by OAR 165-014-0270.

(c) All information included in the optional information fields about the petition signers, such as their printed name, address and date signed, does not comply with OAR 165-014-0275.

(d) The cover and signature sheet submitted is produced on colored paper stock when the petition is not using paid circulators.

(e) No sheet number is provided.

(10) The signature lines on each petition signature sheet accepted for inclusion in the sample will be reviewed and not accepted for sampling if:

(a) The signature line is not certified by the circulator's certification date.

(b) The signature line does not comply with OAR 165-014-0275.

(11) Those individual signature lines accepted for sampling will be entered into the Oregon Centralized Voter Registration System (OCVR) which will be used for the random signature selection process and to verify signatures.

(12) The first random sampling of petition signature lines is verified. If the sampled signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified.

(13) The Elections Division will consolidate and tabulate the verification data, generated from OCVR, for the first sample.

(14) The statistical formula will be applied to the data from the first sample. If the prospective initiative petition is accepted as a result of the first sample the Elections Division will notify the chief petitioners or correspondence recipient and forward the text to the Attorney General for drafting of the ballot title.

(15) If the prospective initiative petition is not accepted as a result of the first sample, the remaining petition signature lines will be verified. If the sampled signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified.

(16) The verification data for the remaining petition signature lines will be added to the first sample data and the statistical formula applied to the combined results. If the prospective initiative petition is accepted after complete verification the Elections Division will notify the chief petitioners or correspondence recipient and forward the text to the Attorney General for drafting of the ballot title.

(17) If after complete verification the Election Division determines the prospective initiative petition does not contain 1,000 valid signatures, chief petitioners may make one additional submittal of no more than 2,000 signatures.

(a) The verification procedures applied to the combined first and second sample will be applied to the second submittal of signatures.

(b) If the results of verification of the second submittal of signatures do not qualify the petition for acceptance, the chief petitioners must begin the prospective initiative petition process again.

(18) Signature verification of the prospective initiative petition must be completed:

(a) Not later than 10 business days after receipt of the prospective petition signatures;

(b) Not later than 20 business days after receipt of prospective petition signatures if two or more prospective petitions are received in a single day; or

(c) Not later than 20 business days after receipt of prospective petition signatures if all signatures contained in the prospective petition are required to be verified.

(19) Once chief petitioners submit the required number of signatures and affirm the petition is complete, the Elections Division utilizes the process outlined in (20) through (31) of this rule to determine if the initiative or referendum petition contains enough valid signatures to qualify for the ballot.

(20) Two signature samples may be selected in order to determine if the initiative or referendum petition contains the required number of valid signatures. The statistical formulas used to determine if an initiative or referendum petition contains the required number of valid signatures are contained in Appendix 2 and Appendix 3, respectively. Both appendices are incorporated into this rule by reference.

(21) Prior to verification, each cover and signature sheet is reviewed and removed if :

(a) The cover and signature sheet submitted is not a version that was approved for circulation.

(b) The circulator certification is insufficient as defined by OAR 165-014-0270.

(c) All information included in the optional information fields about the petition signers, such as their printed name, address and date signed, does not comply with OAR 165-014-0275.

(d) The cover and signature sheet submitted is produced on colored paper stock when the petition is not using paid circulators.

(e) The electronic template submitted is produced on colored paper stock.

(f) No sheet number is provided.

(22) The signature lines on each petition signature sheet accepted for inclusion in the sample will be reviewed and not accepted for sampling if:

(a) The signature line is not certified by the circulator's certification date.

(b) The signature line does not comply with OAR 165-014-0275.

(23) Those individual signature lines accepted for sampling will be entered into the Oregon Centralized Voter Registration System (OCVR) which will be used for the random signature selection process and to verify signatures.

(24) The size of the first sample of signatures will be fixed at 1,000. The size of the second sample of signatures will be specified such that the total number of signatures for the combined first and second sample will be at least five percent of the total number of signatures accepted for verification.

(25) The petition signature sheets containing signature lines selected in the first and second random samples are separated from the signature sheets that are not selected in the sample.

(26) The first random sampling of petition signature lines is verified. If the sampled signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified.

(27) The Elections Division will consolidate and tabulate the verification data, generated from OCVR, for the first sample.

(28) The statistical formula will be applied to the consolidated data from the first sample. After determining the result of the first sample the Elections Division will notify the chief petitioners or correspondence recipient that the petition has either qualified to the ballot or that the second larger sample will be verified.

(29) The second random sampling of petition signature lines is verified. If the sampled signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified.

(30) The verification data for the second sample will be added to the first sample data and the statistical formula applied to the combined results. If the petition is accepted after verification of the combined sample the Elections Division will notify the chief petitioners or correspondence recipient that the petition has qualified to the ballot.

(31) If after verification of the combined sample the Elections Division determines the petition does not contain the required number of valid signatures, chief petitioners may submit additional signatures as long as the filing deadline has not passed. Each additional submittal will be verified using the following process:

(a) A single sample that is the larger of 250 signatures or a number of signatures that is directly proportional to the first submittal of signatures will be selected from additional signatures accepted for inclusion in the sample.

(b) If fewer than 250 signatures are submitted then all signatures are verified.

(c) The verification procedures applied to the first submittal will be applied to any additional submittal of signatures.

(d) To determine acceptance or rejection of the petition, the verification data from additional submittals will be added to the verification data of the first submittal and the statistical formula applied to the combined results.

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

Stat. Auth.: ORS 246.150 & 250.105

Stats. Implemented: ORS 250.105

Hist.: SD 4-1978(Temp), f. & ef. 7-6-78; SD 2-1979, f. & ef. 4-23-79; SD 20-1986, f. & ef. 5-23-86; ELECT 12-1994, f. & cert. ef. 6-23-94; ELECT 8-1999, f. & cert. ef. 9-3-99; ELECT 9-2000, f. & cert. ef. 6-6-00; ELECT 3-2004, f. & cert. ef. 4-15-04; ELECT 3-2005, f. & cert. ef. 3-22-05; ELECT 18-2007, f. & cert. ef. 12-31-07; ELECT 19-2011, f. & cert. ef. 9-26-11; ELECT 7-2014, f. & cert. ef. 1-7-14

OAR REVISION CUMULATIVE INDEX

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123-095-0030(T)	12-1-2013	Repeal	1-1-2014
123-095-0035	12-1-2013	Adopt	1-1-2014
123-095-0035(T)	12-1-2013	Repeal	1-1-2014
123-095-0040	12-1-2013	Amend	1-1-2014
123-095-0040(T)	12-1-2013	Repeal	1-1-2014
125-045-0235	1-1-2014	Amend	2-1-2014
125-055-0100	1-1-2014	Amend	2-1-2014
125-055-0105	1-1-2014	Amend	2-1-2014
125-055-0115	1-1-2014	Amend	2-1-2014
125-055-0120	1-1-2014	Amend	2-1-2014
125-055-0125	1-1-2014	Amend	2-1-2014
125-055-0130	1-1-2014	Amend	2-1-2014
125-246-0100	1-1-2014	Amend	2-1-2014
125-246-0110	1-1-2014	Amend	2-1-2014
125-246-0130	1-1-2014	Amend	2-1-2014
125-246-0165	1-1-2014	Amend	2-1-2014
125-246-0170	1-1-2014	Amend	2-1-2014
125-246-0350	1-1-2014	Amend	2-1-2014
125-246-0360	1-1-2014	Amend	2-1-2014
125-246-0400	1-1-2014	Amend	2-1-2014
125-246-0500	1-1-2014	Amend	2-1-2014
125-246-0556	1-1-2014	Amend	2-1-2014
125-246-0570	1-1-2014	Amend	2-1-2014
125-246-0900	1-1-2014	Amend	2-1-2014
125-247-0170	1-1-2014	Amend	2-1-2014
125-247-0200	1-1-2014	Amend	2-1-2014
125-247-0265	1-1-2014	Amend	2-1-2014
125-247-0270	1-1-2014	Amend	2-1-2014
125-247-0805	1-1-2014	Amend	2-1-2014
125-248-0130	1-1-2014	Amend	2-1-2014
137-055-2170	1-13-2014	Amend(T)	2-1-2014
137-055-3420	1-13-2014	Amend(T)	2-1-2014
141-030-0015	2-1-2014	Amend	2-1-2014
141-030-0025	2-1-2014	Amend	2-1-2014
141-030-0036	2-1-2014	Repeal	2-1-2014
141-030-0037	2-1-2014	Amend	2-1-2014
141-035-0012	2-1-2014	Amend	2-1-2014
141-035-0013	2-1-2014	Amend	2-1-2014
141-035-0015	2-1-2014	Repeal	2-1-2014
141-035-0016	2-1-2014	Amend	2-1-2014
141-035-0018	2-1-2014	Amend	2-1-2014
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141-035-0025	2-1-2014	Amend	2-1-2014
141-035-0030	2-1-2014	Amend	2-1-2014
141-035-0035	2-1-2014	Amend	2-1-2014
141-035-0040	2-1-2014	Amend	2-1-2014
141-035-0045	2-1-2014	Amend	2-1-2014
141-035-0047	2-1-2014	Amend	2-1-2014
141-035-0048	2-1-2014	Amend	2-1-2014
141-035-0050	2-1-2014	Amend	2-1-2014
141-035-0065	2-1-2014	Amend	2-1-2014
141-035-0068	2-1-2014	Amend	2-1-2014
141-040-0020	2-1-2014	Amend	2-1-2014
141-040-0214	2-1-2014	Amend	2-1-2014
141-045-0010	2-1-2014	Amend	2-1-2014

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141-045-0061	2-1-2014	Amend	2-1-2014
141-045-0100	2-1-2014	Amend	2-1-2014
141-089-0640	1-1-2014	Amend	1-1-2014
141-089-0645	1-1-2014	Amend	1-1-2014
141-089-0820	1-1-2014	Amend	1-1-2014
141-089-0825	1-1-2014	Amend	1-1-2014
141-089-0830	1-1-2014	Amend	1-1-2014
141-089-0835	1-1-2014	Amend	1-1-2014
141-145-0000	2-1-2014	Adopt	2-1-2014
141-145-0005	2-1-2014	Adopt	2-1-2014
141-145-0010	2-1-2014	Adopt	2-1-2014
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141-145-0050	2-1-2014	Adopt	2-1-2014
141-145-0055	2-1-2014	Adopt	2-1-2014
141-145-0060	2-1-2014	Adopt	2-1-2014
141-145-0065	2-1-2014	Adopt	2-1-2014
141-145-0070	2-1-2014	Adopt	2-1-2014
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150-118.010(1)	12-26-2013	Amend	2-1-2014
150-118.010(2)	12-26-2013	Amend	2-1-2014
150-118.010(3)	12-26-2013	Amend	2-1-2014
150-118.010(4)(b)	12-26-2013	Amend	2-1-2014
150-118.010(7)	12-26-2013	Amend	2-1-2014
150-118.010(8)	12-26-2013	Adopt	2-1-2014
150-118.100(1)	12-26-2013	Amend	2-1-2014
150-118.100(6)	12-26-2013	Adopt	2-1-2014
150-118.140	12-26-2013	Amend	2-1-2014
150-118.160	12-26-2013	Adopt	2-1-2014
150-118.160-(B)	12-26-2013	Amend	2-1-2014
150-118.171	12-26-2013	Amend	2-1-2014
150-118.225	12-26-2013	Amend	2-1-2014
150-118.250(1)	12-26-2013	Am. & Ren.	2-1-2014
150-118.260	12-26-2013	Adopt	2-1-2014
150-118.260(6)	12-26-2013	Amend	2-1-2014
150-118.265	12-26-2013	Adopt	2-1-2014
150-118.300	12-26-2013	Amend	2-1-2014
150-137.300(3)	12-26-2013	Am. & Ren.	2-1-2014
150-305.145(3)	1-1-2014	Amend	2-1-2014
150-305.230	1-1-2014	Amend	2-1-2014
150-305.285	1-1-2014	Amend	2-1-2014
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150-305.810	12-26-2013	Amend	2-1-2014
150-306.135	1-1-2014	Amend	2-1-2014
150-308.010	1-1-2014	Amend	2-1-2014
150-308A.724	1-1-2014	Repeal	2-1-2014
150-309.100(3)-(B)	1-1-2014	Amend	2-1-2014
150-309.110(1)-(A)	1-1-2014	Amend	2-1-2014
150-311.223(4)	1-1-2014	Amend	2-1-2014
150-311.674	1-1-2014	Repeal	2-1-2014
150-311.689	1-1-2014	Repeal	2-1-2014
150-314.280(3)	1-1-2014	Amend	2-1-2014
150-314.380(2)-(B)	1-1-2014	Amend	2-1-2014
150-314.385(4)	12-26-2013	Amend	2-1-2014
150-314.410(4)	1-1-2014	Amend	2-1-2014
150-314.415(7)	12-26-2013	Amend	2-1-2014
150-314.775	1-1-2014	Amend	2-1-2014
150-314.778	1-1-2014	Amend	2-1-2014
150-314.HB2071(B)	12-26-2013	Renumber	2-1-2014
150-315.068	1-1-2014	Amend	2-1-2014
150-315.204-(A)	1-1-2014	Amend	2-1-2014
150-315.304(9)	1-1-2014	Amend	2-1-2014
150-315.514	12-26-2013	Amend	2-1-2014
150-316.014	12-26-2013	Am. & Ren.	2-1-2014
150-316.102	1-1-2014	Amend	2-1-2014
150-316.127(10)	1-1-2014	Amend	2-1-2014
150-316.368	1-1-2014	Amend	2-1-2014
150-316.680(1)(c)-(A)	1-1-2014	Repeal	2-1-2014
150-316.680(1)(c)-(B)	1-1-2014	Repeal	2-1-2014
150-316.693	1-1-2014	Adopt	2-1-2014
150-316.789	1-1-2014	Repeal	2-1-2014
150-316.791	1-1-2014	Repeal	2-1-2014
150-316.792	1-1-2014	Adopt	2-1-2014
150-317.010(4)	1-1-2014	Amend	2-1-2014
150-317.067	1-1-2014	Amend	2-1-2014
150-457.440(9)	1-1-2014	Amend	2-1-2014
160-010-0700	1-1-2014	Adopt	2-1-2014
160-010-0700	1-3-2014	Adopt	2-1-2014
160-010-0701	1-1-2014	Adopt	2-1-2014
160-010-0701	1-3-2014	Adopt	2-1-2014
160-010-0710	1-1-2014	Adopt	2-1-2014
160-010-0710	1-3-2014	Adopt	2-1-2014
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160-010-0720	1-3-2014	Adopt	2-1-2014
161-006-0155	1-1-2014	Amend(T)	2-1-2014
161-006-0160	1-1-2014	Amend(T)	2-1-2014
161-025-0060	1-1-2014	Amend(T)	2-1-2014
161-570-0025	1-1-2014	Amend(T)	2-1-2014
161-570-0030	1-1-2014	Amend(T)	2-1-2014
165-001-0050	1-2-2014	Amend	2-1-2014
165-010-0005	1-2-2014	Amend	2-1-2014
165-010-0080	1-2-2014	Repeal	2-1-2014
165-012-0005	1-2-2014	Amend	2-1-2014
165-012-0240	1-2-2014	Amend	2-1-2014
165-013-0010	1-2-2014	Amend	2-1-2014
165-014-0005	1-2-2014	Amend	2-1-2014
165-014-0030	1-7-2014	Amend	2-1-2014
165-020-0025	1-2-2014	Repeal	2-1-2014
170-063-0000	1-15-2014	Amend(T)	2-1-2014
173-006-0005	12-19-2013	Amend	2-1-2014

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177-075-0040(T)	12-1-2013	Repeal	1-1-2014
177-099-0095	1-1-2014	Amend	2-1-2014
250-001-0000	1-15-2014	Amend	2-1-2014
250-001-0005	1-15-2014	Amend	2-1-2014
250-001-0040	1-15-2014	Adopt	2-1-2014
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250-001-0060	1-15-2014	Adopt	2-1-2014
250-015-0001	1-15-2014	Amend	2-1-2014
250-015-0002	1-15-2014	Amend	2-1-2014
250-015-0005	1-15-2014	Amend	2-1-2014
250-015-0006	1-15-2014	Amend	2-1-2014
250-015-0008	1-15-2014	Amend	2-1-2014
250-015-0010	1-15-2014	Amend	2-1-2014
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250-015-0016	1-15-2014	Repeal	2-1-2014
250-015-0017	1-15-2014	Repeal	2-1-2014
250-015-0019	1-15-2014	Repeal	2-1-2014
250-015-0020	1-15-2014	Repeal	2-1-2014
250-015-0021	1-15-2014	Repeal	2-1-2014
250-015-0022	1-15-2014	Amend	2-1-2014
250-015-0023	1-15-2014	Repeal	2-1-2014
250-015-0024	1-15-2014	Repeal	2-1-2014
250-015-0025	1-15-2014	Repeal	2-1-2014
250-015-0026	1-15-2014	Amend	2-1-2014
250-015-0027	1-15-2014	Repeal	2-1-2014
250-015-0028	1-15-2014	Repeal	2-1-2014
250-015-0029	1-15-2014	Repeal	2-1-2014
250-015-0031	1-15-2014	Repeal	2-1-2014
250-015-0032	1-15-2014	Repeal	2-1-2014
250-015-0033	1-15-2014	Repeal	2-1-2014
250-015-0035	1-15-2014	Adopt	2-1-2014
250-016-0080	1-15-2014	Amend	2-1-2014
250-016-0090	1-15-2014	Adopt	2-1-2014
250-019-0010	1-15-2014	Repeal	2-1-2014
250-019-0020	1-15-2014	Repeal	2-1-2014
250-019-0030	1-15-2014	Repeal	2-1-2014
250-019-0040	1-15-2014	Repeal	2-1-2014
250-019-0050	1-15-2014	Repeal	2-1-2014
250-019-0060	1-15-2014	Repeal	2-1-2014
250-019-0070	1-15-2014	Repeal	2-1-2014
250-019-0080	1-15-2014	Repeal	2-1-2014
250-020-0032	1-15-2014	Amend	2-1-2014
250-020-0385	1-15-2014	Amend	2-1-2014
255-030-0010	11-27-2013	Amend	1-1-2014
255-030-0013	11-27-2013	Amend	1-1-2014
255-030-0021	11-27-2013	Amend	1-1-2014
255-030-0023	11-27-2013	Amend	1-1-2014
255-030-0024	11-27-2013	Amend	1-1-2014
255-030-0025	11-27-2013	Amend	1-1-2014
255-030-0026	11-27-2013	Amend	1-1-2014
255-030-0027	11-27-2013	Amend	1-1-2014
255-030-0032	11-27-2013	Amend	1-1-2014
255-030-0035	11-27-2013	Amend	1-1-2014
255-030-0040	11-27-2013	Amend	1-1-2014
255-030-0046	11-27-2013	Adopt	1-1-2014
255-030-0055	11-27-2013	Amend	1-1-2014
255-062-0016	11-27-2013	Amend	1-1-2014
259-008-0005	1-2-2014	Amend	2-1-2014
259-008-0010	1-2-2014	Amend	2-1-2014
259-008-0020	1-2-2014	Amend	2-1-2014
259-008-0025	1-2-2014	Amend	2-1-2014
259-008-0025	1-2-2014	Amend	2-1-2014
259-008-0060	1-2-2014	Amend	2-1-2014
259-008-0069	1-2-2014	Amend	2-1-2014
259-008-0070	1-2-2014	Amend	2-1-2014
259-008-0075	1-2-2014	Amend	2-1-2014
259-008-0080	1-2-2014	Amend	2-1-2014
259-008-0090	1-2-2014	Amend	2-1-2014
259-008-0100	1-2-2014	Amend	2-1-2014
259-013-0000	1-2-2014	Amend	2-1-2014
259-013-0220	1-2-2014	Amend	2-1-2014
259-013-0230	1-2-2014	Amend	2-1-2014
259-060-0300	1-2-2014	Amend	2-1-2014
274-015-0010	1-1-2014	Amend	2-1-2014
274-015-0010(T)	1-1-2014	Repeal	2-1-2014
291-014-0100	12-13-2013	Amend	1-1-2014
291-014-0100	1-14-2014	Amend	2-1-2014
291-014-0110	12-13-2013	Amend	1-1-2014
291-014-0110	1-14-2014	Amend	2-1-2014
291-014-0120	12-13-2013	Amend	1-1-2014
291-014-0120	1-14-2014	Amend	2-1-2014
291-041-0018	12-13-2013	Adopt(T)	1-1-2014
291-041-0020	12-13-2013	Amend(T)	1-1-2014
291-077-0035	12-1-2013	Amend	1-1-2014
291-077-0035	1-14-2014	Amend	2-1-2014
291-097-0231	12-13-2013	Adopt(T)	1-1-2014
291-109-0125	12-13-2013	Suspend	1-1-2014
291-109-0180	12-13-2013	Amend(T)	1-1-2014
291-109-0200	12-13-2013	Adopt(T)	1-1-2014
309-012-0130	12-20-2013	Amend(T)	2-1-2014
309-012-0150	12-20-2013	Amend(T)	2-1-2014
309-012-0180	12-20-2013	Amend(T)	2-1-2014
309-012-0190	12-20-2013	Amend(T)	2-1-2014
309-012-0230	12-20-2013	Adopt(T)	2-1-2014
309-039-0500	12-20-2013	Amend(T)	2-1-2014
309-039-0510	12-20-2013	Amend(T)	2-1-2014
309-039-0520	12-20-2013	Amend(T)	2-1-2014
309-039-0530	12-20-2013	Amend(T)	2-1-2014
309-039-0540	12-20-2013	Amend(T)	2-1-2014
309-039-0570	12-20-2013	Amend(T)	2-1-2014
330-070-0014	1-1-2014	Amend	2-1-2014
330-070-0019	1-1-2014	Repeal	2-1-2014
330-070-0020	1-1-2014	Amend	2-1-2014
330-070-0021	1-1-2014	Amend	2-1-2014
330-070-0022	1-1-2014	Amend	2-1-2014
330-070-0025	1-1-2014	Amend	2-1-2014
330-070-0026	1-1-2014	Amend	2-1-2014
330-070-0029	1-1-2014	Amend	2-1-2014
330-070-0064	1-1-2014	Amend	2-1-2014

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330-092-0015	1-1-2014	Amend	2-1-2014
330-092-0020	1-1-2014	Amend	2-1-2014
330-092-0025	1-1-2014	Amend	2-1-2014
330-092-0030	1-1-2014	Amend	2-1-2014
330-092-0035	1-1-2014	Amend	2-1-2014
330-092-0040	1-1-2014	Amend	2-1-2014
330-092-0045	1-1-2014	Amend	2-1-2014
330-092-0050	1-1-2014	Amend	2-1-2014
330-092-0055	1-1-2014	Amend	2-1-2014
330-092-0060	1-1-2014	Repeal	2-1-2014
330-092-0065	1-1-2014	Repeal	2-1-2014
330-092-0070	1-1-2014	Amend	2-1-2014
330-110-0010	12-12-2013	Amend	1-1-2014
330-110-0040	12-12-2013	Amend	1-1-2014
330-110-0040(T)	12-12-2013	Repeal	1-1-2014
330-110-0060	12-12-2013	Adopt	1-1-2014
330-135-0010	12-23-2013	Amend	2-1-2014
330-135-0015	12-23-2013	Amend	2-1-2014
330-135-0018	12-23-2013	Amend	2-1-2014
330-135-0020	12-23-2013	Amend	2-1-2014
330-135-0025	12-23-2013	Amend	2-1-2014
330-135-0030	12-23-2013	Amend	2-1-2014
330-135-0035	12-23-2013	Amend	2-1-2014
330-135-0040	12-23-2013	Amend	2-1-2014
330-135-0045	12-23-2013	Amend	2-1-2014
330-135-0047	12-23-2013	Repeal	2-1-2014
330-135-0048	12-23-2013	Am. & Ren.	2-1-2014
330-135-0050	12-23-2013	Amend	2-1-2014
330-135-0055	12-23-2013	Amend	2-1-2014
330-135-0060	12-23-2013	Adopt	2-1-2014
330-170-0010	1-1-2014	Amend	2-1-2014
330-170-0020	1-1-2014	Amend	2-1-2014
330-170-0030	1-1-2014	Amend	2-1-2014
330-170-0040	1-1-2014	Amend	2-1-2014
330-170-0050	1-1-2014	Amend	2-1-2014
330-170-0060	1-1-2014	Amend	2-1-2014
331-440-0000	2-1-2014	Amend	2-1-2014
331-710-0050	1-1-2014	Amend	2-1-2014
331-710-0060	1-1-2014	Amend	2-1-2014
331-710-0070	1-1-2014	Amend	2-1-2014
331-710-0080	1-1-2014	Amend	2-1-2014
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331-710-0110	1-1-2014	Amend	2-1-2014
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331-720-0015	1-1-2014	Amend	2-1-2014
331-720-0020	1-1-2014	Amend	2-1-2014
331-900-0010	1-1-2014	Amend	2-1-2014
331-900-0015	1-1-2014	Amend	2-1-2014
331-900-0020	1-1-2014	Amend	2-1-2014
331-900-0040	1-1-2014	Amend	2-1-2014
331-900-0050	1-1-2014	Amend	2-1-2014
331-900-0077	1-1-2014	Adopt	2-1-2014
331-900-0085	1-1-2014	Amend	2-1-2014
331-900-0090	1-1-2014	Amend	2-1-2014
331-900-0095	1-1-2014	Amend	2-1-2014
331-900-0097	1-1-2014	Amend	2-1-2014
331-900-0098	1-1-2014	Amend	2-1-2014
331-900-0099	1-1-2014	Amend	2-1-2014
331-900-0115	1-1-2014	Amend	2-1-2014
331-905-0020	1-1-2014	Amend	2-1-2014
331-905-0030	1-1-2014	Amend	2-1-2014
331-905-0052	1-1-2014	Amend	2-1-2014
331-905-0058	1-1-2014	Amend	2-1-2014
331-905-0095	1-1-2014	Amend	2-1-2014
331-910-0005	1-1-2014	Amend	2-1-2014
331-910-0010	1-1-2014	Amend	2-1-2014
331-910-0055	1-1-2014	Amend	2-1-2014
331-910-0060	1-1-2014	Amend	2-1-2014
331-915-0020	1-1-2014	Amend	2-1-2014
331-915-0055	1-1-2014	Amend	2-1-2014
331-915-0060	1-1-2014	Amend	2-1-2014
331-915-0065	1-1-2014	Amend	2-1-2014
331-915-0070	1-1-2014	Amend	2-1-2014
331-925-0050	1-1-2014	Amend	2-1-2014
331-940-0000	1-1-2014	Amend	2-1-2014
331-950-0040	1-1-2014	Amend	2-1-2014
332-020-0010	1-1-2014	Amend	2-1-2014
332-020-0015	1-1-2014	Amend	2-1-2014
333-008-0010	1-13-2014	Amend	2-1-2014
333-008-0010	1-15-2014	Amend(T)	2-1-2014
333-008-0020	1-13-2014	Amend	2-1-2014
333-008-0020	1-15-2014	Amend(T)	2-1-2014
333-008-0020(T)	1-13-2014	Repeal	2-1-2014
333-008-0025	1-15-2014	Amend(T)	2-1-2014
333-008-0045	1-13-2014	Amend	2-1-2014
333-008-0045	1-15-2014	Amend(T)	2-1-2014
333-008-0050	1-15-2014	Amend(T)	2-1-2014
333-008-0120	1-15-2014	Amend(T)	2-1-2014
333-008-1000	1-15-2014	Adopt(T)	2-1-2014
333-008-1010	1-15-2014	Adopt(T)	2-1-2014
333-008-1020	1-15-2014	Adopt(T)	2-1-2014
333-008-1030	1-15-2014	Adopt(T)	2-1-2014
333-008-1040	1-15-2014	Adopt(T)	2-1-2014
333-008-1050	1-15-2014	Adopt(T)	2-1-2014
333-008-1060	1-15-2014	Adopt(T)	2-1-2014
333-008-1070	1-15-2014	Adopt(T)	2-1-2014
333-008-1080	1-15-2014	Adopt(T)	2-1-2014
333-008-1090	1-15-2014	Adopt(T)	2-1-2014
333-008-1100	1-15-2014	Adopt(T)	2-1-2014
333-008-1110	1-15-2014	Adopt(T)	2-1-2014
333-008-1120	1-15-2014	Adopt(T)	2-1-2014
333-008-1130	1-15-2014	Adopt(T)	2-1-2014
333-008-1140	1-15-2014	Adopt(T)	2-1-2014
333-008-1150	1-15-2014	Adopt(T)	2-1-2014
333-008-1160	1-15-2014	Adopt(T)	2-1-2014
333-008-1170	1-15-2014	Adopt(T)	2-1-2014
333-008-1180	1-15-2014	Adopt(T)	2-1-2014
333-008-1190	1-15-2014	Adopt(T)	2-1-2014

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333-008-1220	1-15-2014	Adopt(T)	2-1-2014
333-008-1230	1-15-2014	Adopt(T)	2-1-2014
333-008-1240	1-15-2014	Adopt(T)	2-1-2014
333-008-1250	1-15-2014	Adopt(T)	2-1-2014
333-008-1260	1-15-2014	Adopt(T)	2-1-2014
333-008-1270	1-15-2014	Adopt(T)	2-1-2014
333-008-1280	1-15-2014	Adopt(T)	2-1-2014
333-008-1290	1-15-2014	Adopt(T)	2-1-2014
333-011-0006	1-1-2014	Repeal	2-1-2014
333-011-0011	1-1-2014	Repeal	2-1-2014
333-011-0016	1-1-2014	Repeal	2-1-2014
333-011-0021	1-1-2014	Repeal	2-1-2014
333-011-0043	1-1-2014	Repeal	2-1-2014
333-011-0047	1-1-2014	Am. & Ren.	2-1-2014
333-011-0048	1-1-2014	Repeal	2-1-2014
333-011-0061	1-1-2014	Repeal	2-1-2014
333-011-0067	1-1-2014	Repeal	2-1-2014
333-011-0072	1-1-2014	Repeal	2-1-2014
333-011-0073	1-1-2014	Repeal	2-1-2014
333-011-0076	1-1-2014	Am. & Ren.	2-1-2014
333-011-0096	1-1-2014	Repeal	2-1-2014
333-011-0101	1-1-2014	Am. & Ren.	2-1-2014
333-011-0106	1-1-2014	Am. & Ren.	2-1-2014
333-011-0110	1-1-2014	Am. & Ren.	2-1-2014
333-011-0116	1-1-2014	Repeal	2-1-2014
333-011-0155	1-1-2014	Repeal	2-1-2014
333-011-0200	1-1-2014	Am. & Ren.	2-1-2014
333-011-0205	1-1-2014	Adopt	2-1-2014
333-011-0210	1-1-2014	Adopt	2-1-2014
333-011-0215	1-1-2014	Adopt	2-1-2014
333-011-0220	1-1-2014	Adopt	2-1-2014
333-011-0225	1-1-2014	Adopt	2-1-2014
333-011-0230	1-1-2014	Adopt	2-1-2014
333-011-0235	1-1-2014	Adopt	2-1-2014
333-011-0240	1-1-2014	Adopt	2-1-2014
333-011-0245	1-1-2014	Adopt	2-1-2014
333-011-0250	1-1-2014	Adopt	2-1-2014
333-011-0255	1-1-2014	Adopt	2-1-2014
333-011-0260	1-1-2014	Adopt	2-1-2014
333-011-0265	1-1-2014	Adopt	2-1-2014
333-011-0270	1-1-2014	Adopt	2-1-2014
333-011-0280	1-1-2014	Adopt	2-1-2014
333-011-0285	1-1-2014	Adopt	2-1-2014
333-011-0300	1-1-2014	Adopt	2-1-2014
333-011-0305	1-1-2014	Adopt	2-1-2014
333-011-0310	1-1-2014	Adopt	2-1-2014
333-011-0320	1-1-2014	Adopt	2-1-2014
333-011-0325	1-1-2014	Adopt	2-1-2014
333-011-0330	1-1-2014	Adopt	2-1-2014
333-017-0000	1-1-2014	Amend	2-1-2014
333-018-0005	1-1-2014	Amend	2-1-2014
333-018-0010	1-1-2014	Amend	2-1-2014
333-018-0015	1-1-2014	Amend	2-1-2014
333-018-0018	1-1-2014	Amend	2-1-2014
333-018-0020	1-1-2014	Amend	2-1-2014
333-018-0035	1-1-2014	Amend	2-1-2014
333-019-0010	1-1-2014	Amend	2-1-2014
333-019-0014	1-1-2014	Amend	2-1-2014
333-019-0031	1-1-2014	Amend	2-1-2014
333-019-0046	1-1-2014	Repeal	2-1-2014
333-019-0052	1-1-2014	Adopt	2-1-2014
333-028-0200	1-1-2014	Adopt	2-1-2014
333-028-0210	1-1-2014	Adopt	2-1-2014
333-028-0220	1-1-2014	Adopt	2-1-2014
333-028-0230	1-1-2014	Adopt	2-1-2014
333-028-0240	1-1-2014	Adopt	2-1-2014
333-028-0250	1-1-2014	Adopt	2-1-2014
333-055-0100	11-19-2013	Adopt	1-1-2014
333-055-0100(T)	11-19-2013	Repeal	1-1-2014
333-055-0105	11-19-2013	Adopt	1-1-2014
333-055-0105(T)	11-19-2013	Repeal	1-1-2014
333-055-0110	11-19-2013	Adopt	1-1-2014
333-055-0110(T)	11-19-2013	Repeal	1-1-2014
333-055-0115	11-19-2013	Adopt	1-1-2014
333-056-0020	1-1-2014	Amend	2-1-2014
333-056-0030	1-1-2014	Amend	2-1-2014
333-056-0040	1-1-2014	Amend	2-1-2014
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333-076-0670	1-1-2014	Amend(T)	2-1-2014
333-106-0735	1-1-2014	Adopt	2-1-2014
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333-116-0680	1-1-2014	Amend	2-1-2014
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333-118-0040	1-1-2014	Amend	2-1-2014
333-119-0010	1-1-2014	Amend	2-1-2014
333-119-0090	1-1-2014	Amend	2-1-2014
333-119-0110	1-1-2014	Amend	2-1-2014
333-520-0060	1-1-2014	Amend(T)	2-1-2014
334-010-0005	1-1-2014	Amend	1-1-2014
334-010-0006	1-1-2014	Adopt	1-1-2014
334-010-0010	1-1-2014	Amend	1-1-2014
334-010-0033	1-1-2014	Amend	1-1-2014
334-010-0050	1-1-2014	Amend	1-1-2014
334-020-0005	1-1-2014	Amend	1-1-2014
334-040-0010	1-1-2014	Amend	1-1-2014
340-011-0005	1-6-2014	Amend	2-1-2014
340-011-0010	1-6-2014	Amend	2-1-2014
340-011-0024	1-6-2014	Amend	2-1-2014
340-011-0029	1-6-2014	Amend	2-1-2014
340-011-0046	1-6-2014	Amend	2-1-2014
340-011-0053	1-6-2014	Amend	2-1-2014
340-011-0061	1-6-2014	Amend	2-1-2014
340-011-0310	1-6-2014	Amend	2-1-2014
340-011-0330	1-6-2014	Amend	2-1-2014
340-011-0340	1-6-2014	Amend	2-1-2014

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340-011-0370	1-6-2014	Amend	2-1-2014
340-011-0380	1-6-2014	Amend	2-1-2014
340-011-0390	1-6-2014	Amend	2-1-2014
340-011-0500	1-6-2014	Amend	2-1-2014
340-011-0510	1-6-2014	Amend	2-1-2014
340-011-0515	1-6-2014	Amend	2-1-2014
340-011-0520	1-6-2014	Amend	2-1-2014
340-011-0525	1-6-2014	Amend	2-1-2014
340-011-0530	1-6-2014	Amend	2-1-2014
340-011-0535	1-6-2014	Amend	2-1-2014
340-011-0540	1-6-2014	Amend	2-1-2014
340-011-0545	1-6-2014	Amend	2-1-2014
340-011-0550	1-6-2014	Amend	2-1-2014
340-011-0555	1-6-2014	Amend	2-1-2014
340-011-0565	1-6-2014	Amend	2-1-2014
340-011-0570	1-6-2014	Amend	2-1-2014
340-011-0573	1-6-2014	Amend	2-1-2014
340-011-0575	1-6-2014	Amend	2-1-2014
340-011-0580	1-6-2014	Amend	2-1-2014
340-011-0585	1-6-2014	Amend	2-1-2014
340-011-0605	1-6-2014	Repeal	2-1-2014
340-012-0026	1-6-2014	Amend	2-1-2014
340-012-0027	1-6-2014	Repeal	2-1-2014
340-012-0028	1-6-2014	Amend	2-1-2014
340-012-0030	1-6-2014	Amend	2-1-2014
340-012-0038	1-6-2014	Amend	2-1-2014
340-012-0041	1-6-2014	Amend	2-1-2014
340-012-0045	1-6-2014	Amend	2-1-2014
340-012-0053	1-6-2014	Amend	2-1-2014
340-012-0054	1-6-2014	Amend	2-1-2014
340-012-0055	1-6-2014	Amend	2-1-2014
340-012-0060	1-6-2014	Amend	2-1-2014
340-012-0065	1-6-2014	Amend	2-1-2014
340-012-0066	1-6-2014	Amend	2-1-2014
340-012-0067	1-6-2014	Amend	2-1-2014
340-012-0068	1-6-2014	Amend	2-1-2014
340-012-0071	1-6-2014	Amend	2-1-2014
340-012-0072	1-6-2014	Amend	2-1-2014
340-012-0073	1-6-2014	Amend	2-1-2014
340-012-0074	1-6-2014	Amend	2-1-2014
340-012-0079	1-6-2014	Amend	2-1-2014
340-012-0081	1-6-2014	Amend	2-1-2014
340-012-0082	1-6-2014	Amend	2-1-2014
340-012-0083	1-6-2014	Amend	2-1-2014
340-012-0097	1-6-2014	Amend	2-1-2014
340-012-0130	1-6-2014	Amend	2-1-2014
340-012-0135	1-6-2014	Amend	2-1-2014
340-012-0140	1-6-2014	Amend	2-1-2014
340-012-0145	1-6-2014	Amend	2-1-2014
340-012-0150	1-6-2014	Amend	2-1-2014
340-012-0155	1-6-2014	Amend	2-1-2014
340-012-0160	1-6-2014	Amend	2-1-2014
340-012-0162	1-6-2014	Amend	2-1-2014
340-012-0165	1-6-2014	Amend	2-1-2014
340-012-0170	1-6-2014	Amend	2-1-2014
340-018-0030	1-2-2014	Amend	2-1-2014
340-040-0020	12-23-2013	Amend	2-1-2014
340-040-0080	12-23-2013	Amend	2-1-2014
340-041-0009	12-23-2013	Amend	2-1-2014
340-041-0033	4-18-2014	Amend	2-1-2014
340-071-0100	1-2-2014	Amend	2-1-2014
340-071-0115	1-2-2014	Amend	2-1-2014
340-071-0120	1-2-2014	Amend	2-1-2014
340-071-0130	1-2-2014	Amend	2-1-2014
340-071-0131	1-2-2014	Repeal	2-1-2014
340-071-0135	1-2-2014	Amend	2-1-2014
340-071-0140	1-2-2014	Amend	2-1-2014
340-071-0150	1-2-2014	Amend	2-1-2014
340-071-0155	1-2-2014	Amend	2-1-2014
340-071-0160	1-2-2014	Amend	2-1-2014
340-071-0162	1-2-2014	Amend	2-1-2014
340-071-0165	1-2-2014	Amend	2-1-2014
340-071-0170	1-2-2014	Amend	2-1-2014
340-071-0205	1-2-2014	Amend	2-1-2014
340-071-0215	1-2-2014	Amend	2-1-2014
340-071-0220	1-2-2014	Amend	2-1-2014
340-071-0260	1-2-2014	Amend	2-1-2014
340-071-0265	1-2-2014	Amend	2-1-2014
340-071-0270	1-2-2014	Repeal	2-1-2014
340-071-0275	1-2-2014	Amend	2-1-2014
340-071-0290	1-2-2014	Amend	2-1-2014
340-071-0295	1-2-2014	Amend	2-1-2014
340-071-0302	1-2-2014	Amend	2-1-2014
340-071-0325	1-2-2014	Amend	2-1-2014
340-071-0335	1-2-2014	Amend	2-1-2014
340-071-0340	1-2-2014	Amend	2-1-2014
340-071-0345	1-2-2014	Amend	2-1-2014
340-071-0360	1-2-2014	Amend	2-1-2014
340-071-0400	1-2-2014	Amend	2-1-2014
340-071-0415	1-2-2014	Amend	2-1-2014
340-071-0420	1-2-2014	Amend	2-1-2014
340-071-0425	1-2-2014	Amend	2-1-2014
340-071-0435	1-2-2014	Amend	2-1-2014
340-071-0445	1-2-2014	Amend	2-1-2014
340-071-0520	1-2-2014	Amend	2-1-2014
340-071-0600	1-2-2014	Amend	2-1-2014
340-071-0650	1-2-2014	Amend	2-1-2014
340-200-0040	12-19-2013	Amend	2-1-2014
340-200-0040	1-6-2014	Amend	2-1-2014
340-253-0040	1-1-2014	Amend(T)	2-1-2014
340-253-0060	1-1-2014	Amend(T)	2-1-2014
340-253-0100	1-1-2014	Amend(T)	2-1-2014
340-253-0250	1-1-2014	Amend(T)	2-1-2014
340-253-0310	1-1-2014	Amend(T)	2-1-2014
340-253-0320	1-1-2014	Amend(T)	2-1-2014
340-253-0340	1-1-2014	Amend(T)	2-1-2014
340-253-0400	1-1-2014	Amend(T)	2-1-2014
340-253-0500	1-1-2014	Amend(T)	2-1-2014
340-253-0600	1-1-2014	Amend(T)	2-1-2014
340-253-0630	1-1-2014	Amend(T)	2-1-2014
340-253-0650	1-1-2014	Amend(T)	2-1-2014

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340-253-3020	1-1-2014	Amend(T)	2-1-2014
340-257-0010	12-19-2013	Amend	2-1-2014
340-257-0020	12-19-2013	Amend	2-1-2014
340-257-0030	12-19-2013	Amend	2-1-2014
340-257-0050	12-19-2013	Amend	2-1-2014
340-257-0070	12-19-2013	Amend	2-1-2014
340-257-0080	12-19-2013	Amend	2-1-2014
340-257-0090	12-19-2013	Amend	2-1-2014
340-257-0100	12-19-2013	Amend	2-1-2014
340-257-0110	12-19-2013	Amend	2-1-2014
340-257-0120	12-19-2013	Amend	2-1-2014
409-023-0000	1-1-2014	Am. & Ren.	2-1-2014
409-023-0005	1-1-2014	Am. & Ren.	2-1-2014
409-023-0010	1-1-2014	Am. & Ren.	2-1-2014
409-023-0012	1-1-2014	Am. & Ren.	2-1-2014
409-023-0013	1-1-2014	Am. & Ren.	2-1-2014
409-023-0015	1-1-2014	Am. & Ren.	2-1-2014
409-023-0020	1-1-2014	Am. & Ren.	2-1-2014
409-023-0025	1-1-2014	Am. & Ren.	2-1-2014
409-023-0030	1-1-2014	Am. & Ren.	2-1-2014
409-023-0035	1-1-2014	Am. & Ren.	2-1-2014
409-045-0105	1-1-2014	Adopt(T)	2-1-2014
409-045-0110	1-1-2014	Adopt(T)	2-1-2014
409-045-0115	1-1-2014	Adopt(T)	2-1-2014
409-045-0120	1-1-2014	Adopt(T)	2-1-2014
409-045-0125	1-1-2014	Adopt(T)	2-1-2014
409-045-0130	1-1-2014	Adopt(T)	2-1-2014
409-045-0135	1-1-2014	Adopt(T)	2-1-2014
410-120-0000	12-27-2013	Amend	2-1-2014
410-120-0000(T)	12-27-2013	Repeal	2-1-2014
410-120-0003	1-1-2014	Adopt	2-1-2014
410-120-0030	12-3-2013	Amend	1-1-2014
410-120-0030	1-1-2014	Amend(T)	2-1-2014
410-120-0045	12-27-2013	Amend	2-1-2014
410-120-0045(T)	12-27-2013	Repeal	2-1-2014
410-120-1160	12-27-2013	Amend	2-1-2014
410-120-1160(T)	12-27-2013	Repeal	2-1-2014
410-120-1200	12-27-2013	Amend	2-1-2014
410-120-1200(T)	12-27-2013	Repeal	2-1-2014
410-120-1210	12-27-2013	Amend	2-1-2014
410-120-1210	1-1-2014	Amend(T)	2-1-2014
410-120-1210(T)	12-27-2013	Repeal	2-1-2014
410-120-1230	1-1-2014	Amend(T)	2-1-2014
410-120-1340	12-30-2013	Amend(T)	2-1-2014
410-120-1855	12-27-2013	Amend	2-1-2014
410-120-1855(T)	12-27-2013	Repeal	2-1-2014
410-121-0030	1-1-2014	Amend(T)	2-1-2014
410-121-0030	1-10-2014	Amend(T)	2-1-2014
410-121-0030(T)	1-10-2014	Suspend	2-1-2014
410-121-0040	1-1-2014	Amend(T)	2-1-2014
410-121-4005	11-19-2013	Amend	1-1-2014
410-121-4010	11-19-2013	Amend	1-1-2014
410-121-4020	11-19-2013	Amend	1-1-2014
410-122-0055	1-1-2014	Suspend	2-1-2014
410-122-0186	2-1-2014	Amend(T)	2-1-2014
410-123-1060	1-1-2014	Amend(T)	2-1-2014
410-123-1200	1-1-2014	Amend(T)	2-1-2014
410-123-1260	12-23-2013	Amend	1-1-2014
410-123-1260	1-1-2014	Amend(T)	2-1-2014
410-123-1540	1-1-2014	Amend(T)	2-1-2014
410-123-1670	1-1-2014	Suspend	2-1-2014
410-125-0020	1-1-2014	Amend(T)	2-1-2014
410-125-0047	1-1-2014	Suspend	2-1-2014
410-125-0080	1-1-2014	Amend(T)	2-1-2014
410-125-0085	1-1-2014	Amend(T)	2-1-2014
410-127-0050	1-1-2014	Suspend	2-1-2014
410-129-0195	1-1-2014	Suspend	2-1-2014
410-130-0015	1-1-2014	Adopt	2-1-2014
410-130-0163	1-1-2014	Suspend	2-1-2014
410-130-0240	1-1-2014	Amend(T)	2-1-2014
410-131-0120	1-1-2014	Amend(T)	2-1-2014
410-132-0055	1-1-2014	Suspend	2-1-2014
410-136-3000	1-1-2014	Amend(T)	2-1-2014
410-136-3020	1-1-2014	Amend(T)	2-1-2014
410-136-3060	1-1-2014	Amend(T)	2-1-2014
410-136-3140	1-1-2014	Amend(T)	2-1-2014
410-136-3220	1-1-2014	Amend(T)	2-1-2014
410-136-3240	1-1-2014	Amend(T)	2-1-2014
410-138-0000	1-1-2014	Amend(T)	2-1-2014
410-138-0007	1-1-2014	Amend(T)	2-1-2014
410-138-0009	1-1-2014	Amend(T)	2-1-2014
410-141-0860	1-1-2014	Amend(T)	2-1-2014
410-141-3060	11-29-2013	Amend	1-1-2014
410-141-3080	11-29-2013	Amend	1-1-2014
410-141-3220	11-29-2013	Amend	1-1-2014
410-141-3268	1-1-2014	Amend(T)	2-1-2014
410-141-3420	11-29-2013	Amend	1-1-2014
410-142-0040	1-1-2014	Amend(T)	2-1-2014
410-146-0022	1-1-2014	Suspend	2-1-2014
410-146-0380	1-1-2014	Suspend	2-1-2014
410-147-0125	1-1-2014	Suspend	2-1-2014
410-148-0090	1-1-2014	Suspend	2-1-2014
410-180-0300	12-3-2013	Adopt	1-1-2014
410-180-0300(T)	12-3-2013	Repeal	1-1-2014
410-180-0305	12-3-2013	Adopt	1-1-2014
410-180-0305(T)	12-3-2013	Repeal	1-1-2014
410-180-0310	12-3-2013	Adopt	1-1-2014
410-180-0310(T)	12-3-2013	Repeal	1-1-2014
410-180-0312	12-3-2013	Adopt	1-1-2014
410-180-0315	12-3-2013	Adopt	1-1-2014
410-180-0315(T)	12-3-2013	Repeal	1-1-2014
410-180-0320	12-3-2013	Adopt	1-1-2014
410-180-0320(T)	12-3-2013	Repeal	1-1-2014
410-180-0325	1-15-2014	Adopt	2-1-2014
410-180-0325(T)	1-15-2014	Repeal	2-1-2014
410-180-0326	1-15-2014	Adopt	2-1-2014
410-180-0327	12-3-2013	Adopt	1-1-2014
410-180-0327(T)	12-3-2013	Repeal	1-1-2014
410-180-0340	12-3-2013	Adopt	1-1-2014
410-180-0340(T)	12-3-2013	Repeal	1-1-2014

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410-180-0350	12-3-2013	Adopt	1-1-2014
410-180-0350(T)	12-3-2013	Repeal	1-1-2014
410-180-0355	12-3-2013	Adopt	1-1-2014
410-180-0355(T)	12-3-2013	Repeal	1-1-2014
410-180-0360	12-3-2013	Adopt	1-1-2014
410-180-0370	12-3-2013	Adopt	1-1-2014
410-180-0370(T)	12-3-2013	Repeal	1-1-2014
410-180-0375	12-3-2013	Adopt	1-1-2014
410-180-0375(T)	12-3-2013	Repeal	1-1-2014
410-180-0380	12-3-2013	Adopt	1-1-2014
410-180-0380(T)	12-3-2013	Repeal	1-1-2014
410-200-0010	1-15-2014	Adopt(T)	2-1-2014
410-200-0010(T)	1-15-2014	Suspend	2-1-2014
410-200-0015	1-15-2014	Adopt(T)	2-1-2014
410-200-0015(T)	1-15-2014	Suspend	2-1-2014
410-200-0100	1-15-2014	Adopt(T)	2-1-2014
410-200-0100(T)	1-15-2014	Suspend	2-1-2014
410-200-0105	1-15-2014	Adopt(T)	2-1-2014
410-200-0105(T)	1-15-2014	Suspend	2-1-2014
410-200-0110	1-15-2014	Adopt(T)	2-1-2014
410-200-0110(T)	1-15-2014	Suspend	2-1-2014
410-200-0111	1-15-2014	Adopt(T)	2-1-2014
410-200-0111(T)	1-15-2014	Suspend	2-1-2014
410-200-0115	1-15-2014	Adopt(T)	2-1-2014
410-200-0115(T)	1-15-2014	Suspend	2-1-2014
410-200-0120	1-15-2014	Adopt(T)	2-1-2014
410-200-0120(T)	1-15-2014	Suspend	2-1-2014
410-200-0125	1-15-2014	Adopt(T)	2-1-2014
410-200-0125(T)	1-15-2014	Suspend	2-1-2014
410-200-0130	1-15-2014	Adopt(T)	2-1-2014
410-200-0130(T)	1-15-2014	Suspend	2-1-2014
410-200-0135	1-15-2014	Adopt(T)	2-1-2014
410-200-0135(T)	1-15-2014	Suspend	2-1-2014
410-200-0140	1-15-2014	Adopt(T)	2-1-2014
410-200-0140(T)	1-15-2014	Suspend	2-1-2014
410-200-0145	1-15-2014	Adopt(T)	2-1-2014
410-200-0145(T)	1-15-2014	Suspend	2-1-2014
410-200-0146	1-15-2014	Adopt(T)	2-1-2014
410-200-0146(T)	1-15-2014	Suspend	2-1-2014
410-200-0200	1-15-2014	Adopt(T)	2-1-2014
410-200-0200(T)	1-15-2014	Suspend	2-1-2014
410-200-0205	1-15-2014	Adopt(T)	2-1-2014
410-200-0205(T)	1-15-2014	Suspend	2-1-2014
410-200-0210	1-15-2014	Adopt(T)	2-1-2014
410-200-0210(T)	1-15-2014	Suspend	2-1-2014
410-200-0215	1-15-2014	Adopt(T)	2-1-2014
410-200-0215(T)	1-15-2014	Suspend	2-1-2014
410-200-0220	1-15-2014	Adopt(T)	2-1-2014
410-200-0220(T)	1-15-2014	Suspend	2-1-2014
410-200-0225	1-15-2014	Adopt(T)	2-1-2014
410-200-0225(T)	1-15-2014	Suspend	2-1-2014
410-200-0230	1-15-2014	Adopt(T)	2-1-2014
410-200-0230(T)	1-15-2014	Suspend	2-1-2014
410-200-0235	1-15-2014	Adopt(T)	2-1-2014
410-200-0235(T)	1-15-2014	Suspend	2-1-2014
410-200-0240	1-15-2014	Adopt(T)	2-1-2014
410-200-0240(T)	1-15-2014	Suspend	2-1-2014
410-200-0305	1-15-2014	Adopt(T)	2-1-2014
410-200-0305(T)	1-15-2014	Suspend	2-1-2014
410-200-0310	1-15-2014	Adopt(T)	2-1-2014
410-200-0310(T)	1-15-2014	Suspend	2-1-2014
410-200-0315	1-15-2014	Adopt(T)	2-1-2014
410-200-0315(T)	1-15-2014	Suspend	2-1-2014
410-200-0400	1-15-2014	Adopt(T)	2-1-2014
410-200-0400(T)	1-15-2014	Suspend	2-1-2014
410-200-0405	1-15-2014	Adopt(T)	2-1-2014
410-200-0405(T)	1-15-2014	Suspend	2-1-2014
410-200-0406	1-15-2014	Adopt(T)	2-1-2014
410-200-0406(T)	1-15-2014	Suspend	2-1-2014
410-200-0410	1-15-2014	Adopt(T)	2-1-2014
410-200-0410(T)	1-15-2014	Suspend	2-1-2014
410-200-0415	1-15-2014	Adopt(T)	2-1-2014
410-200-0415(T)	1-15-2014	Suspend	2-1-2014
410-200-0420	1-15-2014	Adopt(T)	2-1-2014
410-200-0420(T)	1-15-2014	Suspend	2-1-2014
410-200-0425	1-15-2014	Adopt(T)	2-1-2014
410-200-0425(T)	1-15-2014	Suspend	2-1-2014
410-200-0435	1-15-2014	Adopt(T)	2-1-2014
410-200-0435(T)	1-15-2014	Suspend	2-1-2014
410-200-0440	1-15-2014	Adopt(T)	2-1-2014
410-200-0440(T)	1-15-2014	Suspend	2-1-2014
410-200-0500	1-15-2014	Adopt(T)	2-1-2014
410-200-0500(T)	1-15-2014	Suspend	2-1-2014
410-200-0505	1-15-2014	Adopt(T)	2-1-2014
410-200-0505(T)	1-15-2014	Suspend	2-1-2014
410-200-0510	1-15-2014	Adopt(T)	2-1-2014
410-200-0510(T)	1-15-2014	Suspend	2-1-2014
410-200-0515	1-15-2014	Adopt(T)	2-1-2014
410-200-0515(T)	1-15-2014	Suspend	2-1-2014
411-001-0100	1-1-2014	Amend	2-1-2014
411-001-0110	1-1-2014	Amend	2-1-2014
411-001-0118	1-1-2014	Amend	2-1-2014
411-001-0120	1-1-2014	Amend	2-1-2014
411-001-0510	12-15-2013	Amend	1-1-2014
411-001-0510(T)	12-15-2013	Repeal	1-1-2014
411-015-0005	12-15-2013	Amend	1-1-2014
411-015-0005(T)	12-15-2013	Repeal	1-1-2014
411-015-0008	12-15-2013	Amend	1-1-2014
411-015-0008(T)	12-15-2013	Repeal	1-1-2014
411-015-0015	12-15-2013	Amend	1-1-2014
411-015-0015(T)	12-15-2013	Repeal	1-1-2014
411-015-0100	12-15-2013	Amend	1-1-2014
411-015-0100(T)	12-15-2013	Repeal	1-1-2014
411-028-0000	12-15-2013	Adopt	1-1-2014
411-028-0000(T)	12-15-2013	Repeal	1-1-2014
411-028-0010	12-15-2013	Adopt	1-1-2014
411-028-0010(T)	12-15-2013	Repeal	1-1-2014
411-028-0020	12-15-2013	Adopt	1-1-2014
411-028-0020(T)	12-15-2013	Repeal	1-1-2014
411-028-0030	12-15-2013	Adopt	1-1-2014

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411-028-0040	12-15-2013	Adopt	1-1-2014
411-028-0040(T)	12-15-2013	Repeal	1-1-2014
411-028-0050	12-15-2013	Adopt	1-1-2014
411-028-0050(T)	12-15-2013	Repeal	1-1-2014
411-030-0070	12-15-2013	Amend	1-1-2014
411-030-0070(T)	12-15-2013	Repeal	1-1-2014
411-030-0100	12-15-2013	Amend	1-1-2014
411-030-0100(T)	12-15-2013	Repeal	1-1-2014
411-031-0020	12-15-2013	Amend	1-1-2014
411-031-0020(T)	12-15-2013	Repeal	1-1-2014
411-031-0040	12-15-2013	Amend	1-1-2014
411-031-0040(T)	12-15-2013	Repeal	1-1-2014
411-031-0050	12-15-2013	Amend	1-1-2014
411-034-0000	12-15-2013	Amend	1-1-2014
411-034-0000(T)	12-15-2013	Repeal	1-1-2014
411-034-0010	12-15-2013	Amend	1-1-2014
411-034-0010(T)	12-15-2013	Repeal	1-1-2014
411-034-0020	12-15-2013	Amend	1-1-2014
411-034-0020(T)	12-15-2013	Repeal	1-1-2014
411-034-0030	12-15-2013	Amend	1-1-2014
411-034-0030(T)	12-15-2013	Repeal	1-1-2014
411-034-0035	12-15-2013	Amend	1-1-2014
411-034-0035(T)	12-15-2013	Repeal	1-1-2014
411-034-0040	12-15-2013	Amend	1-1-2014
411-034-0040(T)	12-15-2013	Repeal	1-1-2014
411-034-0050	12-15-2013	Amend	1-1-2014
411-034-0050(T)	12-15-2013	Repeal	1-1-2014
411-034-0055	12-15-2013	Amend	1-1-2014
411-034-0055(T)	12-15-2013	Repeal	1-1-2014
411-034-0070	12-15-2013	Amend	1-1-2014
411-034-0070(T)	12-15-2013	Repeal	1-1-2014
411-034-0090	12-15-2013	Amend	1-1-2014
411-034-0090(T)	12-15-2013	Repeal	1-1-2014
411-040-0000	12-15-2013	Amend	1-1-2014
411-040-0000(T)	12-15-2013	Repeal	1-1-2014
411-045-0010	12-15-2013	Amend	1-1-2014
411-045-0010(T)	12-15-2013	Repeal	1-1-2014
411-045-0050	12-15-2013	Amend	1-1-2014
411-045-0050(T)	12-15-2013	Repeal	1-1-2014
411-048-0150	12-15-2013	Amend	1-1-2014
411-048-0150(T)	12-15-2013	Repeal	1-1-2014
411-048-0160	12-15-2013	Amend	1-1-2014
411-048-0160(T)	12-15-2013	Repeal	1-1-2014
411-048-0170	12-15-2013	Amend	1-1-2014
411-048-0170(T)	12-15-2013	Repeal	1-1-2014
411-065-0000	12-15-2013	Amend	1-1-2014
411-065-0000(T)	12-15-2013	Repeal	1-1-2014
411-070-0033	12-15-2013	Amend	1-1-2014
411-070-0033(T)	12-15-2013	Repeal	1-1-2014
411-070-0452	12-28-2013	Amend	2-1-2014
411-070-0452(T)	12-28-2013	Repeal	2-1-2014
411-300-0100	12-28-2013	Amend	2-1-2014
411-300-0110	12-28-2013	Amend	2-1-2014
411-300-0110(T)	12-28-2013	Repeal	2-1-2014
411-300-0120	12-28-2013	Amend	2-1-2014
411-300-0120(T)	12-28-2013	Repeal	2-1-2014
411-300-0130	12-28-2013	Amend	2-1-2014
411-300-0130(T)	12-28-2013	Repeal	2-1-2014
411-300-0140	12-28-2013	Amend	2-1-2014
411-300-0140(T)	12-28-2013	Repeal	2-1-2014
411-300-0150	12-28-2013	Amend	2-1-2014
411-300-0150(T)	12-28-2013	Repeal	2-1-2014
411-300-0155	12-28-2013	Amend	2-1-2014
411-300-0170	12-28-2013	Amend	2-1-2014
411-300-0190	12-28-2013	Amend	2-1-2014
411-300-0200	12-28-2013	Amend	2-1-2014
411-300-0205	12-28-2013	Amend	2-1-2014
411-300-0210	12-28-2013	Amend	2-1-2014
411-300-0220	12-28-2013	Amend	2-1-2014
411-308-0010	12-28-2013	Amend	2-1-2014
411-308-0010(T)	12-28-2013	Repeal	2-1-2014
411-308-0020	12-28-2013	Amend	2-1-2014
411-308-0020(T)	12-28-2013	Repeal	2-1-2014
411-308-0030	12-28-2013	Amend	2-1-2014
411-308-0030(T)	12-28-2013	Repeal	2-1-2014
411-308-0040	12-28-2013	Amend	2-1-2014
411-308-0050	12-28-2013	Amend	2-1-2014
411-308-0050(T)	12-28-2013	Repeal	2-1-2014
411-308-0060	12-28-2013	Amend	2-1-2014
411-308-0060(T)	12-28-2013	Repeal	2-1-2014
411-308-0070	12-28-2013	Amend	2-1-2014
411-308-0070(T)	12-28-2013	Repeal	2-1-2014
411-308-0080	12-28-2013	Amend	2-1-2014
411-308-0080(T)	12-28-2013	Repeal	2-1-2014
411-308-0090	12-28-2013	Amend	2-1-2014
411-308-0100	12-28-2013	Amend	2-1-2014
411-308-0100(T)	12-28-2013	Repeal	2-1-2014
411-308-0110	12-28-2013	Amend	2-1-2014
411-308-0120	12-28-2013	Amend	2-1-2014
411-308-0120(T)	12-28-2013	Repeal	2-1-2014
411-308-0130	12-28-2013	Amend	2-1-2014
411-308-0140	12-28-2013	Amend	2-1-2014
411-308-0150	12-28-2013	Amend	2-1-2014
411-320-0010	12-28-2013	Amend	2-1-2014
411-320-0020	12-28-2013	Amend	2-1-2014
411-320-0020(T)	12-28-2013	Repeal	2-1-2014
411-320-0030	12-28-2013	Amend	2-1-2014
411-320-0030(T)	12-28-2013	Repeal	2-1-2014
411-320-0040	12-28-2013	Amend	2-1-2014
411-320-0040(T)	12-28-2013	Repeal	2-1-2014
411-320-0045	12-28-2013	Amend	2-1-2014
411-320-0050	12-28-2013	Amend	2-1-2014
411-320-0060	12-28-2013	Amend	2-1-2014
411-320-0060(T)	12-28-2013	Repeal	2-1-2014
411-320-0070	12-28-2013	Amend	2-1-2014
411-320-0070(T)	12-28-2013	Repeal	2-1-2014
411-320-0080	12-28-2013	Amend	2-1-2014
411-320-0090	12-28-2013	Amend	2-1-2014
411-320-0090(T)	12-28-2013	Repeal	2-1-2014
411-320-0100	12-28-2013	Amend	2-1-2014
411-320-0100(T)	12-28-2013	Repeal	2-1-2014

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411-320-0120	12-28-2013	Amend	2-1-2014
411-320-0120(T)	12-28-2013	Repeal	2-1-2014
411-320-0130	12-28-2013	Amend	2-1-2014
411-320-0130(T)	12-28-2013	Repeal	2-1-2014
411-320-0140	12-28-2013	Amend	2-1-2014
411-320-0150	12-28-2013	Amend	2-1-2014
411-320-0160	12-28-2013	Amend	2-1-2014
411-320-0170	12-28-2013	Amend	2-1-2014
411-320-0175	12-28-2013	Amend	2-1-2014
411-320-0180	12-28-2013	Amend	2-1-2014
411-320-0190	12-28-2013	Amend	2-1-2014
411-320-0200	12-28-2013	Amend	2-1-2014
411-325-0010	12-28-2013	Amend	2-1-2014
411-325-0020	12-28-2013	Amend	2-1-2014
411-325-0020(T)	12-28-2013	Repeal	2-1-2014
411-325-0030	12-28-2013	Amend	2-1-2014
411-325-0040	12-28-2013	Amend	2-1-2014
411-325-0050	12-28-2013	Amend	2-1-2014
411-325-0060	12-28-2013	Amend	2-1-2014
411-325-0070	12-28-2013	Amend	2-1-2014
411-325-0090	12-28-2013	Amend	2-1-2014
411-325-0110	12-28-2013	Amend	2-1-2014
411-325-0120	12-28-2013	Amend	2-1-2014
411-325-0130	12-28-2013	Amend	2-1-2014
411-325-0140	12-28-2013	Amend	2-1-2014
411-325-0150	12-28-2013	Amend	2-1-2014
411-325-0170	12-28-2013	Amend	2-1-2014
411-325-0180	12-28-2013	Amend	2-1-2014
411-325-0185	12-28-2013	Amend	2-1-2014
411-325-0190	12-28-2013	Amend	2-1-2014
411-325-0200	12-28-2013	Amend	2-1-2014
411-325-0220	12-28-2013	Amend	2-1-2014
411-325-0230	12-28-2013	Amend	2-1-2014
411-325-0240	12-28-2013	Amend	2-1-2014
411-325-0250	12-28-2013	Amend	2-1-2014
411-325-0260	12-28-2013	Amend	2-1-2014
411-325-0270	12-28-2013	Amend	2-1-2014
411-325-0280	12-28-2013	Amend	2-1-2014
411-325-0290	12-28-2013	Amend	2-1-2014
411-325-0300	12-28-2013	Amend	2-1-2014
411-325-0320	12-28-2013	Amend	2-1-2014
411-325-0330	12-28-2013	Amend	2-1-2014
411-325-0340	12-28-2013	Amend	2-1-2014
411-325-0350	12-28-2013	Amend	2-1-2014
411-325-0360	12-28-2013	Amend	2-1-2014
411-325-0370	12-28-2013	Amend	2-1-2014
411-325-0380	12-28-2013	Amend	2-1-2014
411-325-0390	12-28-2013	Amend	2-1-2014
411-325-0390(T)	12-28-2013	Repeal	2-1-2014
411-325-0400	12-28-2013	Amend	2-1-2014
411-325-0400(T)	12-28-2013	Repeal	2-1-2014
411-325-0410	12-28-2013	Amend	2-1-2014
411-325-0420	12-28-2013	Amend	2-1-2014
411-325-0430	12-28-2013	Amend	2-1-2014
411-325-0440	12-28-2013	Amend	2-1-2014
411-325-0440(T)	12-28-2013	Repeal	2-1-2014
411-325-0460	12-28-2013	Amend	2-1-2014
411-325-0470	12-28-2013	Amend	2-1-2014
411-325-0480	12-28-2013	Amend	2-1-2014
411-328-0550	12-28-2013	Amend	2-1-2014
411-328-0560	12-28-2013	Amend	2-1-2014
411-328-0560(T)	12-28-2013	Repeal	2-1-2014
411-328-0570	12-28-2013	Amend	2-1-2014
411-328-0620	12-28-2013	Amend	2-1-2014
411-328-0630	12-28-2013	Amend	2-1-2014
411-328-0640	12-28-2013	Amend	2-1-2014
411-328-0650	12-28-2013	Amend	2-1-2014
411-328-0660	12-28-2013	Amend	2-1-2014
411-328-0680	12-28-2013	Amend	2-1-2014
411-328-0690	12-28-2013	Amend	2-1-2014
411-328-0700	12-28-2013	Amend	2-1-2014
411-328-0710	12-28-2013	Amend	2-1-2014
411-328-0715	12-28-2013	Amend	2-1-2014
411-328-0720	12-28-2013	Amend	2-1-2014
411-328-0740	12-28-2013	Amend	2-1-2014
411-328-0750	12-28-2013	Amend	2-1-2014
411-328-0760	12-28-2013	Amend	2-1-2014
411-328-0770	12-28-2013	Amend	2-1-2014
411-328-0780	12-28-2013	Amend	2-1-2014
411-328-0790	12-28-2013	Amend	2-1-2014
411-328-0790(T)	12-28-2013	Repeal	2-1-2014
411-328-0800	12-28-2013	Amend	2-1-2014
411-328-0800(T)	12-28-2013	Repeal	2-1-2014
411-330-0010	12-28-2013	Amend	2-1-2014
411-330-0020	12-28-2013	Amend	2-1-2014
411-330-0020(T)	12-28-2013	Repeal	2-1-2014
411-330-0030	12-28-2013	Amend	2-1-2014
411-330-0030(T)	12-28-2013	Repeal	2-1-2014
411-330-0040	12-28-2013	Amend	2-1-2014
411-330-0040(T)	12-28-2013	Repeal	2-1-2014
411-330-0050	12-28-2013	Amend	2-1-2014
411-330-0050(T)	12-28-2013	Repeal	2-1-2014
411-330-0060	12-28-2013	Amend	2-1-2014
411-330-0060(T)	12-28-2013	Repeal	2-1-2014
411-330-0065	12-28-2013	Amend	2-1-2014
411-330-0070	12-28-2013	Amend	2-1-2014
411-330-0070(T)	12-28-2013	Repeal	2-1-2014
411-330-0080	12-28-2013	Amend	2-1-2014
411-330-0080(T)	12-28-2013	Repeal	2-1-2014
411-330-0090	12-28-2013	Amend	2-1-2014
411-330-0090(T)	12-28-2013	Repeal	2-1-2014
411-330-0100	12-28-2013	Amend	2-1-2014
411-330-0110	12-28-2013	Amend	2-1-2014
411-330-0110(T)	12-28-2013	Repeal	2-1-2014
411-330-0120	12-28-2013	Amend	2-1-2014
411-330-0130	12-28-2013	Amend	2-1-2014
411-330-0140	12-28-2013	Amend	2-1-2014
411-330-0150	12-28-2013	Amend	2-1-2014
411-330-0160	12-28-2013	Amend	2-1-2014
411-330-0170	12-28-2013	Amend	2-1-2014

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411-335-0030	1-1-2014	Suspend	2-1-2014
411-335-0040	1-1-2014	Suspend	2-1-2014
411-335-0060	1-1-2014	Suspend	2-1-2014
411-335-0120	1-1-2014	Suspend	2-1-2014
411-335-0130	1-1-2014	Suspend	2-1-2014
411-335-0150	1-1-2014	Suspend	2-1-2014
411-335-0160	1-1-2014	Suspend	2-1-2014
411-335-0170	1-1-2014	Suspend	2-1-2014
411-335-0180	1-1-2014	Suspend	2-1-2014
411-335-0190	1-1-2014	Suspend	2-1-2014
411-335-0200	1-1-2014	Suspend	2-1-2014
411-335-0210	1-1-2014	Suspend	2-1-2014
411-335-0220	1-1-2014	Suspend	2-1-2014
411-335-0230	1-1-2014	Suspend	2-1-2014
411-335-0240	1-1-2014	Suspend	2-1-2014
411-335-0250	1-1-2014	Suspend	2-1-2014
411-335-0260	1-1-2014	Suspend	2-1-2014
411-335-0270	1-1-2014	Suspend	2-1-2014
411-335-0280	1-1-2014	Suspend	2-1-2014
411-335-0290	1-1-2014	Suspend	2-1-2014
411-335-0310	1-1-2014	Suspend	2-1-2014
411-335-0320	1-1-2014	Suspend	2-1-2014
411-335-0330	1-1-2014	Suspend	2-1-2014
411-335-0340	1-1-2014	Suspend	2-1-2014
411-335-0350	1-1-2014	Suspend	2-1-2014
411-335-0360	1-1-2014	Suspend	2-1-2014
411-340-0010	12-28-2013	Amend	2-1-2014
411-340-0020	12-28-2013	Amend	2-1-2014
411-340-0020(T)	12-28-2013	Repeal	2-1-2014
411-340-0030	12-28-2013	Amend	2-1-2014
411-340-0040	12-28-2013	Amend	2-1-2014
411-340-0050	12-28-2013	Amend	2-1-2014
411-340-0060	12-28-2013	Amend	2-1-2014
411-340-0070	12-28-2013	Amend	2-1-2014
411-340-0080	12-28-2013	Amend	2-1-2014
411-340-0090	12-28-2013	Amend	2-1-2014
411-340-0100	12-28-2013	Amend	2-1-2014
411-340-0100(T)	12-28-2013	Repeal	2-1-2014
411-340-0110	12-28-2013	Amend	2-1-2014
411-340-0110(T)	12-28-2013	Repeal	2-1-2014
411-340-0120	12-28-2013	Amend	2-1-2014
411-340-0120(T)	12-28-2013	Repeal	2-1-2014
411-340-0125	12-28-2013	Amend	2-1-2014
411-340-0125(T)	12-28-2013	Repeal	2-1-2014
411-340-0130	12-28-2013	Amend	2-1-2014
411-340-0130(T)	12-28-2013	Repeal	2-1-2014
411-340-0140	12-28-2013	Amend	2-1-2014
411-340-0150	12-28-2013	Amend	2-1-2014
411-340-0150(T)	12-28-2013	Repeal	2-1-2014
411-340-0160	12-28-2013	Amend	2-1-2014
411-340-0170	12-28-2013	Amend	2-1-2014
411-340-0180	12-28-2013	Amend	2-1-2014
411-345-0010	12-28-2013	Amend	2-1-2014
411-345-0020	12-28-2013	Amend	2-1-2014
411-345-0020(T)	12-28-2013	Repeal	2-1-2014
411-345-0095	12-28-2013	Amend	2-1-2014
411-345-0110	12-28-2013	Amend	2-1-2014
411-345-0130	12-28-2013	Amend	2-1-2014
411-345-0140	12-28-2013	Amend	2-1-2014
411-345-0140(T)	12-28-2013	Repeal	2-1-2014
411-345-0160	12-28-2013	Amend	2-1-2014
411-345-0170	12-28-2013	Amend	2-1-2014
411-345-0180	12-28-2013	Amend	2-1-2014
411-345-0190	12-28-2013	Amend	2-1-2014
411-345-0200	12-28-2013	Amend	2-1-2014
411-345-0230	12-28-2013	Amend	2-1-2014
411-345-0240	12-28-2013	Amend	2-1-2014
411-345-0250	12-28-2013	Amend	2-1-2014
411-345-0260	12-28-2013	Amend	2-1-2014
411-345-0270	12-28-2013	Amend	2-1-2014
411-346-0100	12-28-2013	Amend	2-1-2014
411-346-0110	12-28-2013	Amend	2-1-2014
411-346-0110(T)	12-28-2013	Repeal	2-1-2014
411-346-0120	12-28-2013	Amend	2-1-2014
411-346-0130	12-28-2013	Amend	2-1-2014
411-346-0140	12-28-2013	Amend	2-1-2014
411-346-0150	12-28-2013	Amend	2-1-2014
411-346-0160	12-28-2013	Amend	2-1-2014
411-346-0165	12-28-2013	Amend	2-1-2014
411-346-0170	12-28-2013	Amend	2-1-2014
411-346-0180	12-28-2013	Amend	2-1-2014
411-346-0180(T)	12-28-2013	Repeal	2-1-2014
411-346-0190	12-28-2013	Amend	2-1-2014
411-346-0200	12-28-2013	Amend	2-1-2014
411-346-0210	12-28-2013	Amend	2-1-2014
411-346-0220	12-28-2013	Amend	2-1-2014
411-346-0230	12-28-2013	Amend	2-1-2014
411-350-0010	12-28-2013	Amend	2-1-2014
411-350-0020	12-28-2013	Amend	2-1-2014
411-350-0020(T)	12-28-2013	Repeal	2-1-2014
411-350-0030	12-28-2013	Amend	2-1-2014
411-350-0030(T)	12-28-2013	Repeal	2-1-2014
411-350-0040	12-28-2013	Amend	2-1-2014
411-350-0040(T)	12-28-2013	Repeal	2-1-2014
411-350-0050	12-28-2013	Amend	2-1-2014
411-350-0050(T)	12-28-2013	Repeal	2-1-2014
411-350-0080	12-28-2013	Amend	2-1-2014
411-350-0100	12-28-2013	Amend	2-1-2014
411-350-0110	12-28-2013	Amend	2-1-2014
411-350-0115	12-28-2013	Amend	2-1-2014
411-350-0118	12-28-2013	Amend	2-1-2014
411-350-0120	12-28-2013	Amend	2-1-2014
411-355-0000	12-28-2013	Amend	2-1-2014
411-355-0010	12-28-2013	Amend	2-1-2014
411-355-0010(T)	12-28-2013	Repeal	2-1-2014
411-355-0020	12-28-2013	Amend	2-1-2014
411-355-0020(T)	12-28-2013	Repeal	2-1-2014
411-355-0030	12-28-2013	Amend	2-1-2014
411-355-0030(T)	12-28-2013	Repeal	2-1-2014
411-355-0040	12-28-2013	Amend	2-1-2014

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411-355-0050	12-28-2013	Amend	2-1-2014
411-355-0060	12-28-2013	Amend	2-1-2014
411-355-0070	12-28-2013	Amend	2-1-2014
411-355-0080	12-28-2013	Amend	2-1-2014
411-355-0090	12-28-2013	Amend	2-1-2014
411-355-0100	12-28-2013	Amend	2-1-2014
411-355-0110	12-28-2013	Amend	2-1-2014
411-355-0120	12-28-2013	Amend	2-1-2014
413-010-0000	1-1-2014	Amend	2-1-2014
413-010-0010	1-1-2014	Amend	2-1-2014
413-010-0030	1-1-2014	Amend	2-1-2014
413-010-0035	1-1-2014	Amend	2-1-2014
413-010-0045	1-1-2014	Amend	2-1-2014
413-010-0055	1-1-2014	Amend	2-1-2014
413-010-0065	1-1-2014	Amend	2-1-2014
413-010-0068	1-1-2014	Amend	2-1-2014
413-010-0075	1-1-2014	Amend	2-1-2014
413-010-0170	1-1-2014	Amend	2-1-2014
413-010-0175	1-1-2014	Amend	2-1-2014
413-010-0180	1-1-2014	Amend	2-1-2014
413-010-0185	1-1-2014	Adopt	2-1-2014
413-010-0300	1-1-2014	Amend	2-1-2014
413-010-0310	1-1-2014	Amend	2-1-2014
413-010-0320	1-1-2014	Amend	2-1-2014
413-010-0330	1-1-2014	Amend	2-1-2014
413-010-0340	1-1-2014	Amend	2-1-2014
413-070-0800	1-1-2014	Amend	2-1-2014
413-070-0810	1-1-2014	Amend	2-1-2014
413-070-0830	1-1-2014	Amend	2-1-2014
413-070-0840	1-1-2014	Amend	2-1-2014
413-070-0855	1-1-2014	Amend	2-1-2014
413-070-0860	1-1-2014	Amend	2-1-2014
413-070-0870	1-1-2014	Amend	2-1-2014
413-070-0880	1-1-2014	Amend	2-1-2014
413-100-0400	1-1-2014	Amend(T)	2-1-2014
413-100-0410	1-1-2014	Amend(T)	2-1-2014
413-100-0420	1-1-2014	Amend(T)	2-1-2014
413-100-0430	1-1-2014	Amend(T)	2-1-2014
413-100-0435	1-1-2014	Adopt(T)	2-1-2014
413-100-0440	1-1-2014	Suspend	2-1-2014
413-100-0445	1-1-2014	Amend(T)	2-1-2014
413-100-0450	1-1-2014	Suspend	2-1-2014
413-100-0455	1-1-2014	Amend(T)	2-1-2014
413-100-0460	1-1-2014	Amend(T)	2-1-2014
413-100-0470	1-1-2014	Suspend	2-1-2014
413-100-0480	1-1-2014	Suspend	2-1-2014
413-100-0490	1-1-2014	Suspend	2-1-2014
413-100-0500	1-1-2014	Suspend	2-1-2014
413-100-0510	1-1-2014	Suspend	2-1-2014
413-100-0520	1-1-2014	Suspend	2-1-2014
413-100-0530	1-1-2014	Amend(T)	2-1-2014
413-100-0540	1-1-2014	Suspend	2-1-2014
413-100-0550	1-1-2014	Suspend	2-1-2014
413-100-0560	1-1-2014	Suspend	2-1-2014
413-100-0580	12-31-2013	Renumber	2-1-2014
413-100-0590	12-31-2013	Renumber	2-1-2014
413-100-0600	1-1-2014	Suspend	2-1-2014
413-100-0610	1-1-2014	Suspend	2-1-2014
413-140-0000	1-1-2014	Amend	2-1-2014
413-140-0010	1-1-2014	Amend	2-1-2014
413-140-0026	1-1-2014	Amend	2-1-2014
413-140-0030	1-1-2014	Amend	2-1-2014
413-140-0031	1-1-2014	Adopt	2-1-2014
413-140-0032	1-1-2014	Adopt	2-1-2014
413-140-0033	1-1-2014	Adopt	2-1-2014
413-140-0035	1-1-2014	Amend	2-1-2014
413-140-0040	1-1-2014	Amend	2-1-2014
413-140-0045	1-1-2014	Repeal	2-1-2014
413-140-0047	1-1-2014	Adopt	2-1-2014
413-140-0055	1-1-2014	Repeal	2-1-2014
413-140-0065	1-1-2014	Amend	2-1-2014
413-140-0080	1-1-2014	Repeal	2-1-2014
413-140-0110	1-1-2014	Amend	2-1-2014
413-140-0120	1-1-2014	Repeal	2-1-2014
413-330-0000	1-1-2014	Suspend	2-1-2014
413-330-0010	1-1-2014	Suspend	2-1-2014
413-330-0020	1-1-2014	Suspend	2-1-2014
413-330-0030	1-1-2014	Suspend	2-1-2014
413-330-0040	1-1-2014	Suspend	2-1-2014
413-330-0050	1-1-2014	Suspend	2-1-2014
413-330-0060	1-1-2014	Suspend	2-1-2014
413-330-0080	1-1-2014	Suspend	2-1-2014
414-002-0005	1-15-2014	Adopt	2-1-2014
414-002-0010	1-15-2014	Adopt	2-1-2014
414-800-0005	1-15-2014	Adopt(T)	2-1-2014
414-800-0010	1-15-2014	Adopt(T)	2-1-2014
414-800-0015	1-15-2014	Adopt(T)	2-1-2014
414-800-0020	1-15-2014	Adopt(T)	2-1-2014
414-800-0025	1-15-2014	Adopt(T)	2-1-2014
414-800-0030	1-15-2014	Adopt(T)	2-1-2014
414-800-0105	1-15-2014	Adopt(T)	2-1-2014
414-800-0110	1-15-2014	Adopt(T)	2-1-2014
414-800-0115	1-15-2014	Adopt(T)	2-1-2014
414-800-0120	1-15-2014	Adopt(T)	2-1-2014
414-800-0125	1-15-2014	Adopt(T)	2-1-2014
414-800-0130	1-15-2014	Adopt(T)	2-1-2014
414-900-0005	1-15-2014	Adopt	2-1-2014
414-900-0010	1-15-2014	Adopt	2-1-2014
414-900-0015	1-15-2014	Adopt	2-1-2014
414-900-0020	1-15-2014	Adopt	2-1-2014
415-012-0057	12-20-2013	Adopt(T)	2-1-2014
415-012-0058	12-20-2013	Adopt(T)	2-1-2014
416-530-0000	1-15-2014	Amend	2-1-2014
416-530-0010	1-15-2014	Amend	2-1-2014
416-530-0020	1-15-2014	Amend	2-1-2014
416-530-0030	1-15-2014	Amend	2-1-2014
416-530-0035	1-15-2014	Amend	2-1-2014
416-530-0040	1-15-2014	Amend	2-1-2014
416-530-0050	1-15-2014	Amend	2-1-2014
416-530-0060	1-15-2014	Amend	2-1-2014
416-530-0070	1-15-2014	Amend	2-1-2014

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416-530-0100	1-15-2014	Amend	2-1-2014
416-530-0110	1-15-2014	Amend	2-1-2014
416-530-0125	1-15-2014	Amend	2-1-2014
416-530-0130	1-15-2014	Amend	2-1-2014
416-530-0140	1-15-2014	Amend	2-1-2014
416-530-0150	1-15-2014	Amend	2-1-2014
416-530-0160	1-15-2014	Amend	2-1-2014
416-530-0170	1-15-2014	Amend	2-1-2014
416-530-0200	1-15-2014	Amend	2-1-2014
437-002-0005	12-12-2013	Amend	1-1-2014
437-002-0080	12-12-2013	Amend	1-1-2014
437-002-0140	12-12-2013	Amend	1-1-2014
437-002-0312	12-12-2013	Amend	1-1-2014
437-003-0001	12-12-2013	Amend	1-1-2014
438-005-0035	4-1-2014	Amend	1-1-2014
438-005-0046	4-1-2014	Amend	1-1-2014
438-006-0020	4-1-2014	Amend	1-1-2014
438-006-0031	4-1-2014	Amend	1-1-2014
438-006-0036	4-1-2014	Amend	1-1-2014
438-006-0045	4-1-2014	Amend	1-1-2014
438-006-0062	4-1-2014	Amend	1-1-2014
438-006-0075	4-1-2014	Amend	1-1-2014
438-006-0105	4-1-2014	Repeal	1-1-2014
438-007-0005	4-1-2014	Amend	1-1-2014
438-007-0018	4-1-2014	Amend	1-1-2014
438-007-0020	4-1-2014	Amend	1-1-2014
438-009-0020	4-1-2014	Amend	1-1-2014
438-011-0055	4-1-2014	Adopt	1-1-2014
441-730-0010	1-1-2014	Amend(T)	2-1-2014
441-730-0025	1-1-2014	Amend(T)	2-1-2014
441-730-0030	1-1-2014	Amend(T)	2-1-2014
442-001-0000	1-2-2014	Repeal	2-1-2014
442-001-0005	1-2-2014	Repeal	2-1-2014
442-001-0050	1-2-2014	Repeal	2-1-2014
442-001-0060	1-2-2014	Repeal	2-1-2014
442-001-0070	1-2-2014	Repeal	2-1-2014
442-001-0080	1-2-2014	Repeal	2-1-2014
442-001-0090	1-2-2014	Repeal	2-1-2014
442-001-0100	1-2-2014	Repeal	2-1-2014
442-001-0110	1-2-2014	Repeal	2-1-2014
442-001-0120	1-2-2014	Repeal	2-1-2014
442-001-0130	1-2-2014	Repeal	2-1-2014
442-001-0140	1-2-2014	Repeal	2-1-2014
442-001-0150	1-2-2014	Repeal	2-1-2014
442-001-0160	1-2-2014	Repeal	2-1-2014
442-006-0000	1-2-2014	Repeal	2-1-2014
442-006-0010	1-2-2014	Repeal	2-1-2014
442-006-0020	1-2-2014	Repeal	2-1-2014
442-006-0030	1-2-2014	Repeal	2-1-2014
442-006-0040	1-2-2014	Repeal	2-1-2014
443-003-0005	1-1-2014	Adopt(T)	2-1-2014
443-003-0010	1-1-2014	Adopt(T)	2-1-2014
443-003-0015	1-1-2014	Adopt(T)	2-1-2014
443-003-0020	1-1-2014	Adopt(T)	2-1-2014
443-003-0025	1-1-2014	Adopt(T)	2-1-2014
443-003-0030	1-1-2014	Adopt(T)	2-1-2014
443-003-0035	1-1-2014	Adopt(T)	2-1-2014
443-003-0040	1-1-2014	Adopt(T)	2-1-2014
443-003-0045	1-1-2014	Adopt(T)	2-1-2014
443-003-0050	1-1-2014	Adopt(T)	2-1-2014
443-003-0055	1-1-2014	Adopt(T)	2-1-2014
443-003-0060	1-1-2014	Adopt(T)	2-1-2014
443-003-0065	1-1-2014	Adopt(T)	2-1-2014
443-003-0070	1-1-2014	Adopt(T)	2-1-2014
443-003-0075	1-1-2014	Adopt(T)	2-1-2014
443-003-0080	1-1-2014	Adopt(T)	2-1-2014
443-003-0085	1-1-2014	Adopt(T)	2-1-2014
443-003-0090	1-1-2014	Adopt(T)	2-1-2014
443-003-0095	1-1-2014	Adopt(T)	2-1-2014
443-003-0100	1-1-2014	Adopt(T)	2-1-2014
443-003-0105	1-1-2014	Adopt(T)	2-1-2014
443-003-0110	1-1-2014	Adopt(T)	2-1-2014
443-003-0115	1-1-2014	Adopt(T)	2-1-2014
443-003-0120	1-1-2014	Adopt(T)	2-1-2014
443-003-0125	1-1-2014	Adopt(T)	2-1-2014
459-005-0610	11-22-2013	Amend	1-1-2014
459-040-0060	11-22-2013	Amend	1-1-2014
459-040-0070	11-22-2013	Amend	1-1-2014
459-045-0010	11-22-2013	Amend	1-1-2014
461-001-0000	1-1-2014	Amend	2-1-2014
461-001-0000	1-1-2014	Amend(T)	2-1-2014
461-001-0000(T)	1-1-2014	Repeal	2-1-2014
461-001-0030	1-1-2014	Amend	2-1-2014
461-025-0315	1-1-2014	Amend	2-1-2014
461-025-0375	1-1-2014	Amend	2-1-2014
461-101-0010	1-1-2014	Amend	2-1-2014
461-101-0010(T)	1-1-2014	Repeal	2-1-2014
461-105-0100	1-1-2014	Amend	2-1-2014
461-105-0130	1-1-2014	Amend	2-1-2014
461-110-0210	1-1-2014	Amend	2-1-2014
461-110-0210(T)	1-1-2014	Repeal	2-1-2014
461-110-0330	1-1-2014	Amend	2-1-2014
461-110-0330(T)	1-1-2014	Repeal	2-1-2014
461-110-0340	1-1-2014	Amend	2-1-2014
461-110-0340(T)	1-1-2014	Repeal	2-1-2014
461-110-0350	1-8-2014	Amend(T)	2-1-2014
461-110-0400(T)	1-1-2014	Repeal	2-1-2014
461-110-0530	1-1-2014	Amend	2-1-2014
461-110-0530(T)	1-1-2014	Repeal	2-1-2014
461-110-0630	1-1-2014	Amend	2-1-2014
461-110-0630(T)	1-1-2014	Repeal	2-1-2014
461-115-0016	1-1-2014	Amend(T)	2-1-2014
461-115-0030	1-1-2014	Amend	2-1-2014
461-115-0030(T)	1-1-2014	Repeal	2-1-2014
461-115-0050	1-1-2014	Amend	2-1-2014
461-115-0050(T)	1-1-2014	Repeal	2-1-2014
461-115-0071	1-1-2014	Amend	2-1-2014
461-115-0071(T)	1-1-2014	Repeal	2-1-2014
461-115-0150	1-1-2014	Amend	2-1-2014
461-115-0430	1-1-2014	Amend	2-1-2014

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461-115-0705	1-1-2014	Repeal	2-1-2014
461-120-0030	1-1-2014	Amend	2-1-2014
461-120-0030(T)	1-1-2014	Repeal	2-1-2014
461-120-0050	1-1-2014	Amend	2-1-2014
461-120-0050(T)	1-1-2014	Repeal	2-1-2014
461-120-0125	1-1-2014	Amend	2-1-2014
461-120-0125(T)	1-1-2014	Repeal	2-1-2014
461-120-0210	1-1-2014	Amend	2-1-2014
461-120-0210(T)	1-1-2014	Repeal	2-1-2014
461-120-0310	1-1-2014	Amend	2-1-2014
461-120-0310(T)	1-1-2014	Repeal	2-1-2014
461-120-0315	1-1-2014	Amend	2-1-2014
461-120-0315(T)	1-1-2014	Repeal	2-1-2014
461-120-0330	1-1-2014	Amend	2-1-2014
461-120-0345	1-1-2014	Amend	2-1-2014
461-120-0345(T)	1-1-2014	Repeal	2-1-2014
461-120-0350	1-1-2014	Amend	2-1-2014
461-120-0350(T)	1-1-2014	Repeal	2-1-2014
461-120-0510	1-1-2014	Amend	2-1-2014
461-120-0510(T)	1-1-2014	Repeal	2-1-2014
461-120-0630	1-1-2014	Amend	2-1-2014
461-120-0630(T)	1-1-2014	Repeal	2-1-2014
461-125-0150	1-1-2014	Amend	2-1-2014
461-125-0150(T)	1-1-2014	Repeal	2-1-2014
461-130-0328	1-1-2014	Amend	2-1-2014
461-130-0328(T)	1-1-2014	Repeal	2-1-2014
461-135-0010	1-1-2014	Amend	2-1-2014
461-135-0010(T)	1-1-2014	Repeal	2-1-2014
461-135-0070	1-1-2014	Amend	2-1-2014
461-135-0070(T)	1-1-2014	Repeal	2-1-2014
461-135-0080	1-1-2014	Amend	2-1-2014
461-135-0080(T)	1-1-2014	Repeal	2-1-2014
461-135-0095	1-1-2014	Repeal	2-1-2014
461-135-0096	1-1-2014	Repeal	2-1-2014
461-135-0170	1-1-2014	Repeal	2-1-2014
461-135-0505	1-1-2014	Amend	2-1-2014
461-135-0505	1-1-2014	Amend(T)	2-1-2014
461-135-0780	1-1-2014	Amend	2-1-2014
461-135-0832	1-1-2014	Amend	2-1-2014
461-135-0835	1-1-2014	Amend	2-1-2014
461-135-0841	1-1-2014	Amend	2-1-2014
461-135-0845	1-1-2014	Amend	2-1-2014
461-135-0875	1-1-2014	Amend	2-1-2014
461-135-0875(T)	1-1-2014	Repeal	2-1-2014
461-135-0900	1-1-2014	Amend	2-1-2014
461-135-0900(T)	1-1-2014	Repeal	2-1-2014
461-135-0930	1-1-2014	Amend	2-1-2014
461-135-0930(T)	1-1-2014	Repeal	2-1-2014
461-135-0950	1-1-2014	Amend	2-1-2014
461-135-0950(T)	1-1-2014	Repeal	2-1-2014
461-135-1060	1-1-2014	Repeal	2-1-2014
461-135-1070	1-1-2014	Amend	2-1-2014
461-135-1070(T)	1-1-2014	Repeal	2-1-2014
461-135-1100	1-1-2014	Repeal	2-1-2014
461-135-1101	1-1-2014	Repeal	2-1-2014
461-135-1102	1-1-2014	Repeal	2-1-2014
461-135-1120	1-1-2014	Repeal	2-1-2014
461-135-1125	1-1-2014	Repeal	2-1-2014
461-135-1149	1-1-2014	Repeal	2-1-2014
461-140-0020	1-1-2014	Amend	2-1-2014
461-140-0040	1-1-2014	Amend	2-1-2014
461-140-0040(T)	1-1-2014	Repeal	2-1-2014
461-140-0120	1-1-2014	Amend	2-1-2014
461-140-0120(T)	1-1-2014	Repeal	2-1-2014
461-140-0210	1-1-2014	Amend	2-1-2014
461-140-0210(T)	1-1-2014	Repeal	2-1-2014
461-140-0270	1-1-2014	Amend	2-1-2014
461-140-0270(T)	1-1-2014	Repeal	2-1-2014
461-140-0300	1-1-2014	Amend	2-1-2014
461-145-0040	1-1-2014	Amend	2-1-2014
461-145-0040(T)	1-1-2014	Repeal	2-1-2014
461-145-0050	1-1-2014	Amend	2-1-2014
461-145-0050(T)	1-1-2014	Repeal	2-1-2014
461-145-0080	1-1-2014	Amend	2-1-2014
461-145-0080(T)	1-1-2014	Repeal	2-1-2014
461-145-0086	1-1-2014	Amend	2-1-2014
461-145-0086(T)	1-1-2014	Repeal	2-1-2014
461-145-0090	1-1-2014	Amend	2-1-2014
461-145-0090(T)	1-1-2014	Repeal	2-1-2014
461-145-0110	1-1-2014	Amend	2-1-2014
461-145-0110(T)	1-1-2014	Repeal	2-1-2014
461-145-0120	1-1-2014	Amend	2-1-2014
461-145-0120(T)	1-1-2014	Repeal	2-1-2014
461-145-0130	1-1-2014	Amend	2-1-2014
461-145-0130(T)	1-1-2014	Repeal	2-1-2014
461-145-0150	1-1-2014	Amend	2-1-2014
461-145-0150(T)	1-1-2014	Repeal	2-1-2014
461-145-0220	1-1-2014	Amend	2-1-2014
461-145-0220(T)	1-1-2014	Repeal	2-1-2014
461-145-0230	1-1-2014	Amend	2-1-2014
461-145-0230(T)	1-1-2014	Repeal	2-1-2014
461-145-0250	1-1-2014	Amend	2-1-2014
461-145-0250(T)	1-1-2014	Repeal	2-1-2014
461-145-0280	1-1-2014	Amend(T)	2-1-2014
461-145-0300	1-1-2014	Amend	2-1-2014
461-145-0300(T)	1-1-2014	Repeal	2-1-2014
461-145-0330	1-1-2014	Amend	2-1-2014
461-145-0330(T)	1-1-2014	Repeal	2-1-2014
461-145-0340	1-1-2014	Amend	2-1-2014
461-145-0340(T)	1-1-2014	Repeal	2-1-2014
461-145-0360	1-1-2014	Amend	2-1-2014
461-145-0360(T)	1-1-2014	Repeal	2-1-2014
461-145-0365	1-1-2014	Amend	2-1-2014
461-145-0365(T)	1-1-2014	Repeal	2-1-2014
461-145-0380	1-1-2014	Amend	2-1-2014
461-145-0380(T)	1-1-2014	Repeal	2-1-2014
461-145-0410	1-1-2014	Amend	2-1-2014
461-145-0410(T)	1-1-2014	Repeal	2-1-2014
461-145-0420	1-1-2014	Amend	2-1-2014
461-145-0420(T)	1-1-2014	Repeal	2-1-2014

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461-145-0433	1-1-2014	Amend	2-1-2014
461-145-0433(T)	1-1-2014	Repeal	2-1-2014
461-145-0440	1-1-2014	Amend	2-1-2014
461-145-0440(T)	1-1-2014	Repeal	2-1-2014
461-145-0455	1-1-2014	Amend	2-1-2014
461-145-0455(T)	1-1-2014	Repeal	2-1-2014
461-145-0460	1-1-2014	Amend	2-1-2014
461-145-0460(T)	1-1-2014	Repeal	2-1-2014
461-145-0470	1-1-2014	Amend	2-1-2014
461-145-0470(T)	1-1-2014	Repeal	2-1-2014
461-145-0505	1-1-2014	Amend	2-1-2014
461-145-0505(T)	1-1-2014	Repeal	2-1-2014
461-145-0510	1-1-2014	Amend	2-1-2014
461-145-0510(T)	1-1-2014	Repeal	2-1-2014
461-145-0540	1-1-2014	Amend	2-1-2014
461-145-0540(T)	1-1-2014	Repeal	2-1-2014
461-145-0580	1-1-2014	Amend	2-1-2014
461-145-0580(T)	1-1-2014	Repeal	2-1-2014
461-145-0590	1-1-2014	Amend	2-1-2014
461-145-0590(T)	1-1-2014	Repeal	2-1-2014
461-145-0600	1-1-2014	Amend	2-1-2014
461-145-0600(T)	1-1-2014	Repeal	2-1-2014
461-145-0820	1-1-2014	Amend	2-1-2014
461-145-0820(T)	1-1-2014	Repeal	2-1-2014
461-145-0830	1-1-2014	Amend	2-1-2014
461-145-0830(T)	1-1-2014	Repeal	2-1-2014
461-145-0860	1-1-2014	Amend	2-1-2014
461-145-0860(T)	1-1-2014	Repeal	2-1-2014
461-145-0870	1-1-2014	Repeal	2-1-2014
461-145-0910	1-1-2014	Amend	2-1-2014
461-145-0910(T)	1-1-2014	Repeal	2-1-2014
461-145-0920	1-1-2014	Amend	2-1-2014
461-145-0920(T)	1-1-2014	Repeal	2-1-2014
461-145-0930	1-1-2014	Amend	2-1-2014
461-145-0930(T)	1-1-2014	Repeal	2-1-2014
461-150-0020	1-1-2014	Amend	2-1-2014
461-150-0020(T)	1-1-2014	Repeal	2-1-2014
461-150-0055	1-1-2014	Repeal	2-1-2014
461-150-0060	1-1-2014	Amend	2-1-2014
461-150-0060(T)	1-1-2014	Repeal	2-1-2014
461-150-0070	1-1-2014	Amend	2-1-2014
461-150-0070(T)	1-1-2014	Repeal	2-1-2014
461-150-0080	1-1-2014	Amend	2-1-2014
461-150-0080(T)	1-1-2014	Repeal	2-1-2014
461-150-0090	1-1-2014	Amend	2-1-2014
461-150-0090(T)	1-1-2014	Repeal	2-1-2014
461-155-0030	1-1-2014	Amend	2-1-2014
461-155-0030(T)	1-1-2014	Repeal	2-1-2014
461-155-0180	1-1-2014	Amend	2-1-2014
461-155-0180(T)	1-1-2014	Repeal	2-1-2014
461-155-0225	1-1-2014	Amend	2-1-2014
461-155-0225(T)	1-1-2014	Repeal	2-1-2014
461-155-0235	1-1-2014	Repeal	2-1-2014
461-155-0250	1-1-2014	Amend	2-1-2014
461-155-0270	1-1-2014	Amend	2-1-2014
461-155-0300	1-1-2014	Amend	2-1-2014
461-155-0350	1-1-2014	Amend	2-1-2014
461-155-0350(T)	1-1-2014	Repeal	2-1-2014
461-155-0670	1-1-2014	Amend	2-1-2014
461-155-0670(T)	1-1-2014	Repeal	2-1-2014
461-160-0015	1-1-2014	Amend	2-1-2014
461-160-0015(T)	1-1-2014	Repeal	2-1-2014
461-160-0040	1-1-2014	Amend	2-1-2014
461-160-0040(T)	1-1-2014	Repeal	2-1-2014
461-160-0060	1-1-2014	Amend	2-1-2014
461-160-0060(T)	1-1-2014	Repeal	2-1-2014
461-160-0100	1-1-2014	Amend	2-1-2014
461-160-0100(T)	1-1-2014	Repeal	2-1-2014
461-160-0120	1-1-2014	Repeal	2-1-2014
461-160-0125	1-1-2014	Repeal	2-1-2014
461-160-0160	1-1-2014	Amend	2-1-2014
461-160-0160(T)	1-1-2014	Repeal	2-1-2014
461-160-0190	1-1-2014	Repeal	2-1-2014
461-160-0200	1-1-2014	Repeal	2-1-2014
461-160-0580	1-1-2014	Amend	2-1-2014
461-160-0620	1-1-2014	Amend	2-1-2014
461-160-0630	1-1-2014	Amend	2-1-2014
461-160-0630(T)	1-1-2014	Repeal	2-1-2014
461-160-0700	1-1-2014	Repeal	2-1-2014
461-160-0780	1-1-2014	Amend	2-1-2014
461-165-0030	1-1-2014	Amend	2-1-2014
461-165-0030(T)	1-1-2014	Repeal	2-1-2014
461-165-0070	1-1-2014	Amend	2-1-2014
461-165-0120	1-1-2014	Amend	2-1-2014
461-165-0120(T)	1-1-2014	Repeal	2-1-2014
461-170-0011	1-1-2014	Amend	2-1-2014
461-170-0011(T)	1-1-2014	Repeal	2-1-2014
461-170-0130	1-1-2014	Amend	2-1-2014
461-170-0130(T)	1-1-2014	Repeal	2-1-2014
461-170-0200	1-1-2014	Amend	2-1-2014
461-170-0200(T)	1-1-2014	Repeal	2-1-2014
461-175-0200	1-1-2014	Amend	2-1-2014
461-175-0200(T)	1-1-2014	Repeal	2-1-2014
461-175-0203(T)	1-1-2014	Repeal	2-1-2014
461-175-0206	1-1-2014	Amend	2-1-2014
461-175-0210	1-1-2014	Amend	2-1-2014
461-175-0210(T)	1-1-2014	Repeal	2-1-2014
461-175-0270	1-1-2014	Amend	2-1-2014
461-175-0270(T)	1-1-2014	Repeal	2-1-2014
461-175-0305	1-1-2014	Amend	2-1-2014
461-175-0305(T)	1-1-2014	Repeal	2-1-2014
461-180-0010	1-1-2014	Amend	2-1-2014
461-180-0010(T)	1-1-2014	Repeal	2-1-2014
461-180-0020	1-1-2014	Amend	2-1-2014
461-180-0020(T)	1-1-2014	Repeal	2-1-2014
461-180-0050	1-1-2014	Amend	2-1-2014
461-180-0050(T)	1-1-2014	Repeal	2-1-2014
461-180-0065	1-1-2014	Amend	2-1-2014
461-180-0065(T)	1-1-2014	Repeal	2-1-2014
461-180-0085	1-1-2014	Amend	2-1-2014

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461-180-0090(T)	1-1-2014	Repeal	2-1-2014
461-180-0097(T)	1-1-2014	Repeal	2-1-2014
461-180-0100	1-1-2014	Amend	2-1-2014
461-180-0100(T)	1-1-2014	Repeal	2-1-2014
461-180-0105	1-1-2014	Amend	2-1-2014
461-180-0105(T)	1-1-2014	Repeal	2-1-2014
461-180-0120	1-1-2014	Amend	2-1-2014
461-180-0120(T)	1-1-2014	Repeal	2-1-2014
461-180-0140	1-1-2014	Amend	2-1-2014
461-180-0140(T)	1-1-2014	Repeal	2-1-2014
461-185-0050	1-1-2014	Amend	2-1-2014
461-195-0301	1-1-2014	Amend	2-1-2014
461-195-0310	1-1-2014	Amend	2-1-2014
461-195-0551	1-1-2014	Amend	2-1-2014
471-030-0036	2-23-2014	Amend	2-1-2014
471-030-0036	2-23-2014	Amend	2-1-2014
471-030-0040	2-23-2014	Amend	2-1-2014
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471-030-0040(T)	2-23-2014	Repeal	2-1-2014
471-030-0045	2-23-2014	Amend	2-1-2014
471-030-0045	2-23-2014	Amend	2-1-2014
471-030-0045(T)	2-23-2014	Repeal	2-1-2014
471-030-0045(T)	2-23-2014	Repeal	2-1-2014
471-030-0052	2-23-2014	Amend	2-1-2014
471-030-0052	2-23-2014	Amend	2-1-2014
471-030-0052(T)	2-23-2014	Repeal	2-1-2014
471-030-0052(T)	2-23-2014	Repeal	2-1-2014
471-030-0053	2-23-2014	Amend	2-1-2014
471-030-0053	2-23-2014	Amend	2-1-2014
471-030-0053(T)	2-23-2014	Repeal	2-1-2014
471-030-0053(T)	2-23-2014	Repeal	2-1-2014
471-030-0058	2-23-2014	Adopt	2-1-2014
471-030-0058	2-23-2014	Adopt	2-1-2014
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471-030-0078	2-23-2014	Repeal	2-1-2014
471-030-0078	2-23-2014	Repeal	2-1-2014
471-030-0083	2-23-2014	Adopt	2-1-2014
471-030-0083	2-23-2014	Adopt	2-1-2014
471-030-0210	2-23-2014	Amend	2-1-2014
471-030-0210	2-23-2014	Amend	2-1-2014
471-031-0151	2-23-2014	Amend	2-1-2014
471-031-0151	2-23-2014	Amend	2-1-2014
471-040-0020	2-23-2014	Amend	2-1-2014
471-040-0020	2-23-2014	Amend	2-1-2014
576-010-0000	12-18-2013	Amend	2-1-2014
579-040-0005	12-6-2013	Amend	1-1-2014
579-040-0007	12-6-2013	Amend	1-1-2014
579-040-0010	12-6-2013	Amend	1-1-2014
579-040-0013	12-6-2013	Amend	1-1-2014
579-040-0015	12-6-2013	Amend	1-1-2014
579-040-0020	12-6-2013	Repeal	1-1-2014
579-040-0030	12-6-2013	Amend	1-1-2014
579-040-0035	12-6-2013	Amend	1-1-2014
579-040-0045	12-6-2013	Amend	1-1-2014
579-070-0010	12-6-2013	Amend	1-1-2014
579-070-0030	12-6-2013	Amend	1-1-2014
579-070-0035	12-6-2013	Amend	1-1-2014
579-070-0041	12-6-2013	Amend	1-1-2014
579-070-0042	12-6-2013	Amend	1-1-2014
579-070-0045	12-6-2013	Amend	1-1-2014
580-021-0030	11-20-2013	Amend(T)	1-1-2014
581-015-2000	12-18-2013	Amend	2-1-2014
581-015-2245	12-18-2013	Amend	2-1-2014
581-015-2540	12-18-2013	Amend	2-1-2014
581-015-2550	12-18-2013	Amend	2-1-2014
581-015-2555	12-18-2013	Amend	2-1-2014
581-015-2930	12-18-2013	Adopt	2-1-2014
581-017-0005	12-18-2013	Adopt	2-1-2014
581-017-0010	12-18-2013	Adopt	2-1-2014
581-017-0020	12-18-2013	Adopt	2-1-2014
581-017-0100	12-18-2013	Adopt	2-1-2014
581-017-0105	12-18-2013	Adopt	2-1-2014
581-017-0110	12-18-2013	Adopt	2-1-2014
581-017-0115	12-18-2013	Adopt	2-1-2014
581-017-0300	11-22-2013	Adopt(T)	1-1-2014
581-017-0305	11-22-2013	Adopt(T)	1-1-2014
581-017-0308	11-22-2013	Adopt(T)	1-1-2014
581-017-0311	11-22-2013	Adopt(T)	1-1-2014
581-017-0314	11-22-2013	Adopt(T)	1-1-2014
581-017-0317	11-22-2013	Adopt(T)	1-1-2014
581-017-0320	11-22-2013	Adopt(T)	1-1-2014
581-017-0323	11-22-2013	Adopt(T)	1-1-2014
581-017-0326	11-22-2013	Adopt(T)	1-1-2014
581-017-0329	11-22-2013	Adopt(T)	1-1-2014
581-017-0332	11-22-2013	Adopt(T)	1-1-2014
581-018-0005	12-18-2013	Adopt	2-1-2014
581-018-0010	12-18-2013	Adopt	2-1-2014
581-018-0020	12-18-2013	Adopt	2-1-2014
581-018-0100	12-18-2013	Adopt	2-1-2014
581-018-0105	12-18-2013	Adopt	2-1-2014
581-018-0110	12-18-2013	Adopt	2-1-2014
581-018-0115	12-18-2013	Adopt	2-1-2014
581-018-0120	12-18-2013	Adopt	2-1-2014
581-018-0125	12-18-2013	Adopt	2-1-2014
581-018-0200	12-18-2013	Adopt	2-1-2014
581-018-0205	12-18-2013	Adopt	2-1-2014
581-018-0210	12-18-2013	Adopt	2-1-2014
581-018-0215	12-18-2013	Adopt	2-1-2014
581-018-0220	12-18-2013	Adopt	2-1-2014
581-018-0225	12-18-2013	Adopt	2-1-2014
581-018-0250	12-18-2013	Adopt	2-1-2014
581-018-0255	12-18-2013	Adopt	2-1-2014
581-018-0260	12-18-2013	Adopt	2-1-2014
581-018-0265	12-18-2013	Adopt	2-1-2014
581-018-0270	12-18-2013	Adopt	2-1-2014
581-018-0275	12-18-2013	Adopt	2-1-2014
581-018-0380	11-22-2013	Adopt(T)	1-1-2014
581-018-0385	11-22-2013	Adopt(T)	1-1-2014

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581-018-0397	11-22-2013	Adopt(T)	1-1-2014
581-018-0399	11-22-2013	Adopt(T)	1-1-2014
581-018-0400	11-22-2013	Adopt(T)	1-1-2014
581-018-0405	11-22-2013	Adopt(T)	1-1-2014
581-018-0410	11-22-2013	Adopt(T)	1-1-2014
581-018-0415	11-22-2013	Adopt(T)	1-1-2014
581-018-0420	11-22-2013	Adopt(T)	1-1-2014
581-018-0424	11-22-2013	Adopt(T)	1-1-2014
581-018-0430	12-18-2013	Adopt(T)	2-1-2014
581-018-0433	12-18-2013	Adopt(T)	2-1-2014
581-018-0436	12-18-2013	Adopt(T)	2-1-2014
581-018-0439	12-18-2013	Adopt(T)	2-1-2014
581-018-0442	12-18-2013	Adopt(T)	2-1-2014
581-020-0359	12-18-2013	Amend	2-1-2014
581-022-0606	12-18-2013	Amend	2-1-2014
581-023-0015	12-18-2013	Amend	2-1-2014
589-002-0120	12-16-2013	Amend(T)	2-1-2014
603-052-1241	1-15-2014	Adopt	2-1-2014
629-060-0000	1-1-2014	Am. & Ren.	1-1-2014
629-060-0005	1-1-2014	Am. & Ren.	1-1-2014
629-061-0000	1-1-2014	Am. & Ren.	1-1-2014
629-061-0005	1-1-2014	Am. & Ren.	1-1-2014
629-061-0015	1-1-2014	Am. & Ren.	1-1-2014
629-061-0020	1-1-2014	Am. & Ren.	1-1-2014
629-061-0025	1-1-2014	Repeal	1-1-2014
629-061-0035	1-1-2014	Am. & Ren.	1-1-2014
629-061-0040	1-1-2014	Repeal	1-1-2014
629-061-0045	1-1-2014	Repeal	1-1-2014
629-061-0050	1-1-2014	Repeal	1-1-2014
629-061-0060	1-1-2014	Am. & Ren.	1-1-2014
629-061-0065	1-1-2014	Am. & Ren.	1-1-2014
629-061-0075	1-1-2014	Repeal	1-1-2014
629-165-0005	1-1-2014	Adopt	1-1-2014
629-165-0010	1-1-2014	Adopt	1-1-2014
629-165-0200	1-1-2014	Adopt	1-1-2014
629-165-0210	1-1-2014	Adopt	1-1-2014
635-004-0215	1-1-2014	Amend	2-1-2014
635-004-0275	12-9-2013	Amend(T)	1-1-2014
635-004-0275	1-1-2014	Amend	2-1-2014
635-004-0275(T)	12-9-2013	Suspend	1-1-2014
635-004-0320	1-1-2014	Amend	2-1-2014
635-004-0350	1-1-2014	Amend	2-1-2014
635-004-0360	1-1-2014	Amend	2-1-2014
635-004-0505	1-1-2014	Amend(T)	1-1-2014
635-005-0465	12-1-2013	Amend(T)	1-1-2014
635-005-0705	12-9-2013	Amend(T)	1-1-2014
635-006-0210	1-1-2014	Amend	2-1-2014
635-006-0213	1-1-2014	Amend	2-1-2014
635-006-0232	1-13-2014	Amend	2-1-2014
635-011-0100	12-10-2013	Amend(T)	1-1-2014
635-011-0100	1-1-2014	Amend	2-1-2014
635-011-0104	12-1-2013	Amend(T)	1-1-2014
635-011-0104	12-9-2013	Amend	1-1-2014
635-011-0104(T)	12-9-2013	Repeal	1-1-2014
635-013-0004	1-1-2014	Amend	2-1-2014
635-014-0080	1-1-2014	Amend	2-1-2014
635-014-0090	1-1-2014	Amend	2-1-2014
635-016-0080	1-1-2014	Amend	2-1-2014
635-016-0090	1-1-2014	Amend	2-1-2014
635-017-0080	1-1-2014	Amend	2-1-2014
635-017-0090	1-1-2014	Amend	2-1-2014
635-017-0095	1-1-2014	Amend	2-1-2014
635-018-0080	1-1-2014	Amend	2-1-2014
635-018-0090	1-1-2014	Amend	2-1-2014
635-019-0080	1-1-2014	Amend	2-1-2014
635-019-0090	1-1-2014	Amend	2-1-2014
635-021-0080	1-1-2014	Amend	2-1-2014
635-021-0090	1-1-2014	Amend	2-1-2014
635-023-0080	1-1-2014	Amend	2-1-2014
635-023-0090	1-1-2014	Amend	2-1-2014
635-023-0095	1-1-2014	Amend	2-1-2014
635-023-0095	1-1-2014	Amend(T)	1-1-2014
635-023-0095(T)	1-1-2014	Suspend	1-1-2014
635-023-0125	1-1-2014	Amend	2-1-2014
635-023-0128	1-1-2014	Amend	2-1-2014
635-023-0130	1-1-2014	Amend	2-1-2014
635-023-0134	1-1-2014	Amend	2-1-2014
635-039-0080	1-1-2014	Amend	2-1-2014
635-039-0090	1-1-2014	Amend	2-1-2014
635-065-0001	12-20-2013	Amend	2-1-2014
635-065-0011	12-20-2013	Amend	2-1-2014
635-065-0015	12-20-2013	Amend	2-1-2014
635-065-0090	12-20-2013	Amend	2-1-2014
635-065-0401	12-20-2013	Amend	2-1-2014
635-065-0501	12-20-2013	Amend	2-1-2014
635-065-0705	12-20-2013	Amend	2-1-2014
635-065-0740	12-20-2013	Amend	2-1-2014
635-065-0760	12-20-2013	Amend	2-1-2014
635-065-0765	12-20-2013	Amend	2-1-2014
635-066-0000	12-20-2013	Amend	2-1-2014
635-066-0010	12-20-2013	Amend	2-1-2014
635-067-0000	12-20-2013	Amend	2-1-2014
635-067-0041	12-20-2013	Amend	2-1-2014
635-072-0000	12-20-2013	Amend	2-1-2014
635-110-0000	1-14-2014	Amend	2-1-2014
635-110-0010	1-14-2014	Amend	2-1-2014
635-110-0010(T)	1-14-2014	Repeal	2-1-2014
635-110-0020	1-14-2014	Amend	2-1-2014
635-110-0030	1-14-2014	Amend	2-1-2014
660-006-0025	1-1-2014	Amend	2-1-2014
660-006-0026	1-1-2014	Amend	2-1-2014
660-006-0055	1-1-2014	Amend	2-1-2014
660-018-0020	1-1-2014	Amend	2-1-2014
660-018-0040	1-1-2014	Amend	2-1-2014
660-033-0030	1-1-2014	Amend	2-1-2014
660-033-0120	1-1-2014	Amend	2-1-2014
660-033-0130	1-1-2014	Amend	2-1-2014
660-033-0140	1-1-2014	Amend	2-1-2014
661-010-0021	1-1-2014	Amend	2-1-2014
661-010-0025	1-1-2014	Amend	2-1-2014

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661-010-0050	1-1-2014	Amend	2-1-2014
661-010-0067	1-1-2014	Amend	2-1-2014
661-010-0071	1-1-2014	Amend	2-1-2014
661-010-0073	1-1-2014	Amend	2-1-2014
661-010-0075	1-1-2014	Amend	2-1-2014
731-035-0010	12-20-2013	Amend	2-1-2014
731-035-0020	12-20-2013	Amend	2-1-2014
731-035-0050	12-20-2013	Amend	2-1-2014
731-035-0060	12-20-2013	Amend	2-1-2014
731-035-0080	12-20-2013	Amend	2-1-2014
731-147-0010	1-1-2014	Amend	2-1-2014
731-147-0040	1-1-2014	Amend	2-1-2014
731-149-0010	1-1-2014	Amend	2-1-2014
734-026-0010	11-25-2013	Amend	1-1-2014
734-026-0020	11-25-2013	Amend	1-1-2014
734-026-0030	11-25-2013	Amend	1-1-2014
734-051-8010	1-1-2014	Adopt(T)	2-1-2014
734-051-8015	1-1-2014	Adopt(T)	2-1-2014
734-051-8020	1-1-2014	Adopt(T)	2-1-2014
734-051-8025	1-1-2014	Adopt(T)	2-1-2014
734-051-8030	1-1-2014	Adopt(T)	2-1-2014
734-055-0017	11-25-2013	Repeal	1-1-2014
735-010-0250	12-20-2013	Adopt	2-1-2014
735-018-0010	12-20-2013	Amend	2-1-2014
735-018-0130	12-20-2013	Adopt	2-1-2014
735-050-0120	11-25-2013	Amend	1-1-2014
735-050-0120(T)	11-25-2013	Repeal	1-1-2014
735-062-0007	1-1-2014	Amend	2-1-2014
735-062-0010	1-1-2014	Amend	2-1-2014
735-062-0385	1-1-2014	Amend	2-1-2014
735-064-0070	1-1-2014	Amend	2-1-2014
735-070-0082	1-1-2014	Adopt	2-1-2014
735-070-0085	11-25-2013	Amend	1-1-2014
735-070-0085(T)	11-25-2013	Repeal	1-1-2014
735-070-0185	1-1-2014	Amend	2-1-2014
735-070-0190	1-1-2014	Amend	2-1-2014
735-072-0035	1-1-2014	Amend	2-1-2014
735-150-0045	1-1-2014	Amend	2-1-2014
735-150-0105	1-1-2014	Amend	2-1-2014
735-152-0037	1-1-2014	Amend	2-1-2014
740-200-0010	1-1-2014	Amend	2-1-2014
740-200-0020	1-1-2014	Amend	2-1-2014
740-200-0040	1-1-2014	Amend	2-1-2014
741-040-0040	12-20-2013	Amend	2-1-2014
804-003-0000	12-12-2013	Amend	1-1-2014
804-022-0005	12-12-2013	Amend	1-1-2014
804-022-0010	12-12-2013	Amend	1-1-2014
804-025-0010	12-12-2013	Amend	1-1-2014
806-010-0035	1-1-2014	Amend	2-1-2014
806-010-0045	1-1-2014	Amend	2-1-2014
811-015-0005	11-27-2013	Amend	1-1-2014
812-002-0120	1-1-2014	Amend	2-1-2014
812-003-0130	1-1-2014	Repeal	2-1-2014
812-003-0131	1-1-2014	Amend	2-1-2014
812-003-0140	1-1-2014	Repeal	2-1-2014
812-003-0141	1-1-2014	Repeal	2-1-2014
812-003-0150	1-1-2014	Repeal	2-1-2014
812-003-0152	1-1-2014	Amend	2-1-2014
812-003-0153	1-1-2014	Amend	2-1-2014
812-003-0170	1-1-2014	Repeal	2-1-2014
812-003-0171	1-1-2014	Amend	2-1-2014
812-003-0175	1-1-2014	Amend	2-1-2014
812-003-0180	1-1-2014	Amend	2-1-2014
812-003-0220	1-1-2014	Repeal	2-1-2014
812-003-0221	1-1-2014	Amend	2-1-2014
812-003-0240	1-1-2014	Amend	2-1-2014
812-003-0250	1-1-2014	Amend	2-1-2014
812-003-0260	1-1-2014	Amend	2-1-2014
812-003-0290	1-1-2014	Amend	2-1-2014
812-003-0310	1-1-2014	Amend	2-1-2014
812-003-0320	1-1-2014	Amend	2-1-2014
812-003-0390	1-1-2014	Amend	2-1-2014
812-003-0400	1-1-2014	Amend	2-1-2014
812-003-0430	1-1-2014	Amend	2-1-2014
812-003-0440	1-1-2014	Amend	2-1-2014
812-008-0030	1-1-2014	Amend	2-1-2014
812-008-0040	1-1-2014	Amend	2-1-2014
812-012-0110	1-1-2014	Amend	2-1-2014
812-021-0005	1-1-2014	Amend	2-1-2014
812-021-0021	1-1-2014	Amend	2-1-2014
812-021-0045	1-1-2014	Amend	2-1-2014
812-021-0047	1-1-2014	Amend	2-1-2014
812-022-0015	11-26-2013	Amend(T)	1-1-2014
812-022-0021	11-26-2013	Amend(T)	1-1-2014
812-022-0025	12-12-2013	Amend(T)	1-1-2014
812-022-0026	12-12-2013	Amend(T)	1-1-2014
812-022-0027	12-12-2013	Amend(T)	1-1-2014
812-025-0000	1-1-2014	Amend	2-1-2014
812-025-0005	1-1-2014	Amend	2-1-2014
812-025-0010	1-1-2014	Amend	2-1-2014
812-030-0000	1-1-2014	Amend	2-1-2014
812-030-0240	1-1-2014	Amend	2-1-2014
812-032-0000	1-1-2014	Adopt	2-1-2014
812-032-0100	1-1-2014	Adopt	2-1-2014
812-032-0110	1-1-2014	Adopt	2-1-2014
812-032-0120	1-1-2014	Adopt	2-1-2014
812-032-0123	1-1-2014	Adopt	2-1-2014
812-032-0130	1-1-2014	Adopt	2-1-2014
812-032-0135	1-1-2014	Adopt	2-1-2014
812-032-0140	1-1-2014	Adopt	2-1-2014
812-032-0150	1-1-2014	Adopt	2-1-2014
813-001-0007	12-18-2013	Amend	2-1-2014
813-001-0007	12-18-2013	Amend	2-1-2014
813-001-0007(T)	12-18-2013	Amend	2-1-2014
813-001-0007(T)	12-18-2013	Repeal	2-1-2014
813-005-0001	12-18-2013	Amend	2-1-2014
813-005-0001(T)	12-18-2013	Repeal	2-1-2014
813-005-0005	12-18-2013	Amend	2-1-2014
813-005-0005(T)	12-18-2013	Repeal	2-1-2014
813-005-0016	12-18-2013	Amend	2-1-2014
813-005-0016(T)	12-18-2013	Repeal	2-1-2014

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813-005-0030	12-18-2013	Adopt	2-1-2014
813-005-0030(T)	12-18-2013	Repeal	2-1-2014
813-005-0040	12-18-2013	Adopt	2-1-2014
813-005-0040(T)	12-18-2013	Repeal	2-1-2014
813-005-0050	12-18-2013	Adopt	2-1-2014
813-005-0050(T)	12-18-2013	Repeal	2-1-2014
813-005-0060	12-18-2013	Adopt	2-1-2014
813-005-0060(T)	12-18-2013	Repeal	2-1-2014
813-005-0070	12-18-2013	Adopt	2-1-2014
813-005-0070(T)	12-18-2013	Repeal	2-1-2014
813-006-0005	12-18-2013	Amend	2-1-2014
813-006-0005(T)	12-18-2013	Repeal	2-1-2014
813-006-0010	12-18-2013	Amend	2-1-2014
813-006-0010(T)	12-18-2013	Repeal	2-1-2014
813-006-0015	12-18-2013	Amend	2-1-2014
813-006-0015(T)	12-18-2013	Repeal	2-1-2014
813-006-0020	12-18-2013	Amend	2-1-2014
813-006-0020(T)	12-18-2013	Repeal	2-1-2014
813-006-0025	12-18-2013	Amend	2-1-2014
813-006-0025(T)	12-18-2013	Repeal	2-1-2014
813-006-0030	12-18-2013	Amend	2-1-2014
813-006-0030(T)	12-18-2013	Repeal	2-1-2014
813-006-0035	12-18-2013	Repeal	2-1-2014
813-006-0040	12-18-2013	Adopt	2-1-2014
813-006-0040(T)	12-18-2013	Repeal	2-1-2014
813-055-0001	12-18-2013	Amend	2-1-2014
813-055-0001(T)	12-18-2013	Repeal	2-1-2014
813-055-0010	12-18-2013	Amend	2-1-2014
813-055-0010(T)	12-18-2013	Repeal	2-1-2014
813-055-0020	12-18-2013	Amend	2-1-2014
813-055-0020(T)	12-18-2013	Repeal	2-1-2014
813-055-0040	12-18-2013	Amend	2-1-2014
813-055-0040(T)	12-18-2013	Repeal	2-1-2014
813-055-0050	12-18-2013	Amend	2-1-2014
813-055-0050(T)	12-18-2013	Repeal	2-1-2014
813-055-0060	12-18-2013	Repeal	2-1-2014
813-055-0065	12-18-2013	Adopt	2-1-2014
813-055-0065(T)	12-18-2013	Repeal	2-1-2014
813-055-0075	12-18-2013	Amend	2-1-2014
813-055-0075(T)	12-18-2013	Repeal	2-1-2014
813-055-0085	12-18-2013	Amend	2-1-2014
813-055-0085(T)	12-18-2013	Repeal	2-1-2014
813-055-0095	12-18-2013	Adopt	2-1-2014
813-055-0095(T)	12-18-2013	Repeal	2-1-2014
813-055-0100	12-18-2013	Repeal	2-1-2014
813-055-0105	12-18-2013	Amend	2-1-2014
813-055-0105(T)	12-18-2013	Repeal	2-1-2014
813-055-0110	12-18-2013	Repeal	2-1-2014
813-055-0115	12-18-2013	Amend	2-1-2014
813-055-0115(T)	12-18-2013	Repeal	2-1-2014
813-110-0005	12-18-2013	Amend	2-1-2014
813-110-0005(T)	12-18-2013	Repeal	2-1-2014
813-110-0010	12-18-2013	Amend	2-1-2014
813-110-0010(T)	12-18-2013	Repeal	2-1-2014
813-110-0012	12-18-2013	Repeal	2-1-2014
813-110-0013	12-18-2013	Amend	2-1-2014
813-110-0013(T)	12-18-2013	Repeal	2-1-2014
813-110-0015	12-18-2013	Amend	2-1-2014
813-110-0015(T)	12-18-2013	Repeal	2-1-2014
813-110-0020	12-18-2013	Amend	2-1-2014
813-110-0020(T)	12-18-2013	Repeal	2-1-2014
813-110-0021	12-18-2013	Amend	2-1-2014
813-110-0021(T)	12-18-2013	Repeal	2-1-2014
813-110-0022	12-18-2013	Amend	2-1-2014
813-110-0022(T)	12-18-2013	Repeal	2-1-2014
813-110-0023	12-18-2013	Repeal	2-1-2014
813-110-0025	12-18-2013	Amend	2-1-2014
813-110-0025(T)	12-18-2013	Repeal	2-1-2014
813-110-0026	12-18-2013	Adopt	2-1-2014
813-110-0026(T)	12-18-2013	Repeal	2-1-2014
813-110-0027	12-18-2013	Adopt	2-1-2014
813-110-0027(T)	12-18-2013	Repeal	2-1-2014
813-110-0030	12-18-2013	Amend	2-1-2014
813-110-0030(T)	12-18-2013	Repeal	2-1-2014
813-110-0032	12-18-2013	Adopt	2-1-2014
813-110-0032(T)	12-18-2013	Repeal	2-1-2014
813-110-0033	12-18-2013	Repeal	2-1-2014
813-110-0034	12-18-2013	Adopt	2-1-2014
813-110-0034(T)	12-18-2013	Repeal	2-1-2014
813-110-0035	12-18-2013	Amend	2-1-2014
813-110-0035(T)	12-18-2013	Repeal	2-1-2014
813-110-0037	12-18-2013	Adopt	2-1-2014
813-110-0037(T)	12-18-2013	Repeal	2-1-2014
813-110-0040	12-18-2013	Amend	2-1-2014
813-110-0040(T)	12-18-2013	Repeal	2-1-2014
813-110-0045	12-18-2013	Adopt	2-1-2014
813-110-0045(T)	12-18-2013	Repeal	2-1-2014
813-110-0050	12-18-2013	Repeal	2-1-2014
813-130-0000	12-18-2013	Amend	2-1-2014
813-130-0000(T)	12-18-2013	Repeal	2-1-2014
813-130-0010	12-18-2013	Amend	2-1-2014
813-130-0010(T)	12-18-2013	Repeal	2-1-2014
813-130-0020	12-18-2013	Amend	2-1-2014
813-130-0020(T)	12-18-2013	Repeal	2-1-2014
813-130-0030	12-18-2013	Amend	2-1-2014
813-130-0030(T)	12-18-2013	Repeal	2-1-2014
813-130-0040	12-18-2013	Amend	2-1-2014
813-130-0040(T)	12-18-2013	Repeal	2-1-2014
813-130-0050	12-18-2013	Amend	2-1-2014
813-130-0050(T)	12-18-2013	Repeal	2-1-2014
813-130-0060	12-18-2013	Amend	2-1-2014
813-130-0060(T)	12-18-2013	Repeal	2-1-2014
813-130-0070	12-18-2013	Amend	2-1-2014
813-130-0070(T)	12-18-2013	Repeal	2-1-2014
813-130-0080	12-18-2013	Amend	2-1-2014
813-130-0080(T)	12-18-2013	Repeal	2-1-2014
813-130-0090	12-18-2013	Amend	2-1-2014
813-130-0090(T)	12-18-2013	Repeal	2-1-2014
813-130-0100	12-18-2013	Amend	2-1-2014
813-130-0100(T)	12-18-2013	Repeal	2-1-2014

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813-130-0120	12-18-2013	Amend	2-1-2014
813-130-0120(T)	12-18-2013	Repeal	2-1-2014
813-130-0130	12-18-2013	Repeal	2-1-2014
813-130-0140	12-18-2013	Repeal	2-1-2014
813-130-0150	12-18-2013	Amend	2-1-2014
813-130-0150(T)	12-18-2013	Repeal	2-1-2014
813-205-0000	12-18-2013	Amend	2-1-2014
813-205-0000(T)	12-18-2013	Repeal	2-1-2014
813-205-0010	12-18-2013	Repeal	2-1-2014
813-205-0020	12-18-2013	Amend	2-1-2014
813-205-0020(T)	12-18-2013	Repeal	2-1-2014
813-205-0030	12-18-2013	Amend	2-1-2014
813-205-0030(T)	12-18-2013	Repeal	2-1-2014
813-205-0040	12-18-2013	Amend	2-1-2014
813-205-0040(T)	12-18-2013	Repeal	2-1-2014
813-205-0050	12-18-2013	Amend	2-1-2014
813-205-0050(T)	12-18-2013	Repeal	2-1-2014
813-205-0051	12-18-2013	Amend	2-1-2014
813-205-0051(T)	12-18-2013	Repeal	2-1-2014
813-205-0052	12-18-2013	Amend	2-1-2014
813-205-0052(T)	12-18-2013	Repeal	2-1-2014
813-205-0060	12-18-2013	Amend	2-1-2014
813-205-0060(T)	12-18-2013	Repeal	2-1-2014
813-205-0070	12-18-2013	Amend	2-1-2014
813-205-0070(T)	12-18-2013	Repeal	2-1-2014
813-205-0080	12-18-2013	Amend	2-1-2014
813-205-0080(T)	12-18-2013	Repeal	2-1-2014
813-205-0082	12-18-2013	Adopt	2-1-2014
813-205-0082(T)	12-18-2013	Repeal	2-1-2014
813-205-0085	12-18-2013	Amend	2-1-2014
813-205-0085(T)	12-18-2013	Repeal	2-1-2014
813-205-0100	12-18-2013	Amend	2-1-2014
813-205-0100(T)	12-18-2013	Repeal	2-1-2014
813-205-0110	12-18-2013	Amend	2-1-2014
813-205-0110(T)	12-18-2013	Repeal	2-1-2014
813-205-0120	12-18-2013	Amend	2-1-2014
813-205-0120(T)	12-18-2013	Repeal	2-1-2014
813-205-0130	12-18-2013	Amend	2-1-2014
813-205-0130(T)	12-18-2013	Repeal	2-1-2014
813-205-0140	12-18-2013	Repeal	2-1-2014
813-205-0145	12-18-2013	Adopt	2-1-2014
813-205-0145(T)	12-18-2013	Repeal	2-1-2014
813-205-0150	12-18-2013	Adopt	2-1-2014
813-205-0150(T)	12-18-2013	Repeal	2-1-2014
813-300-0010	12-18-2013	Amend(T)	2-1-2014
817-010-0014	1-1-2014	Amend	2-1-2014
817-030-0028	1-1-2014	Adopt	2-1-2014
817-030-0065	1-1-2014	Amend	2-1-2014
820-001-0020	12-5-2013	Amend(T)	1-1-2014
820-001-0020(T)	12-5-2013	Suspend	1-1-2014
820-001-0020(T)	12-5-2013	Suspend	1-1-2014
820-001-0025	12-5-2013	Amend(T)	1-1-2014
820-010-0010	12-5-2013	Amend(T)	1-1-2014
820-010-0010(T)	12-5-2013	Suspend	1-1-2014
820-010-0010(T)	12-5-2013	Suspend	1-1-2014
820-010-0227	12-5-2013	Amend(T)	1-1-2014
820-010-0227(T)	12-5-2013	Suspend	1-1-2014
820-010-0227(T)	12-5-2013	Suspend	1-1-2014
820-010-0228	12-5-2013	Amend(T)	1-1-2014
820-010-0228(T)	12-5-2013	Suspend	1-1-2014
820-010-0228(T)	12-5-2013	Suspend	1-1-2014
820-010-0260(T)	12-5-2013	Suspend	1-1-2014
820-010-0260(T)	12-5-2013	Suspend	1-1-2014
820-010-0305	12-5-2013	Amend(T)	1-1-2014
820-010-0305(T)	12-5-2013	Suspend	1-1-2014
820-010-0305(T)	12-5-2013	Suspend	1-1-2014
820-010-0442	12-5-2013	Amend(T)	1-1-2014
820-010-0442(T)	12-5-2013	Suspend	1-1-2014
820-010-0442(T)	12-5-2013	Suspend	1-1-2014
820-010-0620	12-5-2013	Amend(T)	1-1-2014
820-010-0620(T)	12-5-2013	Suspend	1-1-2014
820-010-0620(T)	12-5-2013	Suspend	1-1-2014
820-010-0621	12-5-2013	Amend(T)	1-1-2014
820-010-0621(T)	12-5-2013	Suspend	1-1-2014
820-010-0621(T)	12-5-2013	Suspend	1-1-2014
833-020-0051	1-8-2014	Amend	2-1-2014
833-040-0021	1-8-2014	Amend	2-1-2014
833-060-0012	1-8-2014	Amend	2-1-2014
836-007-0001	12-31-2013	Adopt(T)	2-1-2014
836-010-0011	1-1-2014	Amend	2-1-2014
836-010-0051	1-1-2014	Adopt	2-1-2014
836-020-0770	1-1-2014	Amend	2-1-2014
836-020-0775	1-1-2014	Amend	2-1-2014
836-020-0780	1-1-2014	Amend	2-1-2014
836-020-0785	1-1-2014	Amend	2-1-2014
836-020-0806	1-1-2014	Amend	2-1-2014
836-027-0005	1-1-2014	Amend	2-1-2014
836-027-0005	1-8-2014	Amend	2-1-2014
836-027-0010	1-1-2014	Amend	2-1-2014
836-027-0010	1-8-2014	Amend	2-1-2014
836-027-0030	1-1-2014	Amend	2-1-2014
836-027-0030	1-8-2014	Amend	2-1-2014
836-027-0035	1-1-2014	Amend	2-1-2014
836-027-0035	1-8-2014	Amend	2-1-2014
836-027-0045	1-1-2014	Amend	2-1-2014
836-027-0045	1-8-2014	Amend	2-1-2014
836-027-0050	1-1-2014	Amend	2-1-2014
836-027-0050	1-8-2014	Amend	2-1-2014
836-027-0100	1-1-2014	Amend	2-1-2014
836-027-0100	1-8-2014	Amend	2-1-2014
836-027-0125	1-1-2014	Adopt	2-1-2014
836-027-0125	1-8-2014	Adopt	2-1-2014
836-027-0140	1-1-2014	Adopt	2-1-2014
836-027-0140	1-8-2014	Adopt	2-1-2014
836-052-0142	12-5-2013	Amend(T)	1-1-2014
836-052-0676	1-1-2014	Amend	2-1-2014
836-052-0800	1-1-2014	Amend	2-1-2014
836-052-0830	1-1-2014	Repeal	2-1-2014
836-052-0860	1-1-2014	Amend	2-1-2014
836-053-0000	1-1-2014	Amend	2-1-2014

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836-053-0003	1-1-2014	Amend	2-1-2014
836-053-0005	1-1-2014	Amend	2-1-2014
836-053-0007	1-1-2014	Amend	2-1-2014
836-053-0008	1-1-2014	Adopt	2-1-2014
836-053-0009	1-1-2014	Adopt	2-1-2014
836-053-0021	1-1-2014	Amend	2-1-2014
836-053-0030	1-1-2014	Amend	2-1-2014
836-053-0040	1-1-2014	Repeal	2-1-2014
836-053-0050	1-1-2014	Amend	2-1-2014
836-053-0060	1-1-2014	Repeal	2-1-2014
836-053-0063	1-1-2014	Adopt	2-1-2014
836-053-0065	1-1-2014	Amend	2-1-2014
836-053-0070	1-1-2014	Amend	2-1-2014
836-053-0081	1-1-2014	Repeal	2-1-2014
836-053-0210	1-1-2014	Repeal	2-1-2014
836-053-0211	1-1-2014	Adopt	2-1-2014
836-053-0220	1-1-2014	Repeal	2-1-2014
836-053-0221	1-1-2014	Adopt	2-1-2014
836-053-0250	1-1-2014	Repeal	2-1-2014
836-053-0410	1-1-2014	Amend	2-1-2014
836-053-0415	1-1-2014	Amend	2-1-2014
836-053-0430	1-1-2014	Repeal	2-1-2014
836-053-0431	1-1-2014	Adopt	2-1-2014
836-053-0440	1-1-2014	Repeal	2-1-2014
836-053-0460	1-1-2014	Repeal	2-1-2014
836-053-0465	1-1-2014	Amend	2-1-2014
836-053-0471	1-1-2014	Repeal	2-1-2014
836-053-0472	1-1-2014	Adopt	2-1-2014
836-053-0473	1-1-2014	Adopt	2-1-2014
836-053-0475	1-1-2014	Amend	2-1-2014
836-053-0510	1-1-2014	Amend	2-1-2014
836-053-0700	1-1-2014	Repeal	2-1-2014
836-053-0710	1-1-2014	Repeal	2-1-2014
836-053-0750	1-1-2014	Repeal	2-1-2014
836-053-0760	1-1-2014	Repeal	2-1-2014
836-053-0780	1-1-2014	Repeal	2-1-2014
836-053-0785	1-1-2014	Repeal	2-1-2014
836-053-0790	1-1-2014	Repeal	2-1-2014
836-053-0800	1-1-2014	Repeal	2-1-2014
836-053-0825	1-1-2014	Amend	2-1-2014
836-053-0830	1-1-2014	Amend	2-1-2014
836-053-0835	1-1-2014	Adopt	2-1-2014
836-053-0851	1-1-2014	Amend	2-1-2014
836-053-0900	1-1-2014	Amend	2-1-2014
836-053-0910	1-1-2014	Amend	2-1-2014
836-053-1000	1-1-2014	Amend	2-1-2014
836-053-1020	1-1-2014	Amend	2-1-2014
836-053-1030	1-1-2014	Amend	2-1-2014
836-053-1035	1-1-2014	Amend	2-1-2014
836-053-1040	1-1-2014	Repeal	2-1-2014
836-053-1070	1-1-2014	Amend	2-1-2014
836-053-1080	1-1-2014	Amend	2-1-2014
836-053-1100	1-1-2014	Amend	2-1-2014
836-053-1110	1-1-2014	Amend	2-1-2014
836-053-1130	1-1-2014	Amend	2-1-2014
836-053-1140	1-1-2014	Amend	2-1-2014
836-053-1170	1-1-2014	Amend	2-1-2014
836-053-1180	1-1-2014	Adopt	2-1-2014
836-053-1190	1-1-2014	Amend	2-1-2014
836-053-1200	1-1-2014	Amend	2-1-2014
836-053-1315	1-1-2014	Amend	2-1-2014
836-053-1320	1-1-2014	Amend	2-1-2014
836-053-1325	1-1-2014	Amend	2-1-2014
836-053-1330	1-1-2014	Amend	2-1-2014
836-053-1335	1-1-2014	Amend	2-1-2014
836-053-1340	1-1-2014	Amend	2-1-2014
836-053-1342	1-1-2014	Amend	2-1-2014
836-053-1345	1-1-2014	Amend	2-1-2014
836-053-1350	1-1-2014	Amend	2-1-2014
836-053-1355	1-1-2014	Amend	2-1-2014
836-053-1360	1-1-2014	Amend	2-1-2014
836-053-1365	1-1-2014	Amend	2-1-2014
836-053-1400	1-1-2014	Amend	2-1-2014
836-053-1401	1-1-2014	Repeal	2-1-2014
836-053-1410	1-1-2014	Amend	2-1-2014
836-053-1415	1-1-2014	Amend	2-1-2014
836-071-0405	1-1-2014	Adopt	2-1-2014
836-071-0410	1-1-2014	Adopt	2-1-2014
836-071-0415	1-1-2014	Adopt	2-1-2014
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836-071-0425	1-1-2014	Adopt	2-1-2014
836-071-0430	1-1-2014	Adopt	2-1-2014
836-075-0045	1-1-2014	Adopt	2-1-2014
836-080-0050	1-1-2014	Amend	2-1-2014
836-080-0055	1-1-2014	Amend	2-1-2014
836-080-0080	1-1-2014	Amend	2-1-2014
836-081-0005	1-1-2014	Amend	2-1-2014
836-082-0050	1-1-2014	Amend	2-1-2014
836-082-0055	1-1-2014	Amend	2-1-2014
836-085-0001	1-1-2014	Amend	2-1-2014
836-085-0005	1-1-2014	Amend	2-1-2014
836-085-0010	1-1-2014	Amend	2-1-2014
836-085-0025	1-1-2014	Amend	2-1-2014
836-085-0035	1-1-2014	Amend	2-1-2014
836-085-0045	1-1-2014	Amend	2-1-2014
836-085-0050	1-1-2014	Amend	2-1-2014
836-100-0011	1-1-2014	Repeal	2-1-2014
836-100-0016	1-1-2014	Repeal	2-1-2014
836-100-0020	1-1-2014	Repeal	2-1-2014
836-100-0025	1-1-2014	Repeal	2-1-2014
836-100-0030	1-1-2014	Repeal	2-1-2014
836-100-0035	1-1-2014	Repeal	2-1-2014
836-100-0040	1-1-2014	Repeal	2-1-2014
836-100-0045	1-1-2014	Repeal	2-1-2014
836-100-0100	1-1-2014	Amend	2-1-2014
836-100-0105	1-1-2014	Amend	2-1-2014
836-100-0110	1-1-2014	Amend	2-1-2014
836-100-0115	1-1-2014	Amend	2-1-2014
836-200-0400	1-2-2014	Adopt(T)	2-1-2014
836-200-0405	1-2-2014	Adopt(T)	2-1-2014

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836-200-0420	1-2-2014	Adopt(T)	2-1-2014
837-085-0040	1-9-2014	Amend	2-1-2014
837-085-0090	1-9-2014	Amend	2-1-2014
837-085-0280	1-9-2014	Amend	2-1-2014
839-001-0440	1-1-2014	Amend	2-1-2014
839-001-0450	1-1-2014	Amend	2-1-2014
839-003-0005	12-30-2013	Amend	2-1-2014
839-003-0020	12-30-2013	Amend	2-1-2014
839-003-0031	12-30-2013	Amend	2-1-2014
839-003-0090	12-30-2013	Amend	2-1-2014
839-003-0100	12-30-2013	Amend	2-1-2014
839-003-0235	12-30-2013	Amend	2-1-2014
839-003-0245	12-30-2013	Amend	2-1-2014
839-005-0003	12-30-2013	Amend	2-1-2014
839-005-0011	12-30-2013	Amend	2-1-2014
839-005-0030	12-30-2013	Amend	2-1-2014
839-005-0060	12-30-2013	Amend	2-1-2014
839-005-0065	12-30-2013	Amend	2-1-2014
839-005-0070	12-30-2013	Amend	2-1-2014
839-005-0075	12-30-2013	Amend	2-1-2014
839-005-0080	12-30-2013	Amend	2-1-2014
839-005-0085	12-30-2013	Amend	2-1-2014
839-005-0160	12-30-2013	Amend	2-1-2014
839-005-0170	12-30-2013	Amend	2-1-2014
839-005-0200	12-30-2013	Amend	2-1-2014
839-005-0206	12-30-2013	Amend	2-1-2014
839-005-0300	12-30-2013	Adopt	2-1-2014
839-005-0305	12-30-2013	Adopt	2-1-2014
839-005-0310	12-30-2013	Adopt	2-1-2014
839-005-0315	12-30-2013	Adopt	2-1-2014
839-005-0320	12-30-2013	Adopt	2-1-2014
839-005-0325	12-30-2013	Adopt	2-1-2014
839-005-0400	12-30-2013	Adopt	2-1-2014
839-006-0205	12-30-2013	Amend	2-1-2014
839-006-0212	12-30-2013	Amend	2-1-2014
839-006-0270	12-30-2013	Amend	2-1-2014
839-006-0290	12-30-2013	Amend	2-1-2014
839-006-0291	12-30-2013	Adopt	2-1-2014
839-006-0292	12-30-2013	Adopt	2-1-2014
839-006-0295	12-30-2013	Amend	2-1-2014
839-006-0305	12-30-2013	Amend	2-1-2014
839-006-0307	12-30-2013	Am. & Ren.	2-1-2014
839-006-0332	12-30-2013	Renumber	2-1-2014
839-006-0345	12-30-2013	Adopt	2-1-2014
839-006-0450	12-16-2013	Amend(T)	1-1-2014
839-009-0210	12-31-2013	Amend	2-1-2014
839-009-0230	12-31-2013	Amend	2-1-2014
839-009-0240	12-31-2013	Amend	2-1-2014
839-009-0250	12-31-2013	Amend	2-1-2014
839-009-0270	12-31-2013	Amend	2-1-2014
839-009-0280	12-31-2013	Amend	2-1-2014
839-009-0325	12-31-2013	Amend	2-1-2014
839-009-0330	12-31-2013	Amend	2-1-2014
839-009-0340	12-31-2013	Amend	2-1-2014
839-009-0345	12-31-2013	Amend	2-1-2014
839-009-0362	12-31-2013	Amend	2-1-2014
839-009-0363	12-31-2013	Amend	2-1-2014
839-009-0380	12-31-2013	Amend	2-1-2014
839-009-0390	12-31-2013	Amend	2-1-2014
839-009-0430	12-31-2013	Amend	2-1-2014
839-010-0000	12-30-2013	Amend	2-1-2014
839-010-0300	12-30-2013	Adopt	2-1-2014
839-010-0305	12-30-2013	Adopt	2-1-2014
839-010-0310	12-30-2013	Adopt	2-1-2014
839-019-0004	1-1-2014	Amend	2-1-2014
839-019-0010	1-1-2014	Amend	2-1-2014
839-019-0100	1-1-2014	Amend	2-1-2014
839-020-0004	1-1-2014	Amend	2-1-2014
839-020-0025	1-1-2014	Amend	2-1-2014
839-020-0040	1-1-2014	Amend	2-1-2014
839-020-0050	1-1-2014	Amend	2-1-2014
839-020-0070	1-1-2014	Amend	2-1-2014
839-020-1010	1-1-2014	Amend	2-1-2014
839-021-0006	1-1-2014	Amend	2-1-2014
839-021-0067	1-1-2014	Amend	2-1-2014
839-021-0070	1-1-2014	Amend	2-1-2014
839-021-0072	1-1-2014	Amend	2-1-2014
839-021-0087	1-1-2014	Amend	2-1-2014
839-021-0097	1-1-2014	Amend	2-1-2014
839-021-0102	1-1-2014	Amend	2-1-2014
839-021-0104	1-1-2014	Amend	2-1-2014
839-021-0175	1-1-2014	Amend	2-1-2014
839-021-0220	1-1-2014	Amend	2-1-2014
839-021-0221	1-1-2014	Amend	2-1-2014
839-021-0246	1-1-2014	Amend	2-1-2014
839-021-0248	1-1-2014	Amend	2-1-2014
839-021-0255	1-1-2014	Amend	2-1-2014
839-021-0265	1-1-2014	Amend	2-1-2014
839-021-0280	1-1-2014	Amend	2-1-2014
839-021-0290	1-1-2014	Amend	2-1-2014
839-021-0292	1-1-2014	Amend	2-1-2014
839-021-0294	1-1-2014	Amend	2-1-2014
839-021-0297	1-1-2014	Amend	2-1-2014
839-021-0315	1-1-2014	Amend	2-1-2014
839-021-0320	1-1-2014	Amend	2-1-2014
839-021-0325	1-1-2014	Amend	2-1-2014
839-021-0330	1-1-2014	Amend	2-1-2014
839-021-0335	1-1-2014	Amend	2-1-2014
839-021-0340	1-1-2014	Amend	2-1-2014
839-021-0345	1-1-2014	Amend	2-1-2014
839-021-0350	1-1-2014	Amend	2-1-2014
839-021-0355	1-1-2014	Amend	2-1-2014
839-021-0360	1-1-2014	Amend	2-1-2014
839-021-0365	1-1-2014	Amend	2-1-2014
839-021-0370	1-1-2014	Amend	2-1-2014
839-021-0490	1-1-2014	Amend	2-1-2014
839-022-0000	1-1-2014	Repeal	2-1-2014
839-022-0010	1-1-2014	Repeal	2-1-2014
839-022-0100	1-1-2014	Repeal	2-1-2014
839-022-0105	1-1-2014	Repeal	2-1-2014

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839-022-0115	1-1-2014	Repeal	2-1-2014
839-022-0120	1-1-2014	Repeal	2-1-2014
839-022-0125	1-1-2014	Repeal	2-1-2014
839-022-0130	1-1-2014	Repeal	2-1-2014
839-022-0135	1-1-2014	Repeal	2-1-2014
839-022-0140	1-1-2014	Repeal	2-1-2014
839-022-0145	1-1-2014	Repeal	2-1-2014
839-022-0150	1-1-2014	Repeal	2-1-2014
839-022-0155	1-1-2014	Repeal	2-1-2014
839-022-0160	1-1-2014	Repeal	2-1-2014
839-022-0165	1-1-2014	Repeal	2-1-2014
839-025-0004	1-1-2014	Amend	2-1-2014
839-025-0010	1-1-2014	Amend	2-1-2014
839-025-0013	1-1-2014	Amend	2-1-2014
839-025-0020	1-1-2014	Amend	2-1-2014
839-025-0035	1-1-2014	Amend	2-1-2014
839-025-0043	1-1-2014	Amend	2-1-2014
839-025-0085	1-1-2014	Amend	2-1-2014
839-025-0090	1-1-2014	Amend	2-1-2014
839-025-0095	1-1-2014	Amend	2-1-2014
839-025-0230	1-1-2014	Amend	2-1-2014
839-025-0530	1-1-2014	Amend	2-1-2014
839-025-0700	1-1-2014	Amend	2-1-2014
845-004-0001	1-1-2014	Amend	1-1-2014
845-005-0311	1-1-2014	Amend	1-1-2014
845-006-0335	1-1-2014	Amend	1-1-2014
845-006-0392	1-1-2014	Amend	1-1-2014
845-006-0396	1-1-2014	Amend	1-1-2014
845-013-0001	1-1-2014	Amend	1-1-2014
847-001-0024	1-14-2014	Adopt	2-1-2014
847-008-0070	1-14-2014	Amend	2-1-2014
847-010-0053	1-14-2014	Repeal	2-1-2014
847-010-0060	1-14-2014	Amend	2-1-2014
847-020-0110	1-14-2014	Amend	2-1-2014
847-050-0020	1-14-2014	Amend	2-1-2014
847-050-0023	1-14-2014	Amend	2-1-2014
847-050-0025	1-14-2014	Amend	2-1-2014
847-050-0026	1-14-2014	Repeal	2-1-2014
847-070-0019	1-14-2014	Amend	2-1-2014
847-070-0036	1-14-2014	Repeal	2-1-2014
847-070-0037	1-14-2014	Amend	2-1-2014
847-080-0002	1-14-2014	Amend	2-1-2014
848-001-0005	1-1-2014	Amend	1-1-2014
848-005-0020	1-1-2014	Amend	1-1-2014
848-005-0030	1-1-2014	Amend	1-1-2014
848-010-0010	1-1-2014	Amend	1-1-2014
848-010-0015	1-1-2014	Amend	1-1-2014
848-010-0020	1-1-2014	Amend	1-1-2014
848-010-0026	1-1-2014	Amend	1-1-2014
848-010-0033	1-1-2014	Amend	1-1-2014
848-010-0035	1-1-2014	Amend	1-1-2014
848-010-0044	1-1-2014	Amend	1-1-2014
848-015-0030	1-1-2014	Amend	1-1-2014
848-020-0000	1-1-2014	Amend	1-1-2014
848-020-0060	1-1-2014	Amend	1-1-2014
848-040-0105	1-1-2014	Amend	1-1-2014
848-040-0110	1-1-2014	Amend	1-1-2014
848-040-0117	1-1-2014	Amend	1-1-2014
848-040-0147	1-1-2014	Amend	1-1-2014
848-040-0150	1-1-2014	Amend	1-1-2014
848-045-0010	1-1-2014	Amend	1-1-2014
851-021-0005	1-1-2014	Amend	1-1-2014
851-021-0010	1-1-2014	Amend	1-1-2014
851-021-0025	1-1-2014	Amend	1-1-2014
851-021-0050	1-1-2014	Amend	1-1-2014
851-021-0120	1-1-2014	Amend	1-1-2014
851-050-0000	1-1-2014	Amend	1-1-2014
851-050-0001	1-1-2014	Amend	1-1-2014
851-050-0002	1-1-2014	Amend	1-1-2014
851-054-0010	1-1-2014	Amend	1-1-2014
851-054-0020	1-1-2014	Amend	1-1-2014
851-054-0021	1-1-2014	Amend	1-1-2014
851-054-0030	1-1-2014	Adopt	1-1-2014
851-054-0035	1-1-2014	Adopt	1-1-2014
851-054-0040	1-1-2014	Amend	1-1-2014
851-056-0020	1-1-2014	Amend	1-1-2014
851-056-0022	1-1-2014	Amend	1-1-2014
851-061-0020	1-1-2014	Amend	1-1-2014
851-061-0030	1-1-2014	Amend	1-1-2014
851-061-0080	1-1-2014	Amend	1-1-2014
851-061-0090	1-1-2014	Amend	1-1-2014
851-062-0010	1-1-2014	Amend	1-1-2014
851-062-0050	1-1-2014	Amend	1-1-2014
851-062-0080	1-1-2014	Amend	1-1-2014
851-062-0130	1-1-2014	Amend	1-1-2014
852-010-0080	1-3-2014	Amend	2-1-2014
852-050-0005	1-3-2014	Amend	2-1-2014
852-050-0016	1-3-2014	Amend	2-1-2014
855-041-4200	1-3-2014	Amend	2-1-2014
855-080-0021	12-20-2013	Amend(T)	2-1-2014
855-110-0005	1-3-2014	Amend	2-1-2014
855-110-0007	1-3-2014	Amend	2-1-2014
860-001-0310	1-9-2014	Amend	2-1-2014
860-033-0001	12-20-2013	Amend	2-1-2014
860-033-0001(T)	12-20-2013	Repeal	2-1-2014
860-033-0005	12-20-2013	Amend	2-1-2014
860-033-0005(T)	12-20-2013	Repeal	2-1-2014
860-033-0006	12-20-2013	Amend	2-1-2014
860-033-0006(T)	12-20-2013	Repeal	2-1-2014
860-033-0007	12-20-2013	Amend	2-1-2014
860-033-0007(T)	12-20-2013	Repeal	2-1-2014
860-033-0010	12-20-2013	Amend	2-1-2014
860-033-0010(T)	12-20-2013	Repeal	2-1-2014
860-033-0030	12-20-2013	Amend	2-1-2014
860-033-0030(T)	12-20-2013	Repeal	2-1-2014
860-033-0035	12-20-2013	Amend	2-1-2014
860-033-0035(T)	12-20-2013	Repeal	2-1-2014
860-033-0040	12-20-2013	Amend	2-1-2014
860-033-0040(T)	12-20-2013	Repeal	2-1-2014
860-033-0045	12-20-2013	Amend	2-1-2014
860-033-0045(T)	12-20-2013	Repeal	2-1-2014

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860-033-0046(T)	12-20-2013	Repeal	2-1-2014
860-033-0050	12-20-2013	Amend	2-1-2014
860-033-0050(T)	12-20-2013	Repeal	2-1-2014
860-033-0055	12-20-2013	Repeal	2-1-2014
860-033-0100	12-20-2013	Amend	2-1-2014
860-033-0100(T)	12-20-2013	Repeal	2-1-2014
860-033-0110	12-20-2013	Adopt	2-1-2014
860-033-0110(T)	12-20-2013	Repeal	2-1-2014
860-033-0530	12-20-2013	Amend	2-1-2014
860-033-0530(T)	12-20-2013	Repeal	2-1-2014
860-033-0535	12-20-2013	Amend	2-1-2014
860-033-0535(T)	12-20-2013	Repeal	2-1-2014
860-033-0536	12-20-2013	Amend	2-1-2014
860-033-0536(T)	12-20-2013	Repeal	2-1-2014
860-033-0537	12-20-2013	Amend	2-1-2014
860-033-0537(T)	12-20-2013	Repeal	2-1-2014
860-033-0540	12-20-2013	Amend	2-1-2014
860-033-0540(T)	12-20-2013	Repeal	2-1-2014
918-020-0090	1-1-2014	Amend	2-1-2014
918-020-0370	1-1-2014	Amend	2-1-2014
918-020-0370(T)	1-1-2014	Repeal	2-1-2014
918-098-1010	1-1-2014	Amend	2-1-2014
945-040-0180	11-18-2013	Adopt(T)	1-1-2014
945-040-0180	12-23-2013	Adopt(T)	2-1-2014
945-040-0180(T)	12-23-2013	Suspend	2-1-2014

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