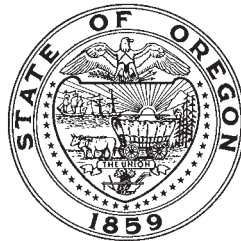


# OREGON BULLETIN

Supplements the 2016 *Oregon Administrative Rules Compilation*

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# INFORMATION ABOUT ADMINISTRATIVE RULES

## General Information

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

## Background on Oregon Administrative Rules

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

## OAR Citations

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

## Understanding an Administrative Rule’s “History”

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

## Locating Current Versions of Administrative Rules

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

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

## Locating Administrative Rule Publications

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

## Filing Administrative Rules and Notices

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

## Administrative Rules Coordinators and Delegation of Signing Authority

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

## Publication Authority

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

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

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## OTHER NOTICES

### REQUEST FOR COMMENTS

#### PROPOSAL TO REIMBURSE SPECIALTY HOSPITALS CLASSIFIED AS LONG-TERM ACUTE CARE HOSPITALS

**COMMENTS DUE:** May 1, 2016

**PROPOSAL:** The Oregon Health Authority (OHA) is proposing to reimburse Specialty hospitals classified as a Long-Term Acute Care Hospitals (LTACH) which are eligible for reimbursement for services that meet the definition at 42CFR 440.10.

**BACKGROUND:** LTACH furnish extended medical and rehabilitative care to individuals with clinically complex problems, such as multiple acute or chronic conditions, that need hospital-level care for relatively extended periods.

To qualify as an LTACH for payment, a facility must meet Medicare's conditions of participation for acute care hospitals.

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

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

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

### REQUEST FOR COMMENTS

#### OREGON HEALTH AUTHORITY (OHA) PROPOSAL TO THE CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS) TO RENEW OREGON'S 1115 MEDICAID DEMONSTRATION WAIVER, THE OREGON HEALTH PLAN (OHP)

**COMMENTS DUE:** April 15, 2016

**PROPOSAL:** The Oregon Health Authority (OHA) is proposing to request approval from the federal Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS) to extend the Oregon Health Plan (OHP) Demonstration under Section 1115(a) of the Social Security Act for an additional five years, and to amend the OHP, as appropriate, in order to incorporate specific measures that will further transform and improve the health system delivery system for low-income Oregonians. The State will request approval of a five-year extension of the 1115 Demonstration (Waiver) beginning July 1, 2017 and continuing through June 30, 2022.

**BACKGROUND:** During the current OHP approval period of July 5, 2012 through June 30, 2017 the Demonstration has helped transform Oregon's health care delivery system to one of coordinated care, with 16 coordinated care organizations (CCOs) now delivering the vast majority (90%) of physical, oral and behavioral health services to OHP members. This new system of health care delivery has led to better health, better care and lower per capita costs, saving the federal and state government over \$1.7 billion by the end of the current waiver in 2017. Due to the success to date, Oregon is in a position to take health system transformation to the next level.

**THE REQUEST:** Oregon will request approval from the federal government of all the State's existing waiver authorities in order to continue to implement and deliver coordinated care system services while slowing growth in costs, and will ask for new flexibilities to continue to build on the state's history of providing the most vulnerable residents with effective, efficient, evidence-based health care, and to meet the following key goals:

I. Build on the transformation of Oregon's Medicaid delivery system with a stronger, expanded focus on integration of physical, behavioral, and oral health care through a performance driven system with the goal of improving health outcomes and continuing to bend the cost curve;

II. Improve the social determinants of health and health equity across all low-income, vulnerable Oregonians with the goal of improving population health outcomes;

III. Commit to ongoing sustainable rate of growth that includes the 2% test (limiting spending increases), a federal investment that is at risk for not meeting that target, and an integrated budget that promotes increased spending on health related services and advances the use of value based payments

IV. Establish supportive partnerships with CMS to expand the coordinated care model by implementing innovative strategies for providing high-quality, cost-effective, person-centered health care for Medicaid and Medicare dual eligible members.

Copies of the draft request and additional information on the 1115 Demonstration waiver can be found at: [www.oregon.gov/oha/OHPB/Pages/health-reform/cms-waiver.aspx](http://www.oregon.gov/oha/OHPB/Pages/health-reform/cms-waiver.aspx).

**EFFECTIVE DATE:** July 1, 2017

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

Janna Starr, 1115 Demonstration Manager  
Division of Medical Assistance Programs  
500 Summer Street NE; Salem, Oregon 97301  
Fax: 503-945-5872  
Email: janna.starr@state.or.us

### REQUEST FOR COMMENTS

#### PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR U. S. POSTAL SERVICE PROCESSING & DISTRIBUTION CENTER IN PORTLAND

**COMMENTS DUE:** 5 p.m., Monday, May 2, 2016

**PUBLIC MEETING:** DEQ will hold a public meeting to provide information regarding the proposed prospective purchaser agreement (consent judgment), on Wednesday, April 6, 2016, from 5:30 p.m. to 6:30 p.m., at Portland Development Commission, 222 NW 5th Ave., Portland.

**PROJECT LOCATION:** U.S. Postal Service Processing and Distribution Center, 715 NW Hoyt Street, Portland, Oregon.

**PROPOSAL:** The Department of Environmental Quality seeks comments on its proposed consent judgment for a prospective purchaser agreement with the Portland Development Commission (PDC) concerning its acquisition of real property located at 715 NW Hoyt Street, Portland, Oregon (Property).

This 13.39 acre site is currently owned by the U. S. Postal Service and occupied by a processing and distribution center, a vehicle maintenance facility, and a parking structure. Historical uses included a variety of rail yard operations and also a manufactured gas plant. Past uses of the Property resulted in contamination of soil by petroleum, volatile and semi-volatile organic contaminants, and metals, and groundwater by volatile and semi-volatile organic compounds. The property is currently covered by a cap including paving and USPS buildings. DEQ issued a Record of Decision in 2010 that documents remedial actions that are necessary to protect public health and the environment. Under the ROD if existing site uses continue, the primarily remedial action is to maintain the existing cap. When redevelopment is initiated, the ROD's hypothetical future site use remedial actions necessitate more extensive environmental actions.

PDC intends to acquire the site for mixed use redevelopment (commercial, residential, public uses) as part of the River District Urban Renewal Area plan. The redevelopment process will involve PDC and both public and private partners. Each partner that acquires title to a portion, or sub-parcel, of the site will become a party to the consent judgment and will be responsible for compliance with both the consent judgment as well as the remedial actions outlined in DEQ's ROD.

The Scope of Work, attached to the consent judgment, includes three project phases: Phase I lease back covers a two year period when PDC leases the property back to the Postal Service while a new postal facility is constructed elsewhere; Phase II pre-construction covers activities undertaken to prepare the property for redevelopment; and Phase III redevelopment covers construction of mixed use projects. Using the 2010 ROD as a starting point, PDC has prepared a Master Remedial Action Plan to guide the overall redevelopment process, and each public or private partner will develop a Sub-Parcel Specific Remedial Action Plan to implement in conjunction

## OTHER NOTICES

with redevelopment of each sub-parcel. The types of remedial measures needed may include cap maintenance, new cap installation, hot spot removal, institutional controls, and/or confirmatory sampling. Redevelopment work in particular will be subject to review and approval by DEQ to ensure compliance with the overall Scope of Work and Master Remedial Action Plan and Sub-Parcel Specific Remedial Action Plans.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed consent judgment will provide Portland Development Commission with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent judgment will also provide Portland Development Commission with third party liability protection. In addition, as provided by ORS 465.327(5), the consent judgment will be recorded in the county real property records and all benefits and burdens of the agreement including release from liability run with the land to future owners.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Dan Hafley at DEQ Northwest Region, 700 NE Multnomah, Suite 600, Portland, OR 97232 or hafley.dan@deq.state.or.us. For more information contact the project manager at 502-229-5417.

Request DEQ project file review.

File review application form

Access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, select "Search complete ECSI database," then enter ECSI# 2183 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #2183 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCcontroller.ashx?SourceId=2183&SourceIdType=11>

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

**THE NEXT STEP:** DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed remedial actions taken at the site.

**ACCESSIBILITY INFORMATION:** DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call 711.

### PUBLIC NOTICE

#### PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR FORMER GAS STATION

**COMMENTS DUE:** 5 p.m., Sunday, May 1, 2016

**PROJECT LOCATION:** 6115 NW St. Helens Road, Portland, Oregon

**PROPOSAL:** The Department of Environmental Quality seeks comments on its proposed consent order for a prospective purchaser agreement with GBR Partnership, referred to as GBR, concerning the acquisition of a former gas station site located at 6115 NW St. Helens Road in Portland. The project is a joint venture between GBR and Environmental Compliance Consultants, Inc, an environmental consulting and waste management company known as ECC. GBR plans to acquire the property and ECC will decommission the existing underground storage tank system. ECC will use the property as an EPA-approved waste transfer facility.

**HIGHLIGHTS:** The property was developed as a gasoline station before 1960. In October 1989, 1950s-era underground storage tanks containing gasoline, diesel and marine fuel were decommissioned, removed from the property and replaced. During the decommissioning, evidence of petroleum hydrocarbon contamination in soil and groundwater near the former underground storage tank pit and dispenser island was observed. Monitoring wells were installed at the property as early as April 1990. Remedial actions historically performed at the property included soil removal in 1989 and soil vapor extraction from 1993 to at least 1997. Groundwater monitoring at the property was suspended in June 2001. During the last groundwater monitoring, benzene was detected in groundwater at a maximum concentration of 15,000 parts-per-billion. The property was vacated after June 2001 and has remained vacant.

In June 2015, soil-gas and groundwater samples were collected from the property to facilitate discussions with DEQ concerning a possible prospective purchaser agreement. Five of nine monitoring wells historically installed in the vicinity of the property were located. Three of the identified monitoring wells were re-developed and sampled. The June 2015 groundwater samples contained significantly lower concentrations of benzene and related volatile organic compounds than samples collected in June 2001. In addition, soil-gas samples collected from the building did not reveal volatile organic compounds at concentrations posing vapor intrusion risks to future occupants.

DEQ proposes to enter into a consent order with GBR, the prospective purchaser. Under the terms of the consent order, GBR agrees to decommission the underground storage tank system and remove up to 50 tons contaminated soil, if encountered. If soil containing petroleum hydrocarbons or volatile organic compounds at levels exceeding occupational worker Risk-Based Concentrations for the vapor intrusion pathway remains following removal, GBR is required to execute and record an institutional control requiring vapor mitigation controls on future buildings. In addition, the consent order requires GBR to develop and survey two monitoring wells if found to be usable, perform four quarters of groundwater monitoring and decommission the monitoring wells when authorized by DEQ. GBR also will be required to prepare a contaminated media management plan.

Due to an unforeseen delay in the property transaction, the consent order with GBR expired on Dec. 31, 2015. DEQ is opening an additional comment period to extend the deadline for the property transaction in the prospective purchaser agreement to Sept. 30, 2016. The scope of work for the prospective purchaser agreement remains unchanged from the original proposal.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed consent order will provide GBR with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent order will also provide GBR with third party liability protection.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Jeff K. Schatz at 700 NE Multnomah Street, Ste 600, Portland, OR 97232-4100 or [schatz.jeff@deq.state.or.us](mailto:schatz.jeff@deq.state.or.us). For more information contact the project manager at 503-229-5024.

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

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

To access site summary information and other documents in the DEQ Leaking Underground Storage Tank (LUST) Cleanup database, go to <http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp>, then enter 26-89-0213 in the LUST Number boxes and click "Lookup" at the bottom of the page. Next, click the link labeled 26-89-0213 in the Log Number column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCcontroller.ashx?SourceId=26-89-0213&SourceIdType=12>.

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

## OTHER NOTICES

**THE NEXT STEP:** DEQ will review and consider all comments received during the comment period. If DEQ decides to enter into the consent order, it will be executed by the parties and recorded with Multnomah County.

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

### REQUEST FOR COMMENTS

#### PROPOSED CLEANUP REMEDY AT ASTORIA MARINE CONSTRUCTION COMPANY IN ASTORIA

**COMMENTS DUE:** 5 p.m., Monday, May 16, 2016

**PROJECT LOCATION:** 92134 Front Road, Astoria, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-0100, the Department of Environmental Quality (DEQ) requests public comment on its proposed cleanup remedy regarding soil and sediment at the Astoria Marine Construction Company (AMCCO) located at 92134 Front Road, Astoria, Oregon. DEQs proposed remedy will be available for review starting April 15, 2016. The most contaminated soil and sediment would be excavated and permanently placed in a soil cell on the property while lower level contamination would be capped or covered in place.

**HIGHLIGHTS:** AMCCO was founded in 1924 to manufacture and repair wooden-hulled fishing and ferry boats, tugboats, and yachts. During World War II, the shipyard added larger shipways and expanded operations for construction of military vessels. During the Korean Conflict, and the Vietnam War, the company built wooden-hulled minesweepers and subchasers. In addition, AMCCO refurbished previously mothballed warships. During the peak production period from 1940-1960 the facility employed more than 400 full-time workers. In the 1960s, work for the U.S. Navy decreased and operations transitioned to fishing and tug boat repair. After 1985, AMCCO's business primarily involved repairs of fishing boats.

A Remedial Investigation found that operations in the past such as sand blasting, paint work, and waste material disposal activities, resulted in the release and accumulation of potentially hazardous chemicals on and around the property and in particular, around the shipways.

A human health risk assessment found potential health risks for people who may come in regular contact with the soil, such as employees at AMCCO or construction workers. Exposure to chemicals in the soil could result in a slight increase in cancer risk or other health effects. An ecological risk assessment found potential risks to aquatic and upland wildlife from metals, tributyltin, and other chemicals in the soil and in the sediment around the shipways and other areas at the site. Chemicals in the sediment of the Lewis and Clark River next to the site may also accumulate in fish, which potentially could increase health risks to people eating the fish that feed in the area.

Under the proposed remedial action the most contaminated upland soil and in-water sediment would be excavated and placed in an engineered, concrete-capped containment cell located on the property. Remaining soil contamination would be capped in place. Most of the remaining in-water sediment contamination would be covered with a layer of clean imported sand. Long-term monitoring would be implemented to verify the effectiveness of the proposed remedial action.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Robert Williams at 700 NE Multnomah St., Suite #600, Portland, OR 97232 or [williams.robert.k@deq.state.or.us](mailto:williams.robert.k@deq.state.or.us). For more information contact the project manager at 503-229-6802.

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

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

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to

<http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, select "Search complete ECSI database", then enter 1898 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1898 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCController.ashx?SourceId=1898&SourceIdType=11>.

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

**THE NEXT STEP:** DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the proposed remedial action.

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

### PUBLIC NOTICE

#### PROPOSED CERTIFICATE OF COMPLETION FOR COMMERCIAL PROPERTY IN SOUTHEAST PORTLAND

**COMMENTS DUE:** 5 p.m., Sunday May 1, 2016

**PROJECT LOCATION:** 240 SE Clay Street, Portland, Oregon

**PROPOSAL:** The Department of Environmental Quality seeks comment on its proposed decision to issue a certificate of completion to Clay Investors, LLC for investigation and cleanup performed under a prospective purchaser agreement at the former Rexel-Taylor Electric facility located at 240 SE Clay Street in Portland. On December 27, 2012, the Multnomah County Circuit Court entered a judgment to resolve a complaint by the State of Oregon against Clay Investors, LLC (Case No. 1212-15856). On February 24, 2015, Clay Investors, LLC notified DEQ that the property was being acquired by 240 Clay Development, LLC, and that all obligations under the prospective purchaser agreement were being assumed by that entity. 240 Clay Development, LLC is constructing a building for commercial and industrial office uses which is scheduled for completion in 2016.

**HIGHLIGHTS:** In May 2006 a fire destroyed much of the Rexel-Taylor Electric building, leaving only the concrete floor and tilt-up concrete walls. In addition to destroying the building interior, a Portland General Electric utility pole with three pole-mounted transformers was consumed, resulting in the release of less than 10 gallons of insulating oil containing polychlorinated biphenyls (PCBs). Fire suppression water mixed with the PCB-containing insulating oil entered the storm drain and caused a sheen on the Willamette River.

In July 2008 a prospective purchaser performed a soil investigation at the site to assess the magnitude and extent of contamination. Diesel and heavy oil were detected in a shallow soil sample collected from a permeable area in the northeast corner of the property. The PCB Aroclor 1016 was detected at a concentration of 0.7 parts-per-million at the base of the former utility pole involved in the fire.

In May 2010 samples of fire-related debris from the floor slab were analyzed and found to contain petroleum hydrocarbons, PCBs, polychlorinated dibenzodioxin, polychlorinated dibenzofuran and polynuclear aromatic hydrocarbons. Further assessment in July 2012 showed that lead at potentially hazardous levels was present in the debris in at least one area of the site. In September 2012, 244 pounds of fire-related debris was removed from an approximate 35,000 square-foot area of the concrete floor, of which 215 pounds were classified as a characteristic hazardous waste and disposed accordingly. In October 2012, sediments potentially containing PCBs were removed from the storm water drains and catch basins in SW 2nd Avenue.

On November 1, 2012 DEQ published notice of a proposed prospective purchaser agreement with Clay Investors, LLC. In December 2012 Clay Investors, LLC entered into a prospective purchaser agreement with DEQ related to its acquisition of the site. Under the terms of the consent judgment Clay Investors, LLC agreed to remove fire-related debris and soil to an approximate depth of one foot from the permeable area in the northeast corner of the site. Clay

## OTHER NOTICES

Investors, LLC also agreed to remove PCB-impacted soil near the location of the former pole-mounted transformer in the south-central portion of the site. The scope of work for the prospective purchaser agreement also required the collection of confirmation samples in both removal areas.

In May 2015 approximately 157 tons of fire debris and lead-impacted soil was removed from the permeable area in the northeast corner of the site. In July 2015 the excavation contractor encountered a layer of bitumen encompassing approximately 200 square feet beneath the floor slab near the northwest corner of the building. In August 2015 the bitumen layer and one foot of underlying soil (78 tons) was removed and disposed off-site. In November 2015 soil was removed from a utility corridor trench near the former utility pole where PBC impacted soil was encountered in July 2008. Confirmation sampling performed after the soil removal actions showed that petroleum hydrocarbons, lead and PCBs were not present at concentrations above method reporting limits.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed certificate of completion provides Clay Investors, LLC and 240 Clay Development, LLC with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed certificate of completion also provides Clay Investors, LLC and 240 Clay Development, LLC with third party liability protection.

**HOW TO COMMENT:** Email comments to DEQ Project Manager Jeff K. Schatz or mail to 700 NE Multnomah St., Ste 600 in Portland, OR 97232-4100. For more information contact the project manager at 503-229-5024.

Find information about requesting a review of DEQ project files.

Find the file review application form.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, select "Search complete ECSI database" then enter 4632 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 4632 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCController.aspx?SourceId=4632&SourceIdType=11>.

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

**THE NEXT STEP:** DEQ will review and consider all comments received during the comment period. If DEQ decides to issue the certificate of completion it will be executed by the parties and recorded with Multnomah County.

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

### PUBLIC NOTICE

#### AGREEMENT SIGNED FOR OVERSIGHT OF COLUMBIA SLOUGH SEDIMENT REMEDIAL ACTION

**PROJECT LOCATION:** Columbia Slough, Portland, Oregon

**ACTION:** In January 2016, DEQ signed a five-year intergovernmental agreement with the City of Portland to continue implementation of tasks associated with the Columbia Slough sediment cleanup (ECSI#1283).

**HIGHLIGHTS:** The Columbia Slough is located south and parallel to the Columbia River and consists of approximately 31 miles of water ways between Fairview Lake on the east side to the Willamette River on the west. Industrial, agricultural and residential development along the slough have resulted in the accumulation of a variety of contaminants in slough sediments, some of which

bioaccumulate and have also been found in fish tissue collected from the slough.

DEQ and the City of Portland Bureau of Environmental Services have worked together under an intergovernmental agreement since June 2006, to implement elements of the 2005 Columbia Slough Record of Decision.

The 2016 DEQ/City Intergovernmental Agreement will allow continued DEQ oversight of City actions and establish a new contract to fund DEQ's oversight of the work. Under the agreement the City agrees to: coordinate and implement upland stormwater source control; conduct long term sediment and fish tissue monitoring; develop a Columbia Slough sediment database; and issue annual reports. **THE NEXT STEP:** DEQ is working with the City to update the Watershed Action Plan schedule which addresses the tasks described above and plan for this summer's sediment sampling event.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, select "Search complete ECSI database", then enter ECSI#1283 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #1283 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at: <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCController.aspx?SourceIdType=11&SourceId=1283>

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

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

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

### REQUEST FOR COMMENTS

#### NO FURTHER ACTION DETERMINATION CHOU REMAINDER

**COMMENTS DUE:** 5 p.m., April 30th, 2016

**PROJECT LOCATION:** 5200 SE Alexander Street, Hillsboro, Oregon.

**PROPOSAL:** DEQ proposes a no further action determination for the site since remaining contaminants do not present an unacceptable risk to human health or the environment.

**HIGHLIGHTS:** The Chou Remainder site is part of a larger property that was formerly in agricultural use from at least 1934 into the late 1980's. The site is currently vacant and land and the site vicinity is rapidly undergoing residential redevelopment. During redevelopment of the adjacent Brookwood Roundabout property (ECSI 4947) agricultural pesticides were detected and removal of soil was completed to address the presence of the organochlorine pesticide dieldrin. During the investigation of the Brookwood Roundabout site, some samples were collected in the Chou Remainder property that indicated the presence of dieldrin. In 2014, a phase 1 investigation was completed recommending additional investigation. The additional investigation was completed in December 2014 and during 2015. Sampling confirmed the presence of dieldrin in shallow soil. In November 2015, soil excavation and removal was performed, and confirmation sampling demonstrated that dieldrin is either not present or below analytical method detection limits. DEQ concludes that any remaining residual soil contamination does not pose significant risks.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Paul Seidel at Oregon Dept. of Environmental Quality, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232 or [seidel.paul@deq.state.or.us](mailto:seidel.paul@deq.state.or.us). For more information contact Paul Seidel at 503-229-5614.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, select "Search complete ECSI database", then enter ECSI#4948 in the Site ID box and click

## OTHER NOTICES

“Submit” at the bottom of the page. Next, click the link labeled ECSI #4948 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/lq/ECSI/ecsidetail.asp?seqnbr=4948>

Find information about requesting a review of DEQ project files. Find the file review application form:

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

**THE NEXT STEP:** DEQ will consider all public comments prior to making a final decision on the property and issuance of a no further action determination.

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

### REQUEST FOR COMMENTS PROPOSED CERTIFICATE OF COMPLETION FOR MOUNTAIN FIR LUMBER SITE

**COMMENTS DUE:** 5 p.m., Monday May 2, 2016

**PROJECT LOCATION:** 900 F Street, Independence, OR 97351

**PROPOSAL:** DEQ is preparing to certify that all cleanup actions required have been satisfactorily completed. This project has resulted in both environmental and economic benefits.

**HIGHLIGHTS:** In December 1997 DEQ signed a Record of Decision selecting the remedial actions needed to clean up contaminated soil and groundwater at the former Mountain Fir Mill site. In October 1998 D Industrials LLC, the current property owner, entered into a Prospective Purchaser Agreement (PPA) with DEQ stipulating intuitional and engineering controls to eliminate potential exposure with remaining contamination at the site. In April 1999 Mountain Fir Lumber entered into a Stipulation and Consent Decree with DEQ in which DEQ agreed to complete additional cleanup on the subject property using funding from Mountain Fir Lumber. This cleanup included the operation of a groundwater remediation system to remove pentachlorophenol from groundwater at the site. The cleanup actions have removed the threat of contamination of the public drinking water supply for the City of Independence. Under the terms of the PPA, the owner of the property remains responsible for long term maintenance of soil contamination that is capped beneath the former mill site.

DEQ created the PPA program in 1995 through amendments to the state’s Environmental Cleanup Law. The PPA is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site

DEQ has determined that all obligations of the PPA and the remedial action objectives and the requirements of the Record of Decision and Consent Decree been met. DEQ is proposing a Certification of Completion for the site. The long term controls that are requirements of the PPA are necessary for the site to remain protective. These controls run with the land and would remain in effect.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Eric Kelley at 4026 Fairview Industrial Dr. SE, Salem, OR 97302 or [kelley.eric@deq.state.or.us](mailto:kelley.eric@deq.state.or.us). For more information contact the project manager at 503-378-5042.

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

Find the file review application form at: <http://www.deq.state.or.us/records/RecordsRequestForm.pdf>

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, select “Search complete ECSI database”, then enter 980 in the Site ID box and click “Submit” at the bottom of the page. Next, click the link labeled 980 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceIdType=11&SourceId=980&Screen=Load>

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

**THE NEXT STEP:** DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the completion certification of the remedial actions taken at the site. A public notice of DEQ’s final decision will be issued.

**ACCESSIBILITY INFORMATION:** DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call 711.

### REQUEST FOR COMMENTS PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR GOSHEN EQUIPMENT

**COMMENTS DUE:** 5 p.m., Monday, May 2, 2016

**PROJECT LOCATION:** 34024 Old Willamette Highway, Eugene

**PROPOSAL:** The Department of Environmental Quality seeks comments on its proposed Consent Judgment for a prospective purchaser agreement with Apex 2016 LLC (Apex) concerning its acquisition of real property located at 34024 Old Willamette Highway, Eugene, Oregon (Property). Apex plans to use the Property for commercial operations.

Contamination to soil and groundwater has resulted from former operations at the Property, previously used as a fuel service station and heavy equipment sales and repair. Petroleum contamination resulted from leaking underground storage tanks (USTs) and surface spills, as well as equipment washing and materials storage. The USTs were removed in 2008, followed by remediation of petroleum-contaminated soil and investigation of soil and groundwater impacts under LUST 20-08-1294. An environmental cleanup site (ECSI 5280) was initiated based on contamination in surface soil at various locations on the Property.

The site will be used for the Oregon State Police (OSP) Southwest Region Headquarters and Eugene Area Command. This facility will also include a forensic lab and equipment storage for OSP and Oregon Department of Fish & Wildlife.

As part of the remedial actions at the Property Apex plans to: 1) Complete a Phase I Environmental Site Assessment of the Property, 2) Complete a focused soil sampling at the Property to determine the types and concentrations residual hazardous substances at the Property resulting from historic site operations, 3) Connect the Property to a public water supply, 4) Generally cover the Property with buildings or asphalt parking lots, 5) Install a vapor barrier beneath all newly constructed on-site buildings, 6) Decommission the on-site groundwater supply well and existing monitoring wells, and 7) Provide both a Contaminated Media Management Plan and Health & Safety Plan that reflects the actions to be taken in the proposed redevelopment of the Property and addresses the existing residual contaminant concentrations, at levels of concern, at the Property.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state’s Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed Consent Judgment will provide Apex 2016 LLC with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the Property. The proposed Consent Judgment will also provide Apex 2016 LLC with third party liability protection.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Cathy Rodda at 165 E. 7th Ave., Suite 100, or [rodda.cathy@deq.state.or.us](mailto:rodda.cathy@deq.state.or.us). For more information contact the project manager at 541-687-7325.

Request DEQ project file review



## OTHER NOTICES

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### File review application form

Access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, select “Search complete ECSI database,” then enter 5280 in the Site ID box and click “Submit” at the bottom of the page. Next, click the link labeled 5280 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceIdType=11&SourceId=5280&Screen=Load>.

Access additional site summary information and other documents in the DEQ Leaking Underground Storage Tank (LUST) Cleanup database, then enter 20-08-1394 in the LUST Number boxes and click “Lookup” at the bottom of the page. Next, click the link labeled 20-08-1394 in the Log Number column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/WebDocs/Forms/Output/LustOutput.aspx?SourceId=35333&SourceIdType=10>.

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

**THE NEXT STEP:** DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed remedial actions taken at the site.

**ACCESSIBILITY INFORMATION:** DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call 711.

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

\*\*\*\*\*  
**Bureau of Labor and Industries**  
**Chapter 839**

**Rule Caption:** Modifies existing definitions related to minimum wage.

Date:	Time:	Location:
4-25-16	2 p.m.	800 NE Oregon St., Rm. 1B Portland, OR 97232

**Hearing Officer:** Jesse Bontecou

**Stat. Auth.:** 2016 OL Ch. 12

**Stats. Implemented:** 2016 OL Ch. 12

**Proposed Amendments:** 839-020-0004

**Last Date for Comment:** 4-29-16, 5 p.m.

**Summary:** Define employer location for three geographic regions of minimum wage as recently passed by 2016 Oregon Legislature. Implements OL Ch. 012, 2016.

**Rules Coordinator:** Marcia Ohlemiller

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

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

\*\*\*\*\*  
**Construction Contractors Board**  
**Chapter 812**

**Rule Caption:** Pre-Licensing Training and Testing, Home Inspectors, Commercial and Residential Continuing Education

Date:	Time:	Location:
4-15-16	10 a.m.	201 High St. SE Salem, OR 97301

**Hearing Officer:** Leslie Culpepper

**Stat. Auth.:** ORS 670.310, 701.082, 701.083, 701.086, 701.122, 701.126, 702.235, 701.350 & 701.355

**Stats. Implemented:** ORS 701.005, 701.082, 701.083, 701.086, 701.091, 701.122, 701.126, 701.350 & 701.355

**Proposed Adoptions:** 812-006-0160, 812-006-0310

**Proposed Amendments:** 812-006-0100, 812-006-0150, 812-006-0200, 812-006-0400, 812-008-0020, 812-008-0072, 812-008-0074,

812-020-0050, 812-020-0062, 812-020-0070, 812-020-0071, 812-022-0010, 812-022-0021

**Proposed Repeals:** 812-020-0080, 812-021-0000, 812-021-0005, 812-021-0010, 812-021-0011, 812-021-0015, 812-021-0016, 812-021-0019, 812-021-0021, 812-021-0023, 812-021-0025, 812-021-0028, 812-021-0030, 812-021-0031, 812-021-0032, 812-021-0033, 812-021-0034, 812-021-0035, 812-021-0037, 812-021-0040, 812-021-0042, 812-021-0045, 812-021-0047, 812-022-0011

**Last Date for Comment:** 4-15-16, 5 p.m.

**Summary:** ADOPT:

- 812-006-0160 is adopted to set forth the pre-licensure training requirement for individuals that take and pass the NASCLA examination.

- 812-006-0310 is adopted to provide an alternative method to obtain a contractor's license by: (1) studying for the NASCLA examination; (2) passing the NASCLA examination; and (3) passing the Oregon pre-licensure test.

AMEND:

- 812-006-0100 is amended to provide an alternative method by which an applicant/RMI may qualify a contractor for licensing.

- 812-006-0150 is amended to create an exemption from the standard pre-licensure training for persons who study for and pass the NASCLA examination.

- 812-006-0200 is amended to create an exemption from the standard pre-licensure training for persons who study for and pass the NASCLA examination and modifies the reference to the agency-approved reference manual that is the basis for the 16-hour training.

- 812-006-0400 is amended to clarify the requirement and align it with common expectations - contractors will have 24 months from the date their RMI passes the test to become licensed. The change does not affect certain contractors may obtain a license based on experience ("grandfathered" contractors).

- 812-008-0020 is amended to delete the term "test," which is defined as a "test administered by the agency." See OAR 812-008-0020(34) (eff. 10/1/15). This term is no longer necessary to be defined.

- 812-008-0072 is amended to eliminate the continuing education unit (CEU) for attending a Home Inspector Advisory Committee. Home inspectors may earn CEUs by providing "ride-along" training to new applicants.

- 812-008-0074 is amended to eliminate the inspector study guide to replace it with the national examination content items..

- 812-020-0050 is amended to allow all commercial contractors two years in which to complete the continuing education requirements.

- 812-020-0062 amends the exemptions for commercial and residential contractors to be the same, with the exception that home inspectors and master builders are not exempt from commercial CE since their work involves exclusively residential structures. Exemptions for contractors that perform plumbing and electrical work or are owned by or hire persons who perform plumbing and electrical work are clarified.

- 812-020-0070 is amended to clarify that if a contractor was a residential contractor at time of the previous endorsement, the contractor must complete residential CE to renew the license.

- 812-020-0071 is amended to eliminate Section 1; obsolete after Dec. 31, 2015.

- 812-022-0010 is amended to clarify that division 22 rules applies to all residential contractors that renew their licenses on or after January 1, 2016.

- 812-022-0021 is amended to retain the exemptions previously allowed, while expanding the language to clarify a broader scope of electrical and elevator contractor licenses (ORS chapter 479), adds the residential developer exemption previously in OAR 812-022-0011. The rule mirrors the exemptions for commercial contractors in OAR 812-020-0062, corrects the citation for plumbing contractors, creates new exemptions for boiler contractors and elevator contractors, adds exemptions for: (1) contractors owned by (or

# NOTICES OF PROPOSED RULEMAKING

employing) a licensed electrician; (2) contractors owned by (or employing) a licensed plumber; (3) contractors licensed as landscape contracting businesses; (4) contractors owned by (or employing) a home inspector; and (5) contractors certified as master builders. This rule does not include an exemption for contractors serving on active duty in the US armed forces. This because that exclusion is already in Division 22 - in OAR 812-022-0015(6).

**REPEAL:**

- 812-020-0080 is repealed because the agency no longer prorates the number of hours that a commercial contractor must complete.  
 - 812-021-0000, 812-021-0005, 812-021-0010, 812-021-0011, 812-021-0015, 812-021-0016, 812-021-0019, 812-021-0021, 812-021-0023, 812-021-0025, 812-021-0028, 812-021-0030, 812-021-0031, 812-021-0032, 812-021-0033, 812-021-0034, 812-021-0035, 812-021-0037, 812-021-0040, 812-021-0042, 812-021-0045, 812-021-0047 are repealed because they were effective through December 31, 2015.  
 - 812-022-0011 is repealed because content is moved to 812-022-0021.

NOTE: In order to save postage and printing costs in these difficult times, CCB is only providing a link to the notice. To view the notice and language of each individual rule change please go to our web site at <http://www.oregon.gov/CCB/laws-rules/Pages/proposed-rules.aspx>. If you don't have web access, contact Leslie Culpepper at (503) 934-2228 for assistance in receiving a copy.

**Rules Coordinator:** Leslie Culpepper  
**Address:** Construction Contractors Board, 201 High St. SE, Suite 600, Salem, OR 97301  
**Telephone:** (503) 934-2228

\*\*\*\*\*  
**Department of Agriculture**  
**Chapter 603**

**Rule Caption:** Raises fees for nursery licenses to cover the program's budget deficit and future inflation.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-8-16	10 a.m.	Oregon Dept. of Agriculture Bldg. 635 Capitol St. NE Salem, OR 97301-2532

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 561, 571  
**Stats. Implemented:** ORS 571.057  
**Proposed Adoptions:** 603-054-0014  
**Proposed Amendments:** 603-054-0016, 603-054-0017, 603-054-0018  
**Last Date for Comment:** 4-15-16, 5 p.m.

**Summary:** Nursery license fees were last adjusted in 2014. This proposed rule would adjust the nursery license fee depending on each nursery license type. License fee increases are needed to cover an existing program budget deficit and to adjust for future inflation.

For license fees for Dealers, Florists and Landscape Contractors, as well as, Greenhouse Growers of Herbaceous Plants the base rate would increase from \$129 to \$148 (15%) and the millage rates would increase by 8%. For license fees for Nursery Stock Growers and Collectors of Native Plants the base rate would increase from \$129 to \$148 (15%) and the millage rate would increase by 18%. The license fee increase for Nursery Stock Growers and Collectors of Native Plants is higher than the other two license types so that the department can recover all costs associated with providing services to these nurseries. In addition, definitions will be added to nursery license fee schedules for clarification.

The following is an example of how fees increases are calculated for Nursery Stock Growers and Collectors of Native Plants:

If gross Sales are: — Current fee: — Proposed new fee formula:  
 a) Up to \$20,000 — \$129 — 15% x \$129 = \$148  
 b) \$20,001 - \$100,000 — \$129 plus .0040 over \$20,000 — \$148 + [(0.04 x 18%) x (\$100,000 - \$20,001)] = \$526  
 c) \$100,001 - \$200,000 — \$449 plus .0037 over \$100,000 — \$526 + [(0.037 x 18%) x (\$200,000 - \$100,001)] = \$963

**Rules Coordinator:** Sue Gooch  
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301  
**Telephone:** (503) 986-4583

\*\*\*\*\*

**Rule Caption:** Exempts certain food establishments located within residential dwelling from regulation under specific conditions.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-21-16	1 p.m.	Oregon Dept. of Agriculture, 635 Capitol St. NE Basement Hearing Rm. Salem, OR 97301

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 561, 616.010 & 616.723  
**Stats. Implemented:** ORS 561, 616.010 & 616.723  
**Proposed Adoptions:** 603-025-0315, 603-025-0320, 603-025-0325, 603-025-0330

**Last Date for Comment:** 4-29-16, 5 p.m.  
**Summary:** Exempts certain food establishments located within residential dwelling from regulation under specific conditions.

**Rules Coordinator:** Sue Gooch  
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301  
**Telephone:** (503) 986-4583

\*\*\*\*\*  
**Department of Agriculture,**  
**Oregon Hazelnut Commission**  
**Chapter 623**

**Rule Caption:** Amends the hazelnut assessment: in-shell to \$17 per ton, shelled to \$42.50 per ton.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-1-16	8 a.m.	15210 NE Miley Rd. Aurora, OR 97002

**Hearing Officer:** Michael Klein  
**Stat. Auth.:** ORS 576.304(2), 576.304(14) & 576.325  
**Stats. Implemented:** ORS 576  
**Proposed Amendments:** 623-010-0010

**Last Date for Comment:** 5-31-16, 4 p.m.  
**Summary:** Proposed amendment to OAR 623-010-0010 will increase the assessment to hazelnut growers. Increased revenue will be used to make up for decreased federal and state dollars for production research projects, and increased state fees. In addition funds will augment the loss of funds from eastern filbert blight-infected trees that are declining in nut production. The anticipated result of the assessment increase will be to maintain funding to support the continued research on the development of eastern filbert blight resistant trees and on the identification of cultural practices specific to the new varieties. This research will enable the Oregon hazelnut industry to be sustainable into the future.

**Rules Coordinator:** Polly Owen  
**Address:** Department of Agriculture, Oregon Hazelnut Commission, 21595 A Dolores Way NE, Aurora, OR 97002-9738  
**Telephone:** (503) 678-6823

\*\*\*\*\*  
**Department of Agriculture,**  
**Oregon Processed Vegetable Commission**  
**Chapter 647**

**Rule Caption:** Amend rules related to assessment rates

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-21-16	7:30 p.m.	1320 Capitol St. NE Salem, OR

**Hearing Officer:** Scott Zielinski  
**Stat. Auth.:** ORS 576.051-576.595  
**Stats. Implemented:** ORS 576.051-576.595  
**Proposed Amendments:** 647-010-0010

**Last Date for Comment:** 4-21-16, Close of Hearing  
**Summary:** The proposed rule amendments set the assessment rates for the six processed vegetable crops governed by the commission.

# NOTICES OF PROPOSED RULEMAKING

**Rules Coordinator:** Misty Slagle  
**Address:** Department of Agriculture, Processed Vegetable Commission, 6745 SW Hampton, Suite 101, Portland, OR 97223  
**Telephone:** (503) 924-1181

.....  
**Department of Agriculture,  
Oregon Raspberry and Blackberry Commission  
Chapter 611**

**Rule Caption:** Eliminates term limits and clarifies that director may reappoint commissioners.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-25-16	2 p.m.	4845 B SW Dresden Ave. Corvallis, OR 97333

**Hearing Officer:** Philip Gutt

**Stat. Auth.:** ORS 576

**Other Auth.:** ORS 576.206(5) & 183.335

**Stats. Implemented:** ORS 576.206

**Proposed Amendments:** 611-030-0010

**Last Date for Comment:** 4-25-16, 5 p.m.

**Summary:** Amend OAR 611-030-0010 to eliminate the language that no commissioner will serve for more than two consecutive full terms of office.

Over time, the number of raspberry and blackberry growers willing to apply and be appointed to serve as commissioners has reduced in proportion to the reduction in number of acres planted. As a result, commissioner positions have gone unfilled which impacts the commission's ability to conduct business. Commissioners who would like to be reappointed have not been able to qualify due to the term limits. Removing term limits will allow commissioners the option to apply for reappointment by the Director of the Oregon Department of Agriculture. The rule also clarifies that commissioners may be reappointed for consecutive terms.

**Rules Coordinator:** Connie Gutt

**Address:** Department of Agriculture, Raspberry and Blackberry Commission, 4845 B SW Dresden Ave., Corvallis, OR 97333

**Telephone:** (541) 758-4043

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

**Rule Caption:** Amendments to Oregon Mechanical Specialty Code.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-19-16	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 455.030

**Stats. Implemented:** ORS 455.110

**Proposed Amendments:** 918-440-0012

**Last Date for Comment:** 4-22-16, 5 p.m.

**Summary:** These proposed rules amend the Oregon Mechanical Specialty Code to define deck or conveyor pizza ovens light-duty cooking appliances.

**Rules Coordinator:** Holly A. Tucker

**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404

**Telephone:** (503) 378-5331

.....  
**Department of Environmental Quality  
Chapter 340**

**Rule Caption:** Water Quality Standards Revisions for Bacteria

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-19-16	4 p.m.	DEQ Headquarters, Rm. EQC A 811 SW 6th Ave. Portland, OR 97204
4-19-16	4 p.m.	The Center for Health Education 740 SW 9th St., Halls B & C Newport, OR 97365

**Hearing Officer:** Aron Borok, Deborah Sturdevant

**Stat. Auth.:** ORS 468.020, 468B.030, 468B.035, 468B.048

**Stats. Implemented:** ORS 468B.030, 468B.035 & 468B.048

**Proposed Amendments:** 340-041-0009, 340-041-0101, 340-041-0220, 340-041-0230, 340-041-0300, 340-041-0320

**Last Date for Comment:** 4-29-16, 4 p.m.

**Summary:** DEQ currently protects people recreating in coastal waters from illness due to fecal contamination of the water by implementing a federal water quality standard that limits the amount of enterococcus bacteria in coastal waters. State-adopted water quality standards also limit the amount of E. coli bacteria in freshwater and fecal coliform bacteria in marine and shellfish harvesting estuarine waters.

In 2012, EPA published revised water quality criteria recommendations for contact recreation in coastal and inland waters. The updated enterococcus criteria recommendations include a geometric mean value that is the same as the current federal criteria and a new 90th percentile value.

In 2013, EPA required states that receive beach monitoring funds under the Beaches Environmental Assessment and Coastal Health Act to adopt the 2012 recommended water quality criteria before October 1, 2016. Adopting the proposed bacteria standards rules will fulfill this requirement.

DEQ has never formally established where shellfish harvesting is a designated beneficial use or the boundary between freshwater and coastal waters for applying the bacteria criteria. DEQ's proposed rule amendments will clarify that each bacteria criterion applies to a specific designated use and will include designated use maps for coastal areas that will show where these designated uses apply. In non-coastal areas, only the freshwater contact recreation use applies.

The proposed rule amendments would:

- Revise Oregon's water quality standards for bacteria in order to protect people who consume shellfish and recreate in coastal waters from illness due to fecal contamination of the water;

- Adopt the United States Environmental Protection Agency's 2012 Recommended Water Quality Criteria for coastal waters for enterococcus bacteria including:

  - A 90-day geometric mean of 35 enterococcus organisms per 100 mL; and

  - A limit of 130 enterococcus organisms per 100 mL which cannot be exceeded more than ten percent of the time in any 90-day period.

- Clearly identify that E. coli criteria protect contact recreation in freshwaters, enterococcus criteria protects contact recreation in coastal waters and fecal coliform protects shellfish harvesting;

- Establish water quality standards designated use maps and modify designated use tables for coastal basins that show the geographic designation of shellfish harvesting use, coastal contact recreation use and freshwater contact recreation use;

- Change the averaging period for the E. coli standard for freshwaters from 30 days to 90 days and change the averaging methodology from "log mean" to "geometric mean;"

- Require that wastewater effluent from fecal sources discharged to waters designated for coastal water contact recreation meet the applicable criteria on a monthly basis;

  - Incorporate plain language into the amended rules consistent with the Oregon Administrative Procedures Act.

**Rules Coordinator:** Meyer Goldstein

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

**Telephone:** (503) 229-6478

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**Department of Forestry  
Chapter 629**

**Rule Caption:** Department of Forestry and Forest Protective Association Firefighter Criminal Defense Expenditures

# NOTICES OF PROPOSED RULEMAKING

**Date:** 4-22-16  
**Time:** 10 a.m.  
**Location:** 2600 State St., Bldg. D  
 Santiam Rm.  
 Salem, OR 97310

**Hearing Officer:** Charlie Stone  
**Stat. Auth.:** ORS 526.041 & 477.128  
**Stats. Implemented:** ORS 477.128  
**Proposed Adoptions:** 629-170-0001, 629-170-0005, 629-170-0010, 629-170-0015, 629-170-0020, 629-170-0025, 629-170-0030, 629-170-0035, 629-170-0040  
**Last Date for Comment:** 4-22-16, 5 p.m.  
**Summary:** OAR 629-170-0001 through 629-170-0040 are intended to outline procedures to guide the exercise of authority granted in ORS 477.128 for the State Forestry Department to pay costs and reasonable attorney fees for legal defense of a firefighter charged with a crime resulting from actions or omissions occurring in the course of fire abatement duties.

The included rules address the scope and effective date of the rules, definitions, purpose, the method for requesting reimbursement of legal defense costs, investigation by the State Forester of the circumstances leading to the alleged acts, determination of eligibility for reimbursement, determination of available funding, development of an agreement establishing the terms for reimbursement and appropriate accounting of authorized funds and an alternative method of maintaining ethical procedures in the special case that it is the State Forester alleged to have committed a crime.

These rules do not regulate activities of forest landowners, operators or the general public, but may have a very limited financial impact on owners who pay forest patrol assessments or the general public depending on the funding that would be used to pay the costs and fees contemplated. The circumstances to which these rules apply have never occurred in Oregon and the future likelihood of occurrence is very small, but still possible.

Written comments must be received by 5:00 p.m. on April 22, 2016. Submissions should be addressed to Sabrina Perez, Agency Rules Coordinator, Oregon Department of Forestry, 2600 State St. Salem, OR 97310 or sent by email to [sabrina.perez00@odf.or.gov](mailto:sabrina.perez00@odf.or.gov) as listed in this notice.

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

## Department of Geology and Mineral Industries Chapter 632

**Rule Caption:** Amends rules to implement HB 3563 (2015) requiring exclusion certificates for certain mining operations.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-12-16	2 p.m.	Albany City Hall, Santiam Rm. Albany, OR
4-19-16	5 p.m.	Geiser Grand Hotel, Cellar Rm. Baker City, OR

**Hearing Officer:** Richard Riggs, Assistant Director  
**Stat. Auth.:** ORS 516.090 & 517.840  
**Stats. Implemented:** ORS 517.750, 517.753, 517.755 & 517.800  
**Proposed Amendments:** 632-030-0016, 632-030-0022  
**Proposed Repeals:** 632-030-0016(T), 632-030-0022(T)  
**Last Date for Comment:** 4-29-16, 5 p.m.  
**Summary:** Establishes reporting requirements for exclusion certificates (EC) and establishes application fee schedules and deadlines. EC applications for sand, gravel, aggregate and crushed stone mines, fee is \$400 with a deadline of September 30, 2016. EC applications for metal placer mine disturbing more than 1,500 cubic yards of material fee is \$400; EC application fee for metal placer miners disturbing less than 1,500 cubic yards disturbance is \$150; all metal placer miner EC applications must be received on or before July 31, 2017. All EC annual renewal fees are set at \$150 by statute (ORS 517.753).

**Rules Coordinator:** Richard Riggs

**Address:** Department of Geology and Mineral Industries, 229 Broadalbin St. SW, Albany, OR 97321  
**Telephone:** (541) 967-2053

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

**Rule Caption:** Adult Protective Services Definition of Sexual Abuse and Addition of Mandatory Reporters

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-15-16	2 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 441.630, 441.635 & 441.640  
**Other Auth.:** HB 2227 (2015) & SB 622 (2015)  
**Stats. Implemented:** ORS 124.050, 441.630, 441.635 & 441.640  
**Proposed Amendments:** 411-020-0002  
**Proposed Repeals:** 411-020-0002(T)  
**Last Date for Comment:** 4-21-16, 5 p.m.

**Summary:** The Department of Human Services (Department) is amending 411-020-0002 in the adult protective services rules to make permanent temporary changes that became effective January 1, 2016. The Department is updating the definitions in 411-020-0002 to comply with provisions of House Bill 2227 and Senate Bill 622, which expanded the list of mandatory reporters and updated the definition of sexual abuse.

**Rules Coordinator:** Kimberly Colkitt-Hallman  
**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301  
**Telephone:** (503) 945-6398

**Rule Caption:** ODDS: In-Home Support for Children and Adults with Intellectual or Developmental Disabilities

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-21-16	4 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 409.050 & 430.662  
**Stats. Implemented:** ORS 427.005, 427.007, 430.610, 430.620 & 430.662-430.670

**Proposed Repeals:** Rules in 411-308, 411-330  
**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to repeal the rules in:

- OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities; and
- OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities.

The Department is restructuring many of the rule divisions that relate to developmental disabilities services to provide more consistency, remove redundancies, and consolidate the requirements for services available through the Community First Choice state plan amendment and the 1915(c) waivers operated by the Department.

Due to the restructure, the Department will no longer need the rules in OAR chapter 411, divisions 308 and 330 because all of the rule language currently contained in OAR chapter 411, divisions 308 and 330 will be moved to the following rule divisions:

- OAR chapter 411, division 450 for community living supports will include the rule language for attendant care, relief care, and skills training.
- OAR chapter 411, division 435 for ancillary services will include the rule language for the services available through the Community First Choice state plan amendment and the 1915(c) waivers oper-

## NOTICES OF PROPOSED RULEMAKING

ated by the Department that do not fall within the purview of community living supports.

- OAR chapter 411, division 375 for independent providers will include the qualifications and standards for independent providers and employers.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: General Definitions and Acronyms for Developmental Disabilities Services

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-20-16	1 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050

**Stats. Implemented:** ORS 409.050

**Proposed Amendments:** 411-317-0000

**Proposed Repeals:** 411-317-0000(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to permanently amend the general definitions and acronyms for developmental disabilities services in OAR 411-317-0000.

OAR 411-317-0000 is being amended to:

- Make permanent temporary changes that became effective January 1, 2016;

- Provide consistency and streamline definitions;

- Incorporate definitions for home and community-based (HCB) services and settings and person-centered service planning to implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS); and

- Reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Contested Case Hearings and Rights of Individuals Receiving Developmental Disabilities Services

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-18-16	3:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050 & 427.107

**Stats. Implemented:** ORS 183.411-183.471, 409.010, 427.107 & 427.109

**Proposed Amendments:** Rules in 411-318

**Proposed Repeals:** 411-318-0000(T), 411-318-0005(T), 411-318-0010(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to permanently update the rights for individuals receiving developmental disabilities services and the process to request a contested case hearing in OAR chapter 411, division 318.

The rules in OAR chapter 411, division 318 are being amended to —

- Make permanent temporary changes that became effective January 1, 2016;

- Incorporate the standards for home and community-based (HCB) services and settings and person-centered service planning adopted by the Department in OAR chapter 411, division 004 to implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS);

- Clarify that a request for a contested case hearing must be in writing;

- Reflect current Department terminology and the restructuring of the rules relating to developmental disabilities services; and

- Perform minor grammar, punctuation, formatting, and housekeeping changes.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Community Developmental Disabilities Programs (CDDPs)

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-22-16	10 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050 & 430.662

**Other Auth.:** SB 659 (2015) & SB 97 (2015)

**Stats. Implemented:** ORS 427.005, 427.007, 430.610, 430.620 & 430.662-430.695

**Proposed Amendments:** Rules in 411-320

**Proposed Repeals:** 411-320-0060, 411-320-0090, 411-320-0100, 411-320-0110, 411-320-0120, 411-320-0130, 411-320-0150, 411-320-0160, 411-320-0020(T), 411-320-0040(T), 411-320-0080(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules for Community Developmental Disabilities Programs (CDDPs) in OAR chapter 411, division 320 to make permanent the following temporary changes that became effective on January 1, 2016:

- To provide consistency and streamline definitions across services, the Department removed general definitions included in OAR 411-317-0000.

- To implement Senate Bill 659, the Department prescribed a process for CDDPs to follow when a child, who is not a resident of Oregon, seeks services while visiting a parent, who is a resident of Oregon, for six weeks of the year or more.

- To implement Senate Bill 97, the Department prescribed a process to reinstate services upon a child's return to Oregon after a temporary absence if the temporary absence of the child was due to the child's parent's military obligation.

- To clarify eligibility determinations, the Department specified —  
-- Eligibility is based on the full criteria for the diagnosis of a developmental disability; and

## NOTICES OF PROPOSED RULEMAKING

-- Eligibility determinations for children less than 7 years of age must be based on an early childhood assessment if the assessment is within one year of intake.

In addition, the Department is proposing to restructure the rules in OAR chapter 411, division 320 to ensure uniform standards for case management, provide more consistency, consolidate requirements, and remove redundancies. Specifically, the Department is proposing to:

- Remove the requirements now found in OAR chapter 411, division 415 related to the delivery of case management services and other service access activities, including requirements for CDDP employees who deliver case management services (services coordinators);

- Consolidate CDDP program and contract requirements and incorporate CDDP requirements currently located in other rule divisions;

- Include correct references to OAR chapter 411, division 318 for individual rights to ensure uniform standards related to individual rights across all types of entities involved in the delivery of developmental disabilities services;

- Incorporate Department payment and reporting system requirements for CDDPs;

- Repeal OAR 411-320-0160 for crisis diversion services to reflect current processes;

- Update training requirements and staff duties to align with current practice;

- Add qualifications, training requirements, and duties for a foster care licensure and certifier; and

- Reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Agency Certification and Endorsement — Medicaid Provider Enrollment Requirements

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-20-16	3 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 410.070, 411.060 & 430.640

**Stats. Implemented:** ORS 409.050, 427.005, 427.007, 430.215, 430.610–430.695 & 443.400–430.455

**Proposed Adoptions:** 411-323-0065

**Proposed Amendments:** Rules in 411-323, 411-370

**Proposed Repeals:** 411-323-0010(T), 411-323-0020(T), 411-323-0030(T), 411-323-0035(T), 411-323-0060(T), 411-370-0010(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules in:

- OAR chapter 411, division 323 for agency certification and endorsement to provide developmental disabilities services in community-based settings; and

- OAR chapter 411, division 370 for Medicaid provider enrollment requirements.

The rules in OAR chapter 411, division 323 are being amended to —

- Make permanent temporary changes that became effective on January 1, 2016;

- Remove general definitions included in OAR 411-317-0000;
- Demonstrate the Department's commitment to the Employment First Policy by assuring that only agencies that have a current endorsement are able to deliver employment services under OAR chapter 411, division 345;

- Provide for a two year phase-in period for certification of agencies previously certified under OAR chapter 411, division 340;

- Require endorsement to the rules in OAR chapter 411, division 323 and corresponding program rules when an agency was previously able to deliver attendant care or employment services under a different endorsement or was certified under OAR chapter 411, division 340. This requirement will be phased in over a two year period;

- Change the certification and endorsement periods from five to two years;

- Adopt the standards for home and community-based (HCB) services and settings and person-centered service planning adopted by the Department in OAR chapter 411, division 004 on January 1, 2016;

- Incorporate a new requirement that agency certification and endorsement is contingent upon meeting the standards for HCB services and settings and person-centered service planning in OAR chapter 411, division 004;

- Include correct references to OAR chapter 411, division 318 for individual rights to ensure uniform standards related to individual rights across all types of entities involved in the delivery of developmental disabilities services;

- Establish an alternate fiscal auditing standard for agencies with less than \$1,000,000 revenue per fiscal year;

- Include current Medicaid and Department standards for reimbursement for the delivery of developmental disabilities services; and

- Reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

The rules in OAR chapter 411, division 370 are being amended to:

- Require agencies endorsed to operate a Community Living Support Program under OAR chapter 411, division 450 to acquire a Medicaid provider number and meet the associated provider enrollment requirements; and

- Reflect current Department terminology, identify that Support Services Brokerages authorize developmental disabilities services, and perform minor grammar, punctuation, formatting, and housekeeping changes.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: 24-Hour Residential Programs for Children and Adults with Intellectual or Developmental Disabilities

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-20-16	3:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 443.450 & 443.455

**Stats. Implemented:** ORS 443.400–443.455

**Proposed Amendments:** Rules in 411-325

**Proposed Repeals:** 411-325-0420, 411-325-0010(T), 411-325-0020(T), 411-325-0040(T), 411-325-0130(T), 411-325-0140(T), 411-325-0150(T), 411-325-0170(T), 411-325-0220(T), 411-325-0300(T), 411-325-0390(T), 411-325-0430(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

## NOTICES OF PROPOSED RULEMAKING

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules in OAR chapter 411, division 325 for 24-hour residential programs for children and adults with intellectual or developmental disabilities.

These rules are being updated to:

- Make permanent temporary changes that became effective on January 1, 2016;
- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004;
- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services;
- Incorporate the changes addressed in OAR chapter 411, division 450 for Community Living Supports, including information regarding entry, exit, and transfer notices, expectations around transfer of assets, and removal of crisis services; and
- Reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.

Under the HCB setting standards, 24-hour residential settings meet the definition of a provider owned, controlled, or operated residential setting. A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

By September 1, 2018, all provider owned, controlled, or operated residential settings must have all the following qualities:

- The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCB services, including opportunities for individuals enrolled in or utilizing HCB services to seek employment and work in competitive integrated employment settings, engage in greater community life, control personal resources, and receive services in the greater community;
- The setting is selected by an individual, or as applicable the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting;
- The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;
- The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;
- The setting facilitates individual choice regarding services and supports, and who provides the services and supports;
- The setting is physically accessible to an individual;
- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;
- Each individual has privacy in his or her own unit;
- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;
- Individuals sharing units have a choice of roommates;
- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;
- Individuals may have visitors of their choosing at any time;

- Each individual has the freedom and support to control his or her own schedule and activities; and

- Each individual has the freedom and support to have access to food at any time.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Supported Living Programs for Adults with Intellectual or Developmental Disabilities

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-20-16	3:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050 & 430.662

**Stats. Implemented:** ORS 430.610, 430.662 & 430.670

**Proposed Adoptions:** 411-328-0625

**Proposed Amendments:** Rules in 411-328

**Proposed Repeals:** 411-328-0550(T), 411-328-0560(T), 411-328-0630(T), 411-328-0650(T), 411-328-0720(T), 411-328-0750(T), 411-328-0790(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules in OAR chapter 411, division 328 for supported living programs for adults with intellectual or developmental disabilities.

These rules are being updated to:

- Make permanent temporary changes that became effective on January 1, 2016;
  - Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
  - Provide clarity on the roles of supported living providers in entry, exit, and service planning;
  - Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004;
  - Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services; and
  - Reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.
- The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.
- When an individual resides in a dwelling that is owned, rented, or leased by an agency endorsed to provide supported living services and the same agency is authorized to provide services to the individual, the dwelling is considered a provider owned, controlled, or operated residential setting and must have all the following qualities:
- The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCB services, including opportunities for individuals enrolled in or utilizing HCB services to seek employment and work in competitive integrated employment settings, engage in greater community life, control personal resources, and receive services in the greater community;
  - The setting is selected by an individual, or as applicable the legal or designated representative of the individual, from among available



# NOTICES OF PROPOSED RULEMAKING

setting options, including non-disability specific settings and an option for a private unit in a residential setting;

- The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

- The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;

- The setting facilitates individual choice regarding services and supports, and who provides the services and supports;

- The setting is physically accessible to an individual;

- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;

- Each individual has privacy in his or her own unit;

- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;

- Individuals sharing units have a choice of roommates;

- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;

- Individuals may have visitors of their choosing at any time;

- Each individual has the freedom and support to control his or her own schedule and activities; and

- Each individual has the freedom and support to have access to food at any time.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Employment Services for Individuals with Intellectual or Developmental Disabilities

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-21-16	2:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050 & 430.662

**Stats. Implemented:** ORS 430.610, 430.662 & 430.670

**Proposed Amendments:** Rules in 411-345

**Proposed Repeals:** 411-345-0010(T), 411-345-0020(T), 411-345-0025(T), 411-345-0030(T), 411-345-0085(T), 411-345-0110(T), 411-345-0160(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is amending the rules in OAR chapter 411, division 345 for employment services for individuals with intellectual or developmental disabilities.

These rules are being amended to:

- Make permanent temporary changes that became effective on January 1, 2016;

- Remove general definitions included in OAR 411-317-0000;

- Incorporate the standards for home and community-based (HCB) services and settings and person-centered service planning adopted by the Department in OAR chapter 411, division 004 to implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS);

- Incorporate the individual rights in OAR chapter 411, division 318 to ensure uniform standards related to individual rights across all types of entities involved in the delivery of developmental disabilities services;

- Ensure alignment with Executive Order 15-01 and OAR chapter 407, division 025 regarding integrated employment services to individuals with intellectual and developmental disabilities;

- Implement Oregon's Employment First Policy;

- Align with the terms of the Lane v. Brown settlement agreement;

- Move non-employment services to the new rules for community living supports in OAR chapter 411, division 450;

- Move case management requirements to the new rules for case management in OAR chapter 411, division 415;

- Require new provider organizations to be certified as agencies under OAR chapter 411, division 323 and endorsed to provide employment services under OAR chapter 411, division 345;

- Require existing providers certified under OAR chapter 411, division 340 to be certified under OAR chapter 411, division 323 as certification renews;

- Move the general provider enrollment requirements that are not specific to employment service providers to the rules in OAR chapter 411, division 370;

- Reflect current Department terminology and the restructuring of the rules relating to developmental disabilities services; and

- Perform minor grammar, punctuation, formatting, and house-keeping changes.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Adult Foster Homes for Individuals with Intellectual or Developmental Disabilities

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-20-16	3:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775 & 443.790

**Stats. Implemented:** ORS 443.705-443.825

**Proposed Amendments:** Rules in 411-360

**Proposed Repeals:** 411-360-0010(T), 411-360-0020(T), 411-360-0050(T), 411-360-0055(T), 411-360-0060(T), 411-360-0130(T), 411-360-0140(T), 411-360-0170(T), 411-360-0190(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules in OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities.

These rules are being updated to:

- Make permanent temporary changes that became effective on January 1, 2016;

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

- Add clarifying language to the definition of a functional needs assessment;

- Clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit to support an individual aged 18 through 20;

- Incorporate direct nursing services to support an adult with complex health management support needs as described in OAR chapter 411, division 380;

- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004;

## NOTICES OF PROPOSED RULEMAKING

- Require foster care providers to implement, as written by a behavior consultant, Behavior Support Plans and Interaction Guidelines;

- Incorporate changes to Bill of Rights language and requirements to match statutory language;

- Specify Individual Support Plan (ISP) participation requirements for foster care providers by removing the ISP requirements targeted for the case management entity;

- Clarify language to align the Medicaid benefits eligibility language under the qualifications for Department-funded services;

- Remove "crisis services" language; and

- Reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.

Under the HCB setting standards, adult foster homes meet the definition of a provider owned, controlled, or operated residential setting. A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

By September 1, 2018, all provider owned, controlled, or operated residential settings must have all the following qualities:

- The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCB services, including opportunities for individuals enrolled in or utilizing HCB services to seek employment and work in competitive integrated employment settings, engage in greater community life, control personal resources, and receive services in the greater community;

- The setting is selected by an individual, or as applicable the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting;

- The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

- The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;

- The setting facilitates individual choice regarding services and supports, and who provides the services and supports;

- The setting is physically accessible to an individual;

- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;

- Each individual has privacy in his or her own unit;

- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;

- Individuals sharing units have a choice of roommates;

- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;

- Individuals may have visitors of their choosing at any time;

- Each individual has the freedom and support to control his or her own schedule and activities; and

- Each individual has the freedom and support to have access to food at any time.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Direct Nursing Services for Adults with Intellectual or Developmental Disabilities

**Date:** 4-20-16

**Time:** 2 p.m.

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

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050 & 413.085

**Stats. Implemented:** ORS 409.050 & 413.085

**Proposed Adoptions:** 411-380-0010, 411-380-0020, 411-380-0030, 411-380-0040, 411-380-0050, 411-380-0060, 411-380-0070, 411-380-0080, 411-380-0090

**Proposed Repeals:** 411-380-0010(T), 411-380-0020(T), 411-380-0030(T), 411-380-0040(T), 411-380-0050(T), 411-380-0060(T), 411-380-0070(T), 411-380-0080(T), 411-380-0090(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is adopting rules in OAR chapter 411, division 380 to make permanent temporary rules that became effective on January 1, 2016 that establish standards and procedures for the provision of direct nursing services. Direct nursing services support individuals 21 years of age or older with intellectual or developmental disabilities and complex, long-term, medical conditions that require shift staff nursing level of supports.

The rules in OAR chapter 411, division 380 define direct nursing services, specify eligibility and limitations for direct nursing services, and specify nursing service requirements for case management entities and the Department. The rules also establish and detail provider requirements including qualifications, enrollment, billing and payment, and documentation and recordkeeping requirements.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Case Management Services

**Date:** 4-22-16

**Time:** 10 a.m.

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

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 427.402 & 430.662

**Stats. Implemented:** ORS 427.005, 427.007, 427.400-427.410, 430.610, 430.620 & 430.662-430.695

**Proposed Adoptions:** Rules in 411-415

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to adopt rules in OAR chapter 411, division 415 to streamline the qualifications and related requirements for providers of case management services related to assessments, Individual Support Plans (ISP), and service monitoring.

The rules in OAR chapter 411, division 415 are drawn primarily from the case management and related functions contained in OAR chapter 411, division 320 for Community Developmental Disabilities Programs (CDDPs) and OAR chapter 411, division 340

# NOTICES OF PROPOSED RULEMAKING

for Support Services Brokerages and are intended to describe case management services delivered by a CDDP, Brokerage, or the Department through the Children's Intensive In-Home Services Program (CIIS) or the children's residential program.

The rules in OAR chapter 411, division 415 also include standards incorporated into OAR chapter 411, division 320 and 340 by temporary rulemaking on January 1, 2016 relating to home and community-based (HCB) services and settings, person-centered service planning, and conflict free case management.

The rules in OAR chapter 411, division 415 include new language that was not in prior rules, including:

- Authority to make a termination of case management a termination of all other developmental disabilities services.
- Authority for a Brokerage to terminate case management and all other developmental disabilities services.
- A requirement for all case managers to complete core competency training.
- A requirement for a case management entity to complete payment authorization in the Department's payment and reporting system prior to the start of services.
- A requirement for all case management entities to carry out the obligations of family reconnection.
- Adaptation of language and requirements around the new Oregon ISP and processes associated with it.
- Updated expectations around the Career Development Plan.
- Aligned expectations across types of case management providers regarding case management services, including ISP authorizations and the use of service agreements, and the case management entity's role with independent providers.
- A requirement for an annual in home visit for all Department consumers and the authority to terminate services if the visit is not permitted.
- The authority to deny authorization of services when the setting for the delivery of those services is unsafe, or it is not possible for the chosen services to keep the individual safe.
- Updated requirements related to HCBS compliance, including residential and non-residential setting options.
- A rule that specifies the conditions that must be present in order for the Department to make payment for case management services.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman  
**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301  
**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Ancillary Services for Individuals Receiving Office of Developmental Disabilities Services

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-20-16	2:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 409.050, 427.104 & 430.662  
**Stats. Implemented:** ORS 427.005, 427.007, 427.115, 430.610, 430.620 & 430.662-430.670  
**Proposed Adoptions:** Rules in 411-435  
**Last Date for Comment:** 5-13-16, 5 p.m.  
**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to adopt rules for ancillary services in OAR chapter 411, division 435 to include eligibility requirements, service descriptions, service limits, and provider qualifications for certain services available under the

1915(k) and 1915(c) funding authorities. These rules are drawn from portions of existing, almost identical, rules in OAR chapter 411 divisions 300, 308, 330, 340, 350, and 355. The relevant portions of those rules are being repealed and put into this new division. Adopting OAR chapter 411, division 435 will assure that variations in the present rules are eliminated.

The Department is also incorporating new sections into OAR chapter 411, division 435 that were not in prior rules, including:

- Department-wide financial eligibility requirements for long-term services as described in OAR 461-145-0220.
- A requirement that an individual must receive three bids before making an environmental modification or environmental safety modification.
- Clarify the policy requiring that purchases made to meet a single identified goal on an ISP must be considered together as one cost for the purpose of triggering a review by the Department prior to the purchase.
- Prohibiting, in most circumstances, providers who may have an advantage in being selected due to their relationship with the individual from providing services to the individual with which the relationship exists.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman  
**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301  
**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Community Living Supports

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-21-16	3:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 409.050 & 430.662  
**Stats. Implemented:** ORS 427.005, 427.007, 430.610, 430.620 & 430.662-430.670  
**Proposed Adoptions:** Rules in 411-450  
**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to adopt rules for community living supports in OAR chapter 411, division 450 to include the eligibility requirements, service descriptions, service limits, and provider qualifications for attendant care, relief care, and skills training available under the Community First Choice 1915(k) funding authority. These rules were taken from portions of current rules located in OAR chapter 411, divisions 300, 308, 330, 340, 350, and 355. The relevant portions of those rules are being eliminated and consolidated into this new division. This will assure that variation within rules across program areas related to these services are eliminated.

The Department is also incorporating new sections into OAR chapter 411, division 450 that were not in prior rules, including:

- A financial eligibility requirement that an individual with a certain amount of home equity is ineligible for community living supports.
- Authority for the Department to deny services when the services are unable to adequately meet the needs of the individual or when the setting in which services are delivered is not safe for the individual or provider.
- Requiring agency providers to notify the Department when the provider intends to change operations in a way that multiple individuals will lose services.

# NOTICES OF PROPOSED RULEMAKING

- Adaptations to any rules that are impacted by OAR chapter 411, division 004 related to home and community-based requirements for facility-based services.

- The provision for these rules to be used as the basis for an agency endorsement as described in OAR chapter 411 division 323.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Support Service Brokerages for Adults with Intellectual or Developmental Disabilities

Date:	Time:	Location:
4-22-16	10 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, Oregon 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 427.104, 427.154 & 430.662

**Stats. Implemented:** ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

**Proposed Amendments:** Rules in 411-340

**Proposed Repeals:** 411-340-0125, 411-340-0130, 411-340-0135, 411-340-0140, 411-340-0160, 411-340-0170, 411-340-0180, 411-340-0020(T), 411-340-0030(T), 411-340-0120(T), 411-340-0150(T)

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules for Support Service Brokerages (Brokerages) in OAR chapter 411, division 340 to make permanent the following temporary changes that became effective on January 1, 2016:

- To provide consistency and streamline definitions across services, the Department removed general definitions included in OAR 411-317-0000; and

- The Department shortened the certification period of a Brokerage from five years to two years.

In addition, the Department is proposing to restructure the rules in OAR chapter 411, division 340 to ensure uniform standards for case management, provide more consistency, consolidate requirements, and remove redundancies. Specifically, the Department is proposing to:

- Relocate qualifications and related requirements for case management services to OAR chapter 411, division 415;

- Repeal OAR 411-340-0125 (Crisis Supports in Support Services) to align rules with current Department practice;

- Relocate eligibility requirements, provider qualifications, and service descriptions for the services that a personal agent may authorize. The portions related to attendant care, skills training, and relief care are being moved to new rules for community living supports in OAR chapter 411, division 450 and the remaining services available under the 1915(k) and 1915(c) funding authorities are being moved to new rules for ancillary services in OAR chapter 411, division 435;

- Move the language in OAR 411-340-0170 that is used to certify provider organizations to the new rules for in-home services in OAR chapter 411, division 450. Provider organizations will be required to become certified under OAR chapter 411, division 323 and endorsed to OAR chapter 411, division 450; and

- Move the language in OAR 411-340-0135 and 411-340-0160 that describes the requirements for independent providers and employers of independent providers to OAR chapter 411, division 375.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer

Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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**Rule Caption:** ODDS: Independent Providers Delivering Developmental Disabilities Services

Date:	Time:	Location:
4-20-16	1:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, Oregon 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050

**Stats. Implemented:** ORS 410.600, 410.606–410.619 & 427.007

**Proposed Adoptions:** 411-375-0035, 411-375-0055

**Proposed Amendments:** 411-375-0000, 411-375-0010, 411-375-0020, 411-375-0040, 411-375-0050, 411-375-0070, 411-375-0080

**Proposed Repeals:** 411-375-0030, 411-375-0010(T), 411-375-0050(T), 411-375-0055(T), 411-375-0070(T), 411-375-0080(T)

**Proposed Ren. & Amends:** 411-375-0060 to 411-375-0045

**Last Date for Comment:** 5-13-16, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules for independent providers delivering developmental disabilities services in OAR chapter 411, division 375.

The rules in OAR chapter 411, division 375 are being amended to —

- Make permanent temporary changes that became effective on January 1, 2016;

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

- Implement changes associated with the Fair Labor Standards Act and Collective Bargaining Agreement regarding hours, pay, and benefits for personal support workers;

- Implement changes to the termination and inactivation procedures;

- Expand OAR chapter 411, division 375 to include standards and requirements related to independent providers that are not personal support workers, as well as pulling the standards for employers from other rules and incorporating them into OAR chapter 411, division 375; and

- Provide standards for documentation for independent providers.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**Rules Coordinator:** Kimberly Colkitt-Hallman

**Address:** Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-6398

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

**Rule Caption:** Amending citizenship and alien status requirements to add an exception for children in Head Start

**Stat. Auth.:** ORS 409.050, 411.060, 411.070

**Stats. Implemented:** ORS 409.050, 411.060, 411.070

**Proposed Amendments:** 461-120-0110

**Proposed Repeals:** 461-120-0110(T)

**Last Date for Comment:** 4-22-16, 5 p.m.

# NOTICES OF PROPOSED RULEMAKING

**Summary:** OAR 461-120-0110 about citizenship and alien status requirements is being amended to include a waiver of the proof of citizenship requirements for children participating in a Head Start program.

In addition, non-substantive edits may be made to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

Rule text showing edits for the rule described above is available at [http://www.dhs.state.or.us/policy/selfsufficiency/ar\\_proposed.htm](http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm).

**Rules Coordinator:** Kris Skaro

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

**Telephone:** (503) 945-6067

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## **Landscape Architect Board Chapter 804**

**Rule Caption:** Update of Continuing Education (CE) Program Rules for Registered Landscape Architects

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-27-16	10 a.m.	Association Center 707 13th St. SE, Suite 114 Salem, OR 97301

**Hearing Officer:** Christine Valentine

**Stat. Auth.:** 804-025-0000: ORS 671.395, 671.415; 804-025-0010: ORS 671.395, 671.415; 804-025-0015: ORS 671.395, 671.415; 804-025-0020: ORS 671.395, 671.415; 804-025-0030: ORS 671.395, 671.415; 804-025-0035: ORS 671.395, 671.404, 671.408, 671.415, 671.995

**Stats. Implemented:** 804-025-0000: 671.395; 804-025-0010: 671.376, 671.395; 804-025-0015: 671.376, 671.395; 804-025-0020: 671.395; 804-025-0030: 671.395; 804-025-0035: 671.395

**Proposed Amendments:** 804-025-0000, 804-025-0010, 804-025-0015, 804-025-0020, 804-025-0030, 804-025-0035

**Last Date for Comment:** 4-27-16, Close of Business

**Summary:** OSLAB proposes comprehensive updates to its continuing education (CE) rules to increase clarity and address lessons learned in 10 years of program implementation. The rules will also be amended to provide the Board with more discretion about options for addressing registrant non-compliance with CE requirements. The Board is not proposing changes to the basic requirements for registrant completion of CE or the auditing of registrants.

**Rules Coordinator:** Christine Valentine

**Address:** Landscape Architect Board, 707 13th St. SE, Suite 114, Salem, OR 97301

**Telephone:** (503) 589-0093

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## **Landscape Contractors Board Chapter 808**

**Rule Caption:** Changes exam score expiration to two years for written exams taken 7/1/2016 or later.

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

**Stats. Implemented:** ORS 671.570

**Proposed Adoptions:** 808-003-0820

**Last Date for Comment:** 4-22-16, Close of Business

**Summary:** Changes exam score expiration to two years for written exams taken 7/1/2016 or later.

**Rules Coordinator:** Kim Gladwill-Rowley

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

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

## **Oregon Criminal Justice Commission Chapter 213**

**Rule Caption:** Amends Oregon Sentencing Guidelines and rules to implement 2015 legislation

**Stat. Auth.:** ORS 137.667

**Stats. Implemented:** ORS 137.667, 2015 OL Ch. 101, 2015 OL Ch. 321, 2015 OL Ch. 324, 2015 OL Ch. 350, 2015 OL Ch. 351, 2015 OL Ch. 361, 2015 OL Ch. 379, 2015 OL Ch. 527, 2015 OL Ch. 639, 2015 OL Ch. 645 & 2015 OL Ch. 751

**Proposed Amendments:** Rules in 213-003, 213-017, 213-018

**Last Date for Comment:** 4-26-16, at conclusion of Commission meeting

**Summary:** These rules implement 2015 legislative enactments. Under ORS 137.667(1), the Commission is required to review legislation creating new crimes and modifying existing crimes, and adopt any necessary changes to the sentencing guidelines. The Commission also may classify offenses as person crimes.

The 2015 Oregon Legislature created new felony crimes including Endangering a Person Protected by a FAPA Order, Unlawful Dissemination of an Intimate Image, Invasion of Personal Privacy I and Sexual Assault of an Animal. The 2015 Oregon Legislature also modified existing felony crimes including Computer Crime, Possession of a Firearm or Dangerous Weapon in Public Building or Court Facility, Disorderly Conduct I, Luring a Minor, Purchasing Sex With a Minor, Coercion, Strangulation, and Assault IV. The 2015 Oregon Legislature also created or modified misdemeanor crimes including Unlawful Dissemination of an Intimate Image and Invasion of Personal Privacy II.

With regard to these and other offenses, the Commission must decide whether to classify new and modified crimes as person crimes, and decide crime seriousness scale categorization (if any) for new and modified felony crimes for which it has not received an express legislative classification. These rule changes implement the Commission's categorizations and classifications with regard to 2015 legislation.

The rule changes also include correcting and updating statutory citations, re-ordering of rule provisions that are based on numerical order of statutory citations, and deletion of a duplicative provision.

**Rules Coordinator:** Julie Vaughn

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

**Telephone:** (503) 378-4830

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## **Oregon Government Ethics Commission Chapter 199**

**Rule Caption:** Amends definition of "Director" and language regarding advisory opinions issued by the Commission

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-25-16	2 p.m.	3218 Pringle Rd. SE, Suite 220 Salem OR 97302

**Hearing Officer:** Marie Scheffers

**Stat. Auth.:** ORS 244.290

**Stats. Implemented:** ORS 244.250, 244.260, 244.290, 244.310, 244.280(3), 244.282 & 244.284

**Proposed Amendments:** 199-001-0010, 199-001-0030

**Last Date for Comment:** 4-25-16, Close of Hearing

**Summary:** The amendment to the definition of "Director" allows the director of the Oregon Government Ethics Commission to designate a person to carry out specific tasks assigned to the director. This will increase efficiency of the agency and is particularly important in case of director absence, illness or injury.

The changes to the language regarding Advisory Opinions are being made to better reflect the language in the statute authorizing the Commission to issue Advisory Opinions (ORS 244.280(3)). ORS 244.280(3) uses the term "person," not "public official or business with which a public official is associated," and uses the term "good faith action" rather than merely "action." This more accurately

# NOTICES OF PROPOSED RULEMAKING

reflects the fact that Advisory Opinions may be issued on issues concerning lobbyists and their clients, not just issues concerning public officials. There was also a typographical error that resulted in an incomplete sentence, which now reads, "A typed notice in uppercase letters not less than 10 point that states the following:"

**Rules Coordinator:** Virginia Lutz  
**Address:** Oregon Government Ethics Commission, 3218 Pringle Rd. SE, Suite 220, Salem, OR 97302  
**Telephone:** (503) 378-5105

\*\*\*\*\*

**Rule Caption:** Adopts rules clarifying procedures and requirements for governing bodies holding executive sessions.

**Date:** 4-25-16      **Time:** 2:30 p.m.      **Location:** 3218 Pringle Rd. SE, Suite 220 Salem OR 97302

**Hearing Officer:** Marie Scheffers  
**Stat. Auth.:** ORS 244.290

**Stats. Implemented:** ORS 192.660

**Proposed Adoptions:** 199-040-0020, 199-040-0025, 199-040-0030, 199-040-0050

**Last Date for Comment:** 4-25-16, Close of Hearing

**Summary:** Rule 199-040-0020 clarifies limitations on topics that may be addressed in executive session, including the fact that compensation is not a proper topic for executive session. Rule 199-040-0025 explains the Commission's procedure for opening complaints about improper executive sessions, providing notice that a complaint made about an executive session will be opened against each member of the governing body who attends the executive session. Rule 199-040-0030 provides guidance to governing bodies who intend to hold an executive session to review, evaluate, discipline, dismiss or consider a complaint or charge against a public official. Rule 199-040-0050 clarifies that the attorney being consulted must be present at an executive session held to consult with counsel concerning the legal rights and obligations of a public body with regard to current litigation or litigation likely to be filed.

**Rules Coordinator:** Virginia Lutz  
**Address:** Oregon Government Ethics Commission, 3218 Pringle Rd. SE, Suite 220, Salem, OR 97302  
**Telephone:** (503) 378-5105

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## Oregon Health Authority, Health Policy and Analytics Chapter 409

**Rule Caption:** Proposed changes to qualify for the Physician Visa Waiver Program by a health care facility.

**Date:** 4-18-16      **Time:** 1 p.m.      **Location:** 500 Summer St. NE, Rm. 554 Salem, OR 97301

**Hearing Officer:** Zarie Haverkate

**Stat. Auth.:** ORS 413.248

**Stats. Implemented:** ORS 413.248

**Proposed Amendments:** 409-035-0020

**Last Date for Comment:** 4-20-16, 5 p.m.

**Summary:** The Oregon Health Authority proposes to amend the criteria for providers recommending candidates to the Physician Visa Waiver Program. The proposed changes to the rule are available at: <http://www.oregon.gov/OHA/OHPR/pages/rulemaking/index.aspx>.

**Rules Coordinator:** Zarie Haverkate  
**Address:** Oregon Health Authority, Health Policy and Analytics, 500 Summer St. NE, E-65, Salem, OR 97301  
**Telephone:** (503) 931-6420

\*\*\*\*\*

**Rule Caption:** Proposed amendments to the Patient-Centered Primary Care Home (PCPCH) Program rules.

**Date:** 4-18-16      **Time:** 11 a.m.      **Location:** 500 Summer St. NE, Rm. 554 Salem, OR 97301

**Hearing Officer:** Zarie Haverkate

**Stat. Auth.:** ORS 413.042, 413.259 & 414.655

**Stats. Implemented:** ORS 513.259, 413.260 & 414.655

**Proposed Amendments:** 409-055-0000, 409-055-0010, 409-055-0020, 409-055-0030, 409-055-0040, 409-055-0045, 409-055-0050, 409-055-0060, 409-055-0070, 409-055-0080, 409-055-0090

**Proposed Repeals:** 409-055-0010(T), 409-055-0030(T), 409-055-0040(T), 409-055-0060(T), 409-055-0070(T)

**Last Date for Comment:** 4-20-16, 5 p.m.

**Summary:** The Oregon Health Authority is proposing amendments that are designed to incrementally adapt the model to the changing health care needs of the state, align the model with the best evidence where it is available, and also to improve the effectiveness of the standards and measures overall. These rules are also being updated to reflect the new organizational structure and statutory references from the 2015 legislative session. The proposed rules are available on our website at: [www.oregon.gov/OHA/OHPR/pages/rulemaking/index.aspx](http://www.oregon.gov/OHA/OHPR/pages/rulemaking/index.aspx).

**Rules Coordinator:** Zarie Haverkate

**Address:** Oregon Health Authority, Health Policy and Analytics, 500 Summer St. NE, E-65, Salem, OR 97301

**Telephone:** (503) 931-6420

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**Rule Caption:** Amendment to Health Evidence Review Commission Rule

**Stat. Auth.:** ORS 414.695 & 413.042

**Stats. Implemented:** ORS 414.695 & 414.698

**Proposed Amendments:** 409-060-0110, 409-060-0120, 409-060-0150

**Last Date for Comment:** 4-18-16, 5 p.m.

**Summary:** The Oregon Health Authority is amending the rule to align with the current organizational structure, from the Office for Oregon Health Policy and Research to the Oregon Health Authority. Other minor grammatical adjustments are also being addressed.

Proposed rules are available on the website at: <http://www.oregon.gov/OHA/OHPR/pages/rulemaking/index.aspx>. For hardcopy requests, call: (503) 931-6420.

**Rules Coordinator:** Zarie Haverkate

**Address:** Oregon Health Authority, Health Policy and Analytics, 500 Summer St. NE, E-65, Salem, OR 97301

**Telephone:** (503) 931-6420

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## Oregon Health Authority, Health Services Division: Medical Assistance Programs Chapter 410

**Rule Caption:** Update DMAP 3165 Form

**Stat. Auth.:** ORS 413.042

**Stats. Implemented:** ORS 414.025 & 414.065

**Proposed Amendments:** 410-120-1280

**Last Date for Comment:** 4-21-16, 5 p.m.

**Summary:** Update DMAP 3165 Form, but there are no rule language changes. The following parenthesis was added for clarification: Expected date(s) of service (if services are to occur over several months, please list the frequency, beginning and expected end dates). Providers were under the impression that they had to complete this form for each date of service (for example, a series of dental procedures that would take place over several dates), which was not the intent of the form.

**Rules Coordinator:** Sandy Cafourek

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

**Telephone:** (503) 945-6430

\*\*\*\*\*

**Rule Caption:** Income Eligibility Guidelines for OCCS Medical Programs

# NOTICES OF PROPOSED RULEMAKING

**Stat. Auth.:** ORS 411.402, 411.404, 413.042 & 414.534  
**Other Auth.:** 42 CFR: 435.110, 435.112, 435.115, 435.116, 435.118, 435.403, 435.940, 435.1200, 457.80, 457.340, 458.350, 435.3, 435.4, 435.406, 435.407, 435.940, 435.952, 435.956, 435.1008, 457.320, 457.380, 435.940, 435.956, 435.406, 457.380, 435.117, 435.170, 435.190, 435.916, 435.917, 435.926, 435.952, 435.1200, 435.1205, 447.56, 457.340, 457.350, 457.360, 457.805, 433.145, 433.147, 433.148, 433.146, 435.610, 435.115, 435.403, 435.1200, 457.80, 457.340, 458.350, 435.119, 435.222, 435.118, 433.138, 433.147, 433.148, 435.602 & 435.608  
**Stats. Implemented:** ORS 411.060, 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

**Proposed Amendments:** 410-200-0315

**Proposed Repeals:** 410-200-0315(T)

**Last Date for Comment:** 4-21-16, 5 p.m.

**Summary:** Every year the Federal Poverty Levels (FPL) are adjusted and published to the Federal Register. A number of OCCS medical programs eligibility and income disregards are based on percentages of the FPL and must be updated now that the FPLs have been published and align with the Oregon Eligibility (ONE) system implementation timeline.

**Rules Coordinator:** Sandy Cafourek

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

**Telephone:** (503) 945-6430

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**Rule Caption:** Incorporate Code Set and HERC Changes into List of Billing Codes Not Covered by OHP

**Stat. Auth.:** ORS 413.042

**Stats. Implemented:** ORS 414.025 & 414.065

**Proposed Amendments:** 410-130-0220

**Proposed Repeals:** 410-130-0220(T)

**Last Date for Comment:** 4-21-16, 5 p.m.

**Summary:** This rule lists billing codes for which the OHP FFS will not make payment. Codes are included in this rule for three reasons: (1) They are for services that are not covered under any OHP benefit plan; (2) They are codes for which payment is bundled under another billing code; and (3) They are services for which OHP requires a different but equivalent code for payment. For example, the billing codes for cosmetic procedures are included in this rule because they are not covered services. The billing code for surgical trays are also included because payment for trays is bundled under the surgery code.

The changes to this rule are to incorporate changes in the national code sets and changes from HERC. Codes that have been terminated from the national code set are being removed. Codes that HERC newly recommended for non-coverage are being added. Codes that will newly be bundled for payment under our adopted payment methodology are being added. Added codes will not be eligible for payment under the FFS program.

**Rules Coordinator:** Sandy Cafourek

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

**Telephone:** (503) 945-6430

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**Rule Caption:** Administration of Oregon Integrated and Coordinated Health Care Delivery System Regulation and Rule Precedence

**Stat. Auth.:** ORS 413.042, 414.615, 414.645, 414.635 & 414.651

**Stats. Implemented:** ORS 414.610-414.685

**Proposed Amendments:** 410-141-3020

**Last Date for Comment:** 4-21-16, 5 p.m.

**Summary:** This rule directs the orderly and efficient administration of the Oregon Integrated and Coordinated Health Care Delivery System and medical assistance programs. This includes the Oregon

Health Plan (OHP) pursuant to ORS Chapter 414, subject to the rule-making requirements of Oregon Revised Statutes and Oregon Administrative Rule (OAR) procedures.

This rule specifies an order of precedence for regulatory requirements for the Authority, clients, enrolled providers, and the CCOs for purposes of the provision of covered coordinated care services to Authority clients including, but not limited to, authorizing and delivering service or denials of authorization or services to Authority clients.

At the direction of Legislative Counsel, the Authority is making a change for accuracy to the listing of the Order of Precedence in this rule. Additionally, we are adding a statement to this rule stating that should there be a conflict interpreting terms or conditions of statute, rule, or contract, the Oregon Administrative Rules in effect at the time of conflict is controlling.

**Rules Coordinator:** Sandy Cafourek

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

**Telephone:** (503) 945-6430

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## Oregon Health Authority, Health Services Division: Mental Health Services Chapter 309

**Rule Caption:** Permanent amendments to OAR 309-091 titled State Hospital Admissions and Discharges.

Date:	Time:	Location:
4-6-16	10 a.m.	500 Summer St. NE, Room 137-A Salem, OR 97301

**Hearing Officer:** Nola Russell

**Stat. Auth.:** ORS 413.042

**Other Auth.:** SB 432 (2011)

**Stats. Implemented:** ORS 179.321, 426.010, 426.020, 161.370 & 179.360

**Proposed Amendments:** 309-091-0050

**Last Date for Comment:** 4-18-16, Close of Business

**Summary:** Permanent amendments to OAR 309-091 titled State Hospital Admissions and Discharges.

**Rules Coordinator:** Nola Russell

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

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

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**Rule Caption:** Permanent amendments to OAR 309-112 titled Use of Restraints in State Hospitals.

Date:	Time:	Location:
4-6-16	10 a.m.	500 Summer St. NE, Room 137-A Salem, OR 97301

**Hearing Officer:** Nola Russell

**Stat. Auth.:** OAR 413.042 & 719.040

**Stats. Implemented:** ORS 426.385 & 427.031

**Proposed Amendments:** 309-112-0000, 309-112-0005, 309-112-0010, 309-112-0015, 309-112-0017, 309-112-0020, 309-112-0025, 309-112-0030, 309-112-0035

**Last Date for Comment:** 4-15-16, Close of Business

**Summary:** These rules prescribe policies and procedures concerning the use of restraints in the treatment, and behavior management of patients in state institutions operated by the Division. In addition to these general rules, other more specific requirements established by federal regulations must be followed where applicable.

**Rules Coordinator:** Nola Russell

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

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

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**Rule Caption:** Permanent amendments to OAR 309-114 titled Informed Consent to Treatment by Patients in State Institutions.

# NOTICES OF PROPOSED RULEMAKING

**Date:** 4-6-16  
**Time:** 10 a.m.  
**Location:** 500 Summer St. NE, Rm. 137-A  
 Salem, OR 97301

**Hearing Officer:** Nola Russell  
**Stat. Auth.:** ORS 413.042  
**Stats. Implemented:** ORS 179.321, 426.070 & 426.385  
**Proposed Amendments:** 309-114-0005  
**Last Date for Comment:** 4-18-16, Close of Business

**Summary:** These rules prescribe standards and procedures to be observed by personnel of state institutions operated by Division in obtaining informed consent to significant procedures, as defined by these rules, from patients of such state institutions. These rules do not apply to routine medical procedures. Administration of significant procedures without informed consent is permitted as described in OAR 309-114-0010(1)(b). The purpose of these rules is to assure that the rights of patients are protected with respect to significant procedures.

**Rules Coordinator:** Nola Russell  
**Address:** Oregon Health Authority, Health Services Division: Mental Health Services, 500 Summer St. NE, Salem, OR 97301  
**Telephone:** (503) 945-7652

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

**Rule Caption:** Packaging and Labeling Requirements for Inhalant Delivery Systems

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-18-16	1 p.m.	Mike Maier Bldg. 1130 NW Harriman Ave., Suite B Community Boardroom. Bend, OR 97703
4-20-16	10 a.m.	Portland State Office Bldg. 800 NE Oregon St. Rm. 1E Portland, OR 97232
4-22-16	1 p.m.	Jackson County Health and Human Services 140 S Holly St. Griffin Creek Rm. #2002 and Table Rock Rm. #2004 Medford, OR 97501

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 431A.175, 431A.178, 431A.183  
**Stats. Implemented:** ORS 431A.175, 431A.178, 431A.183  
**Proposed Adoptions:** 333-015-0300, 333-015-0305, 333-015-0310, 333-015-0315, 333-015-0320, 333-015-0325, 333-015-0330, 333-015-0335, 333-015-0340, 333-015-0345, 333-015-0350, 333-015-0355, 333-015-0360, 333-015-0365, 333-015-0370, 333-015-0375

**Last Date for Comment:** 4-29-16, 5 p.m.  
**Summary:** The Oregon Health Authority, Public Health Division is proposing to permanently adopt administrative rules in chapter 333, division 15 regarding packaging and labeling requirements for inhalant delivery systems.

The proposed rulemaking:

1. Creates definitions in rules to reflect the purpose of the statute, and add clarity to the rules.
2. Requires child-resistant packaging for liquid nicotine containers and non-nicotine liquid containers.
  - a. Provides an exemption for pre-filled inhalant delivery systems.
  - b. Provides an exemption for fillable inhalant delivery systems.
3. Requires that inhalant delivery systems are not "Packaged in a manner attractive to minors," as defined in rules.
4. Requires that inhalant delivery systems display labels that conform to design criteria (e.g., size and font) and contain certain language intended to inform consumers about the content of these products and their health risks.
5. Prohibits certain language on labels of inhalant delivery systems sold in Oregon.

6. Establishes civil penalty amounts and enforcement schedule for violations of the rules.

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

\*\*\*\*\*

**Rule Caption:** Updating requirements for certified or qualified health care interpreter registration through the Oregon Health Authority.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-20-16	1 p.m.	421 SW Oak St., Suite 775 Portland OR 97204

**Hearing Officer:** Keely West  
**Stat. Auth.:** ORS 413.558  
**Stats. Implemented:** ORS 413.556 & 413.558  
**Proposed Amendments:** 333-002-0000, 333-002-0010, 333-002-0020, 333-002-0030, 333-002-0035, 333-002-0040, 333-002-0050, 333-002-0060, 333-002-0070, 333-002-0080, 333-002-0120, 333-002-0140, 333-002-0150, 333-002-0170, 333-002-0190, 333-002-0210

**Proposed Repeals:** 333-002-0100, 333-002-0130, 333-002-0160, 333-002-0180, 333-002-0200, 333-002-0220

**Last Date for Comment:** 4-22-16, Close of Business  
**Summary:** Updates and simplifies requirements for enrollment, registration and certification as a health care interpreter. Merges some rule sections and retracts duplicate requirements. Provides for background checks. Reduces fees associated with enrollment.

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

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**Rule Caption:** Environmental Laboratory Accreditation to expand the scope and fees of accreditation

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-20-16	1 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 815 Portland, OR 97232

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 438.605-438.620, 448.131, 448.150(1), 448.280(1)(b) & (2), 475B.565  
**Stats. Implemented:** ORS 438.605-438.620, 448.280(1)(b) & (2), 475B.565

**Proposed Amendments:** 333-064-0005, 333-064-0010, 333-064-0025, 333-064-0060, 333-064-0065

**Last Date for Comment:** 4-25-16, 5 p.m.  
**Summary:** The Oregon Health Authority, Public Health Division, Oregon State Public Health Laboratory is proposing to permanently amend administrative rules in chapter 333, division 64 pertaining to environmental laboratory accreditation. Based upon implementation of new technologies introduced by environmental laboratories and the cannabis testing laboratories and in order to be compliant with ORS 475B.565 regarding testing and sampling cannabinoid products, ORELAP needs to expand the scope of accreditation. The Oregon Environmental Laboratory Accreditation Program (ORELAP) is a fee based program that accredits laboratories by Matrix-Technology/Method-Analyte. The ORELAP accreditation process will need to be changed to include the revised fields of testing: Basic, Moderate and Complex based on the assessors' time to review the methods during the on-site assessment, as well as the addition of a new field of testing to include the new technologies, expand the definitions of matrix to include cannabinoid products to be tested in order to be accredited based on the assessment of Matrix-Technology/Method-Analyte to the TNI standards. The addition of the field of testing and the matrix per field of testing for which the laboratory has requested accreditation will require a rule change in the fee schedule to determine the appropriate assessment fee. The out-of-



# NOTICES OF PROPOSED RULEMAKING

state fees for environmental laboratories seeking accreditation or renewal of ORELAP accreditation will be increased.

In order to be compliant with ORS 475B.565, ORELAP will include cannabis sampling as an accreditation and will be assigned a point value for an application fee and listed as a technology within the new Advanced Technology field of testing.

The proposed rule changes regarding the out-of-state fees and the addition of a new field of testing (Advanced Technology) with the corresponding fee(s) had been postponed until Ballot Measure 91 was voted by the people of Oregon in November 2015. Upon the passage of ORS 475B.565, requiring cannabis testing laboratories to seek ORELAP accreditation in pursuant of Oregon Liquor Control Commission (OLCC) licensure, the proposed rule changes presented in this notice is a full roll up of proposed rule changes of increased out-of-state fees, addition of new fields of testing, adjustment of the fee schedule based on the Matrix-Technology/Method-Analyte to include cannabis sampling and the addition of the definition of 'matrix' to include cannabinoid products, concentrates or extracts.

**Rules Coordinator:** Brittany Sande

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

**Telephone:** (971) 673-1291

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**Rule Caption:** Specifies duties that can be delegated by a landlord to tenant at an organizational camp

Date:	Time:	Location:
4-26-16	9 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1C Portland, OR 97232

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 446.330

**Other Auth.:** HB 3292 (2015 Ol Ch. 223)

**Stats. Implemented:** ORS 446.310-446.350

**Proposed Adoptions:** 333-030-0023

**Proposed Amendments:** 333-030-0015, 333-030-0020, 333-030-0100, 333-030-0110, 333-030-0120

**Last Date for Comment:** 4-27-16, 5 p.m.

**Summary:** The Oregon Health Authority (Authority), Public Health Division, Food, Pool, and Lodging Program is proposing to permanently amend and adopt rules in chapter 333, division 30 to implement House Bill (HB) 3292 (OL 2015, chapter 223), passed during the 2015 Oregon Legislative Session, relating to organizational camps. House Bill 3292 changed ORS chapter 446 to clarify that camp owners must obtain a license to operate but camp user groups are responsible for compliance with the rules. The bill authorized the Authority to adopt rules identifying duties that a landlord may delegate through a contract to tenants.

**Rules Coordinator:** Brittany Sande

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

**Telephone:** (971) 673-1291

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## Oregon Housing and Community Services Department Chapter 813

**Rule Caption:** Adopts permanent rules for Vertical Housing Program.

Date:	Time:	Location:
4-27-16	10 a.m.	Oregon Housing and Community Services 725 Summer St. NE, Suite 124A Salem OR 97301

**Hearing Officer:** Alison McIntosh

**Stat. Auth.:** ORS 456.555, 307-841-307.867

**Stats. Implemented:** ORS 456.555, 307-841-307.867

**Proposed Amendments:** 813-013-0001, 813-013-0005, 813-013-0010, 813-001-0015, 813-001-0020, 813-013-0035, 813-013-0040, 813-013-0050, 813-013-0054

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

**Summary:** The rules govern the Vertical Housing Tax Exemption Program administered by Oregon Housing and Community Services. The program is designed to encourage the development of housing in commercial corridors. In 2015, the Legislature passed HB 2126, and upon effect, OHCS filed temporary rules. HB 2126 made several changes, including expanding the definition of non-residential, and expanding eligible taxing districts that can opt out of the program to include all local taxing districts. OHCS is now filing these rules as permanent.

**Rules Coordinator:** Alison McIntosh

**Address:** Oregon Housing and Community Services Department, 725 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 986-2079

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## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** The amendments repeal and update rule language for Agent promotional activities.

Date:	Time:	Location:
4-18-16	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Bryant Haley

**Stat. Auth.:** ORS 471, 471.030, 471.040, 471.730(1) & (5) & 471.750

**Stats. Implemented:** ORS 471.750 & 471.752(2)

**Proposed Amendments:** 845-015-0155, 845-015-0175, 845-015-0177, 845-015-0190

**Proposed Repeals:** 845-015-0130

**Last Date for Comment:** 5-2-16, 5 p.m.

**Summary:** This package looks to update and simplify rule language for Agent promotional activities. Specifically;

- 845-015-0130 is repealed and consolidated into the other rule amendments.

- The amendments to 845-015-0155 and 845-015-0190 are house-keeping changes that update language by changing "sales agency" to "liquor store" and removing "sample" from tastings language.

- The amendments to 845-015-0175 clarify and update the advertising requirements for Retail Sales Agents.

- The amendments to 845-015-0177 adds clarifying definitions and processes for promotional activities and sweepstakes.

**Rules Coordinator:** Bryant Haley

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

**Telephone:** (503) 872-5136

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**Rule Caption:** The amendments and repeal align the rule with the statutory changes made in SB 583.

Date:	Time:	Location:
4-27-16	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Bryant Haley

**Stat. Auth.:** ORS 471, 471.030, 471.040, 471.186 & 471.730(1) & (5)

**Stats. Implemented:** ORS 471.155, 471.186, & 471.282, 471.305 & 473

**Proposed Amendments:** 845-005-0417, 845-006-0392, 845-006-0396

**Proposed Repeals:** 845-005-0420

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

**Summary:** Senate Bill 583 passed by the legislature has an effective date of January 1, 2016.

The amendments in the bill added to and revised the qualifications and requirements for the direct shipment of malt beverages, wine, and cider directly to a resident of Oregon.

The amendments and repeal align the rule with the statutory changes made in SB 583.

**Rules Coordinator:** Bryant Haley

# NOTICES OF PROPOSED RULEMAKING

**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222  
**Telephone:** (503) 872-5136

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**Oregon Public Employees Retirement System**  
**Chapter 459**

**Rule Caption:** Modify “effective date of withdrawal,” clarify items required to process a withdrawal, and housekeeping edits.

**Date:** 4-26-16      **Time:** 2:30 p.m.      **Location:** PERS Boardroom.  
11410 SW 68th Pkwy.  
Tigard, OR 97223

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238.650, 238A.450

**Stats. Implemented:** ORS 238A.120 & 238A.375, Ch. 52, OL 2007

**Proposed Amendments:** 459-005-0001, 459-075-0020, 459-080-0020

**Last Date for Comment:** 5-3-16, 5 p.m.

**Summary:** Modify “effective date of withdrawal” to reduce incidents of mandatory repayment, clarify items required to process a withdrawal, and housekeeping edit to “effective date of retirement” to include OPSRP Pension Program reference.

Provides that the “effective date of withdrawal” is the first day of the calendar month in which PERS receives a completed application from a member requesting a withdrawal, rather than the date that PERS receives the last completed required document.

Modifies withdrawal from OPSRP Pension Program - OAR 459-075-0020, to clarify that PERS will not process the withdrawal until PERS receives a completed withdrawal application, “proof of age,” and financial and demographic information from the employer indicating that the member has been terminated from PERS covered employment.

Provides notification that PERS may cancel a member’s request for withdrawal if required items are not received within specified number of days of original withdrawal application.

Housekeeping edits were made to replace the term “separation” with “termination.”

**Rules Coordinator:** Daniel Rivas

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

**Telephone:** (503) 603-7713

.....  
**Oregon Racing Commission**  
**Chapter 462**

**Rule Caption:** Amends annual tax rate percentage cap increase for Advance Deposit Wagering Company licensees.

**Date:** 4-21-16      **Time:** 11:30 a.m.      **Location:** PSOB-Rm. 1C  
800 NE Oregon St.  
Portland, OR 97232

**Hearing Officer:** Charles Williamson

**Stat. Auth.:** ORS 462.270(3) & 462.725

**Stats. Implemented:** ORS 462.270(3) & 462.725

**Proposed Amendments:** 462-220-0040

**Last Date for Comment:** 4-21-16, 11:30 a.m.

**Summary:** Amends rule to reflect future tax cap increase of 2.5% beginning fiscal year 2017–18 for Advanced Deposit Wagering Companies licensed in Oregon.

**Rules Coordinator:** Karen Parkman

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

**Telephone:** (971) 673-0208

**Oregon State Lottery**  
**Chapter 177**

**Rule Caption:** Clarifies use and completion of play slips

**Date:** 4-18-16      **Time:** 2 p.m.      **Location:** Oregon State Lottery  
500 Airport Rd. SE  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 461, 461.210 & 461.220

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

**Stats. Implemented:** ORS 461.210 & 461.220

**Proposed Amendments:** 177-070-0080, 177-085-0015

**Last Date for Comment:** 4-18-16, 2:30 p.m.

**Summary:** The Oregon Lottery has filed a Notice of Proposed Rule-making Hearing to amend the above two rules to clarify the use and completion of Lottery game play slips by deleting the requirement that play slips be hand marked only.

**Rules Coordinator:** Mark W. Hohlt

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

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

.....  
**Oregon Youth Authority**  
**Chapter 416**

**Rule Caption:** OYA is adopting and incorporating by reference the July 1, 2015, BRS Rate Table.

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

**Stats. Implemented:** ORS 420A.010 & 420A.014

**Proposed Amendments:** 416-335-0090

**Last Date for Comment:** 4-29-16, Close of Business

**Summary:** OYA is amending the date and content of the BRS Rate Table referenced in OAR 416-335-0090 to reflect current rates.

**Rules Coordinator:** Winifred Skinner

**Address:** Oregon Youth Authority, 530 Center St. NE, Suite 500, Salem, OR 97301

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

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

**Rule Caption:** In the Matter of Rulemaking to Adopt Federal Pipeline Safety Regulation Amendments.

**Stat. Auth.:** ORS Ch. 183, 756.040 & 757.039

**Stats. Implemented:** ORS 757.039

**Proposed Amendments:** 860-024-0020, 860-024-0021

**Last Date for Comment:** 4-22-16, 5 p.m.

**Summary:** The proposed rules adopt published US Department of Transportation (USDOT) amendments associated with the construction, operation and maintenance of intrastate gas pipelines and liquefied natural gas facilities. The amendments being adopted are from the Code of Federal Regulations, CFR Title 49, Part 192 (amendments through 119), Part 193 (amendments through 25), and Part 199 (amendments through 26).

Per ORS 757.039(3), the Commission has agreements with the USDOT to enforce federal pipeline safety regulations pertaining to pipeline facilities in Oregon. As a condition of those agreements, the Commission must annually certify to the USDOT that the Commission adopted or is in the process of adopting all current federal pipeline safety regulations applicable to intrastate gas pipelines and liquefied natural gas facilities. These rule amendments update the Oregon pipeline safety rules to be current with the federal gas pipeline safety regulations and to comply with USDOT certification requirements.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 596 on comments and file them as a Word or PDF document attached to an email addressed

# NOTICES OF PROPOSED RULEMAKING

to PUC.FilingCenter//apps.puc.state.or.us/edockets/docket.asp?DocketID=20018.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, PO Box 1088, Salem, OR 97308-1088

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

.....  
**Secretary of State,  
Archives Division  
Chapter 166**

**Rule Caption:** Amends, repeals and adopts new rules that address the management of electronic records

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-27-16	1-4p.m.	800 Summer St. NE, Large Conference Rm. Salem, OR 97310

**Hearing Officer:** Stephanie Clark

**Stat. Auth.:** ORS 192 & 357

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

**Proposed Adoptions:** 166-017-0005, 166-017-0015, 166-017-0025, 166-017-0035, 166-017-0045, 166-017-0055, 166-017-0065, 166-017-0075, 166-017-0085, 166-017-0090, 166-017-0095, 166-030-0019

**Proposed Amendments:** 166-017-0010

**Proposed Repeals:** 166-017-0020, 166-017-0030, 166-017-0040, 166-017-0050, 166-017-0060, 166-017-0070, 166-017-0080

**Last Date for Comment:** 4-29-16, 4 p.m.

**Summary:** Amends the definitions section of OAR 166 Division 17 to include terms that are used in the new adopted rules in this division. Adopts new rules that help to guide state agencies and local governments in the proper management of electronic records. Adopts new rule to require state agencies to submit written policies for consideration by the State Archivist. Repeals rules that are no longer technologically relevant.

**Rules Coordinator:** Julie Yamaka

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

**Telephone:** (503) 378-5199

.....  
**Secretary of State,  
Elections Division  
Chapter 165**

**Rule Caption:** Clarifies process of registering qualified individuals to vote using DMV data.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-22-16	10 a.m.	Oregon State Capitol 900 Court St., Hearing Rm. C Salem OR 97301

**Hearing Officer:** Robert Taylor

**Stat. Auth.:** ORS 247.017 & 246.150

**Stats. Implemented:** ORS 247.002, 247.012, 247.016, 247.171, 247.292 & 247.302

**Proposed Amendments:** 165-005-0170

**Last Date for Comment:** 4-29-16, 5 p.m.

**Summary:** The rule implements Oregon Laws 2015, chapter 8, which requires the Secretary to establish by rule, voter registration based on qualified individuals interactions with DMV. This rule amendment clarifies processes for registering and updating qualified individuals based on DMV information, and provides the schedule and process for the registration of individuals who interacted with DMV in 2014 and 2015.

**Rules Coordinator:** Brenda Bayes

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

**Telephone:** (503) 986-1518

.....  
**Southern Oregon University  
Chapter 573**

**Rule Caption:** Special Fees

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-29-16	3 p.m.	1250 Siskiyou Blvd. Ashland, OR 97520

**Hearing Officer:** Patti Eliot

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 351.070

**Proposed Amendments:** 573-040-0005

**Last Date for Comment:** 4-29-16, 5 p.m.

**Summary:** The proposed rule eliminates fees that are no longer necessary and establishes, increases, or decreases fees to more accurately reflect the actual cost of instruction for certain courses and special services not otherwise funded through the institution's operating budget.

**Rules Coordinator:** Treasa Sprague

**Address:** Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

**Telephone:** (541) 552-6319

.....  
**Rule Caption:** Parking Enforcement and Appeals

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 352.360

**Proposed Amendments:** 573-050-0010, 573-050-0025, 573-050-0030, 573-050-0035, 573-0050-0045

**Last Date for Comment:** 4-29-16, 4 p.m.

**Summary:** This amendment in division 50 edits language and adjusts parking fees.

**Rules Coordinator:** Treasa Sprague

**Address:** Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

**Telephone:** (541) 552-6319

# ADMINISTRATIVE RULES

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

**Rule Caption:** To amend rules related to registration and application for registration and to adopt one rule.

**Adm. Order No.:** BEELS 3-2016

**Filed with Sec. of State:** 2-16-2016

**Certified to be Effective:** 2-16-16

**Notice Publication Date:** 1-1-2016

**Rules Adopted:** 820-030-0005

**Rules Amended:** 820-010-0505, 820-015-0026, 820-020-0015, 820-020-0025, 820-020-0030, 820-020-0035, 820-040-0005

**Subject:** OAR 820-010-0505 and 820-015-0026 — Amendments remove language related to requesting a grace period to complete the continuing educational requirements.

OAR 820-020-0015, 820-020-0025, 820-020-0030, and 820-020-0035 — Amendments include applicants for registration or certification in the professional rules of conduct.

OAR 820-030-0005 and 820-040-0005 — Amendments include the definition of “professional service” as used in ORS 672.005.

**Rules Coordinator:** Jenn Gilbert—(503) 934-2107

### 820-010-0505

#### Biennial Renewal of Registration or Certification

(1) Registration as a professional engineer, professional land surveyor, or professional photogrammetrist with the Board is on a biennial renewal schedule. As a condition of registration renewal, registrants must demonstrate compliance with the continuing professional development requirements in OAR 820-010-0635. Verification of completing the required professional development requirements on the CPD Organizational Form and fee must be postmarked or hand delivered by 5:00 p.m. on the day of the expiration date of the registration. The biennial fee to renew a registration is described below:

- (a) Professional Engineer — \$150.00;
- (b) Professional Land Surveyor — \$150.00;
- (c) Professional Photogrammetrist — \$150.00;

(2) Certification as a certified water right examiner is on a biennial renewal schedule. The fee must be postmarked or hand delivered by 5:00 p.m. on the day of the expiration date of the certification. The biennial fee to renew a certification as a water right examiner is \$40.00

(3) A delinquent fee of \$80.00 will be assessed on the first day following the expiration date of each registration or certification, if for each biennial renewal period in which renewal fee payment or verification of having timely completed the required continuing professional development hours has not been submitted.

(a) A registration or certification that is delinquent for failure to pay the renewal fee will remain in “delinquent” status until the delinquent fee, in addition to the required renewal fee, is paid.

(b) A registration or certification that is delinquent for failure to submit verification of having timely completed the required continuing professional development hours, when such hours have been completed, will remain in “delinquent” status until the delinquent fee is paid and the verification is submitted.

(c) A registration or certification that is suspended or for which renewal is refused because of failure to complete the required continuing professional development hours cannot be returned to active status or renewed until any delinquent fees and any biennial renewal fees due are paid, in addition to any conditions imposed by the Board for renewal or lifting of the suspension.

(4) Registrations or certificates in the delinquent or retired status for a period of 5 years or more may not be renewed. Delinquent or retired registrants or certificate holders must re-apply and re-take any applicable examination to obtain their certificate of registration or other certificate after a period of 5 years.

Stat. Auth.: ORS 670.310, 672.168, 672.170, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2011, f. & cert. ef. 1-14-11; BEELS 1-2012(Temp), f. & cert. ef. 3-16-12 thru 5-15-12; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 1-2015, f. & cert. ef. 2-3-15; BEELS 2-2015, f. & cert. ef. 5-21-15; BEELS 7-2015, f. & cert. ef. 9-16-15; BEELS 3-2016, f. & cert. ef. 2-16-16

### 820-015-0026

#### Failure to Comply with Continuing Professional Development Requirements

Any registrant who fails to satisfy the Continuing Professional Development requirements in OAR 820-010-0635 will be subject to suspension of or refusal to renew the registrant’s license. Failure to satisfy the Continuing Professional Development requirements will not be the sole basis for license revocation.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2000, f. & cert. ef. 2-17-00; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 1-2013, f. & cert. ef. 3-13-13; BEELS 1-2015, f. & cert. ef. 2-3-15; BEELS 3-2016, f. & cert. ef. 2-16-16

### 820-020-0015

#### Registrants or Applicants for Registration or Certification Shall Hold Paramount the Safety, Health and Welfare of the Public in the Performance of their Professional Duties

(1) Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.

(2) Registrants shall approve and seal only those design documents and surveys which are safe for public health, property and welfare in conformity with accepted engineering and land surveying standards.

(3) Registrants shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client, or employer except as authorized or required by law.

(4) Registrants shall not permit the use of their name or firm name nor associate in business ventures with any person or firm which they have reason to believe is engaging in fraudulent or dishonest business or professional practices.

(5) Registrants or applicants for registration or certification having knowledge of any alleged violation of any of these Rules of Professional Conduct, shall cooperate with the Board in furnishing such information or assistance as may be required.

(6) Conviction of a felony without restoration of civil rights, or the revocation or suspension of the license of a registrant in another jurisdiction, if for a cause which in the State of Oregon would constitute a violation of ORS 672.020 to 672.310 or of these rules, shall be grounds for a charge of violation of these rules.

(7) Registrants shall continue their professional development throughout their careers; and they shall provide opportunities for the professional development of individuals under their supervision. The Board may require, as a condition for license renewal, that registrants provide documentation to support actions taken to maintain their professional competency.

(8) Registrants or applicants for registration or certification shall cooperate with the Board on all matter subject to the Board’s jurisdiction.

(9) Registrants must apply a seal of the type, kind, size and wording, and affix their signature as required by OAR 820-010-0620.

(10) Registrants must affix a seal and sign any final document prepared under their supervision and control. Any document not clearly marked as a preliminary document under OAR 820-010-0621(2) is a final document that must bear the seal and signature of the registrant under whose supervision and control the document was prepared.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1981, f. 5-19-81, ef. 6-1-81; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 2-2007, f. & cert. ef. 4-5-07; BEELS 3-2016, f. & cert. ef. 2-16-16

### 820-020-0025

#### Obligation of Registrants and Applicants to Issue Statements only in an Objective and Truthful Manner

(1) Registrants and applicants must be objective and truthful and include all relevant and pertinent information in all professional reports, statements or testimony, applications for registration and enrollment as an intern, and references on applications for registration and enrollment.

(2) Registrants may express a professional opinion on technical subjects only when that opinion is founded upon adequate knowledge of the facts and the registrant is competent in the subject matter.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1981, f. 5-19-81, ef. 6-1-81; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 3-2016, f. & cert. ef. 2-16-16

# ADMINISTRATIVE RULES

## 820-020-0030

### Obligation of Registrants and Applicants to Act in Professional Matters for Each Employer or Client as Faithful Agents or Trustees, and to Avoid Conflicts of Interest

(1) For purposes of this section, "applicant" means an applicant who is registered in another jurisdiction.

(2) Registrants and applicants for registration or certification must disclose all known or potential conflicts of interest to their employers or clients by promptly informing them, in writing, of any business association, interest, or other circumstances that could influence their judgment or the quality of their services. For purposes of this rule, a "conflict of interest" includes, but is not limited to, an interest in any property or any other thing of value that is related in any way to or potentially affected by the services that the registrant provides.

(3) A registrant or applicant for registration or certification may not accept any item of value, including any forgiveness of debt, directly or indirectly, from a person other than the individual's employer or client for services offered or performed for the employer or client, unless the individual makes full written disclosure and the individual employer or client consents in writing.

(4) A registrant or applicant for registration or certification who is a member, advisor or employee of a governmental body shall not participate in decisions made by that governmental body with respect to professional services solicited from or provided by that individual or a business or firm that employs the individual or in which the individual holds an ownership interest and through which the individual offers or provides professional services.

(5) A registrant or applicant for registration or certification may not solicit or accept employment or a contract for professional services from a governmental body for which that individual's associate is a member or officer unless the individual discloses all pertinent facts and circumstances of the individual's relationship to the individual's associate and the governmental body provides written consent. For purposes of this rule, an "individual's associate" refers to an individual's employer or an owner or officer of a business or firm that employs the individual or in which the individual holds an ownership interest and through which the individual offers or provides professional services.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1981, f. 5-19-81, ef. 6-1-81; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 3-2016, f. & cert. ef. 2-16-16

## 820-020-0035

### Obligation of Applicants or Registrants to Avoid Improper Solicitation of Professional Employment

(1) An applicant or registrant may not falsify or permit misrepresentation of the academic or professional qualifications of the applicant or registrant, another registrant, or a registrant's associate. For purposes of this rule, a "registrant's associate" refers to a registrant's employer or an owner or officer of a business or firm that employs the registrant or in which the registrant holds an ownership interest and through which the registrant offers or provides professional services.

(2) An applicant or registrant may not misrepresent or exaggerate the responsibility for performance of prior assignments by the applicant or registrant, by any other registrant, or by a registrant's associate.

(3) An applicant who is registered in another jurisdiction or a registrant may not offer, give, solicit or receive, either directly or indirectly, any commission or gift or other valuable consideration in order to secure work.

(4) An applicant who is registered in another jurisdiction or a registrant may not make any political contribution intended to influence the award of a contract by a governmental body.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1981, f. 5-19-81, ef. 6-1-81; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 3-2016, f. & cert. ef. 2-16-16

## 820-030-0005

### Definitions

"Professional service" or "professional services," as used in ORS 672.005, means providing labor that does not produce a tangible commodity, but that requires a high level of training and proficiency.

Stat. Auth.: ORS 670.310, 672.005 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2016, f. & cert. ef. 2-16-16

## 820-040-0005

### Definitions

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

(1) As used in ORS 672.060(10) and 672.107(1)(a)(B), "Ground Area" is defined as any projected or suspended occupied areas above the ground level in combination with areas in contact with the ground. Measurements in determining the ground area shall be taken from outside wall to outside wall and include the sum of the areas of all additions and the area of the original structure. The ground area of a building, or portion thereof, not provided with surrounding exterior walls is the usable area under the horizontal projection of the roof or floor above.

(2) As used in ORS 672.060(11) and 672.107(1)(a)(B), "Height" is measured from the top surface of the lowest flooring to the highest interior overhead finish of the structure in determining whether a building exceeds the 20-foot height limitation. A basement floor is considered the lowest flooring when useable (i.e., storage, garage, etc.)

(3) As used in ORS 672.107(1)(a)(D), the height of a structure is defined as the vertical dimension from the average ground level to the average roof height for sloped roofs or parapet height for flat roofs. In multi-level structures, utilize the upper roof only to determine the dimension.

(4) As used in ORS 672.060(10) and (11), "Appurtenance" means a separate structure that:

(a) Is subordinate to a single family residential dwelling, farm building, or building less than 4,000 square feet in ground area or 20 feet in height;

(b) Is itself no greater than 4,000 square feet in floor area; and,

(c) Is located on the same lot as the structure to which it is subordinate.

(d) "Appurtenance" includes but is not limited to:

(A) A retaining wall less than four feet in height, with level backfill, and not supporting any structure;

(B) Signage less than 15 feet in height and 50 square feet;

(C) Fences less than 12 feet in height;

(D) A carport, cabana, playhouse, or garden structure, no more than 20 feet in height and with vertical and horizontal structural elements primarily formed by a system of conventional, repetitive, wood or cold-formed steel framing members, and a maximum roof span of 30 linear feet. For the purposes of this subsection, "Height" is measured from the top surface of the lowest flooring to the highest interior overhead finish of the structure in determining whether a building exceeds the 20-foot height limitation. A basement floor is considered the lowest flooring when useable (e.g., for storage, living space, appliances, etc.)

(e) "Appurtenance" does not include a single family residential dwelling, farm building, or building less than 4,000 square feet in ground area or 20 feet in height.

(5) "Professional service" or "professional services," as used in ORS 672.005, means providing labor that does not produce a tangible commodity, but that requires a high level of training and proficiency.

Stat. Auth.: ORS 670.310, 672.060, 672.107 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 4-2005, f. & cert. ef. 9-23-05; BEELS 1-2009, f. & cert. ef. 5-15-09; BEELS 8-2015, f. & cert. ef. 11-13-15; BEELS 3-2016, f. & cert. ef. 2-16-16

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**Rule Caption:** To amend OAR 820-010-4000 to be consistent with the requirement in ORS 672.107.

**Adm. Order No.:** BEELS 4-2016(Temp)

**Filed with Sec. of State:** 3-15-2016

**Certified to be Effective:** 3-15-16 thru 9-10-16

**Notice Publication Date:**

**Rules Amended:** 820-010-4000

**Subject:** The amendment to OAR 820-010-4000 clarifies that successful passage of the NCEES 16-hour Structural Examination, buildings module is required for registration as a structural engineer.

**Rules Coordinator:** Jenn Gilbert—(503) 934-2107

## 820-010-4000

### Qualifications for Registration as a Structural Engineer

In order to qualify for registration as a Professional Structural Engineer in Oregon, an applicant for registration must provide all of the following:

(1) Evidence satisfactory to the Board of active Oregon registration as a Professional Engineer, in good standing.

# ADMINISTRATIVE RULES

(2) Evidence satisfactory to the Board of passing or having passed the NCEES 16-hour Structural Examination.

(3) Evidence satisfactory to the Board of having obtained two years of structural engineering experience, verified by a registered Structural Engineer in a jurisdiction with NCEES membership.

(4) A single application packet, which must include all of the following:

(a) A completed Registration Application form.  
(b) The Board will verify that the Applicant holds active registration as an Oregon professional engineer, in good standing.

(c) Official verification of successful passage of the NCEES 16-hour Structural Examination, Buildings Modules. This paragraph of subsection (4) of this rule is effective as of June 25, 2015.

**NOTE:** The 16-hour Structural examinations are written and scored by the NCEES and administered by NCEES Exam Administration Services. Consult NCEES for examination dates, times, locations, cost, and details

(d) A completed Experience Details form describing active practice in structural engineering work, as defined in OAR 820-040-0020.

(e) Five references from individuals with knowledge of the Applicant's structural engineering work:

(A) All five references must attest to the Applicant's ability, professional experience, or both. All five references must complete the Reference Details form provided by the Board and submit the completed Reference Details form directly to the Applicant, in a closed and sealed envelope, signed across the sealed flap by the reference.

(B) At least three of the five references must hold active Structural Engineer registration in a jurisdiction with NCEES membership.

(C) The Board may, for good cause and upon written application, reduce the number of references required for an Applicant.

(f) For Applicants holding registration in another jurisdiction, in lieu of providing the items listed under (b) to (e) of this subsection, the Applicant may release the Applicant's NCEES Record, if any, to the Board.

**NOTE:** See <http://ncees.org/records/>

(g) For Applicants holding structural registration in another jurisdiction references on file with the Board may be used.

(h) Any and all professional disciplinary records of the Applicant, including but not limited to final orders, letters of reprimand, stipulations, and settlement agreements.

(i) The required application and wall certificate fees.

Stat. Auth.: ORS 670.310, 672.107, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 5-2015(Temp), f. & cert. ef. 8-19-15 thru 2-12-16; BEELS 8-2015, f. & cert. ef. 11-13-15; BEELS 4-2016(Temp), f. & cert. ef. 3-15-16 thru 9-10-16

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## Board of Licensed Social Workers Chapter 877

**Rule Caption:** Amends rules to allow board to accept degrees issued by programs in accreditation candidacy.

**Adm. Order No.:** BLSW 1-2016(Temp)

**Filed with Sec. of State:** 3-14-2016

**Certified to be Effective:** 3-14-16 thru 9-9-16

**Notice Publication Date:**

**Rules Amended:** 877-020-0009, 877-015-0108

**Subject:** The amendments will allow the Board of Licensed Social Workers to accept master level degrees from a college or university that is in candidacy for accreditation by an accrediting organization recognized by the Board. The Board's existing authority to accept baccalaureate degrees from programs in accreditation candidacy will continue unchanged. The board currently recognizes colleges and universities that are accredited by the Council on Social Work Education (CSWE) or Canadian Association of Schools of Social Work (CASSW).

**Rules Coordinator:** Randy Harnisch—(503) 373-1163

### 877-020-0009

#### Requirements for Certificate of Clinical Social Work Associate

To be eligible for a certificate of clinical social work associate, a person must:

(1) Submit a complete and accurate application on a form provided by the board.

(2) Hold a master's degree in social work from a college or university accredited by or considered in candidacy status by a credentialing body recognized by the board. The Council on Social Work Education and the Canadian Association for Social Work Education are recognized by the Board. The Board accepts determinations of equivalency of foreign degrees

by the Council on Social Work Education's International Social Work Degree Recognition and Evaluation Service. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant.

(3) Meet the fitness requirements of OAR 877-020-0008(2).

(4) Submit to the board for approval and, following approval, satisfactorily work toward completing an approved plan of practice and supervision that:

(a) Shows that the person will meet the requirements in OAR 877-020-0010(3) while working in an agency that:

(A) Provides the associate with sufficient support to progress toward licensure;

(B) Screens patients who are served by the agency and by the associate; and

(C) Either:

(i) Is licensed by the Oregon Department of Human Services; or

(ii) If not required to be licensed by the Oregon Department of Human Services, is in compliance with the requirements to conduct business in Oregon.

(b) Requires a minimum of 3,500 practice hours of which at least 2,000 hours must involve direct contact with a client of the agency.

(c) Provides for all clinical social work practice by the associate to be supervised and that supervision of the associate meets the requirements of OAR 877-020-0012.

(d) Provides that the associate meet with the plan supervisor for a minimum of one hour not fewer than two times a month. This requirement of the supervision is not met through a training or administrative activity. The associate may meet alone with the supervisor (individual supervision) or may meet with the supervisor and as many as four other mental health professionals (group supervision).

Stat. Auth.: ORS 675.510 – 675.600 & 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2016(Temp), f. & cert. ef. 3-14-16 thru 9-9-16

### 877-015-0108

#### Eligibility Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) In the case of an application submitted to the board by a Clinical Social Work Associate who applies for Licensed Master's Social Worker licensure after having completed 75 hours of supervision required in OAR 877-020-0010(3)(b)(A), the requirement in section (5)(b) of this rule to pass a test is not applicable.

Stat. Auth: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)  
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994 & 675.150  
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2016(Temp), f. & cert. ef. 3-14-16 thru 9-9-16

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## Board of Nursing Chapter 851

**Rule Caption:** Clarifies renewal requirements for State Certification for Nurse Practitioners

**Adm. Order No.:** BN 1-2016

**Filed with Sec. of State:** 3-7-2016

**Certified to be Effective:** 4-1-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 851-050-0138

**Subject:** Updating the criteria for renewal of NP State Certification based on updates that have been previously amended and adopted in OAR 851-050-0142 and 851-056-0014.

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

### 851-050-0138

#### Renewal of Nurse Practitioner State Certification

(1) Renewal of state certification shall be on the same schedule as the renewal system of the registered nurse license. The requirements for recertification are:

(a) Active license as a registered nurse in the state of Oregon.

(b) Submission of all required application fees. Fees are not refundable. An application that has not been completed during the current biennial renewal cycle shall be considered void.

(c) Completion of continuing education hours in one of the following ways:

(A) Maintaining active, unencumbered national certification for specialty role as required by applicable licensure and attest to completion of continuing education required for maintaining national certification; or

(B) 45 structured contact hours of continuing education completed in the two years prior to renewal of their license. At least 15 of the completed CE hours must be in pharmacotherapeutic content at the NP level congruent with their specialty role.

(d) Persons initially certified on or after January 1, 2011 shall provide verification of current national Board certification in a role and population focus congruent with educational preparation and current Oregon nurse practitioner certification.

(e) Verification of practice hours which meet the practice requirement in OAR 851-050-0004.

(f) Verification of utilization of prescriptive authority which meets the requirements specified in OAR 851-056-0014 unless already certified as an Oregon Nurse Practitioner without prescriptive authority.

(2) Nurse practitioners shall maintain accurate documentation and records of any claimed continuing education and practice hours for no less than five years from the date of submission to the Board.

(3) Renewal shall be denied if the applicant does not meet the practice, prescribing, or continuing education requirement for renewal.

(4) Applications for renewal up to 60 days past the expiration date shall meet all requirements for renewal and pay a delinquent fee.

(5) Any individual whose nurse practitioner certification is expired may not practice or represent themselves as a nurse practitioner in Oregon until certification is complete, subject to civil penalty.

(6) Any individual initially licensed after January 1, 2011, whose nurse practitioner national certification is expired may not practice or represent themselves as a nurse practitioner in Oregon regardless of state certification subject to civil penalty.

Stat. Auth.: ORS 678.375 & 678.380  
Stats. Implemented: ORS 678.380  
Hist.: NER 34, f. & ef. 10-1-76; NER 5-1981, f. & ef. 11-24-81; NER 8-1985, f. & ef. 12-9-85; NB 3-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0310; NB 2-1992, f. & cert. ef. 2-13-92; NB 8-1993, f. & cert. ef. 8-23-93; NB 7-1996, f. & cert. ef. 10-29-96; BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06; BN 7-2008, f. & cert. ef. 11-26-08; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10; BN 3-2010(Temp), f. & cert. ef. 4-19-10 thru 10-15-10; BN 13-2010, f. & cert. ef. 9-30-10; BN 6-2013, f. 5-6-13, cert. ef. 6-1-13; BN 5-2015(Temp), f. & cert. ef. 11-24-15 thru 4-30-16; BN 1-2016, f. 3-7-16, cert. ef. 4-1-16

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**Rule Caption:** Regarding APRN authority to dispense for nurse practitioners and clinical nurse specialists

**Adm. Order No.:** BN 2-2016

**Filed with Sec. of State:** 3-7-2016

**Certified to be Effective:** 4-1-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 851-056-0000, 851-056-0020

**Subject:** "Advanced Practice Registered Nurse Prescriptive and Dispensing Authority in Oregon" (the "Handbook") has been updated to the "Prescriptive and Dispensing Authority in Oregon: For Advanced Practice Registered Nurses." This Handbook has been approved by both the Oregon Board of Pharmacy and Board of Nursing regarding prescription drug dispensing program (pursuant to ORS 678.390(3)(a)). Adoption of rule amendment allows for use of this Handbook for purposes of education and attestation of dispensing training program.

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

### 851-056-0000

#### Definitions

(1) "Addiction" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include one or more of the following: impaired control over drug use, compulsive use, continued use despite harm, and craving. Neither physical dependence nor tolerance alone, as defined by these rules, constitutes addiction.

(2) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject.

(3) "Advanced Practice Registered Nurse (APRN)" means a clinical nurse specialist, certified registered nurse anesthetist, or nurse practitioner licensed or state certified by the Board.

(4) "Assessment" means a process of collecting information regarding a client's health status including, but not limited to, illness, response to illness, health risks of individuals, families and groups, resources, strengths and weaknesses, coping behaviors, and the environment. The skills employed during the assessment process may include, but are not limited to, obtaining client histories, conducting physical examinations, and ordering, interpreting, and conducting a broad range of diagnostic procedures (e.g., laboratory studies, EKGs, and X-rays).

(5) "Client(s) or patient(s)" means a family, group or individual who has been assessed by and has a client or patient record established by the clinical nurse specialist or nurse practitioner.

(6) "Clinical education in patient management and pharmacotherapeutics" means a set of structured learning activities, including but not limited to, supervised clinical practice in the pharmacological management of individual clients, as well as other learning activities to promote understanding of pharmacological interventions congruent with the role and population sought for prescriptive authority.

(7) "Compounded Drug" means a combination preparation of the active ingredients of which are components of an FDA approved drug, or a

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drug which is still in common usage and predates the FDA approval process.

(8) “Diagnosis” means identification of actual or potential health problems or need for intervention based on analysis of the data collected.

(9) “Differential diagnosis” means the process of determining a medical diagnosis from among similar diseases and conditions based upon collection and analysis of clinical data.

(10) “Discrete pharmacology course” means an advanced pharmacology course with pharmacologically specific requirements, objectives, and content, which is offered for academic or continuing education credit, and is not integrated into other coursework

(11) “Dispensing authority” means to prepare and deliver substances to the client provided the authority is exercised in compliance with applicable federal and state laws.

(12) “Distribute” means the delivery of a drug other than by administering or dispensing, such as prepackaged samples.

(13) “Functional impairment” means:

(a) Practicing nursing when unable or unfit to perform procedures and/or make decisions due to physical impairment as evidenced by documented deterioration of functioning in the practice setting and/or by assessment of a health care provider qualified to diagnose physical condition or status.

(b) Practicing nursing when unable or unfit to perform procedures and/or make decisions due to psychological or mental impairment as evidenced by documented deterioration of functioning in the practice setting, and/or by the assessment of a health care provider qualified to diagnose mental condition or status.

(c) Practicing nursing when physical or mental ability to practice is impaired by use of drugs, alcohol, or mind-altering substances.

(14) “Legend Drug” means:

(a) A drug which is required by federal law, prior to being dispensed or delivered, to be labeled with the following statement: “Caution: federal law prohibits dispensing without a prescription” or

(b) A drug which is required by any applicable federal or state law or regulation to be dispensed by prescription only or restricted to use by practitioners only.

(15) “Non-Traditional Dispensing” means using automation, such as vending machines, dispensing drugs for therapies greater than 72 hour supply and providing refills at the point of care. This level of dispensing requires registration with the Oregon Board of Pharmacy. APRNs registered with the Oregon Board of Pharmacy will be subject to annual fees, inspections, and compliance standards.

(16) “Off Label” means the use of an FDA approved drug for other than FDA approved indications or dosing.

(17) “Orphan Drug” means a drug which has received orphan status from the US Food and Drug Administration because it targets a disease which affects less than 200,000 persons in the US.

(18) “Pain” means an unpleasant sensory and emotional experience related to adverse nociceptive or neuropathic stimuli. It may also be idiopathic in nature.

(a) “Acute pain” is brief and responds to timely intervention or subsides as healing takes place. Inadequate treatment may delay recovery. Such pain responds to anti-inflammatory and opioid medications, as well as to other approaches.

(b) “Chronic pain” is ongoing or frequently recurring and may become unresponsive to intervention over time.

(c) “Intractable pain” means a pain state in which the cause cannot be removed or otherwise treated and no relief or cure has been found after reasonable efforts.

(19) “Pharmacodynamics” means the study of the biochemical and physiologic effects of drugs and their mechanism of action.

(20) “Pharmacokinetics” means the action of drugs in the body over a period of time.

(21) “Pharmacotherapeutics” means the study of the uses of drugs in the treatment of disease.

(22) “Pharmacogenomics” means the study of the relationship between a specific person’s genetic makeup and his or her response to drug treatment.

(23) “Physical dependence” means the physiologic adaptation to the presence of a medication characterized by withdrawal when its use is stopped abruptly.

(24) “Prescribe” means a written, verbal, or electronic legal directive to procure or designate for use legend drugs or controlled substances. Additionally, a prescription may be issued or required for use of over-the-counter medications.

(25) “Prescribing authority” means the legal permission to determine which drugs and controlled substances shall be used by or administered to a client.

(26) “Specialty” means the defined area of expertise such as that provided by academic education, clinical training, and may include additional legal or professional credentialing mechanisms.

(27) “Structured contact hours” means Continuing Medical Education (CME), or Continuing Education Unit (CEU) and other activities for which you receive academic or continuing education credit as evidenced by certificate or transcript.

(28) “Target audience” means a population for whom an educational program is designed.

(29) “Therapeutic device” means an instrument or an apparatus intended for use in diagnosis or treatment and in the prevention of disease or maintenance or restoration of health.

(30) “Traditional Dispensing” means the labeling and distribution of a medication to the client, which is pre-packaged by a manufacturer registered with the Oregon Board of Pharmacy or repackaged by a pharmacist licensed with the Oregon Board of Pharmacy.

(31) “Tolerance” means the physiologic adaptation to a controlled substance over time, resulting in the need to increase the dose to achieve the same effect, or in a reduction of response with repeated administration.

Stat. Auth.: ORS 678.150 & 678.285

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 3-2011, f. & cert. ef. 10-6-11; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15; BN 6-2015(Temp), f. & cert. ef. 11-30-15 thru 4-30-16; BN 2-2016, f. 3-7-16, f. & cert. ef. 4-1-16

## 851-056-0020

### Dispensing Authority for Nurse Practitioners and Clinical Nurse Specialists

(1) Dispensing authority may be issued to Oregon state certified nurse practitioner or clinical nurse specialist with prescriptive authority in good standing with the Oregon State Board of Nursing.

(2) Certificate holder shall submit an application as required by the Board and attest to understanding all of information contained within the most recent publication of “Prescriptive and Dispensing Authority in Oregon: For Advanced Practice Registered Nurses” from the Board, pursuant to ORS.678.390(3)(a).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 678.390

Stats. Implemented: ORS 678.670, 678.375, 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 12-2013, f. 12-3-13, cert. ef. 1-1-14; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15; BN 6-2015(Temp), f. & cert. ef. 11-30-15 thru 4-30-16; BN 2-2016, f. 3-7-16, f. & cert. ef. 4-1-16

## Board of Optometry Chapter 852

**Rule Caption:** CE reporting changes, fee changes, and other miscellaneous.

**Adm. Order No.:** OPT 1-2016

**Filed with Sec. of State:** 2-23-2016

**Certified to be Effective:** 4-1-16

**Notice Publication Date:** 1-1-2016

**Rules Adopted:** 852-070-0037, 852-070-0047

**Rules Amended:** 852-010-0015, 852-010-0080, 852-050-0006, 852-050-0014, 852-050-0018, 852-050-0025, 852-070-0010, 852-070-0020, 852-070-0035

**Subject:** Division 10 — update fees to reflect new late fees for renewal and lapse in CPR certification. Adds penalties for failure to meet CE audit requirements. Adds fees for conducting national background checks.

Division 50 — add option for online renewal, attestation for CE and CPR certification. Also adds requirement for fingerprints at reinstatement for national background check. Requests licensees to submit an official email address for Board communications.

Division 70 — Adds credit for publication of an article or paper when licensee is first or second author. Gives credit for teaching at a health care institution or accredited optometry school or university. Allows licensees to certify meeting the CE and CPR requirements and adds an audit requiring original documentation to verify CE completion. Defines how to request CE credit.

**Rules Coordinator:** Shelley Sneed—(503) 399-0662, ext. 3



# ADMINISTRATIVE RULES

## 852-010-0015

### Application for Examination and Licensure

(1) Each applicant must meet educational qualifications and must comply with the requirements of ORS 683.040 before the applicant will be accepted for examination and licensure.

(2) Applications for licensure as an optometric physician in Oregon must be directed to the office of the Board.

(3) The application is complete upon receipt by the Board of:

(a) A signed application form;

(b) A copy of the official final transcript from an accredited college of optometry indicating receipt of the doctor of optometry degree;

(c) A copy of the record establishing satisfactory completion of a course in pharmacology as it applies to optometry from an institution approved under ORS 683.040(2) when applicable;

(d) Verification of the passage of the examination of the National Board of Examiners in Optometry (NBEO);

(e) Receipt by the Board's office of the application fee and criminal background check fee as listed in OAR 852-010-0080;

(f) Written confirmation sent directly from the licensing entity of each other state in which the candidate has ever been licensed that the candidate for licensure has not been sanctioned for violating the laws, rules and standards of ethics of that jurisdiction;

(g) Documentation of completion of the required continuing optometric education;

(h) Documentation of current CPR certification, as required in OAR 852-080-0040;

(i) Proof of meeting the requirements of OAR 852 division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI);

(j) Proof of passage of the Oregon optometric law and administrative rules examination; and

(k) Satisfactory results of a criminal records background check as defined in OAR 852-050-0025.

(4) Any application received from an optometrist who has been sanctioned by another optometric licensing jurisdiction is individually reviewed and considered by the Board.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.140, 683.060, 683.270 & 182.466

Hist.: OE 2, f. 12-5-57; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1994, f. & cert. ef. 7-22-94; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-010-0080

### Schedule of Fees

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

(1) Active license:

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

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

(c) Failure to meet renewal date: Late renewal fee — \$50 first failure, \$100 second failure, \$200 any subsequent failure in a seven-year period.

(d) Lapse in CPR certification during licensing period — \$50, \$100 second failure, \$200 any subsequent failure in a seven-year period.

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

(2) The agency assesses civil penalties for violations of ORS 683.010 to 683.310 and 676.110 to 676.220 and OAR chapter 852, some of which may be settled per the terms of a settlement agreement, consent order or stipulated order. Penalties not listed here will be assessed by the Board on a per case basis.

(a) Failure to respond to a Continuing Education audit within 21 days — \$250.

(b) Failure to complete or document meeting Continuing Education requirements by the due date — \$500 plus license suspension if overdue 60 days or more.

(3) Inactive License:

(a) Annual renewal — \$98.

(b) Late renewal fee — \$15.

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

(4) Application for Licensure:

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

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

(c) Application for TPA Certification — \$75.

(d) Law and Administrative Rule Examination administered by the Board — \$75.

(5) Other fees:

(a) Written official license verification — \$20.

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

(c) Reactivation of license — \$100.

(d) Reinstatement of license — \$100.

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

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

(g) Applicant or licensee must pay to the Board the cost of conducting the state and federal background check. The cost is \$45 and due with the application fee or when requested by the Board.

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

Stat. Auth.: ORS 683, 182 & 431

Stats. Implemented: ORS 683.270, 182.466 & 431.972

Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 2-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 2-2015, f. & cert. ef. 11-12-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-050-0006

### Annual Renewal of Active License

(1) Active licensees must annually renew their license to practice optometry:

(a) Annual license-year renewal periods are established by the Board based upon birth dates of licensees;

(b) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(2) Complete license renewal applications are due on the first day of the month of license expiration (month of licensee's birth date) and must be received in the Board's office or be postmarked to the Board's mailing address or successfully submitted via the Board's online system, on or before the due date.

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Payment for the correct license renewal fee(s);

(c) Completion of the required continuing optometric education reporting form and attestation of meeting the continuing education requirements; and

(d) Attestation of continuous CPR certification, as required in OAR 852-80-0040.

(4) The Board, as a courtesy, mails or emails annual license renewal notices to the licensee's current reported address or email address of record. However, it is the licensee's responsibility to ensure timely renewal; failure to receive notice does not relieve the licensee of the responsibility to timely renew

(5) A licensee who is not more than 30 days late in renewing the license may renew upon payment to the Board of the required late fee. If a licensee is more than 30 days late, the license is automatically suspended upon 30-day notice sent to the licensee via certified mail, as required by ORS 683.120(2).

(6) If a licensee is more than 60 days late in renewing the license, the licensee may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement.

(7) Of the annual license renewal fee listed in OAR 852-010-0080, the Board is required by ORS 431.972 to collect an additional annual fee from each optometry licensee for the Electronic Prescription Drug Monitoring Fund, which is remitted to the Oregon Health Authority.

(8) In any seven-year period, any licensee whose complete license renewal and fee is not received or postmarked by the first day of the month

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of license expiration is subject to a late payment fee listed in OAR 852-010-0080, which must be received before the license will be issued.

(9) Any licensee whose Board-required CPR certification lapsed at any time during the licensing period is subject to a lapsed CPR fee as listed in OAR 852-010-0080, which must be received before the license will be issued.

Stat. Auth.: ORS 683, 182 & 431  
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 431.972  
Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 5-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-050-0014

### Reinstatement of License

(1) A person who has been previously licensed by the Board may have the license reinstated to its former status if the person:

(a) Voluntarily surrendered the license to the Board and, at the time of surrender, was in good standing and not surrendering in lieu of discipline or under notice for proposed disciplinary action, or subject to a final order of the Board, or

(b) The license was suspended due to nonpayment of the license renewal fee or late fee and, at the time of suspension, the licensee was not surrendering in lieu of discipline or under notice for proposed disciplinary action, or subject to a final order of the Board.

(2) To reinstate an Oregon Optometry license an optometric physician must:

(a) Submit a signed written request;

(b) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank for adverse actions on each person making an application for licensure;

(c) Pass any required criminal background check;

(d) Pay delinquent fees as determined by the Board;

(e) Pay the reinstatement fee as listed in OAR 852-010-0080; and

(f) Submit documentation of current CPR certification, as required in OAR 852-80-0040;

(g) Submit a complete set of fingerprints obtained from any state or local law enforcement agency, or from any other agency approved by the Board. Applicants shall use forms prescribed by the Board and pay any required fees.

(h) The requirements in (2)(b), (2)(c), (2)(e), and (2)(g) above may be waived by the Board if the license is not more than 60 days expired.

(3) Reinstatement of a license to active status also requires:

(a) Submission of a completed Reactivation Application form;

(b) Passage of the Oregon optometric law and administrative rules examination if it has been more than two years since the person held an active status license in Oregon; and

(c) Submission of proof of continuing education equivalent to Oregon requirements for the previous license renewal period.

Stat. Auth.: ORS 683 & 182  
Stats. Implemented: ORS 683.070, 683.120, 683.270 & 182.466  
Hist.: OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-050-0018

### Official Address, Email address and Telephone Number of Record

(1) Each actively licensed optometric physician must notify the Board in writing of the licensee's primary practice location, which is recorded by the Board as the official address of record. All correspondence from the Board will be sent to the official address of record unless the licensee requests in writing that an alternate mailing address be used. Active licensees who do not have a primary practice location may provide the Board with a mailing address.

(2) Each inactive licensee must notify the Board in writing of a mailing address.

(3) Post office boxes are not acceptable as a mailing address unless a street address is included with it and it is able to receive certified mail and return receipts.

(4) Each licensee (active or inactive) must provide a telephone number of record to the Board, which by default is disclosable to the public. Upon written request, the Board will hold the telephone number of record of a licensee confidential if it is a personal number not associated with a business.

(5) Failure to notify the Board in writing of a change in the licensee's official address or telephone phone number of record may subject the licensee to disciplinary action and a fee as listed in OAR 852-010-0080.

(6) Licensees are requested to submit an official email address for Board communications. Licensees have the ability to opt out of email communications with the agency and continue to receive written information via U.S. mail.

Stat. Auth.: ORS 683 & 182  
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466  
Hist.: OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-050-0025

### State Criminal Records Check and Fitness Determination

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees to determine if they have a history of criminal behavior such that they are not fit to be granted or to hold a license that has been issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may require criminal history of applicants for an initial licensure or renewal, licensees applying to reinstate or reactivate a lapsed license, or licensees under investigation to determine the fitness of an applicant or licensee. Fingerprints and other requested information must be provided upon request as prescribed by the Board. The Board will submit information to the Oregon Department of State Police Law Enforcement Data System to conduct an Oregon Criminal History Check and may also request a National Criminal History Check, and to other sources deemed necessary to ensure public protection

(4) The Board determines whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If a licensee is determined to be unfit, the licensee's license may not be renewed, reactivated, or reinstated. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board considers:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime; and

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction.

(F) Any other information the Board deems relevant or necessary.

(6) All requested background checks include Oregon data. In some circumstances, national criminal data collection may be required.

(7) In order to conduct the Oregon Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary such as but not limited to: proof of identity, residential history, names used while living at each residence, or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demon-

# ADMINISTRATIVE RULES

strated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to 676.175(1).

(9) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and that is in compliance with ORS 670.280. The Board may also consider any arrests, court records, or other information that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(10) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413–183.470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board will conduct a new criminal history check upon request from the applicant or licensee.

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

Stat. Auth.: ORS 683, 182, 181, 676

Stat. Implemented: ORS 683.140, 683.270, 182.466, 181.534 & 676.303

Hist.: OPT 7-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-070-0010

### Requirement of Continuing Optometric Education

The Oregon Board of Optometry is committed to ensuring the continuing education of its licensees for the protection, safety and wellbeing of the public. Continuing education is required to maintain and advance the professional skills and abilities of licensees and to educate optometric physicians in the application and use of new techniques, scientific and clinical advances and the achievements of research to ensure expansive and comprehensive care to the public.

(1) Every active status licensed optometric physician must complete at least 18 hours of clinical optometric courses each license year as a condition of license renewal. Continuing education hours cover 12-month periods and must be reported with license renewal applications. Upon written request, the licensee may carry forward approved excess CE hours completed in the prior license year to the current license year.

(2) Of the required 18 hours, at least nine hours each license year must be in the area of diagnosis, treatment and management of ocular disease (TMOD). The licensee must be the first or second author of the article or paper and the paper must have been published in the CE reporting period.

(3) Optometric physicians must complete one hour of approved credit for an optometric ethics or Oregon law course every other license year, regardless of credits carried forward under (1) of this section. Licensees may receive one hour of optometric ethics/Oregon law credit per year for verified attendance of at least one hour at an official meeting of the Oregon Board of Optometry.

(4) One hour of Board approved cultural competency continuing education may be used toward satisfying the required number of non-TMOD hours each license year.

(5) Credit will be given for no more than five hours of live observation in an approved surgical facility per license year.

(6) The required hours of continuing education used to meet the CE requirement each license year must be of different course content. When the Board determines that a licensee has submitted a course or lecture essentially identical to another presentation submitted for credit in the same license renewal period, credit will be given for only one.

(7) Credit will be given for no more than 2 hours for each publication of a qualifying article or paper.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.140, 683.270, 683.210 & 182.466

Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1978, f. & ef. 1-25-78; OE 1-1984, f. & ef. 1-13-84; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2003, f. 9-15-03, cert. ef. 1-1-04; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-070-0020

### Application for Credit

Each continuing education offering must be approved by the Board in order for an optometric physician to obtain credit. Upon application the Board may:

(1) Grant credit, to the extent determined by it, for any course, or individual or group study deemed suitable to carry out the purposes of ORS 683.210. To be granted credit, any course offering must be open to all optometric physicians licensed in Oregon.

(2) Grant credit, to the extent determined by it, for publication of articles and papers of scientific and educational interest published in recognized scientific publications. The licensee must be the first or second author to earn credit and the paper must have been published in the licensee's CE reporting period.

(3) Grant credit, to the extent determined by it, for courses that relate to the maintenance or advancement of professional skills and abilities. Courses that relate primarily to practice management or jurisprudence will not be granted credit.

(4) Teaching courses at an accredited health care institution or accredited optometric school or university and meet the requirements of 852-070-0010.

Stat. Auth.: ORS 683

Stats. Implemented: ORS 683.210 & 683.270

Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1979, f. & ef. 10-29-79; OE 2-1983, f. & ef. 2-22-83; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-070-0035

### Responsibility to Notify Board

(1) Each active licensee must notify the Board of Optometry in writing of completion of the required hours of approved continuing education credits as part of the license renewal per OAR 852-050-0006.

(2) Notification for at least the total number of required hours must be submitted at one time.

(3) If sufficient proof of continuing education is not received by the Board by the license year renewal period deadline, the license will not be renewed until the continuing education deficiency is made up in a manner acceptable to and approved by the Board.

(4) Licensees must submit original certificates of attendance or other proof of attendance acceptable to the Board when selected for audit or required to submit to renew a lapsed or late license.

(5) Any licensee who has completed the required continuing optometric education course work by the license year renewal period but fails to meet the submission deadline is subject to a late fee as listed in OAR 852-010-0080.

Stat. Auth.: ORS 683

Stats. Implemented: ORS 683.210

Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1984, f. & ef. 1-13-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-070-0037

### Continuing Education Reporting and Audit

(1) Optometric Physicians seeking to renew their active status license shall submit with their renewal application a completed form provided by the Board certifying that they have met the CE and CPR certification requirements set forth in these rules. Any optometric physician renewing a license more than 30 days after their due date, or restoring a lapsed license, will provide original documentation verifying that they have met the continuing education requirement per 852-050-0006, in addition to the form.

(2) The licensee is responsible for ensuring that all reported CE hours have been pre-approved by the Board before attesting to their completion. A licensee may not submit CE credit that has not been pre-approved by the Board.

(a) All requests for course approval must be received by the Board at least 30 days before the license renewal due date for consideration for credit for the current renewal period.

(b) If the Board does not approve the course(s) within the due date, the licensee must submit additional acceptable credits by the renewal due date or the renewal will be considered incomplete and late.

(3) The licensee is responsible for obtaining a completion certificate from the course sponsor for renewal and audit.

(4) Optometric Physicians must maintain accurate documentation and records of any claimed continuing education hours and CPR certification for no less than three years from the date of submission to the Board.

# ADMINISTRATIVE RULES

Licensees must provide documentation of CE and CPR certification when requested by the Board per OAR 852-070-0020.

(5) The Board may audit licensees for compliance with CE and CPR certification by generating a random computer list of a Board determined percentage of renewing licensees on a regular basis. The Board may also include non-random individuals in the audit sample.

(a) Licensees selected for audit will have 21 days from notification to supply the agency with verification of their CE hours or CPR certification dates. Those selected for audit will be notified by first class mail to their address of record. Failure to comply or misrepresentation of compliance is grounds for disciplinary action for unprofessional conduct.

(b) Licensees who fail to respond with the requested documentation within 21 days will be assessed a civil penalty.

(c) If the licensee does not comply within 60 days of the date of the audit letter, the licensee will be sent a notice of license suspension for a minimum of 90 days.

(6) The Board may, in individual cases involving physical disability, illness or undue hardship, grant waivers of the minimum continuing education and CPR certification requirements or extensions of time within which to fulfill the same or make the required reports. Applications for waiver shall be made to the Board in writing at least two months prior to license renewal date.

Stat. Auth.: ORS 683  
Stats. Implemented: ORS 58, 63, 181, 182, 342, 408, 431, 646, 670, 689  
Hist.: OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

## 852-070-0047

### Continuing Education Approval

(1) Licensees or course providers can submit appropriate courses for Board approval. In order to grant approval, a written request must be submitted at least 30 days in advance of the course or license renewal that includes:

- (a) A completed agency request form
- (b) Name and contact information of the course sponsor
- (c) Date and location of the course or program, or a website with the course information
- (d) A brief overview of the course content
- (e) The number of clock hours for the presentation. 1 hour is no less than 50 minutes of presentation time; 30 minutes is no less than 25 minutes of presentation time.

(f) Curriculum Vitae of the presenters

(2) Surgical clinics applying for surgical clinic observation CE time can submit a written request for CE approval by submitting the following information:

- (a) Name and address of the clinic, along with all of the locations where observations may be performed
- (b) The name and contact information for the primary contact for the clinic
- (c) A brief description of the procedures that will be offered for observation
- (d) Curriculum Vitae of the physicians who will be performing the procedures and observing the attendee
- (e) The protocol established for monitoring and verifying the attendance of optometric physicians who observe procedures in the surgery facility

(f) A sample certificate of completion

(3) All submissions are reviewed by a licensed member of the Oregon Board of Optometry.

(4) Requestors will be notified of the approval or denial of their request in writing. Any denials will include the reason for denial.

Stat. Auth.: ORS 683  
Stats. Implemented: ORS 58, 63, 181, 182, 342, 408, 431, 646, 670, 689  
Hist.: OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16

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## Department of Agriculture Chapter 603

**Rule Caption:** Increase penalties for some violations of pesticide laws.

**Adm. Order No.:** DOA 5-2016

**Filed with Sec. of State:** 2-26-2016

**Certified to be Effective:** 2-26-16

**Notice Publication Date:** 1-1-2016

**Rules Adopted:** 603-057-0529, 603-057-0531

**Rules Amended:** 603-057-0502, 603-057-0530, 603-057-0532

**Subject:** This rulemaking will amend the rules that describe the maximum amount allowed and describe how to calculate the amount of a civil penalty that is not based on gross negligence or willful misconduct. This is necessary in order to implement the policy provided by the 2015 Legislative Assembly.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-057-0502

### Civil Penalties Generally

(1) In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of ORS 634 relating to pesticide application, sale or labeling.

(2) Where the Director determines that a violation occurred before June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0529. The amount of such civil penalty for a first violation shall not exceed \$1,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$2,000.

(3) Where the Director determines that a violation did not result from gross negligence or willful misconduct, and if the violation occurred between June 25, 2007 and December 31, 2015, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0530. The amount of such civil penalty for a first violation shall not exceed \$1,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$2,000.

(4) Where the Director determines that a violation did not result from gross negligence or willful misconduct, and if the violation occurred on or after January 1, 2016, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0531. The amount of such civil penalty for a first violation shall not exceed \$2,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$4,000.

(5) Where the Director determines that a violation resulted from gross negligence or willful misconduct and occurred on or after June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0532. The amount of such civil penalty for a first or a subsequent violation shall not exceed \$10,000.

(6) Where the Director determines that a violation involves a failure to comply with a confidentiality agreement related to the pesticide use reporting program, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0420. The amount of such civil penalty for a first or subsequent violation of such confidentiality agreement shall not exceed \$10,000.

(7) If a person requests a hearing, nothing in this division of administrative rules prevents the Department from amending the notice to impose civil penalties for the violation under OAR 603-057-0525 and either OAR 603-057-0530 or 603-057-0531, and, in the alternative, under OAR 603-057-0525 and 603-057-0532. The amended notice will specify which civil penalty will be assessed if the hearing does not occur for any reason.

(8) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with public health and safety.

(9) Civil penalties shall be due and payable ten (10) business days after the order becomes final by operation of law or on appeal. A person may pay a civil penalty before an order becomes final. Payment of a civil penalty before an order becomes final is an admission by the person of all of the allegations in the Notice of Imposition of Civil Penalty.

Stat. Auth.: ORS 561, 634 & 183.335(5)  
Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, & 634.900 - 634.915  
Hist: DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09; DOA 5-2016, f. & cert. ef. 2-26-16

## 603-057-0529

### Civil Penalty For A Violation Occurring Before June 25, 2007; Formula for Amount

(1) When the Director determines that a violation occurred before June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and this section. To determine the amount of the civil penalty, calculate it utilizing the formula:  $NB + [(.1 \times NB) \times (P + H + R + C)] = \text{Penalty Amount}$  where:

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

# ADMINISTRATIVE RULES

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the following manner:

(A) O = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of an unrelated Category III violation;

(C) 2 = past occurrence of an unrelated Category II violation or two unrelated Category III violations;

(D) 3 = past occurrence of an unrelated Category I violation, two unrelated Category II violations or three unrelated Category III violations;

(E) 4 = past occurrence of two unrelated Category I violations, three unrelated Category II violations or four unrelated Category III violations;

(F) 5 = past occurrence of three unrelated Category I violations, four unrelated Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of three or more unrelated Category I violations or five or more unrelated Category II violations.

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps or procedures to correct any prior violations;

(B) O = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps or procedures to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = preventability of violation. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) O = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant.

(f) C = cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) O = the person is neither cooperative nor uncooperative;

(D) 1 = the person is generally uncooperative;

(E) 2 = the person is uncooperative.

(2) If the calculation utilizing the formula in this section results in an amount more than \$1,000 for a first violation of any provision of ORS 634, the Director shall assess a civil penalty of \$1,000. If the calculation utilizing the formula in this section results in an amount more than \$2,000 for any subsequent violation of the same provision of ORS 634, the Director shall assess a penalty of \$2,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915

Hist.: DOA 5-2016, f. & cert. ef. 2-26-16

## 603-057-0530

### Civil Penalty For A Violation Not Resulting From Gross Negligence or Willful Misconduct Between June 25, 2007 and December 31, 2015; Formula for Amount

(1) When the Director determines that the violation did not result from gross negligence or willful misconduct, and if the violation occurred between June 25, 2007 and December 31, 2015, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula:  $NB + [(1 \times NB) \times (P + H + R + C)] = \text{Penalty Amount}$  where:

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix:  
[Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the following manner:

(A) O = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of an unrelated Category III violation;

(C) 2 = past occurrence of an unrelated Category II violation or two unrelated Category III violations;

(D) 3 = past occurrence of an unrelated Category I violation, two unrelated Category II violations or three unrelated Category III violations;

(E) 4 = past occurrence of two unrelated Category I violations, three unrelated Category II violations or four unrelated Category III violations;

(F) 5 = past occurrence of three unrelated Category I violations, four unrelated Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of three or more unrelated Category I violations or five or more unrelated Category II violations.

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps or procedures to correct any prior violations;

(B) O = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps or procedures to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = preventability of violation. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) O = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant.

(f) C = cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) O = the person is neither cooperative nor uncooperative;

(D) 1 = the person is generally uncooperative;

(E) 2 = the person is uncooperative.

(2) If the calculation utilizing the formula in this section results in an amount more than \$1,000 for a first violation of any provision of ORS 634, the Director shall assess a civil penalty of \$1,000. If the calculation utilizing the formula in this section results in an amount more than \$2,000 for any subsequent violation of the same provision of ORS 634, the Director shall assess a penalty of \$2,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; AD 16-1990(Temp), f. & cert. ef. 8-10-90; AD 22-

1990, f. & cert. ef. 12-17-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA

6-2009, f. & cert. ef. 5-7-09; DOA 5-2016, f. & cert. ef. 2-26-16

## 603-057-0531

### Civil Penalty For A Violation Not Resulting From Gross Negligence or Willful Misconduct Between June 25, 2007 and December 31, 2015; Formula for Amount

(1) When the Director determines that the violation did not result from gross negligence or willful misconduct, and if the violation occurred on or after January 1, 2016, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula:  $NB + [(1 \times NB) \times (P + H + R + C)] = \text{Penalty Amount}$  where:

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix:  
[Matrix not included. See ED. NOTE.]

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(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the following manner:

(A) O = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of an unrelated Category III violation;

(C) 2 = past occurrence of an unrelated Category II violation or two unrelated Category III violations;

(D) 3 = past occurrence of an unrelated Category I violation, two unrelated Category II violations or three unrelated Category III violations;

(E) 4 = past occurrence of two unrelated Category I violations, three unrelated Category II violations or four unrelated Category III violations;

(F) 5 = past occurrence of three unrelated Category I violations, four unrelated Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of three or more unrelated Category I violations or five or more unrelated Category II violations.

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps or procedures to correct any prior violations;

(B) O = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps or procedures to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = preventability of violation. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) O = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant.

(f) C = cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) O = the person is neither cooperative nor uncooperative;

(D) 1 = the person is generally uncooperative;

(E) 2 = the person is uncooperative.

(4) If the calculation utilizing the formula in this section results in an amount more than \$2,000 for a first violation of any provision of ORS 634, the Director shall assess a civil penalty of \$2,000. If the calculation utilizing the formula in this section results in an amount more than \$4,000 for any subsequent violation of the same provision of ORS 634, the Director shall assess a penalty of \$4,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Stat. Auth.: ORS 634; 2015 HB 3549, 2015 HB 5002, & 2015 SB 5507

Stats. Implemented: ORS 634; 2015 HB 3549, 2015 HB 5002, & 2015 SB 5507

Hist.: DOA 5-2016, f. & cert. ef. 2-26-16

## 603-057-0532

### Civil Penalty For A Violation Resulting From Gross Negligence or Willful Misconduct And On Or After June 25, 2007; Formula for Amount

(1) When the Director determines that the violation resulted from gross negligence or willful misconduct and that the violation occurred on or after June 25, 2007, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula:  $NB + [(1 \times NB) \times (P + H + C)] = \text{Penalty Amount}$  where:

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = Past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the same manner as described in OAR 603-057-0530(1)(c).

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the same manner as described in OAR 603-057-0530(1)(d).

(e) C = Cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the same manner as described in OAR 603-057-0530(1)(f).

(2) If the calculation utilizing the formula in this section results in an amount more than \$10,000, the Director will assess a penalty of \$10,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, & 634.900 - 634.915

Hist: DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09; DOA 5-2016, f. & cert. ef. 2-26-16

## Department of Agriculture, Oregon Strawberry Commission Chapter 668

**Rule Caption:** Change the assessment on strawberries from 1.25 percent to 1 percent.

**Adm. Order No.:** SBY 1-2016

**Filed with Sec. of State:** 3-9-2016

**Certified to be Effective:** 3-9-16

**Notice Publication Date:** 1-1-2016

**Rules Amended:** 668-010-0010

**Subject:** Amend OAR 668-010-0010 (1) to decrease the assessment by .25%. The assessment was increased in 2013 in order to fund an endowment dedicated to a berry professorship at Oregon State University. Due to reductions in state funds to Oregon State University, continuance of a dedicated berry professorship is only guaranteed through industry support of an endowed professorship. The berry industry benefits from the research and education provided by a professor dedicated to berries.

This proposed rule change will allow the commodity commission to collect assessments of 1 percent of the gross value of the raw product, rather than 1.25 percent of the gross value of the raw product.

**Rules Coordinator:** Connie Gutt—(541) 758-4043

## 668-010-0010

### Assessments

(1) As authorized or required by ORS 576.325 and 576.335, any person who is a first purchaser (or otherwise is required to pay an assessment to the Oregon Strawberry Commission) for all purchases made on or after March 10, 2016, shall deduct and withhold an assessment of 1 percent of the gross value of the raw product before any deductions from the price paid to the producer thereof, after March 10, 2016 for all strawberries grown in Oregon. (See definition of "First Purchaser") Grower-purchasers will use an estimated average of the state price, which will be set by the Commission prior to September 1st each year.

(2) All casual sales of Strawberries shall be exempt from the assessment.

(3) An organic producer will be exempt from assessment if the producer presents the following information to the commission by September 15th of each year:

(a) Either:

(A) A current certificate from a certifying agent under the Organic Foods Production Act, 7 U.S.C. § 6501-6522 and its implementing regulations; or

(B) A statement of exemption from certification under the Organic Foods Production Act, 7 U.S.C. § 6501-6522 and its implementing regulations; and

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(b) A production report signed by the producer containing the producer's name, mailing address, species of berries, and pounds and price for each species.

Stat. Auth.: ORS 576.304  
Stats. Implemented: ORS 576.325 & 576.335  
Hist.: SBY 1, f. 5-31-67; SBY 4(Temp), f. & ef. 6-5-74 - 10-2-74; SBY 5, f. 12-24-74, ef. 1-25-75; SBY 1-1978, f. 5-18-78, ef. 6-1-78; SBY 1-1986, f. & ef. 6-3-86; SBY 2-1986, f. & ef. 8-12-86; SBY 1-1992, f. & cert. ef. 5-15-92; SBY 1-1997, f. & cert. ef. 5-15-97; SBY 1-2001, f. & cert. ef. 2-20-01; SBY 1-2004, f. & cert. ef. 1-15-04; SBY 1-2013, f. & cert. ef. 5-15-13; SBY 1-2016, f. & cert. ef. 3-9-16

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

**Rule Caption:** Modification to the SEER requirement for certain single package air conditioners

**Adm. Order No.:** BCD 3-2016(Temp)

**Filed with Sec. of State:** 3-3-2016

**Certified to be Effective:** 3-3-16 thru 8-29-16

**Notice Publication Date:**

**Rules Amended:** 918-460-0500

**Subject:** This temporary rule amends the energy provisions of the Oregon Structural Specialty Code by aligning the Oregon SEER standard for specific air conditioners with federal mandatory minimum requirements.

**Rules Coordinator:** Holly A. Tucker—(503) 378-5331

**918-460-0500**

**Adopted Oregon Energy Efficiency Specialty Code**

(1) The energy provisions of the **Oregon Structural Specialty Code** are adopted pursuant to OAR chapter 918, division 8.

(2) Effective July 1, 2014, the energy provisions in Chapter 13 of the **Oregon Structural Specialty Code** are adopted in the publication titled **2014 Oregon Energy Efficiency Specialty Code**.

(3) The publication titled **2014 Oregon Energy Efficiency Specialty Code** is based upon the 2010 edition of the **Oregon Energy Efficiency Specialty Code**, with additional Oregon amendments.

(4) For the purposes of implementing a phase-in period for the energy provisions of the **Oregon Structural Specialty Code**, the **2010 Oregon Energy Efficiency Specialty Code** is adopted for the period beginning July 1, 2014 and ending September 30, 2014.

(5) During the phase-in period established in subsection (4), all building departments in the state are required to accept plans for structures designed to either the energy provisions in Chapter 13 of the **Oregon Structural Specialty Code** or to the **2010 Oregon Energy Efficiency Specialty Code**.

(6) Code requirements in effect at the time a plan review or permit application is filed controls the construction under the application unless the applicant agrees to be controlled by subsequent changes.

(7) All references and code provisions adopted in this rule, in OAR chapter 918, or in any specialty code adopted thereunder to the **Oregon Energy Efficiency Specialty Code** mean the energy provisions of the **Oregon Structural Specialty Code** found in Chapter 13 of the **Oregon Structural Specialty Code**.

(8) Effective March 4, 2016, the energy efficiency provisions of the **Oregon Structural Specialty Code** adopted in this rule are amended by modifying the SEER requirement in Table 503.2.3(1), Minimum Efficiency Requirements: Electrically Operated Unitary Air Conditioners and Condensing Units for air conditioners that are air cooled, less than 65,000 Btu/h, and single package equipment. The SEER requirement shall be 13.0. This amendment is retroactive to July 1, 2014.

[Publication: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.020, 455.030, 455.110, 455.505 & 455.511  
Stats. Implemented: ORS 455.110 & 455.511  
Hist.: BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11; BCD 21-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 7-2014, f. 6-20-14, cert. ef. 7-1-14; BCD 3-2016(Temp), f. & cert. ef. 3-3-16 thru 8-29-16

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

**Rule Caption:** Technical fixes to the licensing rules for securities brokers and salespersons.

**Adm. Order No.:** FSR 1-2016

**Filed with Sec. of State:** 3-7-2016

**Certified to be Effective:** 3-7-16

**Notice Publication Date:** 1-1-2016

**Rules Amended:** 441-175-0002, 441-175-0010, 441-175-0015, 441-175-0020, 441-175-0030, 441-175-0040, 441-175-0041, 441-175-0046, 441-175-0050, 441-175-0055, 441-175-0060, 441-175-0070, 441-175-0085, 441-175-0100, 441-175-0110, 441-175-0120, 441-175-0130, 441-175-0140, 441-175-0150, 441-175-0160, 441-175-0165, 441-175-0171, 441-175-0175

**Subject:** This proposed rulemaking is meant to make technical fixes to the securities licensing rules. The proposed rulemaking does not make any substantive changes to the licensing rules. The proposed rules fix outdated references, update language, and generally clarify requirements. The proposed rules are consistent with the intent of Oregon Revised Statute Chapter 59 to ensure licensing of individuals engaged in brokering or selling securities to the public.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

**441-175-0002**

**Fees for Licensing or Notice Filing of Firms and Individuals**

Pursuant to ORS 59.175, the director sets the following fees for licensing or notice filing of firms and individuals:

(1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$250;

(2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;

(3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;

(4) For a broker-dealer salesperson, an initial license fee of \$60 and a renewal license fee of \$55;

(5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;

(6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and

(7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

**441-175-0010**

**Definitions**

As used in these rules:

(1) "Associated person" means any partner, officer, director, or branch manager of a broker-dealer, or investment adviser (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker-dealer, or investment adviser, including any employee of such broker-dealer or investment adviser, except that for the purposes of OAR 441-195-0010, 441-195-0070, 441-205-0140, and 441-205-0210, the term "associated person" shall not include persons whose functions are only clerical or ministerial.

(2) "CRD" means the Central Registration Depository of the Financial Industry Regulatory Authority, a database maintained by the Financial Industry Regulatory Authority to register broker-dealers and salespersons.

(3) "The completion of the transaction" means:

(a) In the case of a customer who purchases a security through or from a broker-dealer except as provided in subsection (b) of this section, the time when such customer pays the broker-dealer any part of the purchase price, or if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(b) In the case of a customer who purchases a security through or from a broker-dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(c) In the case of a customer who sells a security through or to a broker-dealer except as provided in subsection (d) of this section, if the security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer and, if the security is in

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the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer; and

(d) In the case of a customer who sells a security through or to a broker-dealer and who delivers the security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

(4) "Controlling security holder" means a person who exercises control as defined under ORS 59.015(2) or who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of an issuer.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6)(a) "Financial Industry Regulatory Authority" or "FINRA" means the self-regulatory organization registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. §730-3, to register and regulate broker-dealers and salespersons and approved by the SEC as a successor to the National Association of Securities Dealers, Inc.

(b) For purposes of ORS 59.025, 59.049, 59.065, 59.175, 59.331, and 59.370, references to the "National Association of Securities Dealers, Inc." or "NASD" shall refer to the Financial Industry Regulatory Authority or FINRA.

(7) "FINRA broker-dealer" means a broker-dealer subject to section 15 of the Securities Exchange Act of 1934, 15 U.S.C. §780, as amended.

(8) "Form ADV" means the application for registration as an investment adviser under sections 203(c) or 203(g) of the Investment Advisors Act of 1940, 15 U.S.C. § 80b-3, as prescribed by 17 C.F.R. § 279.1, and available at <http://www.sec.gov/divisions/investment/iard/iastuff.shtml>.

(9) "Form BD" means the application for registration as a broker-dealer under the Securities Exchange Act of 1934, 17 U.S.C. §78a et seq., as prescribed by 17 C.F.R. § 249.501, and available at <http://www.sec.gov/about/forms/formbd.pdf>.

(10) "Form U-4" means the Uniform Application for Securities Industry Registration or Transfer, published by FINRA and available at <http://www.finra.org/industry/compliance/registration/crd/filingguidance/p005235>

(11) "Form U-5" means the Uniform Termination Notice for Securities Industry Registration, published by FINRA and available at <http://www.finra.org/industry/compliance/registration/crd/filingguidance/p005235>.

(12) "IARD" means the Investment Adviser Registration Depository maintained by the Financial Industry Regulatory Authority to register investment advisers and investment adviser representatives.

(13) "Independent accountant" means a certified public accountant (CPA) or public accountant (PA), who holds an Oregon permit pursuant to ORS 673.150 or similar permit or license from another state or province.

(14)(a) "Interim financial statement" means a financial statement prepared at a time other than year end. Interim financial statements must be prepared at month end, may be prepared by management, and must include at least a balance sheet and statement of income or operations.

(b) The Focus Report filed with the Securities and Exchange Commission, Form X-17A-5 as required by 17 C.F.R. § 240.17a-5 and available at <http://www.sec.gov/about/forms/secforms.htm>, is acceptable as an interim financial statement.

(15) "NASD" means the National Association of Securities Dealers, Inc., the self-regulatory organization previously registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. §730-3, to register and regulate broker-dealers and salespersons and subsequently succeeded by the Financial Institution Regulatory Authority.

(16) "Non-FINRA broker-dealer" means a broker-dealer who is not a member of the Financial Industry Regulatory Authority.

(17) "S-63" means the Uniform Securities Agent State Law Examination published by the North American Securities Administrators Association in January 2010 and made available at <http://www.nasaa.org/industry-resources/exams/study-guides/>.

(18) "S-65" means the Series 65 Uniform Investment Adviser Law Examination published by the North American Securities Administrators Association in 2010 and made available at <http://www.nasaa.org/industry-resources/exams/series-65-66-resources/series-65-study-guide/>.

(19) "S-66" means the Series 66 Uniform Combined State Law Examination published by the North American Securities Administrators Association in January 2010 and made available at <http://www.nasaa.org/industry-resources/exams/study-guides/>.

(20) "SEC" means the United States Securities and Exchange Commission.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.285

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0161; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0065; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0015

### When Licensing Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the licensing of broker-dealers, state investment advisers, salespersons, or investment adviser representatives under ORS 59.175 and OAR 441, division 175.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the director has notified the applicant that fees are insufficient;

(b) Documents required by the rules in OAR 441, division 175 have not been submitted by the applicant; or

(c) Additional information requested by the director as permitted by the rules in OAR 441, division 175 has not been submitted to the director by the applicant.

(3) An application for licensing is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the director's written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned licensing application shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0020

### Exclusion from Definition of "Broker-Dealer"

ORS 59.015 excludes from the definition of "broker-dealer" the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

(1) Any person who effects sales of securities that are exempt under subsection (13) of ORS 59.025 and OAR 441-025-0040.

(2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered under OAR 441-065-0035, while effecting sales of the securities without special compensation.

(3) Any person, who serves as a dealer manager for an exchange offer of securities which have been registered under OAR 441-065-0035 and who does not perform any active solicitation activities in this state.

(4) Any person who is a licensed Principal Real Estate Broker or Real Estate Broker acting on behalf of that person's Principal Real Estate broker, provided that all of the following conditions are met:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities subject to the Oregon Securities Law, ORS Chapter 59, only effects transactions in securities that are registered under 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve resale of those securities described under paragraph (A) of this subsection.

(c) The person complies with the rules of fair practice under OAR 441-175-0050; and

(d) The person does not engage exclusively in the management of rental real estate as defined in ORS 696.010.

(5) The director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.



# ADMINISTRATIVE RULES

Stat. Auth.: ORS 59.15(1)  
Stats. Implemented: ORS 59.15(1)  
Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.1; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0005; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0030

### Exclusion from Definition of "Investment Adviser"

ORS 59.015 excludes from the definition of "state investment adviser" the following persons, provided the person is not otherwise licensed as a broker-dealer, state investment adviser, mortgage broker, salesperson, or investment adviser representative:

(1) Any person who conducts no public advertising or general solicitation in this state and whose only clients in this state are "accredited investors" as that term is defined in OAR 441-035-0010.

(2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered under OAR 441-065-0035, while providing advice, analyses, reports or other advisory services regarding the securities without special compensation.

(3) Any person who serves as a dealer manager for an exchange offer of securities which has been registered under OAR 441-065-0035 and who does not perform any active solicitation in this state.

(4) Any person whose advice, analyses or reports relate only to securities exempted by subsection (13) of ORS 59.025 and OAR 441-025-0040.

(5) Any person who is a licensed Principal Real Estate Broker or Real Estate Broker acting on behalf of the Principal Real Estate broker if:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities activities, only renders advice, analyses, reports or other advisory services relating to securities that are registered under ORS 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve the resale of those securities described in paragraph (A) of this subsection.

(c) The person complies with the rules of fair practice under OAR 441-175-0050 ; and

(d) The person does not engage exclusively in the management of rental real estate as defined in ORS 696.010.

(6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0230 if the activity is merely an incidental part of the person's usual activities or occupation.

(7) Any person who is licensed as a mortgage banker or mortgage broker under the provisions of ORS 59.840 to 59.965 and whose performance of advisory services relate solely to securities involving real estate paper, whose performance of the advisory services is solely incidental to the person's conduct of business as a mortgage banker or mortgage broker and who receives no special compensation for such services.

(8) The director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.15(6)  
Stats. Implemented: ORS 59.15(6)  
Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.7; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0010; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0040

### Exclusion from Definition of "Salesperson"

ORS 59.015 excludes from the definition of "salesperson" the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

(1) Subject to section (5) of this rule, any person, not otherwise excluded as a "broker-dealer" under ORS 59.015 or OAR 441-175-0020, who represents an excluded person.

(2) Subject to section (5) of this rule, any person, not otherwise excluded as an "investment adviser" under ORS 59.015) or OAR 441-175-0030, who represents an excluded person.

(3) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered under OAR 441-065-0035, while effecting sales of the securities without special compensation.

(4) Any person who serves as a dealer manager for an exchange offer of securities which have been registered under OAR 441-065-0035 and who does not perform any active solicitation in this state.

(5) Any person who is a real estate broker, acting through or on behalf of a principal real estate broker exempt under OAR 441-175-0020 or 441-175-0030, if:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities activities, only acts as a salesperson in connection with securities that are registered under ORS 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve the resale of those securities described in paragraph (A) of this subsection.

(c) The person complies with the rules of fair practice in OAR 441-175-0050; and

(d) The person does not engage exclusively in the management of rental real estate as defined in ORS 696.010.

(6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0240 if the activity is merely an incidental part of the person's usual activities or occupation.

(7) Any person who is compensated by a licensed broker-dealer, or investment adviser on a per capita referral basis without regard to present or future fee or commission income from any customer of the licensed broker-dealer, or investment adviser.

(8) The director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.175 & 59.720  
Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.12; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0015; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 4-2007, f. 10-11-07, cert. ef. 1-1-08; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0041

### Exclusion from Definition of "Investment Adviser Representative"

ORS 59.015 excludes from the definition of "investment adviser representative" the following persons, provided that the person is not otherwise licensed as a broker-dealer, federal covered investment adviser, state investment adviser, salesperson or investment adviser representative:

(1) Any person, not otherwise excluded as a "state investment adviser" under subsection (20)(b) except (20)(b)(I) of ORS 59.015 or OAR 441-175-0030, who represents an excluded person.

(2) Any person who is compensated by a licensed broker-dealer, federal covered investment adviser or state investment adviser on a per capita referral basis without regard to present or future fee or commission income from any customer of the licensed broker-dealer, federal covered investment adviser or state investment adviser.

(3) The director may, by order, as to any person or type of activity, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.015(8) & 59.285  
Stats. Implemented: ORS 59.015(8)  
Hist.: FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0046

### Federal Covered Investment Adviser Representative

For purposes of ORS 59.015(8)(a)(B), the term "Investment Adviser Representative" who is employed by or associated with a federal covered investment adviser only includes an individual who has a "place of business," as that term is defined in rules or regulations promulgated under

# ADMINISTRATIVE RULES

Section 203A of the Investment Advisors Act of 1940 by the U.S. Securities and Exchange Commission, in Oregon, and who either:

(1) Is an Investment Advisor Representative” as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisors Act of 1940 by the U.S. Securities and Exchange Commission; or

(2)(a) Is not a “supervised person” as that term is defined in rules or regulations promulgated under the Investment Advisor Act of 1940 by the U.S. Securities and Exchange Commission; and

(b) Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment advisor.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0050

### Rules of Fair Practice for Real Estate Licensees

Any real estate broker relying on exclusions in OAR 441-175-0020, 441-175-0030 or 441-175-0040 must comply with the following rules of fair practice:

(1) All advertising involving securities registered under ORS 59.065 and OAR chapter 441, division 65 must be filed with the director before the advertising is used.

(2) All customer funds and securities must be segregated from those of the real estate broker, and:

(a) All customer funds must be deposited in a client trust account which is free from all claims, attachment or levy by creditors of the real estate broker; and

(b) All customer securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the real estate broker.

(3) The real estate broker must create and maintain the following books and records pertaining to securities activities for a period of six (6) years:

(a) Records of all securities sales and purchases;

(b) Investor information records;

(c) Trust account transactions;

(d) Discretionary account agreements;

(e) Investor complaints and resolution; and

(f) Financial information of the real estate broker.

(4)(a) A real estate broker may not recommend a securities transaction to an investor unless the real estate broker has reviewed the terms of the transaction and has reasonable grounds to believe that the recommendation is suitable for the investor on the basis of information furnished by the investor, after reasonable inquiry is made by the real estate broker, concerning the investor’s investment objectives, financial situation and any other information known to and deemed relevant by the real estate broker;

(b) The requirements of subsection (a) of this section, except for the requirement to review the transaction, may be satisfied if the investment in fact is suitable for the particular investor;

(c) A real estate broker who is selling securities registered under OAR 441-065-0060 through 441-065-0240 to “sophisticated purchasers” shall comply with the suitability requirements for such purchasers instead of the requirements of subsection (a) of this section.

(5) The responsibility for supervision of all persons engaged by a real estate broker to effect securities transactions or render advisory services is that of the Principal Real Estate broker. Supervision includes reviewing and authorizing all securities activities engaged in by Real Estate Brokers affiliated with a Principal Real Estate Broker.

Stat. Auth.: ORS 59.15 & 59.285

Stats. Implemented: ORS 59.15(1), 59.15(6), 59.15(10), 59.135 & 59.235

Hist.: CC 6-1981(Temp), f. 10-27-81, ef. 11-2-81; CC 2-1982, f. 1-18-82, ef. 2-1-82; FCS 8-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-037-0025; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0055

### Rules of Fair Practice for Mortgage Banker and Mortgage Broker Licensees

Any mortgage banker or mortgage broker licensed under ORS 59.840 to 59.980 and relying upon exclusion from the definition of “broker-dealer” pursuant to 59.015(1)(h) in connection with the offer and sale of registered offerings of securities involving real estate paper shall comply with the following rules of fair practice:

(1) Securities Registration: All offerings shall be registered pursuant to the provisions of ORS 59.065 and OAR chapter 441, division 065.

(2) Salesperson Licensing. All natural persons involved in the offer and sale of securities shall be licensed as issuer salespersons pursuant to the provisions of ORS 59.175 and OAR 441-175-0120. In addition, the

employing mortgage banker or mortgage broker must file material amendments to the salesperson license application pursuant to the provisions of 441-175-0105.

(3) Advertising. All advertising involving the offering must be filed with and accepted by the director prior to its use.

(4) Supervision: The responsibility for supervision of all persons engaged by a licensee to effect securities transactions is that of the licensee. This supervision includes reviewing and authorizing all securities activities of the licensee’s salespersons.

(5) Investor Funds and Securities: All funds received in connection with an offering must be segregated from those of the licensee, and:

(a) All investor funds must be deposited in a client trust account which is free from all claims attachment or levy by creditors of the licensee; and

(b) All investor securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the licensee.

(6) Books and Records: The licensee must create and maintain those books and records required in OAR chapter 441, division 865.

(7) Investor Suitability:

(a) A licensee shall not recommend a securities transaction to an investor unless the licensee has reviewed the terms of the transaction and, after reasonable inquiry by the licensee, the licensee has reasonable grounds to believe that the recommendation is suitable for the investor on the basis of:

(A) Information furnished by the investor (including the investor’s investment objectives and financial situation); and

(B) Any other relevant information known to the licensee.

(b) The requirements of subsection (a) of this section, except for the requirement to review the terms of the transaction, may be satisfied if the investment is in fact suitable for the particular investor;

(c) Specific investor suitability requirements established pursuant to rule or order of the director shall take precedence over the general investor suitability requirements of subsection (a) of this section.

Stat. Auth.: ORS 59.235 & 59.285

Stats. Implemented: ORS 59.135 & 59.175

Hist.: FCS 7-1994, f. & cert. ef. 5-13-94; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0060

### Licensing Rule Implementing, 1997 Oregon Laws Chapter 772 and the National Markets Improvement Act of 1996

(1) A FINRA broker dealer is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state as described in OAR 441-175-0080 or 441-175-0110.

(2)(a) A federal covered investment adviser that makes a notice filing under ORS 59.165(7) and section (4) of this rule does not have to comply with OAR 441-175-0100 and 441-175-0110.

(b) A state investment adviser who has a principal place of business in a state other than this state and complies with that state’s bonding or net capital requirements is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state in OAR 441-175-0100 and 441-175-0110.

(c) An out-of-state state investment adviser that is not exempt under the “de minimis” exemption of ORS 59.015(20)(b)(J) must license in this state and can only operate in this state through an investment adviser representative licensed in this state.

(3) Surety bonds currently in effect in Oregon filed by a broker-dealer, federal covered investment adviser or out-of-state state investment adviser that no longer has to file a bond or letter of credit under ORS 59.175 and this rule shall continue in effect until canceled. However, the liability on the bond or letter of credit continues for six years following its cancellation.

(4)(a) Notice filing by a federal covered investment adviser will be accepted by the director through IARD using a Form ADV and shall include the fee required by OAR 441-175-0002.

(b) The renewal of the notice filing for a federal covered investment adviser will be accepted by the director through IARD and shall include the fee required under OAR 441-175-0002.

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

Stat. Auth.: ORS 59.165 & 59.285

Stats. Implemented: ORS 59.165

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 9-1987(Temp), f. & ef. 10-9-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

# ADMINISTRATIVE RULES

## 441-175-0070

### General Licensing Rules for Broker-Dealers, Investment Advisers and Salespersons, Succession and Acquisition

(1) Incomplete applications will not be processed.

(2) When all documents and fees have been submitted and reviewed by the director, a license for the broker-dealer or investment adviser, which may be conditioned or restricted under OAR 441-225-0030, shall be issued unless the director determines that licensing should be denied on one or more grounds set forth in ORS 59.205 to 59.225.

(3) Licensees conducting business under any name other than the name in which their license is issued by the director shall comply with OAR 441-175-0171.

(4) Licenses of non-FINRA broker-dealers or state investment advisers expire one year after the date of initial licensing, except licenses of state investment advisers that license through IARD will expire on December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0165.

(5) Licenses of FINRA broker-dealers expire December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0160.

(6) Any amendments to an application or license shall be filed in accordance with the provisions of OAR 441-175-0105.

(7)(a) If any person not licensed in the State of Oregon succeeds to the business and continues the business of a person licensed in Oregon, a new application must be filed. However, the license of the predecessor and predecessor salespersons or investment adviser representatives shall remain effective as the license of the successors for a period of 75 days after the succession, if a completed application is received by the director within 30 days of the succession. The salespersons or investment adviser representatives to the predecessor who were licensed in Oregon at the time of the acquisition will be licensed to the successor when the new license is issued. A new license will be issued reflecting the date of succession and a new effective date. There will be no charge for the transfer of salespersons' or investment adviser representatives' licenses from the predecessor to the successor;

(b) A Form BD or ADV filed by a person that is not licensed when such form is filed and which succeeds to and continues the business of a person licensed in the state of Oregon shall be deemed an application for licensing filed by that predecessor and adopted by the successor, even though designated as an amendment, if filed within 30 days of the succession and the succession is based on a change in the predecessor's date or state of incorporation, form or organization, or change in composition of a partnership and the amendment is filed to reflect these changes.

(8) If a broker-dealer or state investment adviser who is licensed in the State of Oregon is acquired by another person licensed in the State of Oregon, there will be no additional licensing requirements. However, the acquiring party must submit an amended Form BD, or Form ADV pursuant to OAR 441-175-0105. There will be no charge for the transfer of salespersons' or investment adviser representatives' licenses from the predecessor to the successor.

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

Stat. Auth.: ORS 59.175, & 59.285

Stats. Implemented: ORS 59.165, 59.175 & 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.1; FCS 3-1989, f. & cert. ef. 2-1-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0085

### Limited Licensing of Canadian Broker-Dealers and Salespersons

(1) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by,

(a) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(b) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(2) A salesperson who will be representing a Canadian broker-dealer licensed under this rule may, provided the agent is licensed in accordance with this rule, effect transactions in securities in this state as permitted for the broker-dealer in section (1) of this rule.

(3) A Canadian broker-dealer may license under this rule provided that it:

(a) Files an application in the form required by the jurisdiction in which it has its head office;

(b) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions in this state and files evidence thereof; and

(c) Is a member of a self-regulatory organization or stock exchange in Canada.

(4) A salesperson who will be representing a Canadian broker-dealer licensed under this rule in effecting transactions in securities in this state may license under this rule provided that he or she:

(a) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office; and

(b) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.

(5) If no denial order is in effect and no proceeding is pending under ORS 59.205, licensing becomes effective on the 30th day after an application is filed, unless earlier made effective, and expires on December 31 of every year.

(6) A Canadian broker-dealer licensed under this rule shall:

(a) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

(b) Provide the director upon request with its books and records relating to its business in this state as a broker-dealer;

(c) Inform the director forthwith of any criminal action taken against it or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and disclose to its clients in the state that the broker-dealer and its salespersons are not subject to the full regulatory provisions in the Oregon Securities Law.

(7) A salesperson of a Canadian broker-dealer licensed under this rule shall:

(a) Maintain his or her provincial or territorial registration in good standing;

(b) Inform the director forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the salesperson as a result of any self-regulatory or regulatory action involving fraud, theft, misrepresentation or similar conduct.

(8)(a) Renewal applications for Canadian broker-dealers and salespersons under this rule must be filed by January 1 of each calendar year following the date of original licensing.

(b) Renewal applications may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subsection (3)(a) or (4)(a) of this rule.

(9) Every applicant for licensing or renewal licensing under this rule shall pay the applicable non-refundable fee for broker-dealers and agents as set in OAR 441-175-0002.

(10) A Canadian broker-dealer or salesperson licensed under this rule may only effect transactions in this state as permitted in sections (1) or (2) of this rule with or through:

(a) The issuers of the securities involved in the transactions;

(b) Other broker-dealers;

(c) Banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(d) As otherwise permitted pursuant to the Oregon Securities Law.

(11) A Canadian broker-dealer or agent licensed under this rule and acting in accordance with the limitations set out in section (10) is exempt from all of the requirements of the Oregon Securities Law, except the anti-fraud provisions and the requirements set out in this rule. Such Canadian broker-dealer or salesperson may only have its notice filing under this rule denied, suspended or revoked for a breach of the anti-fraud provisions in ORS 59.135 or the requirements in this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 5-2001, f. & cert. ef. 6-7-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0100

### Applications for Licensing of Investment Advisers

(1) An applicant for licensing as a state investment adviser must apply through the IARD and the director.

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(2) An applicant must submit to the IARD:

(a) A completed Form ADV, including Parts 1 and 2 of Form ADV;

(b) An investment adviser licensing fee as required by OAR 441-175-0002;

(c) At least one completed Form U-4. All licensed state investment advisers must have at least one representative licensed continuously throughout the licensing period of the investment adviser; and

(d) A licensing fee for each investment adviser representative as required by OAR 441-175-0002.

(3) An applicant must submit To the director:

(a) A surety bond or letter of credit under OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(b) The name of the designated compliance person or persons on the Form ADV. A notice of change in the designated compliance person must be filed with the director within 30 days following the change;

(c) A copy of any proposed client contracts if the applicant is an Oregon based state investment adviser;

(d) A copy of a current balance sheet; and

(e) Any form or portion of any form which cannot be submitted through the IARD.

(4) An Oregon based investment adviser applicant who has custody or possession of a client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client must file with the director financial statements as defined in OAR 441-011-0040 and prepared by an "independent accountant" as defined in 441-175-0010(13) as follows:

(a) If the applicant has been in operation for more than two years, and the application is made less than 90 days after the end of the applicant's fiscal year, the applicant must provide financial statement for the two most recent fiscal years, not including the most recently completed fiscal year.

(b) If the applicant has been in operation for less than two years, the applicant must provide financial statements for the periods of operation.

(c) If the year-end financial statements are dated more than 90 days from the date of the completed application, the applicant must provide interim financial statements that were completed within 90 days of the application.

(5) All applicants must comply with the provisions of OAR 441-175-0070.

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

Stat. Auth.: ORS 59.175& 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.4; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0110

### Surety Bond; Letter of Credit

(1) Every applicant for a license as an Oregon based state investment adviser, must file with the director a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule.

(2) Every person licensed as an Oregon based state investment adviser must maintain a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule during the period of licensing and for at least six years after the person ceases to be licensed as an Oregon based state investment adviser.

(3) In no less than six years after a person ceases to be required to maintain a surety bond or a letter of credit, the person may apply to the director for release of the surety bond or letter of credit. Unless the director determines that claims are pending against the person for violation of the Oregon Securities Law, the director shall release the surety bond or letter of credit.

(4) A surety bond shall be in a form and on terms approved by the director in the sum of \$10,000 from a corporation authorized by the director to transact insurance in the State of Oregon.

(5) A letter of credit shall be in the form and on terms approved by the director in the sum of \$10,000 from a financial institution authorized to transact banking business in the State of Oregon.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175(4) & 59.225

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 1-1987(Temp), f. & ef. 8-7-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 3-1988, f. 2-2-88, cert. ef. 2-3-88; Renumbered from 815-030-0068; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0120

### Licensing of Salespersons or Representatives to Non-FINRA Broker-Dealers, State or Federal Covered Investment Advisers, Issuers and Owners of Securities

(1) For purposes of ORS 59.175, all salespersons or investment adviser representatives, except salespersons desiring to work for a FINRA broker-dealer, must be licensed as provided in this rule.

(2) A non-FINRA broker-dealer, an issuer, or an owner of securities must submit to the director a complete application to license a salesperson including:

(a) A completed Form U-4 or an alternate form approved by the director;

(b) A licensing fee for each salesperson as set in OAR 441-175-0002;

(c) Official notice of a passing score of the appropriate examinations under section (5), if required for licensing under this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking required in section (10) of this rule.

(3) A state or federal covered investment adviser must submit a complete application to the CRD if the CRD is capable of accepting the application and if the CRD cannot accept the documentation it must be submitted to the director. An application must contain the following:

(a) A completed Form U-4 or an alternate form approved by the director;

(b) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(c) Official notice of a passing score on the appropriate examination, if required for licensing under section (6) of this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking required in section (10) of this rule.

(4) The following salespersons or investment adviser representatives are exempt from the examination requirements of section (5) or (6) of this rule:

(a) Salespersons or investment adviser representatives who have been licensed at any time in Oregon during the two years immediately prior to filing an application for licensing and whose current application is for the same type of license;

(b) Salespersons licensed to an issuer or owner of securities where the securities have been registered under ORS 59.065 and OAR chapter 441, division 65; and

(c) Salespersons or investment adviser representatives who have been licensed at any time in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. For salespersons, this exemption is limited to the extent a salesperson has previously taken and passed the examinations required by section (5) of this rule.

(d) Salespersons that have received a waiver from FINRA under Rule 9600, as in effect on the effective date of this rule.

(5) A salesperson to a non-FINRA broker-dealer, or an issuer or owner of securities, who is not exempt from the examination requirements under section (4) of this rule is required to pass the S-63 examination. In addition, a salesperson is required to pass the specific examination which corresponds to the salesperson's authorized sales activity:

(6)(a) An investment adviser representative to a state or federal covered investment adviser, who is not exempt from the examination requirements under section (4) or subsection (6)(b) of this rule, is required to pass the examinations in one of the following paragraphs:

(A) If the applicant has passed the FINRA S-7 General Securities Representative Qualification examination, then either the S-65 examination if taken prior to January 1, 2000 or the S-66 examination if taken after January 1, 2000; or

(B) The S-65 examination if taken after January 1, 2000.

(b) The examinations in subsection (6)(a) shall be waived for an individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(B) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(C) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(D) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;

(E) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants; or

# ADMINISTRATIVE RULES

(F) Such other professional designation as the director may by order recognize.

(7) Limited licensed salespersons or investment adviser representatives may only effect transactions in or provide investment advice concerning securities for which their license is issued.

(8) Alternate equivalent examinations will be considered upon a written request to the director, stating the examination to be replaced, the type of examination, and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(9) Waiver of the examination requirement will be considered upon a written request to the director. Waivers will be limited to applications showing a minimum of three continuous years of securities related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this state.

(10)(a) A person may be licensed simultaneously in this state as a salesperson with more than one broker-dealer or as an investment adviser representative with a state or federal covered investment adviser if all employers enter into an undertaking on a form approved by the director. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's or investment adviser representative's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson or investment adviser representative by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the person during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson or investment adviser representative with the director and pay the applicable fees.

(b) No undertaking is required where:

(A) The salesperson is employed by one or more issuers registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq, under common management or control; or

(B) The employer, a single entity, is licensed or has filed notice in Oregon as both a broker-dealer and a state or federal covered investment adviser.

(c) Any changes in employment by a salesperson or investment adviser representative which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the director.

(11) Where a salesperson desires to work for an issuer or owner of securities:

(a) The salesperson must be a bona fide officer, director or employee of the issuer or owner. No salesperson may be licensed to more than one issuer or owner of securities simultaneously. No person described in this subsection may be licensed to another issuer or owner of securities until two years from the date of the original licensing or last renewal of the prior offering. However, salespersons licensed to a single issuer to sell a continuing issue may be renewed. A waiver of this subsection may be requested from the director as provided in OAR 441-011-0020;

(b) Persons not otherwise licensed, who are selling securities of an issuer for which notice has been filed under ORS 59.049 do not have to meet the requirements of subsection (a) of this section.

(12) Once the requirements of this rule are met, the director shall issue a license, which may be conditioned or restricted under OAR 441-225-0030, for the salesperson or investment adviser representative unless the director determines that licensing should be denied on one or more grounds as set forth in ORS 59.205 to 59.225.

(13) If the application, the undertaking, any supporting material or any representations made to the director are inaccurate or incomplete in any material respect, the license shall be void.

(14) A salesperson or investment adviser representative license issued pursuant to this rule automatically expires without further action of the director as follows:

(a) The license of an issuer's or owner's salesperson expires when the securities are no longer authorized for sale;

(b) The license of every salesperson or investment adviser representative licensed to a broker-dealer or state or federal covered investment adviser expires on the same date that the license of the broker-dealer or state investment adviser or the notice filing of the federal covered investment adviser expires.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 16, f. 5-13-74, ef. 6-11-74; Renumbered from 815-030-0165.2; CC 9-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0070; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 5-1999, f. & cert. ef. 12-23-99; FCS 13-2000, f. & cert. ef. 11-6-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12; FCS 5-2013, f. & cert. ef. 11-15-13; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0130

### Licensing of Salespersons to FINRA Broker-Dealers

(1) For purposes of ORS 59.175, all FINRA salespersons will be eligible for automatic licensing as provided in this rule if:

(a) The salesperson is licensed by the FINRA to a broker-dealer who is a member in good standing of the FINRA;

(b) The salesperson is employed by a broker-dealer who is licensed in Oregon under ORS 59.175;

(c) An application to license the salesperson has been submitted to the CRD by the employer as provided in this rule;

(d) The salesperson has filed with the director an undertaking as required in section (8) of this rule, if applicable; and

(e) The salesperson is not disqualified under OAR 441-175-0140.

(2) The employing broker-dealer must submit an application to license a salesperson in Oregon to the CRD including:

(a) A completed Form U-4;

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; and

(c) Official notice of a passing score of the appropriate examination as required for licensing under section (4) of this rule.

(3) The following salespersons are exempt from the examination requirements of section (4) of this rule:

(a) Salespersons licensed in Oregon at any time during the two years immediately prior to filing an application. The application must be for the same type of license; or

(b) Salespersons licensed in any jurisdiction at any time during the two years immediately prior to filing an application for licensing in Oregon. This exemption is limited to the extent a person has previously taken and passed the examinations required by section (4) of this rule.

(c) Salespersons that have received a waiver from FINRA under Rule 9600, as in effect on the effective date of this rule.

(4) A salesperson who is not exempt from the examination requirements under section (3) of this rule is required to pass the S-63 examination. In addition to the S-63 examination, a salesperson is required to pass the specific examination which corresponds to the salesperson's authorized sales activity.:

(5) Limited licensed salespersons may only effect transactions in securities for which their license is issued.

(6) Alternate equivalent examinations will be considered upon a written request to the director, stating the examination to be replaced, the type of examination and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(7) Waiver of the examination requirement will be considered upon a written request to the director. Waivers will be limited to applications showing a minimum of three continuous years of securities-related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this state.

(8)(a) A person may be licensed simultaneously in Oregon as a salesperson with more than one broker-dealer, mortgage banker, mortgage broker, or investment adviser if all employers enter into an undertaking on a form provided by the director. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson with the director and pay the applicable fees.

(b) No undertaking is required where the employer, a single entity, is licensed in Oregon as both a broker-dealer and an investment adviser; and

# ADMINISTRATIVE RULES

(c) Any changes in employment by a salesperson which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the director.

(9) Unless disqualified for automatic licensing in Oregon under OAR 441-175-0140, the salesperson will be automatically licensed in Oregon upon meeting the requirements as stated in this rule.

(10) If automatic licensing occurs, the effective date of licensing in Oregon will be the Oregon approved date as shown on the CRD.

(11) If the salesperson is disqualified from automatic licensing under OAR 441-175-0140, the director will either approve the application, condition or restrict the license under 441-225-0030, or deny it under ORS 59.205 to 59.225. If the director denies the application, the salesperson will be notified of the facts forming the basis for the denial, the statutory grounds for the denial and the person's right to a hearing under ORS chapter 183.

(12) A salesperson licensed under this rule is licensed in Oregon only for the same classification for which the salesperson is licensed with FINRA.

(13) If the application, the undertaking, any supporting material or any representations made to the director are inaccurate or incomplete in any material respect, the license shall be void.

(14) The license for a FINRA salesperson expires on December 31 of each year. The FINRA broker-dealer shall renew the salesperson's license as provided in ORS 59.185 and OAR 441-175-0160.

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

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 4-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0071; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; Administrative correction 12-4-97; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0140

### Disqualification from Automatic Licensing

(1) For purposes of this rule, principal means a person who is engaged in the management of an enterprise including supervision, solicitation, conduct of the enterprise, or training of persons associated with the enterprise. Principal includes sole proprietors, officers, partners, directors, and persons owning ten percent or more of the outstanding voting securities of the enterprise or of a control person of the enterprise.

(2) A person is not qualified for automatic licensing if the person:

(a) Has been a principal of a broker-dealer or state or federal covered investment adviser which has had its license or notice denied, suspended or revoked by the director;

(b) Has had a license or notice suspended or revoked by the director or a previous application for license denied by the director;

(c) Has been convicted of or pleaded guilty or no contest to any felony;

(d) Has been convicted of or pleaded guilty or no contest to any misdemeanor involving investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property or bribery, counterfeiting, extortion or gambling;

(e) Has been charged, either individually or as a member of an enterprise in which the person was a principal, with any felony or with a misdemeanor specified in subsection (d) of this section;

(f) Has been enjoined by a court in connection with any investment-related activity or has been found by a court to have violated investment-related statutes or regulations;

(g) Has been found by the Securities and Exchange Commission or the Commodity Futures Trading Commission:

(A) To have made a false statement or omission;

(B) To have violated investment-related statutes or regulations; or

(C) To have been a cause of an investment-related enterprise having its authorization to do business denied, suspended, revoked, or restricted.

(h) Has been the subject of an order by the Securities and Exchange Commission or the Commodity Futures Trading Commission denying, suspending, or revoking a registration or restricting activities;

(i) Has been found by any federal or state regulatory agency:

(A) To have made a false statement or omission or to have been dishonest, unfair, or unethical;

(B) To have violated investment-related statutes or regulations; or

(C) To have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted.

(j) Has been the subject of an order by any federal or state agency in connection with any investment-related activity;

(k) Has had any federal or state agency deny, suspend, or revoke a registration, license or notice or otherwise prevent the person from associating with an investment-related business or otherwise discipline the person by restriction of activities;

(l) Has had any federal or state agency revoke or suspend a professional license as an attorney, accountant, or public contractor;

(m) Has been found by any self-regulatory organization or commodities exchange:

(A) To have made a false statement or omissions;

(B) To have violated the rules of the self-regulatory organization or commodities exchange; or

(C) To have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted.

(n) Has been disciplined by expulsion or suspension from membership of any self-regulatory organization or commodities exchange;

(o) Has been barred or suspended from association with a member of a self-regulatory organization or commodities exchange;

(p) Has had activities restricted by any self-regulatory organization or commodities exchange;

(q) Has been the subject of an order issued by a foreign government, court, regulatory agency, or exchange relating to investments or fraud;

(r) Has been the subject of an investment-related complaint or proceeding initiated by a consumer which:

(A) Resulted in an arbitration award or civil judgment against the appellant regardless of the amount, alleged sales practices violations which is still pending, or was settled for an amount of \$10,000 or more; or

(B) Was settled or decided against the person individually or as part of a group for \$10,000 or more; or

(C) Within the past 24 months, alleged sales practices violations and compensatory damages of \$5,000 or more, or alleged forgery, theft, misappropriation or conversion of funds or securities.

(s) Is the subject of any complaint, investigation, or proceeding specified in subsections (2)(a) through (r) of this rule;

(t) Has been denied a securities-related bond or similar instrument, has had such a bond or similar instrument revoked, or has been the cause for payout on such a bond or similar instrument;

(u) Has any unsatisfied judgments or liens against the person;

(v) Has failed in business, made a compromise with creditors, filed a bankruptcy petition, or been declared bankrupt;

(w) Has been a principal of a firm which failed in business, made a compromise with creditors, filed a bankruptcy petition, was declared bankrupt, had a trustee appointed under the Securities Investors Protection Act, or had a direct payment procedure initiated; or

(x) Has been discharged or permitted to resign based on allegations of:

(A) Violations of investment-related statutes, regulations, rules, or investment industry standards of conduct;

(B) Fraud or the wrongful taking of property; or

(C) Failure to supervise in connection with investment-related statutes, regulations, rules, or investment industry standards of conduct.

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.175 & 59.205

Hist.: CC 5-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0072; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0150

### Termination or Cancellation of Salesperson or Investment Adviser Representative License

(1) A salesperson's or investment adviser representative's license with a broker-dealer, state or federal covered investment adviser, issuer or owner, ("employer"), may be terminated at any time by either the salesperson or investment adviser representative, or the employer.

(2) The employer shall provide the director and the terminated person with written notice of the termination on a Form U-5 within 30 days of the termination, accurately describing the reason for the termination under ORS 59.370(2). The notice shall be filed as follows:

(a) If the employer is a FINRA broker-dealer, the notice shall be filed with the CRD;

(b) If the employer is a state or federal covered investment adviser and the investment adviser representative's application was filed through IARD, the notice shall be filed with IARD;

(c) All other employers shall file the notice with the director.

(3) The salesperson or investment adviser representative may provide the director and the former employer with written notice of the termination in any form at any time.

# ADMINISTRATIVE RULES

(4) The status of the license of a salesperson or investment adviser representative licensed under OAR chapter 441, division 175 is dependent upon the status of the employer. Therefore, without further action by the director:

(a) The suspension of the license or notice of the employer suspends the license of the salesperson or investment adviser representative, however, the end of suspension of the license or notice of the employer automatically reinstates the license of the salesperson or investment adviser representative;

(b) The revocation, cancellation, withdrawal or expiration of the license or notice of the employer cancels the license of the salesperson or investment adviser representative;

(c) The suspension of the registration of securities suspends the license of the salesperson licensed to the issuer or owner of the securities; and

(d) The revocation, cancellation, withdrawal or expiration of the registration of securities cancels the license of the salesperson licensed to the issuer or owner of the securities.

(5) Under OAR 441-014-0060, the director may immediately suspend or refuse to renew a salesperson or investment adviser representative license, without prior opportunity for a hearing, upon a showing of a danger to the public health or safety; however, the affected party shall be entitled to a post-action hearing.

Stat. Auth.: ORS 59.175, 59.185 & 59.285

Stats. Implemented: ORS 59.175, 59.185 & 59.225

Hist.: CC 6-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0073; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0160

### Renewal of FINRA Broker-Dealer and Salesperson Licenses

(1) The licenses of a FINRA broker-dealer and all affiliated salespersons expire on December 31, unless otherwise renewed according to this rule.

(2) To renew a license, a FINRA broker-dealer must submit the following items to the FINRA/CRD:

(a) A broker-dealer renewal fee as set in OAR 441-175-0002; and

(b) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed.

(3) Failure to file a complete renewal application prior to December 31 shall result in termination of the broker-dealer license and all affiliated salesperson licenses as of December 31.

(4) If a FINRA broker-dealer satisfies the director that failure to file a complete renewal application prior to December 31 was due to inadvertent oversight and, the FINRA broker-dealer does complete the renewal application by January 31, the director shall reinstate the effected licenses.

Stat. Auth.: ORS 59.185 & 59.285

Stats. Implemented: ORS 59.185

Hist.: CC 7-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0074; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; Administrative Correction 12-4-97; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0165

### Renewal of the Licenses of Non-FINRA Broker-Dealers or State Investment Advisers, and Their Salespersons or Investment Adviser Representatives

(1)(a) The licenses of a non-FINRA broker-dealer or state investment adviser (employer), and the licenses of their salespersons or investment adviser representatives, expire 12 months following the date of original licensing or last renewal of the license of the employer unless otherwise renewed according to this rule.

(b) Notwithstanding subsection (a), if a state investment adviser or investment adviser representative applies through the CRD/IARD that license expires on December 31 of each year unless renewed through the CRD/IARD.

(2) Incomplete applications will not be processed.

(3) To renew a license, a state or federal covered investment adviser which has previously licensed through IARD must submit the following items to the IARD, to the extent the IARD is capable of accepting those items, and otherwise to the director:

(a) An employer renewal fee as set in OAR 441-175-0002;

(b) A renewal fee as set in OAR 441-175-0002 for each licensed investment adviser representative;

(c) Any amendments to Form ADV or Form U-4, under OAR 441-175-0105, which have not previously been submitted.

(4) To renew a license, a non-FINRA broker-dealer must submit the following items to the director:

(a) A non-FINRA broker-dealer renewal form;

(b) An amended Form BD or ADV, under OAR 441-175-0105, if there have been material changes since the most recent filing of the appropriate form;

(c) The name of the person who is the supervisor of the employer's operations. When a new supervisor is appointed, the employer must file the change with the director;

(d) A salesperson renewal form for each salesperson to be renewed, signed by both the salesperson and the employer;

(e) An employer renewal fee as set in OAR 441-175-0002, except as provided in section (6) of this rule;

(f) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed, except as provided in section (6) of this rule; and

(5) If the applicant for renewal is an Oregon based state investment adviser, the renewal applicant must submit the following financial information:

(a) If the investment adviser has or will have custody of client funds or securities, or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, the latest annual balance sheet which must be audited by an "independent accountant," as defined by OAR 441-175-0010(13);

(b) For all other investment advisers, the latest annual balance sheet which may be audited, reviewed or compiled, prepared by an "independent accountant," as defined by OAR 441-175-0010(13); and

(c) If the latest annual balance sheet and statement of income or operations is not current within 90 days of renewal, an interim balance sheet must be submitted.

(6) Any federal or state investment adviser transitioning onto IARD shall pay a prorated renewal fee for the employer and any previously licensed investment adviser representative in the year of the transition calculated from the month the existing notice filing or license expires, as shown in the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1), 59.185 & 59.205

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0171

### Use of Trade Name or Assumed Business Name

(1) Each person holding a license or applying for a license issued under ORS 59.005 to 59.370, who desires to operate under a trade name or an assumed business name must submit the following to the director for each name to be used:

(a) A completed application, with an original signature, on a form approved by the director; and

(b) A non-refundable filing fee as set in OAR 441-175-0002.

(2) An order issued by the director authorizing the licensee to operate under the trade name or assumed business name shall remain in effect until the order is:

(a) Suspended or revoked under ORS 59.205; or

(b) Cancelled under ORS 59.225.

(3)(a) Any person using a trade name or assumed business name pursuant to an order issued by the director must, within 30 days after any change of information, notify the director in writing of any change in address, contact name, phone number or fax number.

(b) Any person making a change in the trade name or assumed business name must submit a new notice and filing fee as provided in Section (1) of this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.015(8), 59.175(7) & 59.175(8)

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FSR 1-2016, f. & cert. ef. 3-7-16

## 441-175-0175

### Internet Communications

(1) Scope of rule. This rule applies to dissemination by firms or individuals of information about securities-related services or products on the Internet, except for any firms or individuals located in Oregon. As used in this section, the term "Internet" is to be construed liberally to include all proprietary or common carrier electronic systems or similar media.

# ADMINISTRATIVE RULES

(2) Solely disseminating information on the Internet concerning securities-related services or products offered by a firm or individual shall not be deemed to be "transacting business" in this state for purposes of ORS 59.165(1), provided the Internet communication:

(a) Is limited to general information on products or services;

(b) Prominently and conspicuously states that the firm or individual may only transact business in this state if first licensed or excluded from licensing requirements;

(c) Clearly states that follow-up, individualized responses to persons in this state using any contact method by such firm or individual that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, will not be made absent compliance with Oregon licensing requirements or a valid exclusion from licensing; and

(d) Contains mechanisms, including and without limitation, technical firewalls or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said firm or individual has completed any applicable licensing or notice filing process in this state, or qualifies for an exclusion from such requirement.

(3) In the case of an individual who is a broker-dealer salesperson or an investment adviser representative, the Internet communication must further:

(a) Be authorized by the firm with which the individual is affiliated;

(b) Clearly disclose the affiliation with the broker-dealer or investment adviser firm;

(c) Be within the scope of authority granted to the individual by his or her firm; and

(d) Be reviewed and approved for content by a principal of the broker-dealer or investment adviser firm.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FSR 1-2016, f. & cert. ef. 3-7-16

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

**Rule Caption:** Amendments to Rules Setting Requirements for Holding Company Forms A, B, C, D, E, F

**Adm. Order No.:** ID 3-2016

**Filed with Sec. of State:** 3-3-2016

**Certified to be Effective:** 3-3-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 836-027-0005, 836-027-0010, 836-027-0012, 836-027-0100, 836-027-0125, 836-027-0140, 836-027-0160

**Subject:** This rulemaking changes to rules to which forms are included as exhibits to the rules. Changes to the forms were necessary to reflect statutory changes made in 2013 and 2015 related to enterprise risk reporting and holding companies. The forms were first updated in a temporary rule to allow insurers to submit requisite documents on the correct forms. This rulemaking will replace the temporary rules and change the language of the rule to allow the division to make changes to the rules without rulemaking. Rather than being an exhibit to the rule, the forms will be available on the DCBS website at the Division of Financial Regulation webpage. Changing the rule in this way will reduce the amount of time it takes to change the forms if future changes to the forms are necessary thus reducing any delay of company transactions. The rules will continue to set forth the requirements for the forms.

**Rules Coordinator:** Karen Winkel—(503) 947-7694

### 836-027-0005

#### Definitions

(1) Unless the context otherwise requires, as used in OAR 836-027-0005 to 836-027-0180:

(a) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(b) "Foreign insurer" includes an alien insurer except where specifically noted otherwise.

(c) "Form A" means the form prescribed by OAR 836-027-0100

(d) "Form B" means the form prescribed by OAR 836-027-0010

(e) "Form C" means the form prescribed by OAR 836-027-0012

(f) "Form D" means the form prescribed by OAR 836-027-0160

(g) "Form E" means the form prescribed by OAR 836-027-0125

(h) "Form F" means the form prescribed by OAR 836-027-0140

(i) "Ultimate controlling person" means the person who is not controlled by any other person.

(2) Unless the context requires otherwise, other terms used in OAR 836-027-0005 to 836-027-0180 are used as defined in ORS 732.548.

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

Stat. Auth.: ORS 732.572

Stats. Implemented: ORS 732.517 - 732.592

Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14; ID 3-2016, f. & cert. ef. 3-3-16

### 836-027-0010

#### Registration of Insurers — Statement Filing

An insurer required to file an annual registration statement pursuant to ORS 732.517 to 732.592 shall:

(1) Furnish the required information on **Form B**. **Form B** is set forth on the website of the Department of Consumer and Business Services at [www.insurance.oregon.gov](http://www.insurance.oregon.gov).

(2) Include a statement that the insurer's board of directors oversees corporate governance and internal controls.

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

Stat. Auth.: ORS 732.572

Stats. Implemented: ORS 732.517 - 732.592

Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 13-1993, f. & cert. ef. 12-1-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14; ID 6-2015(Temp), f. & cert. ef. 9-2-15 thru 2-26-16; ID 3-2016, f. & cert. ef. 3-3-16

### 836-027-0012

#### Summary of Registration — Statement Filing.

An insurer required to file an annual registration statement pursuant to ORS 732.517 to 732.592 is also required to furnish information required on **Form C**. **Form C** is set forth on the website of the Department of Consumer and Business Services at [www.insurance.oregon.gov](http://www.insurance.oregon.gov). An insurer shall file a copy of **Form C** in each state in which the insurer is authorized to do business, if requested by the Insurance Commissioner of that state.

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

Stat. Auth.: ORS 732.572

Stats. Implemented: ORS 732.517 - 732.592

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 6-2015(Temp), f. & cert. ef. 9-2-15 thru 2-26-16; ID 3-2016, f. & cert. ef. 3-3-16

### 836-027-0100

#### Acquisition of Control — Statement Filing

A person required to file a statement pursuant to ORS 732.517 to 732.592 shall furnish the required information on **Form A**, which is incorporated in and made a part of this rule as **Exhibit 1**. The person also shall furnish the required information on **Form E**, which is described in OAR 836-027-0125. **Form E** is set forth on the website of the Department of Consumer and Business Services at [www.insurance.oregon.gov](http://www.insurance.oregon.gov).

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

Stat. Auth.: ORS 732.705

Stats. Implemented: ORS 732.517 - 732.592

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14; ID 15-1996, f. & cert. ef. 11-12-96; ID 6-2015(Temp), f. & cert. ef. 9-2-15 thru 2-26-16; ID 3-2016, f. & cert. ef. 3-3-16

### 836-027-0125

#### Pre-Acquisition Notification

(1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition under ORS 732.523, the person must file a pre-acquisition notification form, **Form E**, as required under ORS 732.589. **Form E** is set forth on the website of the Department of Consumer and Business Services at [www.insurance.oregon.gov](http://www.insurance.oregon.gov).

(2) If a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to ORS 732.527, 732.587, 732.589, 732.542 and 732.544, that person shall file a pre-acquisition notification form, **Form E**. A pre-acquisition notification form need not be filed if the acquisition is beyond the scope of ORS 732.587, 732.589, 732.542 and 732.544.

(3) In addition to the information required by **Form E**, the director may require an opinion from an economist as to the competitive impact of the proposed acquisition.

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

Stat. Auth.: ORS 732.705

Stats. Implemented: ORS 732.517 - 732.592

Hist.: ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14; ID 3-2016, f. & cert. ef. 3-3-16



# ADMINISTRATIVE RULES

## 836-027-0140

### Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report under ORS 732.569 shall furnish the required information on **Form F**. **Form F** is set forth on the website of the Department of Consumer and Business Services at [www.insurance.oregon.gov](http://www.insurance.oregon.gov).

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

Stat. Auth.: ORS 732.705

Stats. Implemented: ORS 732.517 - 732.592

Hist.: ID 7-2013, f. 12-26-13, cert. ef. 1-1-14; ID 1-2014, f. & cert. ef. 1-8-14; ID 3-2016, f. & cert. ef. 3-3-16

## 836-027-0160

### Transactions Subject to Prior Notice — Notice Filing

An insurer required to give notice of a proposed transaction pursuant to ORS 732.574 shall furnish the required information on **Form D**. **Form D** is set forth on the website of the Department of Consumer and Business Services at [www.insurance.oregon.gov](http://www.insurance.oregon.gov).

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

Stat. Auth.: ORS 732.572

Stats. Implemented: ORS 732.517 - 732.592

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 6-2015(Temp), f. & cert. ef. 9-2-15 thru 2-26-16; ID 3-2016, f. & cert. ef. 3-3-16

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

**Rule Caption:** Adopt changes to fall protection standard in construction.

**Adm. Order No.:** OSHA 1-2016

**Filed with Sec. of State:** 3-1-2016

**Certified to be Effective:** 1-1-17

**Notice Publication Date:** 12-1-2015

**Rules Adopted:** 437-003-2501

**Rules Amended:** 437-003-0001, 437-003-0134, 437-003-1501

**Subject:** In November of 2015, Oregon OSHA proposed to revise the general fall protection requirements covered under Division 3 (Construction Industry), Subdivisions 3/M (Fall Protection) and 3/E (Personal Protective and Life Saving Equipment), as requested by federal OSHA. Federal OSHA's request was not based on data related to enforcement, but on the effectiveness of the rule itself, presuming it is followed. The proposed revisions to Subdivision 3/M and Subdivision 3/E, includes amending the 10-foot general trigger height for fall protection to 6 feet, and repealing 437-003-0134(5)(a), which has a 10-foot general fall protection trigger height requirement, due to redundancy.

Five public hearings were held during January of 2016. Oregon OSHA received oral testimony in addition to written comments. Several comments received opposed lowering the 10-foot general trigger height for fall protection to 6 feet. Reasons for the opposing comments included, but were not limited to; the belief that the hazard associated with a 6-foot fall is not an "extreme difference" than that of a 10-foot fall; employers' difficulty of ensuring employees follow company policy to use personal fall protection systems; additional costs incurred by employers and homeowners for increase use of fall protection systems, in lieu of slide guards; lack of data that supports the need to lower the current 10-foot trigger height.

Oregon OSHA considered all comments received. However, since federal OSHA's request was not based on data related to enforcement, but rather on the literal effectiveness of the rule itself, presuming it is followed, Oregon OSHA must comply with federal OSHA's request.

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

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

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

## 437-003-0001

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, in the Federal Register:

#### (1) Subdivision A — GENERAL

(a) 29 CFR 1926.1 Purpose and Scope, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.2 Variances from safety and health standards, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.3 Inspections — right of entry, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.6 Incorporation by reference, published 4/11/14, FR vol. 79, no. 70, p. 20316.

#### (2) Subdivision B — GENERAL INTERPRETATIONS.

(a) 29 CFR 1926.10 Scope of subpart, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.13 Interpretation of statutory terms, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.14 Federal contracts for 'mixed' types of performance, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.16 Rules of construction, published 4/6/79, FR vol. 44, p. 20940.

#### (3) Subdivision C — GENERAL SAFETY AND HEALTH PROVISIONS.

(a) 29 CFR 1926.20 General safety and health provisions, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(b) 29 CFR 1926.21 Safety training and education, published 4/6/79, FR vol. 44, p. 20940; amended with Oregon OSHA AO 6-2012, repealed (b)(6), f. 9/28/12, ef. 4/1/13.

(c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved)

(d) 29 CFR 1926.23 First aid and medical attention, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.24 Fire protection and prevention, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.25 Housekeeping, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.26 Illumination, published 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.27 Sanitation, published 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.28 Personal protective equipment. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.

(j) 29 CFR 1926.29 Acceptable certifications, published 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 3/7/96, FR vol. 61, no. 46, p. 9249.

(l) 29 CFR 1926.31 (Reserved).

(m) 29 CFR 1926.32 Definitions, published 6/30/93, FR vol. 58, no. 124, p. 35078.

(n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.

#### (4) Subdivision D — OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS.

(a) 29 CFR 1926.50 Medical services and first aid, published 6/18/98, FR vol. 63, no. 117, p. 33469.

(b) 29 CFR 1926.51 Sanitation, published 6/30/93, FR vol. 58, no. 124, p. 35084.

(c) 29 CFR 1926.52 Occupational noise exposure, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.53 Ionizing radiation, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.54 Nonionizing radiation, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 1/10/97, FR vol. 62, no. 7, p. 1619.

(g) 29 CFR 1926.56 Illumination, published 4/6/79, FR vol. 44, p. 20940.

# ADMINISTRATIVE RULES

(h) 29 CFR 1926.57 Ventilation, published 1/8/98, FR vol. 63, no. 5, p. 1295.

(i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).

(j) 29 CFR 1926.59 Hazard Communication, published 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1926.60 Methylenedianiline (MDA), published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1926.62 Lead, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

**NOTE:** Cadmium has been redesignated as §1926.1127.

(n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response

**NOTE:** Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.

(5) Subdivision E — PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT.

(a) 29 CFR 1926.95 Criteria for personal protective equipment. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.

(b) 29 CFR 1926.97 Electrical protective equipment, published 4/11/14, FR vol. 79, no. 70, p. 20316.

(c) 29 CFR 1926.100 Head protection. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.

(d) 29 CFR 1926.101 Hearing protection. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.

(e) 29 CFR 1926.102 Eye and face protection. REPEALED with Oregon OSHA Admin. Order 2-2013, filed 2/15/13, effective 4/1/13. In Oregon, OAR 437-003-0134 applies.

(f) 29 CFR 1926.103 Respiratory protection, published 1/8/98, FR vol. 63, no. 5, p. 1297.

**NOTE:** 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.

(g) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.

(h) 29 CFR 1926.106 Working over or near water, published 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.107 Definitions applicable to this subpart, published 8/9/94, FR vol. 59, no. 152, p. 40729.

(6) Subdivision F — FIRE PROTECTION AND PREVENTION.

(a) 29 CFR 1926.150 Fire protection, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.151 Fire prevention, published 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.152 Flammable and combustible liquids, published 6/30/93, FR vol. 58, no. 124, p. 35162.

(d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 6/30/93, FR vol. 58, no. 124, p. 35170.

(e) 29 CFR 1926.154 Temporary heating devices, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.155 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.

(7) Subdivision G — SIGNS, SIGNALS, AND BARRICADES.

(a) 29 CFR 1926.200 Accident prevention signs and tags, published 6/13/13, FR vol. 78, no. 114, p. 35559; 11/6/13, FR vol. 78, no. 215, p. 66641.

(b) 29 CFR 1926.201 Signaling, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(c) 29 CFR 1926.202 Barricades, REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(d) 29 CFR 1926.203 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(8) Subdivision H — MATERIALS HANDLING, STORAGE, USE AND DISPOSAL

(a) 29 CFR 1926.250 General requirements for storage, published 6/30/93, FR vol. 58, no. 124, p. 35173.

(b) 29 CFR 1926.251 Rigging equipment for material handling, published 6/30/93, FR vol. 58, no. 124, p. 35173.

(c) 29 CFR 1926.252 Disposal of waste materials, published 4/6/79, FR vol. 44, p. 20940.

(9) Subdivision I — TOOLS — HAND AND POWER.

(a) 29 CFR 1926.300 General requirements, published 3/7/96, FR vol. 61, no. 46, p. 9250.

(b) 29 CFR 1926.301 Hand tools, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.302 Power operated hand tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.

(d) 29 CFR 1926.303 Abrasive wheels and tools, published 6/30/93, FR vol. 58, no. 124, p. 35175.

(e) 29 CFR 1926.304 Woodworking tools, published 3/7/96, FR vol. 61, no. 46, p. 9251.

(f) 29 CFR 1926.305 Jacks - lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.

(10) Subdivision J — WELDING AND CUTTING.

(a) 29 CFR 1926.350 Gas welding and cutting. Repealed. Oregon OSHA Admin. Order 6-2014, f. 10/28/14, ef. 5/1/15. In Oregon, OAR 437-002-2253 applies.

(b) 29 CFR 1926.351 Arc welding and cutting, published 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.352 Fire prevention, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 6/30/93, FR vol. 58, no. 124, p. 35179.

(e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 4/6/79, FR vol. 44, p. 20940.

(11) Subdivision K — ELECTRICAL.

(a) 29 CFR 1926.400 Introduction, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(b) 29 CFR 1926.401 (Reserved)

(c) 29 CFR 1926.402 Applicability, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(d) 29 CFR 1926.403 General requirements, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(e) 29 CFR 1926.404 Wiring design and protection, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.

(f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(g) 29 CFR 1926.406 Specific purpose equipment and installations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(h) 29 CFR 1926.407 Hazardous (classified) locations, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(i) 29 CFR 1926.408 Special systems, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(j) 29 CFR 1926.409 (Reserved).

(k) 29 CFR 1926.415 (Reserved).

(l) 29 CFR 1926.416 General requirements, published 8/12/96, FR vol. 61, no. 156, p. 41738.

(m) 29 CFR 1926.417 Lockout and tagging of circuits, published 8/12/96, FR vol. 61, no. 156, p. 41739.

(n) 29 CFR 1926.418 (Reserved).

(o) 29 CFR 1926.430 (Reserved).

(p) 29 CFR 1926.431 Maintenance of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(q) 29 CFR 1926.432 Environmental deterioration of equipment, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(r) 29 CFR 1926.433 - 29 CFR 1926.440 (Reserved).

(s) 29 CFR 1926.441 Battery locations and battery charging, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(t) 29 CFR 1926.442 - 29 CFR 1926.448 (Reserved).

(u) 29 CFR 1926.449 Definitions applicable to this subpart, published 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(12) Subdivision L — SCAFFOLDING.

(a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.451 General requirements, published 11/25/96, FR vol. 61, no. 228, p. 59831.

(c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.

(d) 29 CFR 1926.453 Aerial lifts, published 11/25/96, FR vol. 61, no. 228, p. 59832.

(e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.

(f) Appendix A to Subpart L Scaffold Specifications, published 8/30/96, FR vol. 61, no. 170, p. 46117.

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(g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.

(h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(j) Appendix E to Subpart L Drawing and illustrations, published 11/25/96, FR vol. 61, no. 228, p. 59832.

(13) Subdivision M — FALL PROTECTION.

(a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart, published 4/11/14, FR vol. 79, no. 70, p. 20316; amended with AO 1-2016, f. 3/1/16, ef. 1/1/17.

(b) 29 CFR 1926.501 Duty to have fall protection. REPEALED with AO 1-2016, f. 3/1/16, ef. 1/1/17. In Oregon, 437-003-1501 applies.

(c) 29 CFR 1926.502 Fall protection systems criteria and practices, published 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.

(d) 29 CFR 1926.503 Training requirements. REPEALED with AO 6-2002, f. and ef. 7/19/02, in Oregon, 437-003-0503 applies.

(e) Appendix A to Subpart M Determining Roof Widths, published 8/9/94, FR vol. 59, no. 152, p. 40738-40742.

(f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.

(g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.

(h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.

(14) Subdivision N — HELICOPTERS, HOISTS, ELEVATORS, AND CONVEYORS.

(a) 29 CFR 1926.550 (Reserved).

(b) 29 CFR 1926.551 Helicopters, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.553 Base-mounted drum hoist, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(e) 29 CFR 1926.554 Overhead hoists, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.555 Conveyors, published 4/6/79, FR vol. 44, p. 20940.

(15) Subdivision O — MOTOR VEHICLES, MECHANIZED EQUIPMENT, AND MARINE OPERATIONS.

(a) 29 CFR 1926.600 Equipment, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.601 Motor vehicles, REPEALED by OR-OSHA Admin. Order 6-2007, f. 9/26/07, ef. 9/26/07.

(c) 29 CFR 1926.602 Material handling equipment, published 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.

(d) 29 CFR 1926.603 Pile driving equipment, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.604 Site clearing, published 7/22/77, FR vol. 42, p. 37674.

(f) 29 CFR 1926.605 Marine operations and equipment, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.606 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.

(16) Subdivision P — EXCAVATIONS.

(a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.

(b) 29 CFR 1926.651 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.652 Requirements for protective systems, published 10/31/89, FR vol. 54, no. 209, pp. 45961-45962.

(d) Appendices A-F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962-45991.

(17) Subdivision Q — CONCRETE AND MASONRY CONSTRUCTION.

(a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(b) 29 CFR 1926.701 General requirements, published 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.702 Requirements for equipment and tools, published 6/16/88, FR vol. 53, p. 22612.

(d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.

(e) 29 CFR 1926.704 Requirements for precast concrete, published 10/5/89, FR vol. 54, no. 192, p. 41088.

(f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.

(18) Subdivision R — STEEL ERECTION.

(a) 29 CFR 1926.750 Scope, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(b) 29 CFR 1926.751 Definitions, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(d) 29 CFR 1926.753 Hoisting and rigging, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(e) 29 CFR 1926.754 Structural steel assembly, published 4/3/06, FR vol. 71, no. 63, p. 16669.

(f) 29 CFR 1926.755 Column anchorage, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(g) 29 CFR 1926.756 Beams and columns, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(h) 29 CFR 1926.757 Open web steel joists, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(i) 29 CFR 1926.758 Systems-engineered metal buildings, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(j) 29 CFR 1926.759 Falling object protection, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(k) 29 CFR 1926.760 Fall protection, published 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(l) 29 CFR 1926.761 Training, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Nonmandatory Guidelines for Complying with §1926.752(e), published 7/17/01, FR vol. 66, no. 137, p. 37137.

(n) Appendix B to Subpart R Reserved.

(o) Appendix C to Subpart R Illustrations of bridging terminus points: Nonmandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 7/17/01, FR vol. 66, no. 137, p. 37137.

(p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Nonmandatory Guidelines for Complying with §1926.760(c)(3), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(q) Appendix E to Subpart R Training: Nonmandatory Guidelines for Complying with §1926.761, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(r) Appendix F to Subpart R Perimeter columns: Nonmandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 7/17/01, FR vol. 66, no. 137, p. 37137.

(s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Nonmandatory Guidelines for Complying with Complying with §1926.760(d), REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with Complying with §1926.756(c)(1), published 7/17/01, FR vol. 66, no. 137, p. 37137.

(19) Subdivision S — UNDERGROUND CONSTRUCTION, CAISSONS, COFFERDAMS, AND COMPRESSED AIR.

(a) 29 CFR 1926.800 Underground construction, published 4/23/13, FR vol. 78, no. 78, p. 23837.

(b) 29 CFR 1926.801 Caissons, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.802 Cofferdams, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.803 Compressed air, published 7/11/86, FR vol. 51, p. 25318.

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(e) 29 CFR 1926.804 Definitions applicable to this subpart, published 4/6/79, FR vol. 44, p. 20940.

(f) Appendix A to Subpart S Decompression Tables, published 4/6/79, FR vol. 44, p. 20940.

## (20) Subdivision T — DEMOLITION.

(a) 29 CFR 1926.850 Preparatory operations, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.852 Chutes, published 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.853 Removal of materials through floor openings, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.855 Manual removal of floors, published 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 4/23/13, FR vol. 78, no. 78, p. 23837.

(h) 29 CFR 1926.857 Storage, published 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.858 Removal of steel construction, published 4/23/13, FR vol. 78, no. 78, p. 23837.

(j) 29 CFR 1926.859 Mechanical demolition, published 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.860 Selective demolition by explosives, published 4/6/79, FR vol. 44, p. 20940.

## (21) Subdivision U — BLASTING AND USE OF EXPLOSIVES.

(a) 29 CFR 1926.900 General provisions, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.901 Blaster qualifications, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.902 Surface transportation of explosives, published 6/30/93, FR vol. 58, no. 124, p. 35311.

(d) 29 CFR 1926.903 Underground transportation of explosives, published 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35311.

(f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 6/30/93, FR vol. 58, no. 124, p. 35184.

(g) 29 CFR 1926.906 Initiation of explosive charges — electric blasting, published 6/18/98, FR vol. 63, no. 117, p. 33469.

(h) 29 CFR 1926.907 Use of safety fuse, published 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.908 Use of detonating cord, published 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.909 Firing the blast, published 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.910 Inspection after blasting, published 4/6/79, FR vol. 44, p. 20940.

(l) 29 CFR 1926.911 Misfires, published 4/6/79, FR vol. 44, p. 20940.

(m) 29 CFR 1926.912 Underwater blasting, published 4/6/79, FR vol. 44, p. 20940.

(n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 4/6/79, FR vol. 44, p. 20940.

(o) 29 CFR 1926.914 Definitions applicable to this subpart, published 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.

## (22) Subdivision V — POWER TRANSMISSION AND DISTRIBUTION.

29 CFR 1926.950 through 1926.960 are repealed with Oregon OSHA Admin. Order 3-2015, f. 10/9/15, ef. 1/1/16. In Oregon, Division 2/RR applies.

## (23) Subdivision W — ROLLOVER PROTECTIVE STRUCTURES: OVERHEAD PROTECTION.

(a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 7/20/06, FR vol. 71, no. 139, p. 41127.

(d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/28/06, FR vol. 71, no. 39, p. 9909.

## (24) Subdivision X — STAIRWAYS AND LADDERS.

(a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.

(c) 29 CFR 1926.1052 Stairways, published 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(d) 29 CFR 1926.1053 Ladders, published 4/11/14, FR vol. 79, no. 70, p. 20316.

(e) 29 CFR 1926.1054 (Reserved).

(f) 29 CFR 1926.1055 (Reserved).

(g) 29 CFR 1926.1056 (Reserved).

(h) 29 CFR 1926.1057 (Reserved).

(i) 29 CFR 1926.1058 (Reserved).

(j) 29 CFR 1926.1059 (Reserved).

(k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.

## (25) Subdivision Z — TOXIC AND HAZARDOUS SUBSTANCES.

(a) 29 CFR 1926.1101 Asbestos, published 2/8/13, FR vol. 78, no. 27, p. 9311.

(b) 29 CFR 1926.1126 Chromium (VI), published 3/17/10, FR vol. 75, no. 51, pp. 12681-12686.

(c) 29 CFR 1926.1127 Cadmium, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(d) 29 CFR 1926.1152 Methylene Chloride, published 12/18/97, FR vol. 62, no. 243, p. 66275.

(26) Subdivision AA — (Reserved).

(27) Subdivision BB — (Reserved).

(28) Subdivision CC — Cranes and Derricks in Construction.

(a) 29 CFR 1926.1400 Scope, published 4/11/14, FR vol. 79, no. 70, p. 20316.

(b) 29 CFR 1926.1401 Definitions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(c) 29 CFR 1926.1402 Ground conditions, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(d) 29 CFR 1926.1403 Assembly/Disassembly — selection of manufacturer or employer procedures, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(e) 29 CFR 1926.1404 Assembly/Disassembly — general requirements (applies to all assembly and disassembly operations), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(f) 29 CFR 1926.1405 Disassembly — additional requirements for dismantling of booms and jibs (applies to both the use of manufacturer procedures and employer procedures), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(g) 29 CFR 1926.1406 Assembly/Disassembly — employer procedures — general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(h) 29 CFR 1926.1407 Power line safety (up to 350 kV) — assembly and disassembly, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(i) 29 CFR 1926.1408 Power line safety (up to 350 kV) — equipment operations, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(j) 29 CFR 1926.1409 Power line safety (over 35 kV), published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(k) 29 CFR 1926.1410 Power line safety (all voltages) — equipment operations closer than the Table A zone, published 4/11/14, FR vol. 79, no. 70, p. 20316.

(l) 29 CFR 1926.1411 Power line safety — while traveling, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(m) 29 CFR 1926.1412 Inspections, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(n) 29 CFR 1926.1413 Wire rope — inspection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(o) 29 CFR 1926.1414 Wire rope — selection and installation criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(p) 29 CFR 1926.1415 Safety devices, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(q) 29 CFR 1926.1416 Operational aids, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(r) 29 CFR 1926.1417 Operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(s) 29 CFR 1926.1418 Authority to stop operation, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(t) 29 CFR 1926.1419 Signals — general requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

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(u) 29 CFR 1926.1420 Signals — radio, telephone or other electronic transmission of signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(v) 29 CFR 1926.1421 Signals — voice signals — additional requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(w) 29 CFR 1926.1422 Signals — hand signal chart, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(x) 29 CFR 1926.1423 Fall protection, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(y) 29 CFR 1926.1424 Work area control, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(z) 29 CFR 1926.1425 Keeping clear of the load, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(aa) 29 CFR 1926.1426 Free fall and controlled load lowering, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(bb) 29 CFR 1926.1427 Operator qualification and certification, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(cc) 29 CFR 1926.1428 Signal person qualifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(dd) 29 CFR 1926.1429 Qualifications of maintenance & repair employees, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ee) 29 CFR 1926.1430 Training, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ff) 29 CFR 1926.1431 Hoisting personnel, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(gg) 29 CFR 1926.1432 Multiple-crane/derrick lifts — supplemental requirements, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(hh) 29 CFR 1926.1433 Design, construction and testing, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ii) 29 CFR 1926.1434 Equipment modifications, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(jj) 29 CFR 1926.1435 Tower cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(kk) 29 CFR 1926.1436 Derricks, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ll) 29 CFR 1926.1437 Floating cranes/derricks and land cranes/derricks on barges, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(mm) 29 CFR 1926.1438 Overhead & gantry cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(nn) 29 CFR 1926.1439 Dedicated pile drivers, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(oo) 29 CFR 1926.1440 Sideboom cranes, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(pp) 29 CFR 1926.1441 Equipment with a rated hoisting/lifting capacity of 2,000 pounds or less, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(qq) 29 CFR 1926.1442 Severability, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(rr) Appendix A to Subdivision CC of 1926 — Standard Hand Signals, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(ss) Appendix B to Subdivision CC of 1926 — Assembly/Disassembly — Sample Procedures for Minimizing the Risk of Unintended Dangerous Boom Movement, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

(tt) Appendix C to Subdivision CC of 1926 — Operator Certification — Written Examination — Technical Knowledge Criteria, published 8/9/10, FR vol. 75, no. 152, pp. 47906-48177.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02, cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03, cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03;

OSHA 8-2003, f. 12-30-03, cert. ef. 1-1-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 2-2006, f. & cert. ef. 4-28-06; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 5-2006, f. 8-7-06, cert. ef. 1-1-07; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 6-2007, f. & cert. ef. 9-26-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 3-2010, f. 6-10-10, cert. ef. 6-15-10; OSHA 1-2011, f. & cert. ef. 2-9-11; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 5-2011, f. 12-8-11, cert. ef. 7-1-12; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 3-2012, f. & cert. ef. 8-20-12; OSHA 5-2012, f. & cert. ef. 9-25-12; OSHA 6-2012, f. 9-28-12, cert. ef. 4-1-13; OSHA 7-2012, f. & cert. ef. 12-14-12; OSHA 1-2013, f. & cert. ef. 2-14-13; OSHA 2-2013, f. 2-15-13, cert. ef. 4-1-13; OSHA 4-2013, f. & cert. ef. 7-19-13; OSHA 5-2013, f. & cert. ef. 9-13-13; OSHA 6-2013, f. & cert. ef. 10-9-13; OSHA 7-2013, f. & cert. ef. 12-12-13; OSHA 6-2014, f. 10-28-14, cert. ef. 5-1-15; OSHA 3-2015, f. 10-9-15, cert. ef. 1-1-16; OSHA 1-2016, f. 3-1-16, cert. ef. 1-1-17

## 437-003-0134

### Personal Protective Equipment

Application. This rule applies to personal protective equipment and other protective equipment for the eyes, face, head, extremities and torso to include protective clothing, respiratory devices, and protective shields and barriers, wherever employees encounter hazardous processes or environments, chemical hazards, radiological hazards, or mechanical irritants that are capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(1) Hazard assessment and equipment selection.

(A) The employer must assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE) or other protective equipment. If such hazards are present, or likely to be present, the employer must:

(A) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(i) All protective equipment must be of safe design and construction for the work to be performed.

(ii) Protective equipment must be worn and used in a manner which will make full use of its protective properties.

(B) Communicate selection decisions to each affected employee; and,

(C) Select PPE that properly fits each affected employee.

**NOTE:** Non-mandatory Appendix B to Subdivision 2/I, contains an example of procedures that would comply with the requirement for a hazard assessment.

(2) Equipment.

(a) Where employees provide their own protective equipment, the employer is responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(b) All personal protective equipment must be provided, used, and maintained in a sanitary and reliable condition.

(c) Defective or damaged personal protective equipment must not be used.

(d) Each employer must maintain a regular system of inspection and maintenance of personal protective equipment furnished to workers.

(3) Training.

(a) The employer must provide training to each employee who is required by this section to use PPE and each employee that is provided training must know at least the following:

(A) When PPE is necessary;

(B) What PPE is necessary;

(C) How to properly don, doff, adjust, and wear PPE;

(D) The limitations of the PPE; and,

(E) The proper care, maintenance, useful life and disposal of the PPE.

(b) Each affected employee must demonstrate an understanding of the training specified in paragraph (3)(a) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

(c) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (3)(b) of this section, the employer must retrain each such employee. Circumstances where retraining is required include, but are not limited to situations where:

(A) Changes in the workplace render previous training obsolete; or

(B) Changes in the types of PPE to be used render previous training obsolete; or

(C) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

(4) Payment for protective equipment.

(a) Except as provided by paragraphs (4)(b) through (4)(f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, must be provided by the employer at no cost to employees.

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(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(A) The logging boots required by OAR 437-007-0330 in division 7.

(B) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(C) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(5) Fall Protection. When fall protection systems are required by another standard, the employer must ensure that fall protection systems are provided, installed, and implemented according to the criteria in 1926.502, 437-003-0502, 437-003-1502, and 437-003-2502 in Division 3/M, Fall Protection.

(6) Work Clothing.

(a) Clothing must be worn which is appropriate to the work performed and conditions encountered.

(b) Appropriate high temperature protective clothing must be worn by workers who are exposed to possible contact with molten metals or other substances that can cause burns.

(c) Loose sleeves, ties, lapels, cuffs, or other loose clothing must not be worn near moving machinery.

(d) Clothing saturated or impregnated with flammable liquids, corrosive or toxic substances, irritants, or oxidizing agents must be removed immediately and not worn again until properly cleaned.

(e) Rings, wristwatches, earrings, bracelets, and other jewelry which might contact power driven machinery or electric circuitry, must not be worn.

(7) High Visibility Garments. Employees exposed to hazards caused by on highway type moving vehicles in construction zones and street/highway traffic must wear highly visible upper body garments. The colors must contrast with other colors in the area sufficiently to make the worker stand-out. Colors equivalent to strong red, strong orange, strong yellow, strong yellow-green or fluorescent versions of these colors are acceptable. During hours of darkness, the garments must also have reflective material visible from all sides for 1000 feet.

(8) Eye And Face Protection.

(a) The employer must ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

(b) The employer must ensure that each affected employee uses eye protection that provides side protection when there is a hazard from flying objects. Detachable side protectors (e.g., clip-on or slide-on side shields) meeting the pertinent requirements of this section are acceptable.

(c) The employer must ensure that each affected employee who wears prescription lenses while engaged in operations that involve eye hazards wears eye protection that incorporates the prescription in its design, or shall wear eye protection that can be worn over the prescription lenses without disturbing the proper position of the prescription lenses or the protective lenses.

(d) Eye and face PPE must be distinctly marked to facilitate identification of the manufacturer.

(e) The employer must ensure that each affected employee uses equipment with filter lenses that have a shade number appropriate for the work being performed for protection from injurious light radiation. The following is a listing of appropriate shade numbers for various operations. **Table** [Table not included, see ED. NOTE.]

(f) Protective eye and face protection devices must comply with any of the following consensus Standards.

(A) ANSI Z87.1-2003, American National Standard Practice for Occupational and Educational Eye and Face Protection, which is incorporated by reference in 1910.6;

(B) ANSI Z87.1-1989 (R-1998), American National Standard Practice for Occupational and Educational Eye and Face Protection, which is incorporated by reference in 1910.6; or

(C) ANSI Z87.1-1989, American National Standard Practice for Occupational and Educational Eye and Face Protection, which is incorporated by reference in 1910.6.

(g) Protective eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(h) Employees whose occupation or assignment requires exposure to laser beams shall be furnished laser safety goggles as required by Occupational Health Regulations which will protect for the specific wavelength of the laser and be of optical density adequate for the energy involved.

(9) Head Protection.

(a) The employer must ensure that each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head from falling or flying objects.

(b) The employer must ensure that a protective helmet designed to reduce electrical shock hazard is worn by each such affected employee when near exposed electrical conductors which could contact the head.

(c) Head protection must comply with any of the following consensus standards:

(A) ANSI Z89.1-2009, American National Standard for Industrial Head Protection, which is incorporated by reference in 1910.6;

(B) ANSI Z89.1-2003, American National Standard for Industrial Head Protection, which is incorporated by reference in 1910.6;

(C) ANSI Z89.1-1997, American National Standard for Industrial Head Protection, which is incorporated by reference in 1910.6; or

(d) Head protection devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(e) Employees who are exposed to power-driven machinery or to sources of ignition shall wear caps or other head covering which completely covers the hair.

(10) Foot Protection.

(a) The employer must ensure that each affected employee use protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects, or objects piercing the sole, and where such employee's feet are exposed to electrical hazards.

(b) Protective footwear must comply with any of the following consensus standards:

(A) ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear, which are incorporated by reference in 1910.6;

(B) ANSI Z41-1999, American National Standard for Personal Protection –Protective Footwear, which is incorporated by reference in 1910.6; or

(C) ANSI Z41-1991, American National Standard for Personal Protection –Protective Footwear, which is incorporated by reference in §1910.6.

(c) Protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(d) Special types or designs of shoes or foot guards are required where conditions exist that make their use necessary for the safety of workers.

(11) Leg protection.

(a) Leggings or high boots of leather, rubber, or other suitable material must be worn by persons exposed to hot substances or dangerous chemical spills.

(b) Employees using chain saws must wear chaps or leg protectors that cover the leg from the upper thigh to mid-calf. The protector must be material designed to resist cuts from the chain saw. Employers must provide this protection at no cost to the employee.

(12) Hand Protection.

(a) Employers must select and require employees to use appropriate hand protection when employees' hands are exposed to hazards such as those from skin absorption of harmful substances; severe cuts or lacerations; severe abrasions; punctures; chemical burns; thermal burns; and harmful temperature extremes.

(b) Employers must base the selection of the appropriate hand protection on an evaluation of the performance characteristics of the hand pro-

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tection relative to the task(s) to be performed, conditions present, duration of use, and the hazards and potential hazards identified.

(c) Gloves must not be worn by persons whose hands are exposed to moving parts in which they could be caught.

(13) Skin protection. Where the need for their use is necessary, protective covering, ointments, gloves, or other effective protection must be provided for and used by persons exposed to materials which are hazardous to the skin.

[ED. NOTE: Table referenced is available from the agency.]

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2013, f. 2-15-13, cert. ef. 4-1-13; OSHA 1-2016, f. 3-1-16, cert. ef. 1-1-17

## 437-003-1501

### Fall Protection

(1) General. Except where permitted by another standard, when employees are exposed to a hazard of falling 6 feet or more to a lower level, the employer must ensure that fall protection systems are provided, installed, and implemented according to the criteria in 1926.502, 437-003-0502, 437-003-1502, and 437-003-2502.

(2) Walking/working surfaces. The employer must determine if the walking/working surfaces on which its employees are to work have the strength and structural integrity to safely support employees. Employees may work on those surfaces only when the surfaces have the requisite strength and structural integrity.

(3) Holes. Regardless of height, each employee on a walking/working surface must be protected from tripping in or stepping into or through holes (including skylights) by covers, or equivalent.

**NOTE:** Smoke domes or skylight fixtures are not considered covers for the purpose of this section unless they meet the strength requirements of 1926.502(i).

(4) Wall openings. Each employee working on, at, above, or near wall openings (including those with chutes attached) where the inside bottom edge of the wall opening is less than 39 inches above the walking/working surface and the outside bottom edge of the wall opening is 6 feet or more above lower levels, must be protected from falling by the use of guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(5) Excavations.

(a) Employers must use guardrail systems, fences, or barricades to protect any employee who might approach the edge of an excavation, when the excavation is 6 feet or more in depth and is not readily seen because of plant growth or other visual barrier.

(b) Employers must use guardrail systems, fences, barricades, or covers to protect any employee who might approach the edge of a well, pit, shaft, or other similar excavation, when the excavation is 6 feet or more in depth.

(6) Dangerous equipment. In addition to the fall protection requirements under 437-003-1501(1), each employee working less than 6 feet above dangerous equipment must be protected from falls into or onto dangerous equipment by guardrail systems or equipment guards.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2016, f. 3-1-16, cert. ef. 1-1-17

## 437-003-2501

### Protection From Falling Objects

(1) General. Except as otherwise provided in paragraph (2) of this section, when employees are exposed to falling objects, the employer must have each employee wear a hard hat and must implement one of the following measures in accordance with the criteria in 1926.502(j):

(a) Erect toeboards, screens, or guardrail systems to prevent objects from falling from higher levels; or,

(b) Erect a canopy structure and keep potential fall objects far enough from the edge of the higher level so that those objects would not go over the edge if they were accidentally displaced; or,

(c) Barricade the area to which objects could fall, prohibit employees from entering the barricaded area, and keep objects that may fall far enough away from the edge of a higher level so that those objects would not go over the edge if they were accidentally displaced.

(2) Holes. Employees working below walking/working surface holes (including skylights) must be protected from objects falling through by covers meeting the criteria in 1926.502(i), or equivalent.

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

Stats Implemented: ORS 654.001 - 654.295

Hist.: OSHA 1-2016, f. 3-1-16, cert. ef. 1-1-17

**Rule Caption:** Adopt changes to slide guard use rules in construction.

**Adm. Order No.:** OSHA 2-2016

**Filed with Sec. of State:** 3-1-2016

**Certified to be Effective:** 10-1-17

**Notice Publication Date:** 12-1-2015

**Rules Amended:** 437-003-0503, 437-003-1500

**Rules Repealed:** 437-003-3502

**Subject:** In November of 2015, Oregon OSHA proposed to revise the general fall protection requirements covered under Division 3 (Construction Industry), Subdivisions 3/M (Fall Protection), as requested by federal OSHA. The proposed revisions to Subdivision 3/M, includes revoking the use of slide guards as a sole or primary fall protection system.

Five public hearings were held during January of 2016. Oregon OSHA received oral testimony in addition to written comments. Several comments received opposed the elimination of slide guards as an acceptable method of fall protection. Reasons for the opposing comments included, but were not limited to; the belief that slide guards are an effective method of fall protection, and are largely accepted; employers' difficulty of ensuring employees follow company policy to use personal fall protection systems; a potential increase of exposures to falls for delivery employees needing to install their own fall protection system rather than relying upon already installed slide guards; having multiple employees engaged in roofing work while wearing ropes and harnesses increases trip hazards; ropes can catch on and knock over stacks of material; using ropes and harnesses can slow down the job; and lack of data that supports the opinion that slide guards are not an effective means of fall protection.

Oregon OSHA considered all comments received. However, since federal OSHA's request was not based on data related to enforcement, but rather on the literal effectiveness of the rule itself, presuming it is followed, Oregon OSHA must comply with federal OSHA's request.

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

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

## 437-003-0503

### Training Requirements

(1) Training Program.

(a) The employer shall provide a training program for each employee who might be exposed to fall hazards. The program shall enable each employee to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to minimize these hazards.

(b) The employer shall assure that each employee has been trained, as necessary, by a competent person qualified in the following areas:

(A) The nature of fall hazards in the work area;

(B) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;

(C) The use and operation of guardrail systems, personal fall arrest systems, safety net systems, warning line systems, safety monitoring systems, personal fall restraint systems, positioning devices, and other appropriate protection to be used;

(D) The role of each employee in the safety monitoring system when this system is used;

(E) The limitations on the use of mechanical equipment during the performance of roofing work;

(F) The correct procedures for the handling and storage of equipment and materials and the erection of overhead protection; and

(G) The role of employees in the fall protection work plan;

(H) The standards contained in this subpart.

(2) Certification of training.

(a) The employer shall verify compliance with paragraph (a) of this section by preparing a written certification record. The written certification record shall contain the name or other identity of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of

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this section, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

(b) The latest training certification shall be maintained.

(3) Retraining. When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (a) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

(a) Changes in the workplace render previous training obsolete; or

(b) Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or

(c) Inadequacies in an affected employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist: OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 2-2016, f. 3-1-16, cert. ef. 10-1-17

## 437-003-1500

### Additional Definitions

(1) Body belt means a Type 1 safety belt used in conjunction with lanyard or lifeline for fall restraint only.

(2) Fall protection system means personal fall arrest system, personal fall restraint system, positioning device system, guardrail system, safety net system, warning line system, or safety monitoring system.

(3) Personal fall restraint system means a fall protection system that prevents the user from falling any distance. The system is comprised of either a body belt or body harness, along with an anchorage, connectors and other necessary equipment. The other components typically include a lanyard, and may also include a lifeline and other devices.

(4) Rake edge means the inclined roof edges, such as those on the gable end of a building.

(5) Roofing work means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck and leading edge work.

(6) Walking/working surface means any surface, whether horizontal or vertical on which an employee walks or works, including, but not limited to, floors, roofs, ramps, bridges, runways, formwork, beams, columns, trusses and concrete reinforcing steel but not ladders, vehicles, or trailers, on which employees must be located in order to perform their job duties.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist: OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 2-2016, f. 3-1-16, cert. ef. 10-1-17

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

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

**Adm. Order No.:** WCD 1-2016

**Filed with Sec. of State:** 3-7-2016

**Certified to be Effective:** 4-1-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 436-009-0001, 436-009-0004, 436-009-0005, 436-009-0008, 436-009-0010, 436-009-0020, 436-009-0025, 436-009-0030, 436-009-0040, 436-009-0060, 436-009-0080, 436-009-0090, 436-009-0110, 436-010-0001, 436-010-0005, 436-010-0008, 436-010-0240, 436-010-0265, 436-010-0270, 436-010-0330, 436-010-0340

**Rules Repealed:** 436-009-0004(T), 436-009-0010(T)

**Subject:** The agency has amended OAR 436-009, "Oregon Medical Fee and Payment Rules," to:

-Adopt updated medical fee schedules (Appendices B, C, D, and E) and resources for the payment of health care providers;

-Increase maximum allowable payment rates by three percent for physician services except for physical therapy services;

-Remove two laboratory HCPCS codes, G0431 and G0434, from the physician fee schedule. Add fee schedule amounts to the physi-

cian fee schedule for HCPCS codes G0477, G0478, G0479, G0480, G0481, G0482 and G0483;

-Require that requests for reconsideration of administrative orders be received by the director before the order becomes final;

-Specify how providers must complete boxes 32 and 32a on the National Uniform Claim Committee 1500 Claim Form;

-Exclude platelet rich plasma injections from compensability;

-Eliminate the list of hospitals subject to including Medicare Severity Diagnosis Related Group (MS-DRG) codes on their bills, in favor of a general requirement to include the MS-DRG codes, unless the hospital is a critical access hospital or if the bill contains revenue code 002x.

-Replace the requirement for an insurer or insurer's representative to respond to a question from a provider or a worker about reimbursement within 48 hours with a requirement to do so within two days; require that explanations to workers about out-of-pocket expenses and explanations of benefits sent to health care providers specify two days instead of 48 hours to respond to questions;

-Remove a redundant requirement for health care providers to send multidisciplinary treatment programs to insurers - already in OAR 436-010;

-Increase the maximum payable for hearing aids, without approval by the insurer or director, from \$5000 to \$7000 for a pair and from \$2500 to \$3500 for a single hearing aid;

Allow a worker to upgrade a hearing aid by paying the price difference;

-Require that compounded drugs be billed at the component ingredient level, listing each ingredient's national drug code (NDC), and that ingredients without an NDC are not reimbursable;

-Set the maximum allowable fee for a compound drug at 83.5% of the average wholesale price (AWP) for each individual ingredient, plus a single compounding fee of \$10.00;

-Replace the mileage reimbursement rate payable to interpreters, currently \$0.50 per mile, with the private vehicle mileage rate published in Bulletin 112; and

-Clarify in the matrix for health care provider types that a physician assistant who is not, or is no longer, eligible to provide treatment as a Type B attending physician is not required to have a written treatment plan if the physician assistant provides care that is authorized by an attending physician.

The agency has amended OAR 436-010, "Medical Services," to:

-Require that requests for reconsideration of administrative orders be received by the director before the order becomes final;

-Replace the requirement for an insurer to forward a copy of an independent medical exam report to the attending physician or authorized nurse practitioner within 72 hours of its receipt of the report with a requirement to do so within three days; and

-Clarify in the matrix for health care provider types that a physician assistant who is not, or is no longer, eligible to provide treatment as a Type B attending physician is not required to have a written treatment plan if the physician assistant provides care that is authorized by an attending physician.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-009-0001

### Administration of These Rules

(1) Any orders issued by the division in carrying out the director's authority to enforce Oregon Revised Statute (ORS) chapter 656 and Oregon Administrative Rule (OAR) chapter 436, are considered orders of the director of the Department of Consumer and Business Services.

(2) Authority for Rules. These rules are promulgated under the director's general rulemaking authority of ORS 656.726(4) and specific authority under ORS 656.248.

(3) Purpose. The purpose of these rules is to establish uniform guidelines for administering the payment for medical benefits to workers within the workers' compensation system.

(4) Applicability of Rules.

(a) These rules apply to all services rendered on or after the effective date of these rules.



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(b) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0004

### Adoption of Standards

(1) The director adopts, by reference, the American Society of Anesthesiologists ASA, Relative Value Guide 2015 as a supplementary fee schedule for those anesthesia codes not found in Appendix B. To get a copy of the ASA Relative Value Guide 2015, contact the American Society of Anesthesiologists, 520 N. Northwest Highway, Park Ridge, IL 60068-2573, 847-825-5586, or on the Web at: <http://www.asahq.org>.

(2) The director adopts, by reference, the American Medical Association's (AMA) Current Procedural Terminology (CPT® 2016), Fourth Edition Revised, 2015, for billing by medical providers. The definitions, descriptions, and guidelines found in CPT® must be used as guides governing the descriptions of services, except as otherwise provided in these rules. The guidelines are adopted as the basis for determining level of service.

(3) The director adopts, by reference, the AMA's CPT® Assistant, Volume 0, Issue 04 1990 through Volume 25, Issue 12, 2015. If there is a conflict between the CPT® manual and CPT® Assistant, the CPT® manual is the controlling resource.

(4) To get a copy of the CPT® 2016 or the CPT® Assistant, contact the American Medical Association, 515 North State Street, Chicago, IL 60610, 800-621-8335, or on the Web at: <http://www.ama-assn.org>.

(5) The director adopts, by reference, only the alphanumeric codes from the CMS Healthcare Common Procedure Coding System (HCPCS). These codes are to be used when billing for services, but only to identify products, supplies, and services that are not described by CPT® codes or that provide more detail than a CPT® code.

(a) Except as otherwise provided in these rules, the director does not adopt the HCPCS edits, processes, exclusions, color-coding and associated instructions, age and sex edits, notes, status indicators, or other policies of CMS.

(b) To get a copy of the HCPCS, contact the National Technical Information Service, Springfield, VA 22161, 800-621-8335 or on the Web at: [www.cms.gov/Medicare/Coding/HCPCSReleaseCodeSets/Alpha-Numeric-HCPCS.html](http://www.cms.gov/Medicare/Coding/HCPCSReleaseCodeSets/Alpha-Numeric-HCPCS.html).

(6) The director adopts, by reference, CDT 2016: Dental Procedure Codes, to be used when billing for dental services. To get a copy, contact the American Dental Association at American Dental Association, 211 East Chicago Ave., Chicago, IL 60611-2678, or on the Web at: [www.ada.org](http://www.ada.org).

(7) The director adopts, by reference, the 02/12 1500 Claim Form and Version 1.1 06/13 (for the 02/12 form) 1500 Health Insurance Claim Form Reference Manual published by the National Uniform Claim Committee (NUCC). To get copies, contact the NUCC, American Medical Association, 515 N. State St., Chicago, IL 60654, or on the Web at: [www.nucc.org](http://www.nucc.org).

(8) The director adopts, by reference, the Official UB-04 Data Specifications Manual 2015 Edition, published by National Uniform Billing Committee (NUBC). To get a copy, contact the NUBC, American Hospital Association, One North Franklin, 29th Floor, Chicago, IL 60606, 312-422-3390, or on the Web at: [www.nubc.org](http://www.nubc.org).

(9) The director adopts, by reference, the NCPDP Manual Claim Forms Reference Implementation Guide Version 1.4 (7/2015) and the NCPDP Workers' Compensation/Property & Casualty Universal Claim Form (WC/PC UCF) Version 1.1 -(5/2009). To get a copy, contact the National Council for Prescription Drug Programs (NCPDP), 9240 East Raintree Drive, Scottsdale, AZ 85260-7518, 480-477-1000, or on the Web at: [www.ncdp.org](http://www.ncdp.org).

(10) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 control over any conflicting provision in ASA Relative Value Guide 2015, CPT® 2016, CPT® Assistant, HCPCS 2016, CDT 2016, Dental Procedure Codes, 1500 Health Insurance Claim Form Reference Instruction Manual, Official UB-04 Data Specifications Manual, or NCPDP Manual Claim Forms Reference Implementation Guide.

(11) Copies of the standards referenced in this rule are also available for review during regular business hours at the Workers' Compensation Division, Medical Resolution Team, 350 Winter Street NE, Salem OR 97301, 503-947-7606.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.248 & 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-

2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 7-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 8-2015(Temp), f. 12-8-15, cert. ef. 1-1-16 thru 6-28-16; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0005

### Definitions

(1) Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS chapter 656 are hereby incorporated by reference and made part of these rules.

(2) Abbreviations used in these rules are either defined in the rules in which they are used or defined as follows:

(a) CMS means Centers for Medicare & Medicaid Services.

(b) CPT® means Current Procedural Terminology published by the American Medical Association.

(c) DMEPOS means durable medical equipment, prosthetics, orthotics, and supplies.

(d) EDI means electronic data interchange.

(e) HCPCS means Healthcare Common Procedure Coding System published by CMS.

(f) ICD-9-CM means International Classification of Diseases, Ninth Revision, Clinical Modification, Vol. 1, 2 & 3 by US Department of Health and Human Services.

(g) ICD-10-CM means International Classification of Diseases, Tenth Revision, Clinical Modification.

(h) MCO means managed care organization certified by the director.

(i) NPI means national provider identifier.

(j) OSC means Oregon specific code.

(k) PCE means physical capacity evaluation.

(l) WCE means work capacity evaluation.

(3) "Administrative review" means any decision making process of the director requested by a party aggrieved with an action taken under these rules except the hearing process described in OAR 436-001.

(4) "Ambulatory surgery center" (ASC) means:

(a) Any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization; or

(b) Any entity outside of Oregon similarly licensed, or certified by Medicare or a nationally recognized agency as an ASC.

(5) "Attending physician" has the same meaning as described in ORS 656.005(12)(b). See Appendix A, "Matrix for Health Care Provider Types".

(6) "Authorized nurse practitioner" means a nurse practitioner licensed under ORS

678.375 to 678.390 who has certified to the director that the nurse practitioner has reviewed informational materials about the workers' compensation system provided by the director and who has been assigned an authorized nurse practitioner number by the director.

(7) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(8) "Chart note" means a notation made in chronological order in a medical record in which the medical service provider records such things as subjective and objective findings, diagnosis, treatment rendered, treatment objectives, and return to work goals and status.

(9) "Clinic" means a group practice in which several medical service providers work cooperatively.

(10) "CMS form 2552" (Hospital and Hospital Health Care Complex Cost Report) means the annual report a hospital makes to Medicare.

(11) "Current procedural terminology" or "CPT"® means the Current Procedural Terminology codes and terminology published by the American Medical Association unless otherwise specified in these rules.

(12) "Date stamp" means to stamp or display the initial receipt date and the recipient's name on a paper or electronic document, regardless of whether the document is printed or displayed electronically.

(13) "Days" means calendar days.

(14) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(15) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(16) "Enrolled" means an eligible worker has received notification from the insurer that the worker is being required to receive treatment under the provisions of a managed care organization (MCO). However, a worker may not be enrolled who would otherwise be subject to an MCO contract

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if the worker's primary residence is more than 100 miles outside the MCO's certified geographical service area.

(17) "Fee discount agreement" means a direct contract entered into between a medical service provider or clinic and an insurer to discount fees to the medical service provider or clinic under OAR 436-009-0018.

(18) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(19) "Hospital" means an institution licensed by the State of Oregon as a hospital.

(a) "Inpatient" means a patient who is admitted to a hospital prior to and extending past midnight for treatment and lodging.

(b) "Outpatient" means a patient not admitted to a hospital prior to and extending past midnight for treatment and lodging. Medical services provided by a health care provider such as emergency room services, observation room, or short stay surgical treatments that do not result in admission are also considered outpatient services.

(20) "Initial claim" means the first open period on the claim immediately following the original filing of the occupational injury or disease claim until the worker is first declared to be medically stationary by an attending physician or authorized nurse practitioner. For nondisabling claims, the "initial claim" means the first period of medical treatment immediately following the original filing of the occupational injury or disease claim ending when the attending physician or authorized nurse practitioner does not anticipate further improvement or need for medical treatment, or there is an absence of treatment for an extended period.

(21) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or, an employer or employer group that has been certified under ORS 656.430 and meets the qualifications of a self-insured employer under ORS 656.407.

(22) "Interim medical benefits" means those services provided under ORS 656.247 on initial claims with dates of injury on or after January 1, 2002, that are not denied within 14 days of the employer's notice of the claim.

(23) "Interpreter" means a person who:

(a) Provides oral or sign language translation; and

(b) Owns, operates, or works for a business that receives income for providing oral or sign language translation. It does not include a medical provider, medical provider's employee, or a family member or friend of the patient.

(24) "Interpreter services" means the act of orally translating between a medical provider and a patient who speak different languages, including sign language. It includes reasonable time spent waiting at the location for the medical provider to examine or treat the patient as well as reasonable time spent on necessary paperwork for the provider's office.

(25) "Mailed or mailing date" means the date a document is post-marked. Requests submitted by facsimile or "fax" are considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(26) "Managed care organization" or "MCO" means an organization formed to provide medical services and certified in accordance with OAR chapter 436, division 015.

(27) "Medical provider" means a medical service provider, a hospital, a medical clinic, or a vendor of medical services.

(28) "Medical service" means any medical treatment or any medical, surgical, diagnostic, chiropractic, dental, hospital, nursing, ambulances, and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services.

(29) "Medical service provider" means a person duly licensed to practice one or more of the healing arts.

(30) "Medical treatment" means the management and care of a patient for the purpose of combating disease, injury, or disorder. Restrictions on activities are not considered treatment unless the primary purpose of the restrictions is to improve the worker's condition through conservative care.

(31) "Parties" mean the worker, insurer, MCO, attending physician, and other medical provider, unless a specific limitation or exception is expressly provided for in the statute.

(32) "Patient" means the same as worker as defined in ORS 656.005(30).

(33) "Physical capacity evaluation" means an objective, directly observed, measurement of a patient's ability to perform a variety of physi-

cal tasks combined with subjective analyses of abilities by patient and evaluator. Physical tolerance screening, Blankenship's Functional Capacity Evaluation, and Functional Capacity Assessment have the same meaning as Physical Capacity Evaluation.

(34) "Provider network" means a health service intermediary other than an MCO that facilitates transactions between medical providers and insurers through a series of contractual arrangements.

(35) "Report" means medical information transmitted in written form containing relevant subjective or objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.

(36) "Residual functional capacity" means a patient's remaining ability to perform work-related activities. A residual functional capacity evaluation includes, but is not limited to, capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, bending/stooping, twisting, kneeling, crouching, crawling, and reaching, and the number of hours per day the patient can perform each activity.

(37) "Specialist physician" means a licensed physician who qualifies as an attending physician and who examines a patient at the request of the attending physician or authorized nurse practitioner to aid in evaluation of disability, diagnosis, or provide temporary specialized treatment. A specialist physician may provide specialized treatment for the compensable injury or illness and give advice or an opinion regarding the treatment being rendered, or considered, for a patient's compensable injury.

(38) "Type A attending physician" means an attending physician under ORS 656.005(12)(b)(A). See Appendix A, "Matrix for Health Care Provider Types".

(39) "Type B attending physician" means an attending physician under ORS 656.005(12)(b)(B). See Appendix A, "Matrix for Health Care Provider Types".

(40) "Usual fee" means the medical provider's fee charged to the general public for a given service.

(41) "Work capacity evaluation" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening has the same meaning as Work Capacity Evaluation.

(42) "Work hardening" means an individualized, medically prescribed and monitored, work-oriented treatment process. The process involves the patient participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the patient to a specific job.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.000 et seq., 656.005, 656.726(4)

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 3-2002, f. 2-25-02, cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04, cert. ef. 4-1-04; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0008

### Request for Review before the Director

(1) General.

(a) Administrative review before the director:

(A) Except as otherwise provided in ORS 656.704, the director has exclusive jurisdiction to resolve all disputes concerning medical fees, non-payment of compensable medical bills, and medical service and treatment disputes arising under ORS 656.245, 656.247, 656.248, 656.260, 656.325, and 656.327. Disputes about whether a medical service provided after a worker is medically stationary is compensable within the meaning of ORS 656.245(1)(c), or whether a medical treatment is unscientific, unproven, outmoded, or experimental under ORS 656.245(3), are subject to administrative review before the director.

(B) A party does not need to be represented to participate in the administrative review before the director.

(C) Any party may request that the director provide voluntary mediation or alternative dispute resolution after a request for administrative review or hearing is filed.

(b) Except for disputes regarding interim medical benefits under ORS 656.247, when there is a formal denial of the compensability of the underlying claim, or a denial of the causal relationship between the medical service or treatment and the accepted condition or the underlying condition, the parties may file a request for hearing with the Hearings Division of the Workers' Compensation Board to resolve the compensability issue.

(2) Time Frames and Conditions.

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(a) The following time frames and conditions apply to requests for administrative review before the director under this rule:

(b) For MCO-enrolled claims, a party that disagrees with an action or decision of the MCO must first use the MCO's dispute resolution process. If the party does not appeal the MCO's decision using the MCO's dispute resolution process, in writing and within 30 days of the mailing date of the decision, the party will lose all rights to further appeal the decision absent a showing of good cause. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation to the insurer, the 30-day time frame begins when the attorney receives written notice or has actual knowledge of the MCO decision.

(c) For MCO-enrolled claims, if a party disagrees with the final action or decision of the MCO, the aggrieved party must request administrative review before the director within 60 days of the MCO's final decision. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation to the insurer, the 60-day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. If a party has been denied access to the MCO dispute resolution process, or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving a particular type of dispute, the insurer or the MCO must advise the medical provider or worker that they may request review before the director.

(d) For claims not enrolled in an MCO, or for disputes that do not involve an action or decision of an MCO:

(A) A worker must request administrative review before the director within 90 days of the date the worker knew, or should have known, there was a dispute over the provision of medical services. If the worker is represented, and the worker's attorney has given notice of representation to the insurer, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute.

(B) A medical provider must request administrative review within 90 days of the mailing date of the most recent explanation of benefits or a similar notification the provider received regarding the disputed service or fee. Rebillings without any relevant changes will not provide a new 90 day period to request administrative review.

(C) An insurer must request administrative review within 90 days of the date action on the bill was due under OAR 436-009-0030.

(D) For disputes regarding interim medical benefits on denied claims, the date the insurer should have known of the dispute is no later than one year from the claim denial, or 45 days after the bill is perfected, whichever occurs last. A request for administrative review under this rule may also be filed as prescribed in OAR chapter 438, division 005.

(e) Within 180 days of the date a bill is paid, an insurer may request a refund from a provider for any amount it determines was overpaid for a compensable medical service. If the provider does not respond to the request, or disagrees that a service was overpaid, the insurer may request director review within 90 days of requesting the refund.

(f) Medical provider bills for treatment or services that are under review before the director are not payable during the review.

### (3) Form and Required Information.

(a) Requests for administrative review before the director should be made on Form 2842 as described in Bulletin 293. When an insurer or a worker's representative submits a request without the required information, the director may dismiss the request or hold initiation of the administrative review until the required information is submitted. Unrepresented workers may ask the director for help in meeting the filing requirements.

(A) The requesting party must simultaneously notify all other interested parties and their representatives, if known, of the dispute. The notice must:

- (i) Identify the worker's name, date of injury, insurer, and claim number;
- (ii) Specify the issues in dispute and the relief sought; and
- (iii) Provide the specific dates of the unpaid disputed treatment or services.

(B) If the request for review is submitted by either the insurer or the medical provider, it must state specific codes of services in dispute and include enough documentation to support the request, including copies of original bills, chart notes, bill analyses, operative reports, any correspondence between the parties regarding the dispute, and any other documentation necessary to review the dispute. The insurer or medical provider requesting review must provide all involved parties a copy of:

- (i) The request for review;
- (ii) Any attached supporting documentation; and

(iii) If known, an indication of whether or not there is an issue of causation or compensability of the underlying claim or condition.

(b) In addition to medical evidence relating to the dispute, all parties may submit other relevant information, including written factual information, sworn affidavits, or legal argument, for incorporation into the record. Such information may also include timely written responses and other evidence to rebut the documentation and arguments of an opposing party. The director may take or obtain additional evidence consistent with statute, such as pertinent medical treatment and payment records. The director may also interview parties to the dispute, or consult with an appropriate committee of the medical provider's peers. When a party receives a written request for additional information from the director, the party must respond within 14 days.

(c) When a request for administrative review is filed under ORS 656.247, the insurer must provide a record packet, at no charge, to the director and all other parties or their representatives as follows:

(A) The packet must include a complete, indexed copy of the worker's medical record and other documents that are arguably related to the medical dispute, arranged in chronological order, with oldest documents on top, and numbered in Arabic numerals in the lower right corner of each page. The number must be preceded by the designation "Ex." and pagination of the multiple page documents must be designated by a hyphen followed by the page number. For example, page two of document 10 must be designated "Ex. 10-2." The index must include the document numbers, description of each document, author, number of pages, and date of the document. The packet must include the following notice in bold type:

We hereby notify you that the director is being asked to review the medical care of this worker. The director may issue an order that could affect reimbursement for the disputed medical service(s).

(B) If the insurer requests review, the packet must accompany the request, with copies sent simultaneously to the other parties.

(C) If the requesting party is other than the insurer, or if the director has initiated the review, the director will request the record from the insurer. The insurer must provide the record within 14 days of the director's request as described in this rule.

(D) If the insurer fails to submit the record in the time and format specified in this rule, the director may sanction the insurer under OAR 436-010-0340.

(4) Dispute Resolution by Agreement (Alternative Dispute Resolution).

(a) A dispute may be resolved by agreement between the parties to the dispute. The agreement must be in writing and approved by the director. The director may issue a letter of agreement instead of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

- (A) A party fails to honor the agreement;
  - (B) The agreement was based on misrepresentation;
  - (C) Implementation of the agreement is not feasible because of unforeseen circumstances; or
  - (D) All parties request revision or reinstatement of the dispute.
- (b) Any mediated agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney.

### (5) Director Order and Reconsideration.

(a) The director may, on the director's own motion, reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new information that could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be received by the director before the administrative order becomes final.

(b) During any reconsideration of the administrative order, the parties may submit new material evidence consistent with this rule and may respond to such evidence submitted by others.

(c) Any party requesting reconsideration or responding to a reconsideration request must simultaneously notify all other interested parties of its contentions and provide them with copies of all additional information presented.

(d) Attorney fees in administrative review will be awarded as provided in ORS 656.385(1) and OAR 436-001-0400 through 436-001-0440.

### (6) Hearings.

(a) Any party that disagrees with an action or administrative order under these rules may obtain review of the action or order by filing a

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request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order under ORS 656.245, 656.248, 656.260, or 656.327, or within 60 days of the mailing date of an order under ORS 656.247. OAR 436-001 applies to the hearing.

(b) In the review of orders issued under ORS 656.245(3) or 656.247, no new medical evidence or issues will be admitted at hearing. In these reviews, an administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law.

(c) Contested case hearings of sanctions and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254 or 656.745 may request a hearing by the Hearings Division of the board as follows:

(A) A written request for a hearing must be mailed to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(B) The request must be mailed to the division within 60 days after the mailing date of the order or notice of assessment.

(C) The division will forward the request and other pertinent information to the board.

(7) Other Proceedings.

(a) Director's administrative review of other actions not covered under sections (1) through (6) of this rule: Any party seeking an action or decision by the director, or any party aggrieved by an action taken by another party, may request administrative review before the director. Any party may request administrative review as follows:

(b) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(c) The division may require and allow such input and information as it deems appropriate to complete the review.

Stat. Auth.: ORS 656.704, 656.726(4)

Stats. Implemented: ORS 656.704

Hist.: WCD 5-1982(Admin), f. 2-23-82, cf. 3-1-82; WCD 1-1984(Admin), f. & cf. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-89, (Former sections (3), (4), & (7) Renumbered to 436-010-0130); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0110; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02, cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04, cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0010

### Medical Billing and Payment

(1) General.

(a) Only treatment that falls within the scope and field of the medical provider's license to practice will be paid under a workers' compensation claim. Except for emergency services or as otherwise provided for by statute or these rules, treatments and medical services are only payable if approved by the worker's attending physician or authorized nurse practitioner. Fees for services by more than one physician at the same time are payable only when the services are sufficiently different that separate medical skills are needed for proper care.

(b) All billings must include the patient's full name, date of injury, and the employer's name. If available, billings must also include the insurer's claim number and the provider's NPI. If the provider does not have an NPI, then the provider must provide its license number and the billing provider's FEIN. For provider types not licensed by the state, "99999" must be used in place of the state license number. Bills must not contain a combination of ICD-9 and ICD-10 codes.

(c) The medical provider must bill their usual fee charged to the general public. The submission of the bill by the medical provider is a warrant that the fee submitted is the usual fee of the medical provider for the services rendered. The director may require documentation from the medical provider establishing that the fee under question is the medical provider's usual fee charged to the general public. For purposes of this rule, "general public" means any person who receives medical services, except those persons who receive medical services subject to specific billing arrangements allowed under the law that require providers to bill other than their usual fee.

(d) Medical providers must not submit false or fraudulent billings, including billing for services not provided. As used in this section, "false or fraudulent" means an intentional deception or misrepresentation with the knowledge that the deception could result in unauthorized benefit to the provider or some other person. A request for pre-payment for a deposition is not considered false or fraudulent.

(e) When a provider treats a patient with two or more compensable claims, the provider must bill individual medical services for each claim separately.

(f) When rebilling, medical providers must indicate that the charges have been previously billed.

(g) If a patient requests copies of medical bills in writing, medical providers must provide copies within 30 days of the request, and provide any copies of future bills during the regular billing cycle.

(2) Billing Timelines. (For payment timelines see OAR 436-009-0030.)

(a) Medical providers must bill within:

(A) 60 days of the date of service;

(B) 60 days after the medical provider has received notice or knowledge of the responsible workers' compensation insurer or processing agent; or

(C) 60 days after any litigation affecting the compensability of the service is final, if the provider receives written notice of the final litigation from the insurer.

(b) If the provider bills past the timelines outlined in subsection (a) of this section, the provider may be subject to civil penalties as provided in ORS 656.254 and OAR 436-010-0340.

(c) When submitting a bill later than outlined in subsection (a) of this section, a medical provider must establish good cause. Good cause may include, but is not limited to, such issues as extenuating circumstances or circumstances considered outside the control of the provider.

(d) When a provider submits a bill within 12 months of the date of service, the insurer may not reduce payment due to late billing.

(e) When a provider submits a bill more than 12 months after the date of service, the bill is not payable, except when a provision of subsection (2)(a) is the reason the billing was submitted after 12 months.

(3) Billing Forms.

(a) All medical providers must submit bills to the insurer unless a contract directs the provider to bill the managed care organization (MCO).

(b) Medical providers must submit bills on a completed current UB-04 (CMS 1450) or CMS 1500 except for:

(A) Dental billings, which must be submitted on American Dental Association dental claim forms;

(B) Pharmacy billings, which must be submitted on a current National Council for Prescription Drug Programs (NCPDP) form; or

(C) Electronic billing transmissions of medical bills (see OAR 436-008).

(c) Notwithstanding subsection (3)(b) of this rule, a medical service provider doing an IME may submit a bill in the form or format agreed to by the insurer and medical service provider.

(d) Medical providers may use computer-generated reproductions of the appropriate forms.

(e) Unless different instructions are provided in the table below, the provider should use the instructions provided in the National Uniform Claim Committee 1500 Claim Form Reference Instruction Manual. [Table not included. See ED. NOTE.]

(4) Billing Codes.

(a) When billing for medical services, a medical provider must use codes listed in CPT® 2016 or Oregon specific codes (OSC) listed in OAR 436-009-0060 that accurately describe the service. If there is no specific CPT® code or OSC, a medical provider must use the appropriate HCPCS or dental code, if available, to identify the medical supply or service. If there is no specific code for the medical service, the medical provider must use the unlisted code at the end of each medical service section of CPT® 2016 or the appropriate unlisted HCPCS code, and provide a description of the service provided. A medical provider must include the National Drug Code (NDC) to identify the drug or biological when billing for pharmaceuticals.

(b) Only one office visit code may be used for each visit except for those code numbers relating specifically to additional time.

(5) Modifiers.

(a) When billing, unless otherwise provided by these rules, medical providers must use the appropriate modifiers found in CPT® 2016, HCPCS' level II national modifiers, or anesthesia modifiers, when applicable.

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(b) Modifier 22 identifies a service provided by a medical service provider that requires significantly greater effort than typically required. Modifier 22 may only be reported with surgical procedure codes with a global period of 0, 10, or 90 days as listed in Appendix B. The bill must include documentation describing the additional work. It is not sufficient to simply document the extent of the patient's comorbid condition that caused the additional work. When a medical service provider appropriately bills for an eligible procedure with modifier 22, the payment rate is 125% of the fee published in Appendix B, or the fee billed, whichever is less. For all services identified by modifier 22, two or more of the following factors must be present:

- (A) Unusually lengthy procedure;
- (B) Excessive blood loss during the procedure;
- (C) Presence of an excessively large surgical specimen (especially in abdominal surgery);

(D) Trauma extensive enough to complicate the procedure and not billed as separate procedure codes;

(E) Other pathologies, tumors, malformations (genetic, traumatic, or surgical) that directly interfere with the procedure but are not billed as separate procedure codes; or

(F) The services rendered are significantly more complex than described for the submitted CPT®.

## (6) Physician Assistants and Nurse Practitioners.

Physician assistants and nurse practitioners must document in the chart notes that they provided the medical service. If physician assistants or nurse practitioners provide services as surgical assistants during surgery, they must bill using modifier "81."

## (7) Chart Notes.

(a) All original medical provider billings must be accompanied by legible chart notes. The chart notes must document the services that have been billed and identify the person performing the service.

(b) Chart notes must not be kept in a coded or semi-coded manner unless a legend is provided with each set of records.

(c) When processing electronic bills, the insurer may waive the requirement that bills be accompanied by chart notes. The insurer remains responsible for payment of only compensable medical services. Medical providers may submit their chart notes separately or at regular intervals as agreed with the insurer.

(8) Challenging the Provider's Bill. For services where the fee schedule does not establish a fixed dollar amount, an insurer may challenge the reasonableness of a provider's bill on a case by case basis by asking the director to review the bill under OAR 436-009-0008. If the director determines the amount billed is unreasonable, the director may establish a different fee to be paid to the provider based on at least one of, but not limited to, the following: reasonableness, the usual fees of similar providers, fees for similar services in similar geographic regions, or any extenuating circumstances.

## (9) Billing the Patient / Patient Liability.

(a) A patient is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer according to OAR chapter 436. However, the patient may be liable, and the provider may bill the patient:

(A) If the patient seeks treatment for conditions not related to the accepted compensable injury or illness;

(B) If the patient seeks treatment for a service that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but is not limited to, ongoing treatment by non-attending physicians in excess of the 30-day/12-visit period or by nurse practitioners in excess of the 180-day period, as set forth in ORS 656.245 and OAR 436-010-0210;

(C) If the insurer notifies the patient that he or she is medically stationary and the patient seeks palliative care that is not authorized by the insurer or the director under OAR 436-010-0290;

(D) If an MCO-enrolled patient seeks treatment from the provider outside the provisions of a governing MCO contract; or

(E) If the patient seeks treatment listed in section (12) of this rule after the patient has been notified that such treatment is unscientific, unproven, outmoded, or experimental.

(b) If the director issues an order declaring an already rendered medical service or treatment inappropriate, or otherwise in violation of the statute or administrative rules, the worker is not liable for such services.

(10) Disputed Claim Settlement (DCS). The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a DCS were agreed on, but was

either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except, if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment must be made within 45 days of the insurer's knowledge of the outstanding bill.

## (11) Payment Limitations.

(a) Insurers do not have to pay providers for the following:

(A) Completing forms 827 and 4909;

(B) Providing chart notes with the original bill;

(C) Preparing a written treatment plan;

(D) Supplying progress notes that document the services billed;

(E) Completing a work release form or completion of a PCE form, when no tests are performed;

(F) A missed appointment "no show" (see exceptions below under section (13) Missed Appointment "No Show"); or

(G) More than three mechanical muscle testing sessions per treatment program or when not prescribed and approved by the attending physician or authorized nurse practitioner.

(b) Mechanical muscle testing includes a copy of the computer print-out from the machine, written interpretation of the results, and documentation of time spent with the patient. Additional mechanical muscle testing may be paid for only when authorized in writing by the insurer prior to the testing.

(c) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the patient.

(d) Vitamin B-12 injections are not reimbursable unless necessary for a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(12) Excluded Treatment. The following medical treatments (or treatment of side effects) are not compensable and insurers do not have to pay for:

(a) Dimethyl sulfoxide (DMSO), except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface electromyography (EMG) tests;

(d) Rolwing;

(e) Prolotherapy;

(f) Thermography;

(g) Lumbar artificial disc replacement, unless it is a single level replacement with an unconstrained or semi-constrained metal on polymer device and:

(A) The single level artificial disc replacement is between L3 and S1;

(B) The patient is 16 to 60 years old;

(C) The patient underwent a minimum of six months unsuccessful exercise based rehabilitation; and

(D) The procedure is not found inappropriate under OAR 436-010-0230;

(h) Cervical artificial disc replacement, unless it is a single level replacement with a semi-constrained metal on polymer or a semi-constrained metal on metal device and:

(A) The single level artificial disc replacement is between C3 and C7;

(B) The patient is 16 to 60 years old;

(C) The patient underwent unsuccessful conservative treatment;

(D) There is intraoperative visualization of the surgical implant level; and

(E) The procedure is not found inappropriate under OAR 436-010-0230; and

(i) Platelet rich plasma (PRP) injections.

(13) Missed Appointment (No Show). In general, the insurer does not have to pay for "no show" appointments. However, insurers must pay for "no show" appointments for arbiter exams, director required medical exams, independent medical exams, worker requested medical exams, and closing exams. If the patient does not give 48 hours notice, the insurer must pay the provider 50 percent of the exam or testing fee and 100 percent for any review of the file that was completed prior to cancellation or missed appointment.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.245, 656.252, 656.254

Stats. Implemented: ORS 656.245, 656.252, 656.254

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 3-2002, f. 2-25-02, cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04, cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert.

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ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 4-2014(Temp), f. & cert. ef. 4-15-14 thru 10-11-14; WCD 6-2014, f. 6-13-14, cert. ef. 7-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 8-2015(Temp), f. 12-8-15, cert. ef. 1-1-16 thru 6-28-16; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0020

### Hospitals

#### (1) Inpatient.

(a) For the purposes of this rule, hospital inpatient services are those services that are billed with codes "0111" through "0118" in form locator #4 on the UB-04 billing form.

#### (b) Hospital inpatient bills must include:

(A) For dates of service prior to Oct. 1, 2015, ICD-9-CM codes, and for dates of service on and after Oct. 1, 2015, ICD-10-CM codes;

(B) When applicable, procedural codes;

(C) The hospital's NPI; and

(D) The Medicare Severity Diagnosis Related Group (MS-DRG) code, except for:

(i) Bills from critical access hospitals, (See Bulletin 290); or

(ii) Bills containing revenue code 002x.

(c) Unless otherwise provided by contract, the insurer must pay the audited bill for hospital inpatient services by multiplying the amount charged by the hospital's adjusted cost-to-charge ratio (See Bulletin 290). The insurer must pay in-state hospitals not listed in Bulletin 290 at 80 percent of billed charges for inpatient services.

#### (2) Outpatient.

(a) For the purposes of this rule, hospital outpatient services are those services that are billed with codes "0131" through "0138" in form locator #4 on the UB-04 billing form.

(b) Hospital outpatient bills must, when applicable, include the following:

(A) Revenue codes;

(B) For dates of service prior to Oct. 1, 2015, ICD-9-CM codes, and for dates of service on and after Oct. 1, 2015, ICD-10-CM codes,

(C) CPT® codes and HCPCS codes; and

(D) The hospital's NPI.

(c) Unless otherwise provided by contract, the insurer must pay for hospital outpatient services as follows: [Table not included. See ED. NOTE.]

(3) Specific Circumstances. When a patient is seen initially in an emergency department and is then admitted to the hospital for inpatient treatment, the services provided immediately prior to admission are considered part of the inpatient treatment. Diagnostic testing done prior to inpatient treatment is considered part of the hospital services subject to the hospital inpatient fee schedule.

#### (4) Out-of-State Hospitals.

(a) The payment to out-of-state hospitals may be negotiated between the insurer and the hospital.

(b) Any agreement for payment less than the billed amount must be in writing and signed by the hospital and insurer representative.

(c) The agreement must include language that the hospital will not bill the patient any remaining balance and that the negotiated amount is considered payment in full.

(d) If the insurer and the hospital are unable to reach an agreement within 45 days of the insurer's receipt of the bill, either party may bring the issue to the director for resolution. The director may order payment up to the amount billed considering factors such as, but not limited to, reasonableness, usual fees for similar services by facilities in similar geographic areas, case specific services, and any extenuating circumstances.

#### (5) Calculation of Cost-to-Charge Ratio Published in Bulletin 290.

(a) Each hospital's CMS 2552 form and financial statement is the basis for determining its adjusted cost-to-charge ratio. If a current form 2552 is not available, then financial statements may be used to develop estimated data. If the adjusted cost-to-charge ratio is determined from estimated data, the hospital will receive the lower ratio of either the hospital's last published cost-to-charge ratio or the hospital's cost-to-charge ratio based on estimated data.

(b) The basic cost-to-charge ratio is developed by dividing the total net expenses for allocation shown on Worksheet A, and as modified in subsection (c), by the total patient revenues from Worksheet G-2.

(c) The net expenses for allocation derived from Worksheet A is modified by adding, from Worksheet A-8, the expenses for:

(A) Provider-based physician adjustment;

(B) Patient expenses such as telephone, television, radio service, and other expenses determined by the director to be patient-related expenses; and

(C) Expenses identified as for physician recruitment.

(d) The basic cost-to-charge ratio is further modified to allow a factor for bad debt and the charity care provided by each hospital. The adjustment for bad debt and charity care is calculated in two steps. Step one: Add the dollar amount for net bad debt to the dollar amount for charity care. Divide this sum by the dollar amount of the total patient revenues, from Worksheet G-2, to compute the bad debt and charity ratio. Step two: Multiply the bad debt and charity ratio by the basic cost-to-charge ratio calculated in subsection (5)(b) to obtain the factor for bad debt and charity care.

(e) The basic cost-to-charge ratio is further modified to allow an adequate return on assets. The director will determine a historic real growth rate in the gross fixed assets of Oregon hospitals from the audited financial statements. This real growth rate and the projected growth in a national fixed weight price deflator will be added together to form a growth factor. This growth factor will be multiplied by the total fund balance, from Worksheet G of each hospital's CMS 2552 to produce a fund balance amount. The fund balance amount is then divided by the total patient revenues from Worksheet G-2, to compute the fund balance factor.

(f) The factors resulting from subsections (5)(d) and (5)(e) of this rule are added to the ratio calculated in subsection (5)(b) of this rule to obtain the adjusted cost-to-charge ratio. In no event will the adjusted cost-to-charge ratio exceed 1.00.

(g) The adjusted cost-to-charge ratio for each hospital will be revised annually, at a time based on their fiscal year, as described by bulletin. Each hospital must submit a copy of its CMS 2552 and financial statements each year within 150 days of the end of the hospital's fiscal year to the Information Technology and Research Section, Department of Consumer and Business Services. The adjusted cost-to-charge ratio schedule will be published by bulletin twice yearly, effective for the six-month period beginning April 1 and the six-month period beginning October 1.

(h) For newly formed or established hospitals for which no CMS 2552 has been filed or for which there is insufficient data, or for those hospitals that do not file Worksheet G-2 with the submission of their CMS 2552, the division determines an adjusted cost-to-charge ratio for the hospital based upon the adjusted cost to charge ratios of a group of hospitals of similar size or geographic location.

(i) If the financial circumstances of a hospital unexpectedly or dramatically change, the division may revise the hospital's adjusted cost-to-charge ratio to allow equitable payment.

(j) If audit of a hospital's CMS 2552 by the CMS produces significantly different data from that obtained from the initial filing, the division may revise the hospital's adjusted cost-to-charge ratio to reflect the data developed subsequent to the initial calculation.

(k) Notwithstanding subsections (1)(c) and (2)(c) of this rule, the director may exclude rural hospitals from imposition of the adjusted cost-to-charge ratio based upon a determination of economic necessity. The rural hospital exclusion will be based on the financial health of the hospital reflected by its financial flexibility index. All rural hospitals having a financial flexibility index at or below the median for critical access hospitals nationwide qualify for the rural exemption. Rural hospitals that are designated as critical access hospitals under the Oregon Medicare Rural Hospital Flexibility Program are automatically exempt from imposition of the adjusted cost-to-charge ratio.

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

Stat. Auth.: ORS 656.726(4), 656.012, 656.236(5), 656.327(2) & 656.313(4)(d)

Stats. Implemented: ORS 656.248, 656.252 & 656.256

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0701, 5-1-85; WCD 3-1985(Admin)(Temp), f. & ef. 9-4-85; WCD 4-1985(Admin)(Temp), f. & ef. 9-11-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1986(Admin)(Temp), f. 2-5-86, ef. 2-6-86; WCD 2-1986(Admin), f. 3-10-86, ef. 3-17-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 15-1990, f. & cert. ef. 8-7-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0090; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; Administrative correction 6-18-97; WCD 8-1997(Temp), f. & cert. ef. 7-9-97; WCD 16-1997, f. & cert. ef. 12-15-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02, cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04, cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 4-2014(Temp), f. & cert. ef. 4-15-14 thru 10-11-14; WCD 6-

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2014, f. 6-13-14, cert. ef. 7-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0025

### Worker Reimbursement

#### (1) General.

(a) When the insurer accepts the claim the insurer must notify the worker in writing that:

(A) The insurer will reimburse claim-related services paid by the worker; and

(B) The worker has two years to request reimbursement.

(b) The worker must request reimbursement from the insurer in writing. The insurer may require reasonable documentation such as a sales slip, receipt, or other evidence to support the request. The worker may use Form 3921 — Request for Reimbursement of Expenses.

(c) Insurers must date stamp requests for reimbursement on the date received.

(d) The insurer or its representative must provide a written explanation to the worker for each type of out-of-pocket expense (mileage, lodging, medication, etc.) being paid or denied.

(e) The explanation to the worker must be in 10 point size font or larger and must include:

(A) The amount of reimbursement for each type of out-of-pocket expense requested.

(B) The specific reason for non-payment, reduced payment, or discounted payment for each itemized out-of-pocket expense the worker submitted for reimbursement;

(C) An Oregon or toll-free phone number for the insurer or its representative, and a statement that the insurer or its representative must respond to a worker's reimbursement question within two days, excluding weekends and legal holidays;

(D) The following notice, Web link, and phone number: "To access Bulletin 112 with information about reimbursement amounts for travel, food, and lodging costs visit [www.oregonwcdoc.info](http://www.oregonwcdoc.info) or call 503-947-7606.";

(E) Space for the worker's signature and date; and

(F) A notice of right to administrative review as follows: "If you disagree with this decision about this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Resolution Team, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."

(f) According to ORS 656.325(1)(f) and OAR 436-060-0095(5)(f), when a worker attends an independent medical examination (IME), the insurer must reimburse the worker for related costs regardless of claim acceptance, deferral, or denial.

#### (2) Timeframes.

(a) The worker must submit a request for reimbursement of claim-related costs by whichever date is later:

(A) Two years from the date the costs were incurred or

(B) Two years from the date the claim or medical condition is finally determined compensable.

(b) If the worker requests reimbursement after two years as listed in subsection (a), the insurer may disapprove the reimbursement request.

(c) On accepted claims the insurer must, within 30 days of receiving the reimbursement request:

(A) Reimburse the worker if the request shows the costs are related to the accepted claim;

(B) Disapprove the request if unreasonable or if the costs are not related to the accepted claim; or

(C) Request additional information from the worker to determine if costs are related to the accepted claim. If additional information is needed, the time needed to obtain the information is not counted in the 30-day time frame for the insurer to issue reimbursement.

(d) When the insurer receives a reimbursement request before claim acceptance, and the claim is ultimately accepted, by whichever date is later the insurer must:

(A) Within 30 days of receiving the reimbursement request:

(i) Reimburse the worker if the request shows the costs are related,

(ii) Disapprove the request if unreasonable or if the costs are not related, or

(iii) Request additional information. If additional information is needed, the time needed to obtain the information is not counted in the 30-day time frame for the insurer to issue reimbursement; or

(B) Within 14 days of claim acceptance:

(i) Reimburse the worker if the request shows the costs are related,

(ii) Disapprove the request if unreasonable or if the costs are not related, or

(iii) Request additional information. If additional information is needed, the time needed to obtain the information is not counted in the 14-day time frame for the insurer to issue reimbursement.

(e) In a claim for aggravation or a new medical condition, reimbursement requests are not due and payable until the aggravation or new medical condition is accepted.

(f) If the claim is denied, requests for reimbursement must be returned to the worker within 14 days, and the insurer must retain a copy.

(3) Meal and Lodging Reimbursement.

(a) Meal reimbursement is based on whether a meal is reasonably required by necessary travel to a claim-related appointment.

(b) Lodging reimbursement is based on the need for an overnight stay to attend an appointment.

(c) Meals and lodging are reimbursed at the actual cost or the rate published in Bulletin 112, whichever is less. Lodging reimbursement may exceed the maximum rate published in Bulletin 112 when special lodging is required or when the worker is unable to find lodging at or below the maximum rate within 10 miles of the appointment location.

(4) Travel Reimbursement.

(a) Insurers must reimburse workers for actual and reasonable costs for travel to medical providers paid by the worker under ORS 656.245(1)(e), 656.325, and 656.327.

(b) The insurer may limit worker reimbursement for travel to an attending physician if the insurer provides a prior written explanation and a written list of attending physicians that are closer for the worker, of the same specialty, and who are able and willing to provide similar medical services to the worker. The insurer may limit worker reimbursement for travel to an authorized nurse practitioner if the insurer provides a prior written explanation and a written list of authorized nurse practitioners that are closer for the worker, of the same specialty, and who are able and willing to provide similar medical services to the worker. The insurer must inform the worker that he or she may continue treating with the established attending physician or authorized nurse practitioner; however, reimbursement of transportation costs may be limited to the distance from the worker's home to a provider on the written list.

(c) Within a metropolitan area the insurer may not limit worker reimbursement for travel to an attending physician or authorized nurse practitioner even if there are medical providers closer to the worker.

(d) Travel reimbursement dispute decisions will be based on principles of reasonableness and fairness within the context of the specific case circumstances as well as the spirit and intent of the law.

(e) Personal vehicle mileage is the reasonable actual distance based on the beginning and ending addresses. The mileage reimbursement is limited to the rate published in Bulletin 112.

(f) Public transportation or, if required, special transportation will be reimbursed based on actual cost.

(5) Other Reimbursements.

(a) The insurer must reimburse the worker for other claim-related expenses based on actual cost. However, reimbursement for hearing aids is limited to the amounts listed in OAR 436-009-0080.

(b) For prescription medications, the insurer must reimburse the worker based on actual cost. When a provider prescribes a brand-name drug, pharmacies must dispense the generic drug (if available), according to ORS 689.515. When a worker insists on receiving the brand-name drug, and the prescribing provider has not prohibited substitution, the worker must either pay the total cost of the brand-name drug out of pocket or pay the difference between the cost of the brand-name drug and generic to the pharmacy. The worker may then request reimbursement from the insurer. However, if the insurer has previously notified the worker in writing that the worker is liable for the difference between the generic and brand-name drug, the insurer only has to reimburse the worker the generic price of the drug.

(c) For IMEs, child care costs are reimbursed at the rate prescribed by the State of Oregon Department of Human Services.

(d) Home health care provided by a worker's family member is not required to be under the direct control and supervision of the attending

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physician. A worker may receive reimbursement for such home health care services only if the family member demonstrates competency to the satisfaction of the worker's attending physician.

(6) **Advancement Request.** If necessary to attend a medical appointment, the worker may request an advance for transportation and lodging expenses. Such a request must be made to the insurer in sufficient time to allow the insurer to process the request.

Stat. Auth.: ORS 656.245, 656.325, 656.704 & 656.726(4)  
Stats. Implemented: ORS 656.245, 656.704 & 656.726(4)  
Hist.: WCB 6-1969, f. 10-23-69, ef. 10-29-69; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0270, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02, Renumbered from 436-060-0070; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0030

### Insurer's Duties and Responsibilities

#### (1) General.

(a) The insurer must pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.

(b) The insurer, or its designated agent, may request from the medical provider any and all necessary records needed to review accuracy of billings. The medical provider may charge an appropriate fee for copying documents under OAR 436-009-0060. If the evaluation of the records must be conducted on-site, the provider must furnish a reasonable work-site for the records to be reviewed at no cost. These records must be provided or made available for review within 14 days of a request.

(c) The insurer must establish an audit program for bills for all medical services to determine that the bill reflects the services provided, that appropriate prescriptions and treatment plans are completed in a timely manner, that payments do not exceed the maximum fees adopted by the director, and that bills are submitted in a timely manner. The audit must be continuous and must include no fewer than 10 percent of medical bills. The insurer must provide upon the director's request documentation establishing that the insurer is conducting a continuous audit of medical bills. This documentation must include, but not be limited to, medical bills, internal audit forms, and any medical charge summaries prepared by private medical audit companies.

#### (2) Bill Processing.

(a) Insurers must date stamp medical bills, chart notes, and other documentation upon receipt. Bills not submitted according to OAR 436-009-0010(1)(b) and (2) must be returned to the medical provider within 20 days of receipt of the bill with a written explanation describing why the bill was returned and what needs to be corrected. A request for chart notes on EDI billings must be made to the medical provider within 20 days of the receipt of the bill.

The number of days between the date the insurer returns the bill or requests chart notes and the date the insurer receives the corrected bill or chart notes, does not count toward the 45 days within which the insurer is required to make payment.

(b) The insurer must retain a copy of each medical provider's bill received by the insurer or must be able to reproduce upon request data relevant to the bill, including but not limited to, provider name, date of service, date the insurer received the bill, type of service, billed amount, coding submitted by the medical provider as described in OAR 436-009-0010(1)(b) and (3)(b), and insurer action, for any non-payment or fee reduction. This includes all bills submitted to the insurer even when the insurer determines no payment is due.

(c) Any service billed with a code number commanding a higher fee than the services provided must be returned to the medical provider for correction or paid at the value of the service provided.

#### (3) Payment Requirements.

(a) Insurers must pay bills for medical services on accepted claims within 45 days of receipt of the bill, if the bill is submitted in proper form according to OAR 436-009-0010(1)(b), (3)(a) through (7)(c), and clearly shows that the treatment is related to the accepted compensable injury or disease.

(b) The insurer or its representative must provide a written explanation of benefits (EOB) of the services being paid or denied. If the billing is done electronically, the insurer or its representative may provide this explanation electronically. The insurer or its representative must send the explanation to the medical provider that billed for the services. For the purpose

of this rule an EOB has the same meaning as an explanation of review (EOR).

(c) The written EOB must be in 10 point size font or larger. Electronic and written explanations must include:

(A) The amount of payment for each service billed. When the payment covers multiple patients, the explanation must clearly separate and identify payments for each patient;

(B) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;

(C) An Oregon or toll-free phone number for the insurer or its representative, and a statement that the insurer or its representative must respond to a medical provider's payment question within two days, excluding weekends and legal holidays;

(D) The following notice, Web link, and phone number:

"To access information about Oregon's Medical Fee and Payment Rules, visit

[www.oregonwcdoc.info](http://www.oregonwcdoc.info) or call 503-947-7606.";

(E) Space for the provider's signature and date; and

(F) A notice of right to administrative review as follows: "If you disagree with this decision about this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Resolution Team, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."

(d) Payment of medical bills is required within 14 days of any action causing the service to be payable, or within 45 days of the insurer's receipt of the bill, whichever is later.

(e) Failure to pay for medical services timely may render the insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily applies such a service charge to the general public.

(f) When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each medical service code.

(g) Bills for medical services rendered at the request of the insurer and bills for information submitted at the request of the insurer, which are in addition to those required in OAR 436-010-0240 must be paid within 45 days of receipt by the insurer even if the claim is denied.

(h) If an insurer determines that it has made an overpayment to a provider for medical services, the insurer may request a refund from the provider. The insurer must make the request within 180 days of the payment date. Resolution of overpayment disputes must be made under OAR 436-009-0008.

#### (4) Communication with Providers.

(a) The insurer or its representative must respond to a medical provider's inquiry about a medical payment within two days, not including weekends or legal holidays. The insurer or its representative may not refer the medical provider to another entity to obtain an answer.

(b) An insurer or its representative and a medical provider may agree to send and receive payment information by email or other electronic means. Electronic records sent are subject to the Oregon Consumer Identity Theft Protection Act under ORS 646A.600 to 646A.628 and federal law.

(5) EDI Reporting. For medical bill reporting requirements, see OAR 436-160 Electronic Data Interchange Medical Bill Data rules.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264  
Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 6-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16



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## 436-009-0040

### Fee Schedule

(1) Fee Schedule Table.

(a) Unless otherwise provided by contract or fee discount agreement allowed by these rules, insurers must pay according to the following table: [Table not included. See ED. NOTE.]

(b) The global period is listed in the column 'Global Days' of Appendix B.

(2) Anesthesia.

(a) When using the American Society of Anesthesiologists Relative Value Guide, a basic unit value is determined by reference to the appropriate anesthesia code. The total anesthesia value is made up of a basic unit value and, when applicable, time and modifying units.

(b) Physicians or certified nurse anesthetists may use basic unit values only when they personally administer the general anesthesia and remain in constant attendance during the procedure for the sole purpose of providing the general anesthesia.

(c) Attending surgeons may not add time units to the basic unit value when administering local or regional block for anesthesia during a procedure. The modifier 'NT' (no time) must be on the bill.

(d) Local infiltration, digital block, or topical anesthesia administered by the operating surgeon is included in the payment for the surgical procedure.

(e) In calculating the units of time, use 15 minutes per unit. If a medical provider bills for a portion of 15 minutes, round the time up to the next 15 minutes and pay one unit for the portion of time.

(f) The maximum allowable payment amount for anesthesia codes is determined by multiplying the anesthesia value by a conversion factor of \$58.00. Unless otherwise provided by contract or fee discount agreement permitted by these rules, the insurer must pay the lesser of:

(A) The maximum allowable payment amount for anesthesia codes; or

(B) The provider's usual fee.

(g) When the anesthesia code is designated by IC (individual consideration), unless otherwise provided by a contract or fee discount agreement, the insurer must pay 80 percent of the provider's usual fee.

(3) Surgery. Unless otherwise provided by contract or fee discount agreement permitted by these rules, insurers must pay multiple surgical procedures performed in the same session according to the following:

(a) One surgeon: [Table not included. See ED. NOTE.]

(b) Two or more surgeons: [Table not included. See ED. NOTE.]

(c) Assistant surgeons: [Table not included. See ED. NOTE.]

(d) Nurse practitioners or physician assistants; [Table not included. See ED. NOTE.]

(e) Self-employed surgical assistants who work under the direct control and supervision of a physician; [Table not included. See ED. NOTE.]

(f) When a surgeon performs surgery following severe trauma, and the surgeon does not think the fees should be reduced under the multiple surgery rule, the surgeon may request special consideration by the insurer. The surgeon must provide written documentation and justification. Based on the documentation, the insurer may pay for each procedure at 100 percent.

(g) If the surgery is non-elective, the physician is entitled to payment for the initial evaluation of the patient in addition to the global fee for the surgical procedure(s) performed. However, the pre-operative visit for elective surgery is included in the listed global value of the surgical procedure, even if the pre-operative visit is more than one day before surgery.

(4) Radiology Services.

(a) Insurers only have to pay for X-ray films of diagnostic quality that include a report of the findings. Insurers will not pay for 14" x 36" lateral views.

(b) When multiple contiguous areas are examined by computerized axial tomography (CAT) scan, computerized tomography angiography (CTA), magnetic resonance angiography (MRA), or magnetic resonance imaging (MRI), then the technical component must be paid 100 percent for the first area examined and 75 percent for all subsequent areas. These reductions do not apply to the professional component. The reductions apply to multiple studies done within two days, unless the ordering provider provides a reasonable explanation of why the studies needed to be done on separate days.

(5) Pathology and Laboratory Services.

(a) The payment amounts in Appendix B apply only when there is direct physician involvement.

(b) Laboratory fees must be billed in accordance with ORS 676.310. If a physician submits a bill for laboratory services that were performed in

an independent laboratory, the bill must show the amount charged by the laboratory and any service fee that the physician charges.

(6) Physical Medicine and Rehabilitation Services.

(a) Time-based CPT® codes must be billed and paid according to this table: [Table not included. See ED. NOTE.]

(b) Except for CPT® codes 97001, 97002, 97003, or 97004, payment for modalities and therapeutic procedures is limited to a total of three separate CPT®-coded services per day for each provider, identified by their federal tax ID number. An additional unit of time for the same CPT® code does not count as a separate code.

(c) CPT® codes 97032, 97033, 97034, 97035, 97036, and 97039 are time-based codes and require constant attendance. Chart notes must clearly indicate the time treatment begins and the time treatment ends for the day or the amount of time spent providing the treatment.

(d) CPT® codes 97010 through 97028 are not payable unless they are performed in conjunction with other procedures or modalities that require constant attendance or knowledge and skill of the licensed medical provider.

(e) When multiple treatments are provided simultaneously by one machine, device, or table there must be a notation on the bill that treatments were provided simultaneously by one machine, device, or table and there must be only one charge.

(7) Reports.

(a) Except as otherwise provided in OAR 436-009-0060, when another medical provider, or an insurer or its representative asks a medical provider to prepare a report, or review records or reports, the medical provider should bill the insurer for their report or review of the records using CPT® codes such as 99080. The bill should include documentation of time spent reviewing the records or reports.

(b) If the insurer asks the medical service provider to review the IME report and respond, the medical service provider must bill for the time spent reviewing and responding using OSC D0019. The bill should include documentation of time spent.

(8) Nurse Practitioners and Physician Assistants. Services provided by authorized nurse practitioners, physician assistants, or out-of-state nurse practitioners must be paid at 85 percent of the amount calculated in section (1) of this rule.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0060

### Oregon Specific Codes

(1) Multidisciplinary Services.

(a) Services provided by multidisciplinary programs not otherwise described by CPT® codes must be billed under Oregon specific codes.

(b) Bills using the multidisciplinary codes must include copies of the treatment record that specifies:

(A) The type of service rendered,

(B) The medical provider who provided the service,

(C) Whether treatment was individualized or provided in a group session, and

(D) The amount of time treatment was rendered for each service billed.

(2) Table of all Oregon Specific Codes (For OSC fees, see Appendix B.) [Appendix not included. See ED. NOTE.]

(3) CARF / JCAHO Accredited Programs.

(a) Treatment in a chronic pain management program, physical rehabilitation program, work hardening program, or a substance abuse program will not be paid unless the program is accredited for that purpose by the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(b) Organizations that have applied for CARF accreditation, but have not yet received accreditation, may receive payment for multidisciplinary programs upon providing evidence to the insurer that an application for accreditation has been filed with and acknowledged by CARF. The organizations may provide multidisciplinary services under this section for a period of up to six months from the date CARF provided notice to the organi-

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zation that the accreditation process has been initiated, or until such time as CARF accreditation has been received or denied, whichever occurs first.

(c) Notwithstanding OAR 436-009-0010(4)(a), program fees for services within a multidisciplinary program may be used based upon written pre-authorization from the insurer. Programs must identify the extent, frequency, and duration of services to be provided. (d) All job site visits and ergonomic consultations must be preauthorized by the insurer.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; 2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0080

### Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

(1) Durable medical equipment (DME), such as Transcutaneous Electrical Nerve Stimulation (TENS), Microcurrent Electrical Nerve Stimulation (MENS), home traction devices, heating pads, reusable hot/cold packs, etc., is equipment that:

- (a) Is primarily and customarily used to serve a medical purpose,
- (b) Can withstand repeated use,
- (c) Could normally be rented and used by successive patients,
- (d) Is appropriate for use in the home, and
- (e) Is not generally useful to a person in the absence of an illness or injury.

(2) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. Examples: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc. The insurer must pay for the repair or replacement of prosthetic appliances damaged as a result of a compensable injury, even if the worker received no other injury. If the appliance is not repairable, the insurer must replace the appliance with a new appliance comparable to the one damaged. If the worker chooses to upgrade the prescribed prosthetic appliance, the worker may do so but must pay the difference in price.

(3) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. Examples: brace, splint, shoe insert or modification, etc.

(4) Supplies are materials that may be reused multiple times by the same person, but a single supply is not intended to be used by more than one person, including, but not limited to incontinent pads, catheters, bandages, elastic stockings, irrigating kits, sheets, and bags.

(5) When billing for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), providers must use the following modifiers, when applicable:

- (a) NU for purchased, new equipment
- (b) UE for purchased, used equipment
- (c) RR for rented equipment

(6) Unless otherwise provided by contract or sections (7) through (11) of this rule, insurers must pay for DMEPOS according to the following table: [Table not included. See ED. NOTE.]

(7) Unless a contract establishes a different rate, the table below lists maximum monthly rental rates for the codes listed (do not use Appendix E or section (6) to determine the rental rates for these codes): [Table not included. See ED. NOTE.]

(8) For items rented, unless otherwise provided by contract:

(a) The maximum daily rental rate is one thirtieth (1/30) of the monthly rate established in sections (6) and (7) of this rule.

(b) After a rental period of 13 months, the item is considered purchased, if the insurer so chooses.

(c) The insurer may purchase a rental item anytime within the 13-month rental period, with 75 percent of the rental amount paid applied towards the purchase.

(9) For items purchased, unless otherwise provided by contract, the insurer must pay for labor and reasonable expenses at the provider's usual rate for:

(a) Any labor and reasonable expenses directly related to any repairs or modifications subsequent to the initial set-up; or

(b) The provider may offer a service agreement at an additional cost.

(10) Hearing aids must be prescribed by the attending physician, authorized nurse practitioner, or specialist physician. Testing must be done

by a licensed audiologist or an otolaryngologist. The preferred types of hearing aids for most patients are programmable behind the ear (BTE), in the ear (ITE), and completely in the canal (CIC) multichannel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner. Unless otherwise provided by contract, insurers must pay the provider's usual fee for hearing services billed with HCPCS codes V5000 through V5999. However, without approval from the insurer or director, the payment for hearing aids may not exceed \$7000 for a pair of hearing aids, or \$3500 for a single hearing aid. If the worker chooses to upgrade the prescribed hearing aid, the worker may do so but must pay the difference in price.

(11) Unless otherwise provided by contract, insurers must pay the provider's usual fee for vision services billed with HCPCS codes V0000 through V2999.

(12) The worker may select the service provider. For claims enrolled in a managed care organization (MCO) the worker may be required to select a provider from a list specified by the MCO.

(13) Except as provided in section (10) of this rule, the payment amounts established by this rule do not apply to a worker's direct purchase of DMEPOS. Workers are entitled to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

(14) DMEPOS dispensed by a hospital (inpatient or outpatient) must be billed and paid according to OAR 436-009-0020.

[ED. NOTE: Tables & appendices referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 4-2011(Temp) f. 6-30-11, cert. ef. 7-5-11 thru 12-31-11; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2012(Temp), f. 4-13-12, cert. ef. 4-23-12 thru 10-19-12; WCD 4-2012, f. 9-21-12, cert. ef. 10-20-12; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0090

### Pharmaceutical

(1) General.

(a) Unless otherwise provided by an MCO contract, prescription medications do not require prior approval even after the patient is medically stationary.

(b) When a provider prescribes a brand-name drug, pharmacies must dispense the generic drug (if available), according to ORS 689.515. However, a patient may insist on receiving the brand-name drug and either pay the total cost of the brand-name drug out of pocket or pay the difference between the cost of the brand-name drug and generic to the pharmacy.

(c) Unless otherwise provided by MCO contract, the patient may select the pharmacy.

(2) Pharmaceutical Billing and Payment.

(a) Pharmaceutical billings must contain the National Drug Code (NDC) to identify the drug or biological billed. This includes compounded drugs, which must be billed by ingredient, listing each ingredient's NDC. Ingredients without an NDC are not reimbursable.

(b) All bills from pharmacies must include the prescribing provider's NPI or license number.

(c) Unless otherwise provided by contract, insurers must pay medical providers for prescription medication, including injectable drugs, at the medical provider's usual fee, or the maximum allowable fee, whichever is less. However, drugs provided by a hospital (inpatient or outpatient) must be billed and paid according to OAR 436-009-0020.

(d) Unless directly purchased by the worker (see 009-0025(5)), the maximum allowable fee for pharmaceuticals is calculated according to the following table: [Table not included. See ED. NOTE.]

(Note: "AWP" means the Average Wholesale Price effective on the date the drug was dispensed.)

(e) Insurers must use a nationally published prescription pricing guide for calculating payments to the provider, e.g., RED BOOK or Medi-Span.

(3) Clinical Justification Form 4909.

(a) The prescribing provider must fill out Form 4909, Pharmaceutical Clinical Justification for Workers' Compensation, and submit it to the insurer when prescribing more than a five day supply of the following drugs:

- (A) Celebrex®,
- (B) Cymbalta®,
- (C) Fentora®,

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- (D) Kadian®,
- (E) Lidoderm®,
- (F) Lyrica®, or
- (G) OxyContin®.

(b) Insurers may not challenge the adequacy of the clinical justification. However, they may challenge whether or not the medication is excessive, inappropriate, or ineffectual under ORS 656.327.

(c) The prescribing provider is not required to fill out Form 4909 for refills of medications listed on that form.

(d) If a prescribing provider does not submit Form 4909, Pharmaceutical Clinical Justification for Workers' Compensation, to the insurer, the insurer may file a complaint with the director.

(4) Dispensing by Medical Service Providers.

(a) Except in an emergency, prescription drugs for oral consumption dispensed by a physician's or authorized nurse practitioner's office are compensable only for the initial supply to treat the patient, up to a maximum of 10 days.

(b) For dispensed over-the-counter medications, the insurer must pay the retail-based fee.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. 5-22-09, cert. ef. 7-1-09; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-009-0110

### Interpreters

(1) Choosing an Interpreter. A patient may choose a person to communicate with a medical provider when the patient and the medical provider speak different languages, including sign language. The patient may choose a family member, a friend, an employee of the medical provider, or an interpreter. The medical provider may disapprove of the patient's choice at any time the medical provider feels the interpreter services are not improving communication with the patient, or feels the interpretation is not complete or accurate.

(2) Billing.

(a) Interpreters must charge the usual fee they charge to the general public for the same service.

(b) Interpreters may only bill an insurer or, if provided by contract, a managed care organization (MCO). However, if the insurer denies the claim, interpreters may bill the patient.

(c) Interpreters may bill for interpreter services and for mileage when the round-trip mileage is 15 or more miles. For the purpose of this rule, "mileage" means the number of miles traveling from the interpreter's starting point to the exam or treatment location and back to the interpreter's starting point.

(d) If the interpreter arrives at the provider's office for an appointment that was required by the insurer or the director, e.g., an independent medical exam, a physician review exam, or an arbiter exam, the interpreter may bill for interpreter services and mileage according to section (2)(c) of this rule even if:

- (A) The patient fails to attend the appointment; or
- (B) The provider has to cancel or reschedule the appointment.

(e) If interpreters do not know the workers' compensation insurer responsible for the claim, they may contact the Department of Consumer and Business Services', Workers' Compensation Division at 503-947-7814. They may also access insurance policy information at <http://www4.cbs.state.or.us/ex/wcd/cov/index.cfm>.

(3) Billing and Payment Limitations.

(a) When an appointment was not required by the insurer or director, interpreters may not bill any amount for interpreter services or mileage if:

- (A) The patient fails to attend the appointment; or
- (B) The provider cancels or reschedules the appointment.

(b) The insurer is not required to pay for interpreter services or mileage when the services are provided by:

- (A) A family member or friend of the patient; or
- (B) A medical provider's employee.

(4) Billing Timelines.

(a) Interpreters must bill within:

(A) 60 days of the date of service;

(B) 60 days after the interpreter has received notice or knowledge of the responsible workers' compensation insurer or processing agent; or

(C) 60 days after any litigation affecting the compensability of the service is final, if the interpreter receives written notice of the final litigation from the insurer.

(b) If the interpreter bills past the timelines outlined in subsection (a) of this section, the interpreter may be subject to civil penalties as provided in ORS 656.254 and OAR 436-010-0340.

(c) When submitting a bill later than outlined in subsection (a) of this section, an interpreter must establish good cause. Good cause may include, but is not limited to, extenuating circumstances or circumstances considered outside the control of the interpreter.

(d) A bill is considered sent by the date the envelope is post-marked or the date the document is faxed.

(5) Billing Form.

(a) Interpreters must use an invoice when billing for interpreter services and mileage and use Oregon specific code:

- (A) D0004 for interpreter services except American Sign Language,
- (B) D0005 for American Sign Language interpreter services, and
- (C) D0041 for mileage.

(b) An interpreter's invoice must include:

- (A) The interpreter's name, the interpreter's company name, if applicable, billing address, and phone number;
- (B) The patient's name;
- (C) The patient's workers' compensation claim number, if known;
- (D) The correct Oregon specific codes for the billed services (D0004, D0005, or D0041);

(E) The workers' compensation insurer's name and address;

(F) The date interpreter services were provided;

(G) The name and address of the medical provider that conducted the exam or provided treatment;

(H) The total amount of time interpreter services were provided; and

(I) The mileage, if the round trip was 15 or more miles.

(6) Payment Calculations.

(a) Unless otherwise provided by contract, insurers must pay the lesser of the maximum allowable payment amount or the interpreter's usual fee.

(b) Insurers must use the following table to calculate the maximum allowable payment for interpreters: [Table not included. See ED. NOTE.]

(7) Payment Requirements.

(a) When the medical exam or treatment is for an accepted claim or condition, the insurer must pay for interpreter services and mileage if the round-trip mileage is 15 or more miles.

(b) When the patient fails to attend or the provider cancels or reschedules a medical exam required by the director or the insurer, the insurer must pay the no-show fee and mileage if the round-trip mileage is 15 or more miles.

(c) The insurer must pay the interpreter within:

(A) 14 days of the date of claim acceptance or any action causing the service to be payable, or 45 days of receiving the invoice, whichever is later; or

(B) 45 days of receiving the invoice for an exam required by the insurer or director.

(d) When an interpreter bills within 12 months of the date of service, the insurer may not reduce payment due to late billing.

(e) When an interpreter bills over 12 months after the date of service, the bill is not payable, except when a provision of subsection (4)(c) of this rule is the reason the billing was submitted after 12 months.

(f) If the insurer does not receive all the information to process the invoice, the insurer must return the invoice to the interpreter within 20 days of receipt. The insurer must provide specific information about what is needed to process the invoice.

(g) When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each service billed.

(h) The insurer must provide a written explanation of benefits for services paid or denied and must send the explanation to the interpreter that billed for the services. If the billing is done electronically, the insurer or its representative may provide this explanation electronically. All the information on the written explanation must be in 10 point size font or larger.

(i) Electronic and written explanations must include:

(A) The payment amount for each service billed. When the payment covers multiple patients, the explanation must clearly separate and identify payments for each patient;

(B) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;

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(C) An Oregon or toll-free phone number for the insurer or its representative, and a statement that the insurer or its representative must respond to an interpreter's payment questions within two days, excluding weekends and legal holidays;

(D) The following notice, Web link, and phone number: "To access the information about Oregon's Medical Fee and Payment rules, visit [www.oregonwcdoc.info](http://www.oregonwcdoc.info) or call 503-947-7606";

(E) Space for a signature and date; and

(F) A notice of the right to administrative review as follows: "If you disagree with this decision about this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Resolution Team, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."

(j) The insurer or its representative must respond to an interpreter's inquiry about payment within two days, not including weekends or legal holidays. The insurer or its representative may not refer the interpreter to another entity to obtain the answer.

(k) The insurer or its representative and an interpreter may agree to send and receive payment information by email or other electronic means. Electronic records sent are subject to the Oregon Consumer Identity Theft Protection Act under ORS 646A.600 to 646A.628 and federal law.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248

Hist.: WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-010-0001

### Administration of These Rules

(1) Any orders issued by the division in carrying out the director's authority to enforce Oregon Revised Statute (ORS) chapter 656 and Oregon Administrative Rule (OAR) chapter 436, are considered orders of the director of the Department of Consumer and Business Services.

(2) Authority for Rules. These rules are promulgated under the director's general rulemaking authority of ORS 656.726(4) for administration of and pursuant to ORS chapter 656, particularly: ORS 656.245, 656.248, 656.250, 656.252, 656.254, 656.256, 656.260, 656.268, 656.273, 656.313, 656.325, 656.327, 656.331, 656.704, and 656.794.

(3) Purpose. The purpose of these rules is to establish uniform guidelines for administering the delivery of and payment for medical services to workers within the workers' compensation system.

(4) Applicability of Rules.

(a) These rules apply on or after the effective date to carry out the provisions of ORS 656.245, 656.247, 656.248, 656.250, 656.252, 656.254, 656.256, 656.260, 656.268, 656.313, 656.325, 656.327, 656.331, 656.704, and 656.794, and govern all providers of medical services licensed or authorized to provide a product or service under ORS chapter 656.

(b) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.250, 656.252, 656.254, 656.256, 656.260, 656.268, 656.313, 656.325, 656.327, 656.331, 656.704, 656.794

Hist.: WCB 1-1972, f. & ef. 1-14-72; WCB 4-1976, f. 10-20-76, ef. 11-1-76; WCD 7-1978(Admin), f. & ef. 6-5-78; WCD 2-1980(Admin), f. 1-28-80, ef. 2-1-80; WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0003, 5-1-85; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-010-0005

### Definitions

(1) Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS chapter 656 are hereby incorporated by reference and made part of these rules.

(2) "Administrative review" means any decision making process of the director requested by a party aggrieved with an action taken under these rules except the hearing process described in OAR 436-001.

(3) "Attending physician" has the same meaning as described in ORS 656.005(12)(b). See Appendix A "Matrix for Health Care Provider Types."

(4) "Authorized nurse practitioner" means a nurse practitioner licensed under ORS 678.375 to 678.390 who has certified to the director that the nurse practitioner has reviewed informational materials about the workers' compensation system provided by the director and who has been assigned an authorized nurse practitioner number by the director.

(5) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(6) "Chart note" means a notation made in chronological order in a medical record in which the medical service provider records information such as subjective and objective findings, diagnosis, treatment rendered, treatment objectives, and return-to-work goals and status.

(7) "Come-along provider" means a primary care physician, chiropractic physician, or an authorized nurse practitioner who is not a managed care organization (MCO) panel provider and who continues to treat the worker when the worker becomes enrolled in an MCO. (See OAR 436-015-0070.)

(8) "Date stamp" means to stamp or display the initial receipt date and the recipient's name on a paper or electronic document, regardless of whether the document is printed or displayed electronically.

(9) "Days" means calendar days.

(10) "Direct control and supervision" means the physician is on the same premises, at the same time, as the person providing a medical service ordered by the physician. The physician can modify, terminate, extend, or take over the medical service at any time.

(11) "Direct medical sequela" means a condition that is clearly established medically and originates or stems from an accepted condition. For example: The accepted condition is low back strain with herniated disc at L4-5. The worker develops permanent weakness in the leg and foot due to the accepted condition. The weakness is considered a "direct medical sequela."

(12) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(13) "Eligible worker" means a worker who has filed a claim or who has an accepted claim and whose employer is located in an MCO's authorized geographical service area, covered by an insurer that has a contract with that MCO.

(14) "Enrolled" means an eligible worker has received notification from the insurer that the worker is being required to treat under the provisions of a managed care organization (MCO). However, a worker may not be enrolled who would otherwise be subject to an MCO contract if the worker's primary residence is more than 100 miles outside the managed care organization's certified geographical service area.

(15) "Health care practitioner or health care provider" has the same meaning as a "medical service provider."

(16) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(17) "Home health care" means necessary medical and medically related services provided in the patient's home environment. These services may include, but are not limited to, nursing care, medication administration, personal hygiene, or assistance with mobility and transportation.

(18) "Hospital" means an institution licensed by the State of Oregon as a hospital.

(19) "Initial claim" means the first open period on the claim immediately following the original filing of the occupational injury or disease claim until the worker is first declared to be medically stationary by an attending physician or authorized nurse practitioner. For nondisabling claims, the "initial claim" means the first period of medical treatment immediately following the original filing of the occupational injury or disease claim ending when the attending physician or authorized nurse practitioner does not anticipate further improvement or need for medical treatment, or there is an absence of treatment for an extended period.

(20) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or, an employer or employer group that has been certified under ORS 656.430 that meets the qualifications of a self-insured employer under ORS 656.407.

(21) "Interim medical benefits" means those services provided under ORS 656.247 on initial claims with dates of injury on or after January 1, 2002 that are not denied within 14 days of the employer's notice of the claim.

(22) "Mailed or mailing date" means the date a document is post-marked. Requests submitted by facsimile or "fax" are considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped by the Workers' Compensation Division. Phone or in-per-

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son requests, where allowed under these rules, will be considered mailed as of the date of the request.

(23) "Managed care organization" or "MCO" means an organization formed to provide medical services and certified in accordance with OAR chapter 436, division 015.

(24) "Medical evidence" includes, but is not limited to: expert written testimony; written statements; written opinions, sworn affidavits, and testimony of medical professionals; records, reports, documents, laboratory, X-ray and test results authored, produced, generated, or verified by medical professionals; and medical research and reference material used, produced, or verified by medical professionals who are physicians or medical record reviewers in the particular case under consideration.

(25) "Medical provider" means a medical service provider, a hospital, a medical clinic, or a vendor of medical services.

(26) "Medical service" means any medical treatment or any medical, surgical, diagnostic, chiropractic, dental, hospital, nursing, ambulances, or other related services; drugs, medicine, crutches, prosthetic appliances, braces, and supports; and where necessary, physical restorative services.

(27) "Medical service provider" means a person duly licensed to practice one or more of the healing arts.

(28) "Medical treatment" means the management and care of a patient for the purpose of combating disease, injury, or disorder. Restrictions on activities are not considered treatment unless the primary purpose of the restrictions is to improve the worker's condition through conservative care.

(29) "Parties" mean the worker, insurer, MCO, attending physician, and other medical provider, unless a specific limitation or exception is expressly provided for in the statute.

(30) "Patient" means the same as worker as defined in ORS 656.005(30).

(31) "Physical capacity evaluation" means an objective, directly observed, measurement of a worker's ability to perform a variety of physical tasks combined with subjective analyses of abilities by worker and evaluator. Physical tolerance screening, Blankenship's Functional Capacity Evaluation, and Functional Capacity Assessment have the same meaning as Physical Capacity Evaluation.

(32) "Physical restorative services" means those services prescribed by the attending physician or authorized nurse practitioner to address permanent loss of physical function due to hemiplegia or a spinal cord injury, or to address residuals of a severe head injury. Services are designed to restore and maintain the patient's highest functional ability consistent with the patient's condition.

(33) "Report" means medical information transmitted in written form containing relevant subjective or objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.

(34) "Residual functional capacity" means a patient's remaining ability to perform work-related activities. A residual functional capacity evaluation includes, but is not limited to, capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, bending/stooping, twisting, kneeling, crouching, crawling, and reaching, and the number of hours per day the patient can perform each activity.

(35) "Specialist physician" means a licensed physician who qualifies as an attending physician and who examines a patient at the request of the attending physician or authorized nurse practitioner to aid in evaluation of disability, diagnosis, or provide temporary specialized treatment. A specialist physician may provide specialized treatment for the compensable injury or illness and give advice or an opinion regarding the treatment being rendered, or considered, for a patient's compensable injury.

(36) "Work capacity evaluation" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening has the same meaning as Work Capacity Evaluation.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.000 et seq. & 656.005

Hist.: WCB 4-1976, f. 10-20-76, ef. 11-1-76; WCD 7-1978(Admin), f. & ef. 6-5-78; WCD 2-1980(Admin), f. 1-28-80, ef. 2-1-80; WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0005, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 4-1986(Admin), f. 6-26-86, ef. 7-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 2-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-90; WCD 16-1990(Temp), f. & cert. ef. 8-17-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 1-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 7-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 1-2015, f. 1-29-

15, cert. ef. 3-1-15; WCD 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-010-0008

### Request for Review before the Director

(1) General.

(a) Administrative review before the director:

(A) Except as otherwise provided in ORS 656.704, the director has exclusive jurisdiction to resolve all disputes concerning medical fees, non-payment of compensable medical bills, and medical service and treatment disputes arising under ORS 656.245, 656.247, 656.248, 656.260, 656.325, and 656.327. Disputes about whether a medical service provided after a worker is medically stationary is compensable within the meaning of ORS 656.245(1)(c), or whether a medical treatment is unscientific, unproven, outmoded, or experimental under ORS 656.245(3), are subject to administrative review before the director.

(B) A party does not need to be represented to participate in the administrative review before the director.

(C) Any party may request that the director provide voluntary mediation or alternative dispute resolution after a request for administrative review or hearing is filed.

(b) All issues pertaining to disagreements about medical services within a managed care organization (MCO), including disputes under ORS 656.245(4)(a) about whether a change of provider will be medically detrimental to the worker, are subject to ORS 656.260. A party dissatisfied with an action or decision of the MCO must first apply for and complete the internal dispute resolution process within the MCO before requesting an administrative review of the matter before the director.

(c) Except for disputes regarding interim medical benefits under ORS 656.247, when there is a formal denial of the compensability of the underlying claim, or a denial of the causal relationship between the medical service or treatment and the accepted condition or the underlying condition, the parties may file a request for hearing with the Hearings Division of the Workers' Compensation Board to resolve the compensability issue.

(d) The director may, on the director's own motion, initiate a review of medical services or medical treatment at any time.

(e) If the director issues an order declaring an already rendered medical treatment or medical service inappropriate, or otherwise in violation of the statute or medical rules, the worker is not obligated to pay for such.

(2) Time Frames and Conditions.

(a) The following time frames and conditions apply to requests for administrative review before the director under this rule:

(A) For MCO-enrolled claims, a party that disagrees with an action or decision of the MCO must first use the MCO's dispute resolution process. If the party does not appeal the MCO's decision using the MCO's dispute resolution process, in writing and within 30 days of the mailing date of the decision, the party will lose all rights to further appeal the decision unless the party can show good cause. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation to the insurer, the 30-day time frame begins when the attorney receives written notice or has actual knowledge of the MCO decision.

(B) For MCO-enrolled claims, if a party disagrees with the final action or decision of the MCO, the aggrieved party must request administrative review before the director within 60 days of the MCO's final decision. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation to the insurer, the 60-day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. If a party has been denied access to the MCO dispute resolution process, or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving a particular type of dispute, the insurer or the MCO must advise the medical provider or worker that they may request review before the director.

(C) For claims not enrolled in an MCO, or for disputes that do not involve an action or decision of an MCO, the aggrieved party must request administrative review before the director within 90 days of the date the party knew, or should have known, there was a dispute. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation to the insurer, the 90-day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due. For disputes regarding interim medical benefits on denied claims, the date the insurer should have known of the dispute is no later than one year from the claim denial, or 45 days after the bill is perfected, whichever occurs last. A request for administra-

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tive review under this rule may also be filed as prescribed in OAR chapter 438, division 005.

(b) Medical provider bills for treatment or services that are under review before the director are not payable during the review.

(3) Form and Required Information.

(a) Requests for administrative review before the director should be made on Form 2842 as described in Bulletin 293. When an insurer or a worker's representative submits a request without the required information, the director may dismiss the request or hold initiation of the administrative review until the required information is submitted. Unrepresented workers may ask the director for help in meeting the filing requirements. The requesting party must simultaneously notify all other interested parties and their representatives, if known, of the dispute. The notice must:

(A) Identify the worker's name, date of injury, insurer, and claim number;

(B) Specify the issues in dispute and the relief sought; and

(C) Provide the specific dates of the unpaid disputed treatment or services.

(b) In addition to medical evidence relating to the dispute, all parties may submit other relevant information, including written factual information, sworn affidavits, or legal argument, for incorporation into the record. Such information may also include timely written responses and other evidence to rebut the documentation and arguments of an opposing party. The director may take or obtain additional evidence consistent with statute, such as pertinent medical treatment and payment records. The director may also interview parties to the dispute, or consult with an appropriate committee of the medical provider's peers. When a party receives a written request for additional information from the director, the party must respond within 14 days.

(c) When a request for administrative review is filed under ORS 656.247, 656.260, or 656.327, the insurer must provide a record packet, at no charge, to the director and all other parties or their representatives as follows:

(A) The packet must include a complete, indexed copy of the worker's medical record and other documents that are arguably related to the medical dispute, arranged in chronological order, with oldest documents on top, and numbered in Arabic numerals in the lower right corner of each page. The number must be preceded by the designation "Ex." and pagination of the multiple page documents must be designated by a hyphen followed by the page number. For example, page two of document 10 must be designated "Ex. 10-2." The index must include the document numbers, description of each document, author, number of pages, and date of the document. The packet must include the following notice in bold type:

We hereby notify you that the director is being asked to review the medical care of this worker. The director may issue an order that could affect reimbursement for the disputed medical service(s).

(B) If the insurer requests review, the packet must accompany the request, with copies sent simultaneously to the other parties.

(C) If the requesting party is not the insurer, or if the director has initiated the review, the director will request the record from the insurer. The insurer must provide the record within 14 days of the director's request as described in this rule.

(D) If the insurer fails to submit the record in the time and format specified in this rule, the director may sanction the insurer under OAR 436-010-0340.

(E) Except for disputes regarding interim medical benefits, the packet must include certification stating that there is an issue of compensability of the underlying claim or condition or stating that there is not an issue of compensability of the underlying claim or condition. If the insurer issued a denial that has been reversed by the Hearings Division, the Board, or the Court of Appeals, the insurer must provide a statement regarding its intention, if known, to accept or appeal the decision.

(4) Physician Review (E.g., appropriateness). If the director determines a review by a physician is indicated to resolve the dispute, the director, under OAR 436-010-0330, may appoint an appropriate medical service provider or panel of providers to review the medical records and, if necessary, examine the worker and perform any necessary and reasonable medical tests, other than invasive tests. Notwithstanding ORS 656.325(1), if the worker is required by the director to submit to a medical exam as part of the administrative review process, the worker may refuse an invasive test without sanction.

(a) A single physician selected to conduct a review must be a practitioner of the same healing art and specialty, if practicable, of the medical service provider whose treatment or service is being reviewed.

(b) When a panel of physicians is selected, at least one panel member must be a practitioner of the same healing art and specialty, if practicable,

of the medical service provider whose treatment or service is being reviewed.

(c) When such an exam of the worker is required, the director will notify the appropriate parties of the date, time, and location of the exam. Examinations will be at a place reasonably convenient to the worker, if possible. The parties must not directly contact the physician or panel unless it relates to the exam date, time, location, or attendance. If the parties have special questions they want addressed by the physician or panel, the questions must be submitted to the director for screening as to the appropriateness of the questions. Matters not related to the issues before the director are inappropriate for medical review and will not be submitted to the reviewing physician(s). The exam may include, but is not limited to:

(A) A review of all medical records and diagnostic tests submitted,

(B) An examination of the worker, and

(C) Any necessary and reasonable medical tests.

(5) Dispute Resolution by Agreement (E.g., Alternative Dispute Resolution).

(a) A dispute may be resolved by agreement between the parties to the dispute. The agreement must be in writing and approved by the director. The director may issue a letter of agreement instead of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) A party fails to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the dispute.

(b) Any mediated agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney.

(c) If the dispute does not resolve through mediation or alternative dispute resolution, the director will issue an order. If the dispute is not resolved by agreement and if the director determines that no bona fide dispute exists in a claim not enrolled in an MCO, the director will issue an order under ORS 656.327(1). If any party disagrees with an order of the director that no bona fide medical dispute exists, the party may appeal the order to the Workers' Compensation Board within 30 days of the mailing date of the order. Upon review, the order of the director may be modified only if it is not supported by substantial evidence in the record developed by the director.

(6) Director Order and Reconsideration.

(a) The director may, on the director's own motion, reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new information that could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be received by the director before the administrative order becomes final.

(b) During any reconsideration of the administrative order, the parties may submit new material evidence consistent with this rule and may respond to such evidence submitted by others.

(c) Any party requesting reconsideration or responding to a reconsideration request must simultaneously notify all other interested parties of its contentions and provide them with copies of all additional information presented.

(d) Attorney fees in administrative review will be awarded as provided in ORS 656.385(1) and OAR 436-001-0400 through 436-001-0440.

(7) Hearings.

(a) Any party that disagrees with an action or administrative order under these rules may obtain review of the action or order by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the action or order under ORS 656.245, 656.248, 656.260, or 656.327, or within 60 days of the mailing date of an action or order under ORS 656.247. OAR 436-001 applies to the hearing.

(b) In the review of orders issued under ORS 656.245, 656.247, 656.260(15) or (16), or 656.327(2), no new medical evidence or issues will be admitted at hearing. In these reviews, an administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law.

(c) Contested case hearings of sanctions and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254 or

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656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

(A) A written request for a hearing must be mailed to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(B) The request must be mailed to the administrator within 60 days after the mailing date of the order or notice of assessment.

(C) The administrator will forward the request and other pertinent information to the Workers' Compensation Board.

(8) Other Proceedings.

(a) Any party seeking an action or decision by the director, or any party aggrieved by an action taken by another party not covered under sections (1) through (7) of this rule, may request administrative review before the director.

(b) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(c) The administrator may require and allow such input and information as it deems appropriate to complete the review.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.254, 656.256, 656.260, 656.268, 656.313, 656.325, 656.327, 656.331, 656.704

Hist.: WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-010-0240

### Medical Records and Reporting Requirements for Medical Providers

(1) Medical Records and Reports.

(a) Medical providers must maintain records necessary to document the extent of medical services provided.

(b) All records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided with each set of records.

(c) Reports may be handwritten and must include all relevant or requested information such as the anticipated date of release to return to work, medically stationary date, etc.

(d) Diagnoses stated on all reports, including Form 827, must conform to terminology found in the appropriate International Classification of Disease (ICD).

(2) Diagnostic Studies. When the director or the insurer requests original diagnostic studies, including but not limited to actual films, they must be forwarded to the director, the insurer, or the insurer's designee within 14 days of receipt of a written request.

(a) Diagnostic studies, including films, must be returned to the medical provider within a reasonable time.

(b) The insurer must pay a reasonable charge made by the medical provider for the costs of delivery of diagnostic studies, including films.

(3) Multidisciplinary Programs. When an attending physician or authorized nurse practitioner approves a multidisciplinary treatment program for the worker, the attending physician or authorized nurse practitioner must provide the insurer with a copy of the approved treatment program within 14 days of the beginning of the treatment program.

(4) Release of Medical Records.

(a) Health Insurance Portability and Accountability Act (HIPAA) rules allow medical providers to release information to insurers, self-insured employers, service companies, or the Department of Consumer and Business Services. [See 45 CFR 164.512(l).]

(b) When patients file workers' compensation claims they are authorizing medical providers and other custodians of claim records to release relevant medical records including diagnostics. The medical provider will not incur any legal liability for disclosing such records. [See ORS 656.252(4).] The authorization is valid for the life of the claim and cannot be revoked by the patient or the patient's representative. A separate authorization is required for release of information regarding:

(A) Federally funded drug and alcohol abuse treatment programs governed by Federal Regulation 42, CFR 2, which may only be obtained in compliance with this federal regulation, and

(B) HIV-related information protected by ORS 433.045.

(c) Any medical provider must provide all relevant information to the director, or the insurer or its representative upon presentation of a signed Form 801, 827, or 2476. The insurer may print "Signature on file" on a

release form as long as the insurer maintains a signed original. However, the medical provider may require a copy of the signed release form.

(d) The medical provider must respond within 14 days of receipt of a request for progress reports, narrative reports, diagnostic studies, or relevant medical records needed to review the efficacy, frequency, and necessity of medical treatment or medical services. Medical information relevant to a claim includes a past history of complaints or treatment of a condition similar to that presented in the claim or other conditions related to the same body part.

(e) Patients or their representatives are entitled to copies of all medical and payment records, which may include records from other medical providers. Patients or their representatives may request all or part of the record. These records should be requested from the insurer, but may also be obtained from medical providers. A summary may substitute for the actual record only if the patient agrees to the substitution. The following records may be withheld:

(A) Psychotherapy notes;

(B) Information compiled for use in a civil, criminal, or administrative action or proceeding;

(C) Other reasons specified by federal regulation; and

(D) Information that was obtained from someone other than a medical provider when the medical provider promised confidentiality and release of the information would likely reveal the source of the information.

(f) A medical provider may charge the patient or his or her representative for copies at the rate specified in OAR 436-009-0060. A patient may not be denied summaries or copies of his or her medical records because of inability to pay.

(5) Release to Return to Work.

(a) When requested by the insurer, the attending physician or authorized nurse practitioner must submit verification that the patient's medical limitations related to their ability to work result from an occupational injury or disease. If the insurer requires the attending physician or authorized nurse practitioner to complete a release to return-to-work form, the insurer must use Form 3245.

(b) The attending physician or authorized nurse practitioner must advise the patient, and within five days, provide the insurer written notice of the date the patient is released to return to regular or modified work.

(6) Time Loss and Medically Stationary.

(a) When time loss is authorized by the attending physician or authorized nurse practitioner, the insurer may require progress reports every 15 days. Chart notes may be sufficient to satisfy this requirement. If more information is required, the insurer may request a brief or complete narrative report. The provider must submit a requested progress report or narrative report within 14 days of receiving the insurer's request.

(b) The attending physician or authorized nurse practitioner must, if known, inform the patient and the insurer of the following and include it in each progress report:

(A) The anticipated date of release to work;

(B) The anticipated date the patient will become medically stationary;

(C) The next appointment date; and

(D) The patient's medical limitations.

(c) The insurer must not consider the anticipated date of becoming medically stationary as a date of release to return to work.

(d) The attending physician or authorized nurse practitioner must notify the patient, insurer, and all other medical providers involved in the patient's treatment when the patient is determined medically stationary and whether the patient is released to any kind of work. The medically stationary date must be the date of the exam and not a projected date.

(7) Consultations. When the attending physician, authorized nurse practitioner, or the MCO requests a consultation with a medical provider regarding conditions related to an accepted claim:

(a) The attending physician, authorized nurse practitioner, or the MCO must promptly notify the insurer of the request for the consultation and provide the consultant with all relevant medical records. However, if the consultation is for diagnostic studies performed by radiologists or pathologists, no such notification is required.

(b) The consultant must submit a copy of the consultation report to the insurer and the attending physician, authorized nurse practitioner, or MCO within 10 days of the date of the exam or chart review. The consultation fee includes the fee for this report.

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

Stat. Auth.: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252 & 656.254

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0101, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-90; WCD

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30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0030; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-010-0265

### Independent Medical Exams (IMEs) and Worker Requested Medical Exams (WRMEs)

#### (1) General.

(a) Except as provided in section (12) of this rule, “independent medical exam” (IME) means any medical exam (including a physical capacity or work capacity evaluation or consultation that includes an exam) that is requested by the insurer under ORS 656.325. A “worker-requested medical exam” (WRME) is an exam available to a worker under ORS 656.325. An IME or WRME is completed by a medical service provider other than the worker’s attending physician or authorized nurse practitioner. The insurer may obtain three IMEs for each opening of the claim. These exams may be obtained before or after claim closure. For the purpose of determining the number of IMEs, any IME scheduled but not completed does not count as a statutory IME. A claim for aggravation, Board’s Own Motion, or reopening of a claim when the worker becomes enrolled or actively engaged in training according to rules adopted under ORS 656.340 and 656.726 allows a new series of three IMEs. A medical service provider must not unreasonably interfere with the right of the insurer to obtain an IME by a physician of the insurer’s choice. The insurer must choose the medical service providers from the director’s list of authorized IME providers under ORS 656.328. The IME may be conducted by one or more providers of different specialties, generally done at one location and completed within a 72-hour period. If the providers are not at one location, the IME must be completed within a 72-hour period and at locations reasonably convenient to the worker.

(b) The provider will determine the conditions under which the exam will be conducted.

(c) IMEs must be at times and intervals reasonably convenient to the worker and must not delay or interrupt treatment of the worker.

(d) When the insurer requires a worker to attend an IME, the insurer must comply with the notification and reimbursement requirements found in OAR 436-009-0025 and 436-060-0095.

(e) A medical provider who unreasonably fails to provide diagnostic records for an IME under OAR 436-010-0240 may be assessed a penalty under ORS 656.325.

(f) The worker may complete an online survey at [www.wcdimesurvey.info](http://www.wcdimesurvey.info) or make a complaint about the IME on the Workers’ Compensation Division’s website. If the worker does not have access to the Internet, the worker may call the Workers’ Compensation Division at 503-947-7606.

#### (2) IME/WRME Authorization.

(a) Medical service providers can perform IMEs, WRMEs, or both once they complete a director-approved training and are placed on the director’s list of authorized IME providers.

(A) To be on the director’s list to perform IMEs or WRMEs, a medical service provider must complete the online application at [www.oregonwcdoc.info](http://www.oregonwcdoc.info), hold a current license, be in good standing with the provider’s regulatory board, and must have:

(i) Reviewed IME training materials provided or approved by the director found at [www.oregonwcdoc.info](http://www.oregonwcdoc.info); or

(ii) Completed a director-approved training course regarding IMEs. The training curriculum must include all topics listed in Appendix B.

(B) By submitting the application to the director, the medical service provider agrees to abide by:

(i) The standards of professional conduct for performing IMEs adopted by the provider’s regulatory board or standards published in Appendix C if the provider’s regulatory board does not have standards; and

(ii) All relevant workers’ compensation laws and rules.

(C) A provider may be sanctioned or removed from the director’s list of authorized IME providers after the director finds that the provider:

(i) Violated the standards of either the professional conduct for performing IMEs adopted by the provider’s regulatory board or the independent medical examination standards published in Appendix C;

(ii) Has a current restriction on his or her license or is under a current disciplinary action from their professional regulatory board;

(iii) Has entered into a voluntary agreement with his or her regulatory board that the director determines is detrimental to performing IMEs;

(iv) Violated workers’ compensation laws or rules; or

(v) Has failed to complete training required by the director.

(D) A provider may appeal the director’s decision to exclude or remove the provider from the director’s list within 60 days under ORS 656.704(2) and OAR 436-001-0019.

(b) If a provider is not on the director’s list of authorized IME providers at the time of the IME, the insurer may not use the IME report and the report may not be used in any subsequent proceedings.

#### (3) IME Training.

(a) The IME provider training curriculum must be approved by the director before the training is given. Any party may submit a curriculum to the director for approval. The curriculum must include:

(A) A training outline,

(B) Goals,

(C) Objectives,

(D) The method of training, and

(E) All topics addressed in Appendix B.

(b) Within 21 days of the IME training, the training vendor must send the director the date of the training and a list of all medical providers who completed the training, including names and license numbers.

(c) Insurer claims examiners must be trained and certified in accordance with OAR 436-055 regarding appropriate interactions with IME medical service providers.

#### (4) IME Related Forms.

(a) When scheduling an IME, the insurer must ensure the medical service provider has:

(A) Form 3923, “Important Information about Independent Medical Exams,” available to the worker before the exam; and

(B) Form 3227, “Invasive Medical Procedure Authorization,” if applicable.

(b) The IME provider must make Form 3923 with the attached observer Form 3923A available to the worker.

#### (5) IME Observer.

(a) A worker may choose to have an observer present during the IME, however, an observer may not participate in or obstruct the IME. An observer is not allowed in a psychological examination unless the examining provider approves the presence of the observer.

(b) The worker must sign Form 3923A, “IME Observer Form,” acknowledging that the worker understands the IME provider may ask sensitive questions during the exam in the presence of the observer. An observer must not participate in or obstruct the exam. If the worker does not sign Form 3923A, the provider may exclude the observer. The IME provider must verify that the worker signed the “IME Observer Form” acknowledging that the worker understands:

(A) The IME provider may ask sensitive questions during the exam in the presence of the observer;

(B) If the observer interferes with the exam, the IME provider may stop the exam, which could affect the worker’s benefits; and

(C) The observer must not be paid to attend the exam.

(c) A person receiving any compensation for attending the exam may not be a worker’s observer. The worker’s attorney or any representative of the worker’s attorney may not be an observer.

(6) Invasive Procedure. For the purposes of this rule, an invasive procedure is one that breaks the skin or penetrates, pierces, or enters the body using a surgical or exploratory procedure (e.g., by a needle, tube, scope, or scalpel). If an IME provider intends to perform an invasive procedure, the provider must explain to the worker the risks involved in the procedure and the worker’s right to refuse the procedure. The worker must check the applicable box on Form 3227, “Invasive Medical Procedure Authorization,” either agreeing to the procedure or declining the procedure and sign the form.

(7) Record the Exam. With the IME provider’s approval, the worker may use a video camera or other recorder to record the exam.

(8) Objection to the IME Location. When a worker objects to the location of an IME, the worker may request review before the director within six business days of the mailing date of the appointment notice.

(a) The request may be made in-person, by telephone, fax, email, or mail.

(b) The director may facilitate an agreement between the parties regarding location.

(c) If necessary, the director will conduct an expedited review and issue an order regarding the reasonableness of the location.

(d) The director will determine if travel is medically contraindicated or unreasonable because:

(A) The travel exceeds limitations imposed by the attending physician, authorized nurse practitioner, or any medical conditions;



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(B) Alternative methods of travel will not overcome the limitations;  
or

(C) The travel would impose undue hardship for the worker that outweighs the right of the insurer to select an IME location of its choice.

(9) Failure to Attend an IME. If the worker fails to attend an IME and does not notify the insurer before the date of the exam or does not have sufficient reason for not attending the exam, the director may impose a monetary penalty against the worker for failure to attend.

(10) IME Report.

(a) Upon completion of the exam, the IME provider must:

(A) Send the insurer a copy of the report and, if applicable, the observer Form 3923A, the invasive procedure Form 3227, or both.

(B) Sign a statement at the end of the report acknowledging that any false statements may result in sanctions by the director and verifying:

(i) Who performed the exam;

(ii) Who dictated the report; and

(iii) The accuracy of the report content.

(b) The insurer must forward a copy of the signed report to the attending physician or authorized nurse practitioner within three days, excluding weekends and legal holidays, of the insurer's receipt of the report.

(11) Request for Additional Exams.

(a) When the insurer has obtained the three IMEs allowed under this rule and wants to require the worker to attend an additional IME, the insurer must first request authorization from the director. Insurers that fail to request authorization from the director may be assessed a civil penalty. The process for requesting authorization is:

(A) The insurer must submit a request for authorization to the director by using Form 2333, "Insurer's Request for Director Approval of an Additional Independent Medical Examination." The insurer must send a copy of the request to the worker and the worker's attorney, if any; and

(B) The director will review the request and determine if additional information from the insurer or the worker is necessary. Upon receiving a written request for additional information from the director, the parties have 14 days to respond. If the parties do not provide the requested information, the director will issue an order approving or disapproving the request based on available information.

(b) To determine whether to approve or deny the request for an additional IME, the director may consider, but is not limited to, whether:

(A) An IME involving the same discipline(s) or review of the same condition has been completed within the past six months.

(B) There has been a significant change in the worker's condition.

(C) There is a new condition or compensable aspect introduced to the claim.

(D) There is a conflict of medical opinions about a worker's medical treatment, medical services, impairment, stationary status, or other issues critical to claim processing or benefits.

(E) The IME is requested to establish preponderance for medically stationary status.

(F) The IME is medically harmful to the worker.

(G) The IME requested is for a condition for which the worker has sought treatment or services, or the condition has been included in the compensable claim.

(c) Any party who disagrees with the director's order approving or disapproving a request for an additional IME may request a hearing by the Hearings Division of the Workers' Compensation Board under ORS 656.283 and OAR chapter 438.

(12) Other Exams – Not Considered IMEs.

The following exams are not considered IMEs and do not require approval as outlined in section (11) of this rule:

(a) An exam, including a closing exam, requested by the worker's attending physician or authorized nurse practitioner;

(b) An exam requested by the director;

(c) An elective surgery consultation requested under OAR 436-010-0250(3);

(d) An exam of a permanently totally disabled worker required under ORS 656.206(5);

(e) A closing exam that has been arranged by the insurer at the attending physician's or authorized nurse practitioner's request; and

(f) An exam requested by the managed care organization (MCO) for the purpose of clarifying or refining a plan for continuing medical services as provided under the MCO's contract.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264

Hist.: WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef.

1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 4-2007(Temp), f. & cert. ef. 6-7-07 thru 12-3-07; WCD 9-2007, f. 11-1-07, cert. ef. 12-4-07; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-010-0270

### Insurer's Rights and Duties

(1) Notifications.

(a) Immediately following receipt of notice or knowledge of a claim, the insurer must notify the worker in writing about how to receive medical services for compensable injuries.

(b) Within 10 days of any change in the status of a claim, (e.g., acceptance or denial of a claim, or a new or omitted medical condition), the insurer must notify the attending physician or authorized nurse practitioner, if known, and the MCO, if any.

(c) In disabling and nondisabling claims, immediately following notice or knowledge that the worker is medically stationary, the insurer must notify the worker and the attending physician or authorized nurse practitioner in writing which medical services remain compensable. This notice must list all benefits the worker is entitled to receive under ORS 656.245 (1)(c).

(d) When the insurer establishes a medically stationary date that is not based on the findings of an attending physician or authorized nurse practitioner, the insurer must notify all medical service providers of the worker's medically stationary status. For all injuries occurring on or after October 23, 1999, the insurer must pay all medical service providers for services rendered until the insurer provides notice of the medically stationary date to the attending physician or authorized nurse practitioner.

(2) Medical Records Requests.

(a) Insurers may request relevant medical records, using Form 2476, "Request for Release of Medical Records for Oregon Workers' Compensation Claim," or a computer-generated equivalent of Form 2476, with "signature on file" printed on the worker's signature line, provided the insurer maintains a worker-signed original of the release form.

(b) Within 14 days of receiving a request, the insurer must forward all relevant medical information to return-to-work specialists, vocational rehabilitation organizations, or new attending physician or authorized nurse practitioner.

(3) Pre-authorization. Unless otherwise provided by an MCO, an insurer must respond in writing within 14 days of receiving a medical provider's written request for preauthorization of diagnostic imaging studies, other than plain film X-rays. The response must include whether the service is pre-authorized or not pre-authorized.

(4) Insurer's Duties under MCO Contracts.

(a) Insurers who enter into an MCO contract under OAR 436-015, must notify the affected employers of the following:

(A) The names and addresses of all MCO panel providers within the employer's geographical service area(s);

(B) How workers can receive compensable medical services within the MCO;

(C) How workers can receive compensable medical services by non-panel providers; and

(D) The geographical service area governed by the MCO.

(b) Insurers under contract with an MCO must notify any newly insured employers as specified in subsection (4)(a) of this rule no later than the effective date of coverage.

(c) When the insurer is enrolling a worker in an MCO, the insurer must provide the name, address, and telephone number of the worker and, if represented, the name of the worker's attorney to the MCO.

(d) When the insurer is enrolling a worker in an MCO, the insurer must simultaneously provide written notice to the worker, the worker's representative, all medical providers, and the MCO of enrollment. To be considered complete, the notice must:

(A) Provide the worker a written list of the eligible attending physicians within the relevant MCO geographic service area or provide a Web address to access the list of eligible attending physicians. If the notice does not include a written list, then the notice must also:

(i) Provide a telephone number the worker may call to ask for a written list; and

(ii) Tell the worker that he or she has seven days from the mailing date of the notice to request the list;

(B) Explain how the worker may obtain the names and addresses of the complete panel of MCO medical providers;

(C) Advise the worker how to obtain medical services for compensable injuries within the MCO. This includes whether the worker:

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(i) Must change attending physician or authorized nurse practitioner to an MCO panel provider, or

(ii) May continue to treat with the worker's current attending physician or authorized nurse practitioner;

(D) Explain how the worker can receive compensable medical treatment from a "come-along" provider;

(E) Advise the worker of the right to choose the MCO when more than one MCO contract covers the worker's employer, except when the employer provides a coordinated health care program. For the purpose of this rule, "coordinated health care program" means an employer program providing coordination of a separate policy of group health insurance coverage with the medical portion of workers' compensation coverage, for some or all of the employer's workers, which provides the workers with health care benefits even if a workers' compensation claim is denied; and

(F) Notify the worker of his or her right to appeal MCO decisions and provide the worker with the title, address, and telephone number of the contact person at the MCO responsible for ensuring the timely resolution of complaints or disputes.

(e) When an insurer enrolls a worker in an MCO before claim acceptance, the insurer must inform the worker in writing that the insurer will pay for certain medical services even if the claim is denied. Necessary and reasonable medical services that are not otherwise covered by health insurance will be paid until the worker receives the notice of claim denial or until three days after the denial is mailed, whichever occurs first.

(f) When a worker who is not yet medically stationary must change medical providers because an insurer enrolled the worker in an MCO, the insurer must notify the worker of the right to request review before the MCO if the worker believes the change would be medically detrimental.

(g) If, at the time of MCO enrollment, the worker's medical service providers are not members of the MCO and do not qualify as "come-along providers," the insurer must notify the worker and providers regarding provisions of care under the MCO contract, including continuity of care as provided by OAR 436-015-0035(4).

(h) Within seven days of receiving a dispute regarding an issue that should be processed through the MCO dispute resolution process and a copy has not been sent to the MCO, the insurer must:

(A) Send a copy of the dispute to the MCO; or

(B) If the MCO does not have a dispute resolution process for that issue, notify the parties in writing to seek administrative review before the director.

(i) The insurer must notify the MCO within seven days of receiving notification of the following:

(A) Any changes to the worker's or worker's attorney's name, address, or telephone number;

(B) Any requests for medical services from the worker or the worker's medical provider; or

(C) Any request by the worker to continue treating with a "come-along" provider.

(j) Insurers under contract with MCOs must maintain records including, but not limited to:

(A) A listing of all employers covered by MCO contracts;

(B) The employers' WCD employer numbers;

(C) The estimated number of employees governed by each MCO contract;

(D) A list of all workers enrolled in the MCO; and

(E) The effective dates of such enrollments.

(k) When the insurer is disenrolling a worker from an MCO, the insurer must simultaneously provide written notice of the disenrollment to the worker, the worker's representative, all medical service providers, and the MCO. The insurer must mail the notice no later than seven days before the date the worker is no longer subject to the contract. The notice must tell the worker how to obtain compensable medical services after disenrollment.

(l) When an MCO contract expires or is terminated without renewal, the insurer must simultaneously provide written notice to the worker, the worker's representative, all medical service providers, and the MCO that the worker is no longer subject to the MCO contract. The notice must be mailed no later than three days before the date the contract expires or terminates. The notice must tell the worker how to obtain compensable medical services after the worker is no longer subject to the MCO contract.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0801, f. 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0100; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. &

cert. ef. 10-25-99 thru 4-21-000; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-010-0330

### Medical Arbiters and Physician Reviewers

(1) The director will establish and maintain a list of arbiters. The director will appoint a medical arbiter or a panel of medical arbiters from this list under ORS 656.268.

(2) The director will establish and maintain a list of physician reviewers. The director will appoint an appropriate physician or a panel of physicians from this list to review medical treatment or medical services disputes under ORS 656.245 and 656.327.

(3) When a worker is required to attend an examination under this rule, the director will provide notice of the examination to the worker and all affected parties. The notice will inform all parties of the time, date, location, and purpose of the examination. Examinations will be at a place reasonably convenient to the worker, if possible.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.268, 656.325 & 656.327

Hist.: WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0047; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

## 436-010-0340

### Sanctions and Civil Penalties

(1) If the director finds any medical provider in violation of the medical reporting requirements established under ORS 656.245, 656.252, 656.254(1), or 656.325, or OAR 436-009 or 436-010, the director may impose one or more of the following sanctions:

(a) Reprimand by the director;

(b) Non-payment, reduction, or recovery of fees in part or whole for medical services provided;

(c) Referral to the appropriate licensing board;

(d) Civil penalty not to exceed \$1,000 for each occurrence. In determining the amount of penalty to be assessed, the director will consider:

(A) The degree of harm inflicted on the worker or the insurer;

(B) Whether there have been previous violations; and

(C) Whether there is evidence of willful violations; or

(e) A penalty of \$100 for each violation of ORS 656.325(1)(c)(C).

(2) If the medical provider fails to provide information under OAR 436-010-0240 within fourteen days of receiving a request sent by certified mail or fax, penalties under this rule or OAR 436-015-0120 may be imposed.

(3) The director may impose a penalty of forfeiture of fees and a fine not to exceed \$1,000 for each occurrence on any medical service provider who, under ORS 656.254, and 656.327, has been found to:

(a) Fail to comply with the medical rules;

(b) Provide medical services that are excessive, inappropriate, or ineffectual; or

(c) Engage in any conduct demonstrated to be dangerous to the health or safety of a worker.

(4) If the conduct as described in section (3) of this rule is found to be repeated and willful, the director may declare the medical provider ineligible for reimbursement for treating workers' compensation patients for a period not to exceed three years.

(5) A medical provider whose license has been suspended or revoked by the licensing board for violations of professional ethical standards may be declared ineligible for reimbursement for treating workers' compensation patients for a period not to exceed three years. A certified copy of the revocation or suspension order will be prima facie justification for the director's order.

(6) If a financial penalty is imposed on the medical provider for violation of these rules, the provider may not seek recovery of the penalty fees from the worker.

(7) If an insurer or worker believes sanctions under sections (1) or (2) of this rule are appropriate, either may submit a complaint in writing to the director.

(8) If the director finds an insurer in violation of the notification provisions of OAR 436-010 limiting medical services, the director may order the insurer to reimburse any affected medical providers for services pro-

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vided until the insurer complies with the notification requirement. Any penalty will be limited to the amounts listed in section (9) of this rule.

(9) If the director finds any insurer in violation of statute, OAR 436-009, OAR 436-010, or an order of the director, the insurer may be subject to penalties under ORS 656.745 of not more than \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three month period. Each violation, or each day a violation continues, will be considered a separate violation.

(10) The director may subject a worker who fails to meet the requirements in OAR 436-010-0265(9) to a \$100 penalty per occurrence under ORS 656.325, to be deducted from future benefits.

Stat. Auth.: ORS 656726(4)

Stats. Implemented: ORS 656.245, 656.254 & 656.745

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90, Renumbered from 436-010-0110(3)(4) & (7); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0130; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2015, f. 8-20-15, cert. ef. 10-1-15; WCD 1-2016, f. 3-7-16, cert. ef. 4-1-16

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## Department of Corrections Chapter 291

**Rule Caption:** Standards for Interstate Transfer of Adult Offenders  
**Adm. Order No.:** DOC 2-2016

**Filed with Sec. of State:** 2-29-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 10-1-2015

**Rules Amended:** 291-180-0252

**Subject:** The Department of Corrections fully participates in the Interstate Compact for Adult Offender Supervision (ICAOC). This rule amendment is necessary so that the department may adopt by reference the most current rules published by the ICAOS.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

### 291-180-0252

#### Standards for Interstate Transfer of Adult Offenders

The Department of Corrections adopts by this reference standards for the interstate transfer of adult offender supervision set out in the official ICAOS rules, published by the Interstate Commission for Adult Offender Supervision, as updated to reflect amendments to the rules effective March 1, 2016. The rules may be viewed at the ICAOS website at [www.interstatecompact.org](http://www.interstatecompact.org).

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 25-2011, f. 12-5-11 cert. ef. 12-7-11; DOC 2-2016, f. 2-29-16, cert. ef. 3-1-16

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**Rule Caption:** Jail Inspections

**Adm. Order No.:** DOC 3-2016

**Filed with Sec. of State:** 2-29-2016

**Certified to be Effective:** 2-29-16

**Notice Publication Date:** 11-1-2015

**Rules Amended:** 291-167-0005, 291-167-0010, 291-167-0015

**Subject:** The revisions to these rules are necessary to align the rules with statutory requirements of ORS 169.090 and other minor house-keeping items.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

### 291-167-0005

#### Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of Department of Corrections in accordance with ORS 169.070, 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: To provide coordinated state services to local governments with respect to local correctional facilities and juvenile detention facilities within the State of Oregon.

(3) Policy: It is the policy of the Department of Corrections to designate staff within the state to:

(a) Provide technical assistance to local governments in planning and operation of county correctional facilities.

(b) Inspect local facilities for compliance with standards established in ORS 169.070, 169.076 to 169.078, 169.740, 419A.052, 419A.061 and 419B.180.

(c) Take appropriate action to insure compliance as provided in ORS 169.080;

(d) Review plans of new construction or major renovation of local correctional facilities, temporary holds, lockups and juvenile detention facilities providing advisory recommendation on safety and security as provided in ORS 169.085.

(e) Develop, publish, distribute, and maintain a manual of recommended guidelines for the operation of local correctional facilities, lockups, temporary holds, and juvenile detention facilities as provided in ORS 169.090.

Stat. Auth.: ORS 169.070, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 169.070 - 169.750, 179.040, 419A.052, 419A.061, 419B.180, 423.020, 423.030 & 423.075

Hist.: CD 13-1986(Temp), f. 6-30-86, ef. 8-15-86; CD 31-1986, f. & ef. 9-19-86; DOC 5-2001, f. & cert. ef. 2-7-01; DOC 3-2016, f. & cert. ef. 2-29-16

### 291-167-0010

#### Definitions

(1) Detainee: A person held with no criminal charges.

(2) Juvenile Detention Facility: A facility as described in ORS 419A.050 and 419A.052 and which includes local correctional facilities and lockups where juveniles are detained.

(3) Local Confinement Facility: Any facility operated by local government entity for the purpose of holding or lodging prisoners, detainees, or juveniles.

(4) Local Correctional Facility: A jail or prison for the reception and confinement of prisoners that is provided, maintained, and operated by a county or city and holds persons for more than 36 hours.

(5) Lockup: A facility for the temporary detention of arrested persons held up to 36 hours, excluding holidays, Saturdays and Sundays, but the period in lockup shall not exceed 96 hours after booking.

(6) Major Renovation: A plan to alter a local confinement facility to the extent that security, supervision of prisoners, or general operation is changed. Major renovation is the restructure, or adding to any portion of a building which is designed and used for confinement, that equals 50 percent of the total value of that area, or 50 percent of the total square feet of space.

(7) Prisoner: A person held with criminal charges or sentenced to the facility.

(8) Temporary Hold: A facility, the principal purpose of which is the temporary detention of a prisoner or detainee for four or less hours while awaiting court appearance or transportation to a local correctional facility.

Stat. Auth.: ORS 169.070, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 169.070 - 169.750, 179.040, 419A.052, 419A.061, 419B.180, 423.020, 423.030 & 423.075

Hist.: CD 13-1986(Temp), f. 6-30-86, ef. 8-15-86; CD 31-1986, f. & ef. 9-19-86; DOC 5-2001, f. & cert. ef. 2-7-01; DOC 3-2016, f. & cert. ef. 2-29-16

### 291-167-0015

#### Procedures

The state jail inspector shall provide technical assistance, inspection of facilities, review renovation and new construction plans for all confinement facilities within the state and take appropriate action to insure the compliance with standards established in ORS 169.076 to 169.078, 419A.052 and 419B.180.

(1) The state jail inspector will respond to requests for assistance from county commissioners, sheriffs, county legal counsel, mayors, chiefs of police, and city attorneys within a reasonable time frame agreed upon with the requesting parties.

(2) The state jail inspector will routinely inspect local confinement facilities and report his findings with respect to the appropriate statutory standards to the authorities responsible for the facility's operation and control.

(a) County adult confinement facilities reports will be forwarded to the facility director, county commissions, and sheriff of the county.

(b) Juvenile confinement facility reports will be forwarded to the chair of the county commissioners, juvenile court director and/or facility manager.

(c) City confinement facility reports will be forwarded to chief of police, mayor and/or city manager.

(3) The state jail inspector will establish and maintain a file for each of the confinement facilities within the state and for those contracted out of state which contains:

(a) Most recent inspection report;

(b) Fire Marshall inspection report;

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(c) Health and Sanitation inspections;  
(d) Other pertinent correspondence and information germane to the facility.

(4) Local confinement facilities which are found not to be in compliance with the appropriate standards, the state jail inspector will:

(a) Notify the appropriate authority responsible for the facility's operation in writing, stating the violation and/or condition of non-compliance. The notification should give a reasonable time for compliance.

(b) If compliance is not met, the state jail inspector will notify the Director of the Department of Corrections who shall refer the matter to the Attorney General for action as authorized by ORS 169.080.

(5) The state jail inspector will review new construction and major renovation plans submitted by local government and make appropriate recommendation to the local government agency within 45 days of submission of the plans.

Stat. Auth.: ORS 169.070, 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 169.070 - 169.750, 179.040, 419A.052, 419A.061, 419B.180, 423.020, 423.030 & 423.075  
Hist.: CD 13-1986(Temp), f. 6-30-86, ef. 8-15-86; CD 31-1986, f. & ef. 9-19-86; DOC 5-2001, f. & cert. ef. 2-7-01; DOC 3-2016, f. & cert. ef. 2-29-16

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**Rule Caption:** Eligibility for work and housing assignment levels for inmates in Department of Corrections facilities

**Adm. Order No.:** DOC 4-2016

**Filed with Sec. of State:** 3-8-2016

**Certified to be Effective:** 3-8-16

**Notice Publication Date:** 1-1-2016

**Rules Amended:** 291-082-0110

**Subject:** This rule amendment is necessary to add criteria to determine an inmate's eligibility for an on-site work assignment, which is an assignment outside the perimeter fence of the institution where the inmate is housed.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-082-0110

### Work Housing Assignment Level Evaluation (WHALE) Eligibility

(1) Inside Work Assignment: All inmates at custody classification Level 1 or 2 are minimally eligible for an inside work assignment.

(2) On-Site Work Assignment: An inmate must meet the following criteria to be considered for an on-site work assignment:

(a) Meets criteria for an inside work assignment on the WHALE.

(b) Has served more than 60 days in DOC custody.

(c) Has no predatory sex offender designation in Oregon or any other state, and if a sex offender, score 5 or below on the Static 99R or is not classified as a Level III sex offender under OAR 255-085-0020 (Sex Offender Risk Assessment Methodology). The Static 99R and definitions (version 2003, age coding August 2012) are attached to this rule.

(d) Has not been sentenced under the sexually violent dangerous offender law.

(e) Is approved by the functional unit manager or designee.

(3) Community Work Assignment: An inmate must meet the following criteria to be considered for a community work assignment:

(a) Served more than 60 days in DOC custody.

(b) No conviction for Arson I or Attempted Arson I.

(c) No conviction for a sex offense or a crime with a sexual element.

(d) No active protection/restraining order(s).

(e) No conviction for a Stalking offense.

(f) No active court Stalking Order.

(g) Not found in violation of Sexual Assault or Sexual Coercion as described in OAR 291-105-0015, Rules of Misconduct.

(h) Minimal escape risk as defined in the Custody Classification Guide and the rule on Classification (Inmate) (OAR 291-104).

(i) No felony detainer(s) that are untried or expire after the inmate's projected release date.

(j) No multiple misdemeanor detainers that expire after the inmate's projected release date.

(k) No designators on file disqualifying community assignment.

(4) Unfenced Housing: An inmate must meet the following criteria to be considered for an unfenced housing assignment:

(a) Custody Classification Level 1.

(b) Meets all community work assignment criteria listed in subsection

(3) above.

(c) No conviction for Arson II, Attempted Arson II, Reckless Burning or other related arson crimes, including attempts.

(d) No current escape designator, or any ESMO or ESSV designators, as defined in the Custody Classification Guide (OAR 291-104-0116).

(e) No misdemeanor detainer that is untried.

(f) No consecutive misdemeanor detainer that expires one year or less from the inmate's projected release date.

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

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075

Hist.: DOC 10-2008(Temp), f. 5-8-08, cert. ef. 5-13-08 thru 11-7-08; DOC 27-2008, f. & cert. ef. 11-7-08; DOC 21-2011(Temp), f. & cert. ef. 10-17-11 thru 4-13-12; DOC 5-2012, f. & cert. ef. 3-1-12; DOC 2-2015(Temp), f. & cert. ef. 1-6-15 thru 7-3-15; DOC 6-2015, f. & cert. ef. 5-21-15; DOC 4-2016, f. & cert. ef. 3-8-16

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## Department of Energy Chapter 330

**Rule Caption:** Amending Biomass Tax Credit rules to increase application fee.

**Adm. Order No.:** DOE 1-2016

**Filed with Sec. of State:** 3-1-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 330-170-0010, 330-170-0050

**Subject:** These permanent rule amendments for the Biomass Producer or Collector Tax Credit program increase the application fee from \$100 plus 2.5 percent of the tax credit amount to \$100 plus 3.8 percent of the tax credit amount for tax years beginning on or after January 1, 2016. The fee increase was explained and included in the Oregon Department of Energy's budget approved by the legislature as part of the 2015-2017 budget process. ORS 315.141(5)(b) directs the department to collect a fee not to exceed the cost to the department of determining the amount of certified cost. Currently, the department is not collecting fees sufficient to recover the actual cost of the program.

**Rules Coordinator:** Elizabeth Ross—(503) 378-8534

## 330-170-0010

### Purpose and Scope

(1) OAR chapter 330, division 170 establishes the procedure and criteria for certifying tax credits under ORS 315.141 and 469B.403.

(2) These rules apply to tax years beginning on or after January 1, 2016.

Stat. Auth.: ORS 315.141

Stats. Implemented: ORS 315.141 & 469B.403

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14; DOE 1-2016, f. & cert. ef. 3-1-16

## 330-170-0050

### Application Process

(1) Applicants requesting a Biomass Producer or Collector Tax Credit must apply on the department approved form. The form must include the following information:

(a) The name of the applicant, address, phone number and email;

(b) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law;

(c) A description of the quantity and type of biomass produced or collected;

(d) The name of the biofuel producer that received the biomass for use as biofuel or to produce biofuel;

(e) The applicant's certification statement; and

(f) The name, address, email address and telephone number of the responsible party for the applicant.

(2) In addition to the information on the form, the applicant must provide all of the following information related to the amount of biomass claimed in the application:

(a) Evidence that the agricultural producer or biomass collector held title to the biomass at the time the biomass was delivered. Evidence of title that may be satisfactory to the department, includes, but is not limited to: contracts, receipts, settlement sheets.

(b) Documentation indicating the origination of the biomass, such as the physical address; township, range, section and quarter/quarter section; or other specific geographic indicator.

(c) A summary or settlement sheet for each shipment received by the biofuel producer. Each summary or settlement sheet must include the following:

# ADMINISTRATIVE RULES

(A) The name and address of the biofuel producer to which the biomass was delivered;

(B) The date of delivery for each shipment of biomass;

(C) The type of biomass included in each shipment and the applicable tax credit rate for each shipment;

(D) The amount of biomass delivered in each shipment;

(E) The delivered price for each shipment of biomass, including the dry ton payment rate if applicable;

(F) The weight ticket number or a similar unique identifier for each shipment; and

(G) For woody biomass and vegetative biomass from agricultural crops, the dry ton weight equivalent of the actual tonnage in each shipment, calculated in a manner acceptable to the department.

(d) A receipt of qualifying biomass that includes the type of biomass, name and address of biomass producer or collector, name and address of the person receiving the biomass from the applicant, type of biofuel facility, dates delivered, amount of biomass received and a statement attesting to the receipt and use of biomass. An applicant may complete the department approved Receipt of Qualifying Biomass form or provide a receipt satisfactory to the department.

(e) All calculations used to convert one measure of the biomass to another measure and source references for the calculations and all variables.

(f) An application fee of \$100 plus 3.8 percent of the total amount of tax credit.

(g) If eligible biomass is stored or aggregated with other biomass or materials after the initial production or collection activities and prior to delivery to a biofuel producer, the biomass producer or collector must provide detailed records certifying the amount and source of each type of biomass.

(h) Agricultural producers or biomass collectors that produce or collect animal manure must use the department approved worksheet or the following formula to calculate the amount of eligible manure:

(A)  $A \times B \times C / 2000$ ; where:

(i) A is equal to the number of 1,000 pound animal units contributing manure during the period,

(ii) B is equal to the average animal manure production value from the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Revision 2, March 2008, and

(iii) C is equal to the number of days in the period.

(B) The following documentation must be included with the application:

(i) The log of animal numbers and calculation of 1,000 pound animal units: [Number of animals contributing manure, by classification, (conduct a separate calculation for milkers, dry cows, heifers, calves)] multiplied by [the average lbs./1,000] = number of 1,000 pound animal units;

(ii) Documentation indicating the manure was used or is to be used as biofuel in Oregon or to produce biofuel in Oregon; and

(iii) A copy of the Oregon Confined Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) General Permit Summary; and

(iv) The most recent Oregon Confined Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) General Permit Annual Report.

(i) When it is not practicable to produce weight tickets for deliveries to a biofuel producer, agricultural producers that produce oil seed crops, grain crops, grass, wheat, straw or other vegetative biomass must include the following records with their application:

(A) Documentation demonstrating the quantity of biomass produced, which must include one or more of the following:

(i) Acreage report(s) or yield data submitted to the United States Department of Agriculture;

(ii) Crop insurance records of acreage planted and quantity harvested of biofuel crop; or

(iii) Additional documentation showing the actual yields of the biomass crop.

(B) Receipts or equivalent documentation indicating the biomass was used or is to be used as biofuel in Oregon, or to produce biofuel.

(j) If the applicant is transferring biomass that cannot be weighed or calculated, the applicant must supply documentation indicating the amount of biomass as measured by metering equipment or a similar device.

(A) Applicants must provide documentation, including manufacturer's specifications that indicate the measurements are accurate and reliable.

(B) Metering equipment or similar devices must be calibrated according to the manufacturer's specifications and the calibration records must be maintained for a period of no less than five years.

(3) The department may require the applicant to provide further information to complete a review of the application and verify compliance with statute and these rules. This information may include, but is not limited to, demonstration that the biomass is used as biofuel in an eligible manner. The department will notify the applicant in writing requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(4) If a biomass collector requests a tax credit in place of the agricultural producer that produced the biomass, the application must include a signed statement from the agricultural producer that they are aware the biomass collector will be applying for the credit and that the agricultural producer will not apply for a tax credit for the same unit of biomass.

(5) Applications must be received within 60 days following the end of the applicant's tax year during which the biomass is delivered to a biofuel producer. Applications received after this date will be returned and any application fee will be fully refunded.

(6) The department may refund up to 75 percent of the application fee if the application is withdrawn prior to review by the department. Only refunds that are \$100 or greater will be issued.

(7) The department may require the applicant to pay reasonable costs, not to exceed actual costs, incurred in connection with reviewing the application that exceed the original application fee and which the Director determines are incurred solely in connection with processing the application. The department shall advise the applicant of any additional costs the applicant must pay before the department incurs the costs.

Stat. Auth.: ORS 351.141

Stats. Implemented: ORS 315.141 & 469B.403

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 13-2010, f. & cert. ef. 11-2-10; DOE 8-2011, f. 11-4-11, cert. ef. 1-1-12; DOE 5-2013, f. 12-20-13, cert. ef. 1-1-14; DOE 1-2016, f. & cert. ef. 3-1-16

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**Rule Caption:** Amending Energy Incentives Program energy conservation tax credit rules to implement HB 2448.

**Adm. Order No.:** DOE 2-2016

**Filed with Sec. of State:** 3-15-2016

**Certified to be Effective:** 3-15-16

**Notice Publication Date:** 2-1-2016

**Rules Adopted:** 330-210-0110

**Rules Amended:** 330-210-0000, 330-210-0010, 330-210-0040, 330-210-0100, 330-210-0150

**Subject:** These permanent rule amendments for the Energy Incentives Program (EIP) energy conservation tax credit implement changes provided in Oregon Laws 2015, chapter 545 (HB 2448). HB 2448 and the rules make modifications to the EIP energy conservation tax credit program that allow ODOE to require performance agreements as part of the final certification process and to require in a performance agreement that energy conservation projects with \$1 million or more in certified total project costs annually recertify the tax credit.

The rules provide that these performance agreements may include project requirements for operations, energy savings, timeframes, and performance. The rules also provide the criteria that ODOE will use to evaluate EIP conservation projects below the \$1 million threshold for possible performance agreements when project owners apply for final certification.

HB 2448 authorizes ODOE to require performance agreements for energy conservation projects with \$1 million or more in certified total project costs to include a requirement to annually recertify the tax credit three times. The rules provide the timeline, requirements, application process, and review process for recertifying the tax credit. This process will provide project owners with a five-year tax credit in portions over the five year period. The overall total amount of the tax credit remains the same, provided the project owner successfully completes each recertification. The rule also includes a \$750 fee to cover costs associated with tax credit recertification; this fee is collected at each recertification.

The department plans for the rules to be effective upon filing. HB 2448 applies to applications for final certification under ORS

# ADMINISTRATIVE RULES

469B.291 submitted on or after September 1, 2015, and to tax years beginning on or after January 1, 2015.

**Rules Coordinator:** Elizabeth Ross—(503) 378-8534

## 330-210-0000

### Applicability of Rules in OAR 330, Division 210

(1) These rules implement the incentive program for energy conservation projects established by House Bill 3672 (2011) and amended by House Bill 4079 (2012) and House Bill 2448 (2015). The rules also provide procedures for submission, agency review and selection of energy conservation projects for preliminary and final certification of tax credits.

(2) These rules apply to all applications for tax credits for energy conservation projects, as governed by ORS 469B.270 to 469B.306.

Stat. Auth.: ORS 469.040, 469B.306, OL 2015 Ch. 545

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331, OL 2015 Ch. 545

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 2-2016, f. & cert. ef. 3-15-16

## 330-210-0010

### Definitions

For the purposes of this division, the following definitions apply:

(1) "Applicant" means a person who has applied for or who has received a preliminary certificate for a conservation energy incentive program tax credit, who has submitted an informational filing for a small premium project, who has applied for or received a final certification for an energy incentive program tax credit, or who has entered into a performance agreement with the department.

(2) "Certified cost" means the cost certified in the final certification.

(3) "Cost" has the meaning given in ORS 469B.270, the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the director of the department.

(6) "Energy conservation project" has the meaning given in ORS 469B.270, any capital investment for which the first year energy savings yields a simple payback period of greater than three years. "Energy conservation project" does not include:

(a) Recycling equipment, products and projects;

(b) Transportation projects;

(c) Energy recovery as that term is defined in ORS 459.005; or

(d) Alternative fuel vehicles.

(7) "Incremental cost" means the difference between the cost of doing the energy conservation project with the energy efficient features and the cost to construct a similar project at current Oregon energy code or documented industry standard.

(8) "Installation or construction" means the process of physical assembly of an energy conservation project or supporting infrastructure at its operating location.

(9) "New construction" means a building project that is newly constructed.

(10) "Opportunity period" means the timeframe specified in an Opportunity Announcement for the department to accept applications for energy conservation projects.

(11) "Qualified third party" means a third party, selected by the director, that provides recommendations to the director regarding a research and development energy conservation project.

(12) "Qualifying project cost" means the amount of the energy conservation project's cost that is used in calculating the amount of tax credit certified.

(13) "Research and development project" means an energy conservation project that a qualified third party recommends to the department as one that demonstrates innovation.

(14) "Service life" means equipment service life as established in the 2011 edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers' (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the department receives a complete preliminary application or, for equipment not rated by ASHRAE, as determined by the department.

(15) "Small premium project" means an energy conservation project with qualifying project costs of less than \$20,000 for which the department has identified prequalified measures.

(16) "Total building retrofit" means a comprehensive building retrofit that includes energy efficiency projects for each energy-using system including the building envelope. A building retrofit that does not include each energy-using system may also apply as a total building retrofit; if the project meets the eligibility standards described in OAR 330-210-0070.

(17) "Total project cost" means all costs directly associated with an energy conservation project, including costs that are not qualifying project costs.

Stat. Auth.: ORS 469.040, 469B.306, OL 2015 Ch. 545

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331, OL 2015 Ch. 545

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 2-2016, f. & cert. ef. 3-15-16

## 330-210-0040

### Fees

The department adopts the following schedule of fees as provided by ORS 469B.294 for applicants. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants, except those applying through the small premium project process, must submit an application fee of \$500 with their preliminary certification application.

(2) Applicants applying through the small premium project process must submit a fee of \$75 with their informational filing.

(3) Applicants selected for technical review will be required to pay an additional technical review fee prior to that review. The fee amount is equal to the qualifying project cost multiplied by 0.9 percent. Small premium projects are not subject to the technical review fee.

(4) Applicants requesting amendments to preliminary certifications must submit a fee of \$300 with their amendment request.

(5) Applicants for final certification must submit with their application a final review fee. This fee amount is equal to the qualifying project cost multiplied by 0.55 percent. All applicants seeking final certification for a project, including small premium projects, are required to apply for final review and pay the final review fee.

(6) Applicants that transfer their tax credit to a pass-through partner must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department will issue a tax credit certificate.

(a) If the department assists the applicant, except those using the small premium project process, in obtaining a pass-through partner or partners, the fee for that assistance is 1.25 percent of the tax credit amount plus \$200 per tax credit certificate issued.

(b) If the department does not assist the applicant, except those using the small premium project process, in obtaining a pass-through partner, the fee is \$200 per tax credit certificate issued.

(c) Applicants for small premium projects, the fee is \$200 plus \$100 per each additional tax credit certificate issued. The additional fee of \$100 per certificate issued does not apply to the first certificate.

(7) Applicants issued a tax credit certificate that choose to have their tax credit re-issued to a transferee must pay a transfer fee. The fee for small premium project applicants is \$200 plus \$100 per each additional tax credit certificate issued and the fee for all other applicants is \$200 plus \$100 per tax credit certificate issued. The additional fee of \$100 per certificate issued does not apply to the first certificate for small premium project applicants.

(8) Applicants subject to recertification must submit a fee of \$750 with each application for recertification.

(9) If an applicant fails to pay fees timely as required by this rule, the department may reject the pending application and discontinue the review.

Stat. Auth.: ORS 469.040, 469B.294 & 469B.306

Stats. Implemented: ORS 469B.270 - 469B.306 & 315.331, OL 2015 Ch. 545

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 3-2013, f. & cert. ef. 10-2-13; DOE 2-2015, f. 8-28-15, cert. ef. 9-1-15; DOE 2-2016, f. & cert. ef. 3-15-16

## 330-210-0100

### Final Certification

(1) An energy conservation project must be completed and operational prior to applying for a final certification. An applicant must submit requests for amendments to preliminary certifications prior to or at the time of submission of the final certification application.

(2) The department will not review applications for final certification received after the expiration of the preliminary certification or those without the final review fee.

(3) The applicant must submit the application on the current department-issued form and all sections must be completed.

(4) The department will review the application, and may conduct an inspection to verify:

(a) That the energy conservation project is complete and operating.

(b) Compliance with statute, rules and the preliminary certification or informational filing.

(c) Compliance with state and local regulations, including required licenses and permits.

(d) The lease or rental agreement if the project is leased or rented.

(e) That the property taxes for the project location are current.

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(f) That the energy conservation project will be maintained and operated for at least five years.

(g) The total project costs for purchase and installation or construction of the energy conservation project were paid in full.

(A) A certified public accountant must attest to the total project cost, or if the total project cost is less than \$50,000, the applicant must submit copies of receipts for the project.

(i) The certified public accountant cannot be the project owner nor permanently employed by the project owner or pass-through partner.

(ii) Receipts for proof of payment may include canceled checks, credit card statements, binding contracts and agreements.

(B) The application must demonstrate that no contract or loan agreements directly related to the project are in default.

(C) The application must include information regarding all incentives, regardless of source, applied for or received in connection with the project.

(h) Other information the department considers necessary.

(5) If an application for final certification does not include all information needed to complete the final certification review, the department may ask the applicant, in writing, to submit additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application for final certification.

(6) The department will notify the applicant, in writing, if the department denies the application during final review. An applicant may submit a written request for reconsideration within 60 days after the department issues a decision on a final certification application.

(7) As part of the final certification process, projects with certified cost of \$1 million or more will be required to enter into a performance agreement with the department and applicants with projects with certified cost of less than \$1 million may be required to enter into a performance agreement with the department.

(a) To determine if a performance agreement is required for projects with certified cost of less than \$1 million, the department may, but is not limited to evaluating:

- (A) Financial aspects of the project,
- (B) Technical aspects of the project, and
- (C) Other areas as determined by the department.

(b) A performance agreement may include:

- (A) A recertification requirement under Oregon Laws 2015, chapter 545, section 2,
- (B) Energy performance requirements,
- (C) Conditions and requirements in the preliminary certificate,
- (D) A provision allowing the performance agreement to be terminated for reasons stated in the agreement and subject to terms described in the agreement, and

(E) Any additional requirements that the department determines are appropriate to promote the purposes of ORS 315.331 and 469B.270 to 469B.306.

(c) The department may require a legal sufficiency review of a performance agreement by the Oregon Department of Justice prior to entering into the agreement.

(d) If the department decides to require a performance agreement, the department will send a performance agreement to the applicant for review.

(e) Applicants will have 30 calendar days from the date of the offer letter accompanying the performance agreement to accept the performance agreement. The offer letter accompanying the performance agreement will specify how an applicant may accept the performance agreement. An applicant's failure to accept the performance agreement as specified in the offer letter may result in denial of the application for final certification.

(f) After the department receives the performance agreement signed by the applicant and the department executes the performance agreement, the department will issue the appropriate portion of the tax credit certificate. Projects subject to recertification may be issued a certified amount letter showing the total tax credit amount approved along with a final certificate for the initial portion of the tax credit.

(g) An applicant must submit a written amendment request to the department to amend a performance agreement. The department will decide whether to approve the request. An amendment cannot result in a greater tax credit amount.

(A) If approved, the department will draft an amended performance agreement, which may contain new or amended conditions and requirements. The amended performance agreement will become effective upon signature by all parties.

(B) If denied, the department will notify the applicant in writing. The notice will include the reasons for the denial of the amendment request.

(8) The department will determine the certified cost upon verification that the energy conservation project's installation or construction is complete and that the project complies with statute, rules, the preliminary certification or informational filing, and any other applicable requirements.

(a) Except as provided in (8)(c), the department may issue a tax credit certificate of up to 35 percent of the qualifying project cost. The department may certify a lesser tax credit amount than approved in the preliminary certificate or reserved in the informational filing, but may not certify a greater amount.

(b) The sum of any incentives, grants, credits, other public funds and the energy conservation tax credit may not exceed total project costs.

(c) If recertification of the tax credit is required under Oregon Laws 2015, chapter 545, section 2 and this rule, the department may issue a certificate for an initial portion of tax credit up to 10 percent of the certified cost. To receive certification of the full value of the tax credit, the applicant must recertify the tax credit as required under Oregon Laws 2015, chapter 545 and OAR 330-210-0110.

(9) The department will send a written notification to the applicant of its decision whether to issue a final certification within 60 days, after the department receives a complete application for final certification. If a written decision from the department is not issued within 60 days after receipt of the complete application, then the application is rejected and no further action will be taken. Any time required to provide additional information as provided in OAR 330-210-0100(5) is not included in this 60 day period.

Stat. Auth.: ORS 469.040, 469B.306, OL 2015 Ch. 545

Stats. Implemented: ORS 469B.270 to 469B.306, 315.331, OL 2015 Ch. 545

Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 2-2016, f. & cert. ef. 3-15-16

## 330-210-0110

### Tax Credit Recertification

(1) An applicant of an energy conservation project with certified cost of \$1 million or more that is subject to a performance agreement requiring recertification must recertify the tax credit annually up to three years following the date of the issuance of the final certificate for the initial portion of the tax credit to receive the full value of the tax credit.

(2) To recertify the tax credit, the department must receive an application for recertification at least 60 days prior to the anniversary date of the issuance of the initial portion of the tax credit certificate.

(3) The application for recertification must contain the following information:

(a) A description of the business operations conducted at the facility and any changes in the business operations since the project was completed;

(b) Energy consumption or production data for the project or facility as shown in the preceding 12 months of utility billing records;

(c) A statement signed by the applicant attesting that the project is in compliance with all applicable laws related to the ownership and operation of the project;

(d) A statement signed by the applicant attesting that the applicant is current on all obligations to the state and local regulations, including but not limited to obligations for taxes and permitting fees;

(e) Any other information required by the department.

(4) An application for recertification must be accompanied by the recertification fee specified in these rules.

(5) The department may require an inspection of the project or facility as part of the review of the application for recertification.

(6) The department may consult with the city or county in which the facility is located or with any federal or state agency in determining whether to approve an application for recertification.

(7) During review of the application for recertification, the department will compare operation and performance data to the requirements in the performance agreement.

(8) If the application for recertification is approved, the department will issue a tax credit certificate for the approved portion of the tax credit seeking recertification.

(a) In the first recertification period, the department may issue a portion of the tax credit certificate up to 10 percent of the certified cost.

(b) In the second recertification period, the department may issue a portion of the tax credit certificate up to 5 percent of the certified cost.

(c) In the third recertification period, the department may issue two portions of the tax credit certificate up to 5 percent of the certified cost for each certificate. The second portion of the tax credit cannot be claimed until the fifth tax year.

(9) The department may deny the recertification or issue a recertification for a lesser amount if the department determines that the project is not

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in compliance with all applicable statutes, administrative rules and the performance agreement.

(10) If the department does not approve an application for recertification or reduces the amount of tax credit, the applicant may not claim, use or transfer that portion of the tax credit for which the recertification was denied.

(11) If an applicant does not receive recertification of a portion of a tax credit, either because of a denial of the application for recertification or failure to submit a timely and complete application for recertification, the applicant loses that portion of the tax credit and that portion is considered revoked. If applicable, the applicant may submit subsequent applications for recertification for portions of the tax credit remaining to be recertified.

(12) A person aggrieved by a decision of the department to deny or reduce the amount of a recertification for a tax credit may request a contested case hearing under ORS Chapter 183.

Stat. Auth.: ORS 469.040, 469B.306, OL 2015 Ch. 545  
Stats. Implemented: ORS 469B.270 - 469B.306, 315.331, OL 2015 Ch. 545  
Hist.: DOE 2-2016, f. & cert. ef. 3-15-16

## 330-210-0150

### Compliance and Pass-through

All participants in this program are subject to OAR 330-230. If the tax credit is subject to recertification under OAR 330-210-0110, only that portion of the tax credit that has been certified or recertified may be transferred at the five-year present value rate in OAR 330-230-0130.

Stat. Auth.: ORS 469.040, 469B.306, OL 2015 Ch. 545  
Stats. Implemented: ORS 469B.270 - 469B.306, 315.331, OL 2015 Ch. 545  
Hist.: DOE 12-2011(Temp), f. & cert. ef. 12-23-11 thru 6-19-12; DOE 6-2012, f. & cert. ef. 6-19-12; DOE 2-2016, f. & cert. ef. 3-15-16

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Treaty Indian Winter Commercial Gill Net Fisheries in Zone 6 of the Columbia River Extended

**Adm. Order No.:** DFW 11-2016(Temp)

**Filed with Sec. of State:** 2-18-2016

**Certified to be Effective:** 2-19-16 thru 3-31-16

**Notice Publication Date:**

**Rules Amended:** 635-041-0065

**Rules Suspended:** 635-041-0065(T)

**Subject:** This amended rule extends the ongoing Columbia River Treaty Indian commercial gill net fisheries in The Dalles and John Day pools, previously set to end at 6:00 p.m. Monday, February 22. These fisheries are now set to run through 6:00 p.m. Saturday, February 27, 2016. Modifications are consistent with action taken February 18, 2016 by the Oregon and Washington Departments of Fish and Wildlife, in cooperation with the Columbia River Treaty Tribes, at a meeting of the Columbia River Compact.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-041-0065

### Winter Salmon Season

(1) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, and carp may be taken for commercial purposes in the Columbia River Treaty Indian platform and hook-and-line fisheries from all of Zone 6 beginning 6:00 a.m. Monday, February 1 through 6:00 p.m. Monday, March 21, 2016.

(a) Gear used in the fisheries described above is restricted to subsistence fishing gear which includes hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open fishing period may be sold at any time or retained for subsistence purposes. White sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool or may be kept for subsistence purposes. Sturgeon landed during any open commercial gillnet period may be sold at any time. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may not be sold but may be kept for subsistence purposes.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp and white sturgeon may be taken for commercial purposes in the following Columbia River Treaty Indian gill net fisheries:

(a) The Dalles and John Day pools beginning 6:00 a.m. Monday, February 1 through 6:00 p.m. Saturday, February 27, 2016.

(b) Gear is restricted to gill nets. There are no mesh size restrictions.

(c) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp; and white sturgeon between 43-54 inches in fork length that are caught in The Dalles and John Day pools during open periods described in section (2)(a) above, may be sold or retained for subsistence purposes. Fish landed during any open fishing period may be sold after the period closes.

(3) Closed areas as set forth in OAR 635-041-0045 are in effect.

Stat. Auth.: ORS 496.118, 506.119

Stats. Implemented: ORS 506.109, 506.129, 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 1-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 19-2012(Temp), f. 3-2-12, cert. ef. 3-5-12 thru 6-15-12; DFW 20-2012(Temp), f. & cert. ef. 3-5-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 9-2013(Temp), f. 1-31-13, cert. ef. 2-1-13 thru 3-31-13; DFW 15-2013(Temp), f. 2-22-13, cert. ef. 2-27-13 thru 6-15-13; DFW 18-2013(Temp), f. 3-5-13, cert. ef. 3-6-13 thru 6-15-13; DFW 35-2013(Temp), f. & cert. ef. 5-21-13 thru 6-30-13; DFW 48-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 6-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 15-2014(Temp), f. 2-25-14, cert. ef. 2-26-14 thru 7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. ef. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; DFW 37-2014(Temp), f. & cert. ef. 5-6-14 thru 7-31-14; DFW 46-2014(Temp), f. 5-19-14, cert. ef. 5-20-14 thru 7-31-14; DFW 48-2014(Temp), f. 5-27-14, cert. ef. 5-28-14 thru 7-31-13; DFW 54-2014(Temp), f. 6-2-14, cert. ef. 6-3-14 thru 7-31-14; DFW 59-2014(Temp), f. 6-9-14, cert. ef. 6-10-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 9-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 3-31-15; DFW 13-2015(Temp), f. 2-19-15, cert. ef. 2-20-15 thru 3-31-15; DFW 19-2015(Temp), f. 3-11-15, cert. ef. 3-12-15 thru 3-31-15; Administrative correction, 4-21-15; DFW 38-2015(Temp), f. & cert. ef. 5-5-15 thru 7-31-15; DFW 46-2015(Temp), f. 5-18-15, cert. ef. 5-19-15 thru 7-31-15; DFW 48-2015(Temp), f. 5-26-15, cert. ef. 5-27-15 thru 7-31-15; DFW 55-2015(Temp), f. & cert. ef. 6-2-15 thru 7-31-15; DFW 60-2015(Temp), f. 6-8-15, cert. ef. 6-9-15 thru 7-31-15; DFW 67-2015(Temp), f. 6-10-15, cert. ef. 6-11-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 6-2016(Temp), f. 1-28-16, cert. ef. 2-1-16 thru 3-31-16; DFW 10-2016(Temp), f. 2-11-16, cert. ef. 2-12-16 thru 3-31-16; DFW 11-2016(Temp), f. 2-18-16, cert. ef. 2-19-16 thru 3-31-16

**Rule Caption:** Tillamook Bay Commercial Cockle Clam Dive Fishery Closes.

**Adm. Order No.:** DFW 12-2016(Temp)

**Filed with Sec. of State:** 2-22-2016

**Certified to be Effective:** 2-23-16 thru 8-20-16

**Notice Publication Date:**

**Rules Amended:** 635-005-0355

**Subject:** Amended rule closes the Tillamook Bay commercial cockle clam dive fishery at 12:01 a.m. February 23, 2016 due to a projected attainment of the 185,000 pound annual harvest quota allowed



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under bay clam dive permits. Modifications are consistent with requirements described in OAR 635-005-0355 sections (1) and (2).

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-005-0355

### Catch Limits

(1) In Tillamook Bay, the commercial landing cap for clams harvested by the bay clam dive fishery are 185,000 pounds for cockles, 235,000 pounds for gaper clams, and 225,000 pounds for butter clams.

(2) When any of the commercial clam landing caps specified in sections (1) of this rule are reached, the commercial cockle clam fishery in that particular estuary will close for the remainder of the calendar year.

(3) The Tillamook Bay cockle dive fishery is closed beginning 12:01 a.m. Tuesday, February 23, 2016 due to the anticipated attainment of the 185,000 pound landing cap.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06, Renumbered from 635-005-0032, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 80-2012(Temp), f. 6-28-12, cert. ef. 7-4-12 thru 12-30-12; Administrative correction, 2-1-13; DFW 54-2013(Temp), f. 6-12-13, cert. ef. 6-15-13 thru 12-11-13; Administrative correction, 12-19-13; DFW 69-2014(Temp), f. 6-12-14, cert. ef. 6-13-14 thru 12-10-14; Administrative correction, 12-18-14; DFW 11-2015(Temp), f. 2-3-15, cert. ef. 2-6-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 112-2015(Temp), f. 8-20-15, cert. ef. 8-26-15 thru 12-31-15; DFW 164-2015, f. 12-9-15, cert. ef. 1-1-16; DFW 12-2016(Temp), f. 2-22-16, cert. ef. 2-23-16 thru 8-20-16

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**Rule Caption:** Price of Oregon's Live Fish Transport Permits Reduced from \$40 to \$13.

**Adm. Order No.:** DFW 13-2016(Temp)

**Filed with Sec. of State:** 2-23-2016

**Certified to be Effective:** 2-23-16 thru 8-20-16

**Notice Publication Date:**

**Rules Amended:** 635-007-0605

**Subject:** This amended rule modifies the purchase prices of fish transfer permits from \$40 to \$13 beginning February 23, 2016. Fish Division Administrators intend to follow-up this action with modifications to the permanent rule through the Oregon Fish and Wildlife Commission process later this year.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-007-0605

### Fish Transport Permit Application

(1) Any person wishing to obtain a Fish Transport Permit shall complete and submit to the Department the appropriate permit application form.

(2) A fee of \$13.00 (no license agent fee) shall be charged for each Fish Transportation Permit issued by the Department.

(a) An invoice will be issued to Private Fish Suppliers for fish transferred to or from their production facilities for permits that the Department has issued the previous year.

(b) Invoice Payment must be received in full by March 1 for permits issued the previous year.

(c) Failure to pay invoice in full by March 1 shall result in suspension of approved permits.

(3) The Department may prescribe such terms and conditions in a permit as it deems necessary, including but not limited to, the period of time (usually 30 days) during which the transportation and/or release of fish is authorized.

(4) Fish may be held for an indefinite period of time under a Fish Transport Permit. The permit, or a copy thereof, shall be made available for inspection upon request by the Department or the Oregon State Police.

Stat. Auth.: ORS 496.138, 496.146 & 506.119; Other Auth.: SB 247 (2015)

Stats. Implemented: ORS 497.252 & 498.222

Hist.: FWC 27-1982, f. & ef. 4-30-82; FWC 25-1984, f. 6-21-84, ef. 7-1-84, Renumbered from 635-043-0305; FWC 3-1991, f. & cert. ef. 1-18-91; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10; DFW 139-2015, f. 10-14-15, cert. ef. 1-1-16; DFW 13-2016(Temp), f. & cert. ef. 2-23-16 thru 8-20-16

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**Rule Caption:** Amend Rules to Add Arkansas to Cervid Parts Importation Ban

**Adm. Order No.:** DFW 14-2016(Temp)

**Filed with Sec. of State:** 2-25-2016

**Certified to be Effective:** 2-25-16 thru 8-22-16

**Notice Publication Date:**

**Rules Amended:** 635-065-0765

**Subject:** This temporary rule amends rules to add Arkansas to the list of states from which the importation of certain cervid parts is banned.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-065-0765

### Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is unlawful to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is unlawful to possess the meat or carcass of any deer, elk, pronghorn antelope, bighorn sheep, or Rocky Mountain goat without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer, elk, pronghorn antelope, bighorn sheep, or Rocky Mountain goat is:

(a) The animal's scalp which shall include the attached eyes and ears, if animal is female; or ears, antlers or horns, and eyes if the animal is male, or;

(b) The head naturally attached to at least one quarter of the carcass or;

(c) Reproductive organs (testicles, scrotum, or penis if male; vulva or udder (mammary) if female) naturally attached to one quarter of the carcass or to another major portion of meat.

(A) For hunts with antler or horn restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers or horns naturally attached shall accompany the carcass or major portions of meat.

(B) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, (testicles, scrotum, penis, vulva, udder, mammary), either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken.

(4) When any game mammal or part thereof is transferred to the possession of another person, a written record describing the game mammal or part being transferred indicating the name and address of the person whose tag was originally attached to the carcass and the number of that tag shall accompany such transfer and shall remain with such game mammal or part so long as the same is preserved or until replaced by a tag or seal of the Department.

(5) All game mammals in possession in the field or forest or in transit more than 48 hours after the close of the open season for such mammal must be tagged with a tag or metal seal by the Department or by the Oregon State Police.

(6) All game mammals or portions thereof shipped by commercial carrier shall be tagged with a tag or metal seal provided by the Department or by the Oregon State Police.

(7) It is unlawful to receive or have in possession any game mammal or part thereof which:

(a) Is not properly tagged;

(b) Was taken in violation of any wildlife laws or regulations; or

(c) Was taken by any person who is or may be exempt from the jurisdiction of such laws or regulations.

(8) No person shall possess any game mammal or part thereof which has been illegally killed, found or killed for humane reasons, except shed antlers, unless he has notified and received permission from the Department or personnel of the Oregon State Police prior to transporting.

(9) No person shall possess the horns of bighorn sheep or Rocky Mountain goat that were not taken legally during an authorized season. Any horns of bighorn sheep or Rocky Mountain goat obtained by the Department may be made available to scientific and educational institutions and for ceremonial purposes.

(10) Except for the following parts, importation of a cervid carcass or parts of a cervid carcass is prohibited if the cervid was killed in a state or province with a documented case of Chronic Wasting Disease:

(a) Meat that is cut and wrapped commercially or privately;

(b) Meat that has been boned out;

(c) Quarters or other portions of meat with no part of the spinal column or head attached;

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- (d) Hides and/or capes with no head attached;
- (e) Skull plates with antlers attached that have been cleaned of all meat and brain tissue;
- (f) Antlers with no tissue attached;
- (g) Upper canine teeth (buglers, whistlers, ivories);
- (h) Finished taxidermy heads.

(11) For the purposes of the parts and carcass import ban in subsection 10, the states or provinces with a documented case of Chronic Wasting Disease (CWD) are Alberta, Arkansas, Colorado, Illinois, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming, and Saskatchewan. The Department shall add by temporary rule any additional states or provinces when any new cases of CWD arise.

(12) The parts and carcass import ban in subsection (11) does not apply to parts or carcasses shipped to the National Fish and Wildlife Forensics Laboratory (Ashland, Oregon) for the purpose of law enforcement investigations and also does not apply to parts or carcasses of reindeer/caribou.

(13) Cervid carcasses or parts of cervid carcasses found in Oregon in violation of the parts and carcass ban in subsection 10 shall be disposed of in a manner as follows:

(a) Brain tissue, spinal columns, and whole heads or heads minus the cleaned skull plate and attached antlers, shall be disposed of either by incineration at temperatures exceeding 800° F or at lined landfills registered by Oregon Department of Environmental Quality capable of accepting animal carcasses without environmental contamination; rendering is not an allowed means of disposal.

(b) The person(s) who imported parts in violation of the parts and carcass ban in subsection 10 shall pay for appropriate disposal of cervid carcasses or parts of cervid carcasses.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & ef. 3-10-88; FWC 63-1989, f. & ef. 8-15-89; FWC 24-1990, f. & ef. 3-21-90; FWC 9-1997, f. & ef. 2-27-97; FWC 49-1998, f. & ef. 6-22-98; FWC 1-1999, f. & ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 90-2002(Temp), f. & ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & ef. 11-12-02; DFW 127-2002(Temp), f. & ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & ef. 1-17-03; DFW 50-2003, f. & ef. 6-13-03; DFW 61-2003, f. & ef. 7-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2005, f. & ef. 6-14-05; DFW 111-2005(Temp), f. & ef. 9-23-05 thru 10-31-05; Administrative correction 11-18-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 135-2008, f. & ef. 10-17-08; DFW 2-2009, f. & ef. 1-9-09; DFW 8-2010(Temp), f. & ef. 1-25-10 thru 7-24-10; DFW 21-2010(Temp), f. & ef. 2-26-10 thru 8-24-10; DFW 36-2010(Temp), f. & ef. 3-30-10 thru 9-25-10; DFW 83-2010, f. & ef. 6-15-10; DFW 62-2011, f. & ef. 6-3-11; DFW 92-2012(Temp), f. & ef. 7-23-12 thru 1-19-13; DFW 136-2012, f. & ef. 10-24-12; DFW 137-2012(Temp), f. & ef. 10-24-12 thru 4-22-13; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13; DFW 10-2013, f. & ef. 2-7-13; DFW 138-2013, f. & ef. 12-20-13; DFW 155-2014(Temp), f. & ef. 10-28-14 thru 4-26-15; DFW 1-2015, f. & ef. 1-6-15; DFW 69-2015, f. & ef. 1-15-15; DFW 14-2016(Temp), f. & ef. 2-25-16 thru 8-22-16

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**Rule Caption:** Treaty Indian Winter Commercial Gill Net Fisheries in Zone 6 of the Columbia River Extended.

**Adm. Order No.:** DFW 15-2016(Temp)

**Filed with Sec. of State:** 2-25-2016

**Certified to be Effective:** 2-26-16 thru 3-31-16

**Notice Publication Date:**

**Rules Amended:** 635-041-0065

**Rules Suspended:** 635-041-0065(T)

**Subject:** This amended rule extends the ongoing Columbia River Treaty Indian commercial gill net fisheries in The Dalles and John Day pools, previously set to end at 6:00 p.m. Saturday, February 27. These fisheries are now set to run through 6:00 p.m. Saturday, March 5, 2016. Modifications are consistent with action taken February 25, 2016 by the Oregon and Washington Departments of Fish and Wildlife, in cooperation with the Columbia River Treaty Tribes, at a meeting of the Columbia River Compact.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

**635-041-0065**

**Winter Salmon Season**

(1) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, and carp may be taken for commercial purposes in the Columbia River Treaty

Indian platform and hook-and-line fisheries from all of Zone 6 beginning 6:00 a.m. Monday, February 1 through 6:00 p.m. Monday, March 21, 2016.

(a) Gear used in the fisheries described above is restricted to subsistence fishing gear which includes hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open fishing period may be sold at any time or retained for subsistence purposes. White sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool or may be kept for subsistence purposes. Sturgeon landed during any open commercial gillnet period may be sold at any time. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may not be sold but may be kept for subsistence purposes only.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp and white sturgeon may be taken for commercial purposes in the following Columbia River Treaty Indian gill net fisheries:

(a) The Dalles and John Day pools beginning 6:00 a.m. Monday, February 1 through 6:00 p.m. Saturday, March 5, 2016.

(b) Gear is restricted to gill nets. There are no mesh size restrictions.

(c) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp; and white sturgeon between 43-54 inches in fork length that are caught in The Dalles and John Day pools during open periods described in section (2)(a) above, may be sold or retained for subsistence purposes. Fish landed during any open fishing period may be sold after the period closes.

(3) Closed areas as set forth in OAR 635-041-0045 are in effect.

Stat. Auth.: ORS 496.118 & 506.119  
Stats. Implemented: ORS 506.109, 506.129 & 507.030  
Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & ef. 1-29-88; FWC 10-1988, f. & ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & ef. 3-5-92; FWC 7-1993, f. & ef. 2-1-93; FWC 12-1993(Temp), f. & ef. 2-22-93; FWC 18-1993(Temp), f. & ef. 3-2-93; FWC 7-1994, f. & ef. 2-1-94; FWC 11-1994(Temp), f. & ef. 2-28-94; FWC 9-1995, f. & ef. 2-1-95; FWC 19-1995(Temp), f. & ef. 3-3-95; FWC 5-1996, f. & ef. 2-7-96; FWC 4-1997, f. & ef. 1-30-97; DFW 8-1998(Temp), f. & ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & ef. 3-3-98; DFW 20-1998(Temp), f. & ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & ef. 2-1-02; DFW 11-2002(Temp), f. & ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & ef. 2-14-07; DFW 14-2007(Temp), f. & ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & ef. 3-21-11; DFW 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 19-2012(Temp), f. 3-2-12, cert. ef. 3-5-12 thru 6-15-12; DFW 20-2012(Temp), f. & ef. 3-5-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 9-2013(Temp), f. 1-31-13, cert. ef. 2-1-13 thru 3-31-13; DFW 15-2013(Temp), f. 2-22-13, cert. ef. 2-27-13 thru 6-15-13; DFW 18-2013(Temp), f. 3-5-13, cert. ef. 3-6-13 thru 6-15-13; DFW 35-2013(Temp), f. & ef. 3-1-13 thru 6-30-13; DFW 48-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 6-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 15-2014(Temp), f. 2-25-14, cert. ef. 2-26-14 thru 7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. ef. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; DFW 37-2014(Temp), f. & ef. 5-6-14 thru 7-31-14; DFW 46-2014(Temp), f. 5-19-14, cert. ef. 5-20-14 thru 7-31-14; DFW 48-2014(Temp), f. 5-27-14, cert. ef. 5-28-14 thru 7-31-13; DFW 54-2014(Temp), f. 6-2-14, cert. ef. 6-3-14 thru 7-31-14; DFW 59-2014(Temp), f. 6-9-14, cert. ef. 6-10-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 9-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 3-31-15; DFW 13-2015(Temp), f. 2-19-15, cert. ef. 2-20-15 thru 3-31-15; DFW 19-2015(Temp), f. 3-11-15, cert. ef. 3-12-15 thru 3-31-15; Administrative correction, 4-21-15; DFW 38-2015(Temp), f. & ef. 5-5-15 thru 7-31-15; DFW 46-2015(Temp), f. 5-18-15,

# ADMINISTRATIVE RULES

cert. ef. 5-19-15 thru 7-31-15; DFW 48-2015(Temp), f. 5-26-15, cert. ef. 5-27-15 thru 7-31-15; DFW 55-2015(Temp), f. & cert. ef. 6-2-15 thru 7-31-15; DFW 60-2015(Temp), f. 6-8-15, cert. ef. 6-9-15 thru 7-31-15; DFW 67-2015(Temp), f. 6-10-15, cert. ef. 6-11-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 6-2016(Temp), f. 1-28-16, cert. ef. 2-1-16 thru 3-31-16; DFW 10-2016(Temp), f. 2-11-16, cert. ef. 2-12-16 thru 3-31-16; DFW 11-2016(Temp), f. 2-18-16, cert. ef. 2-19-16 thru 3-31-16; DFW 15-2016(Temp), f. 2-25-16, cert. ef. 2-26-16 thru 3-31-16

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**Rule Caption:** Treaty Indian Winter Commercial Gill Net Fisheries in Zone 6 of the Columbia River Revised.

**Adm. Order No.:** DFW 16-2016(Temp)

**Filed with Sec. of State:** 3-3-2016

**Certified to be Effective:** 3-5-16 thru 3-31-16

**Notice Publication Date:**

**Rules Amended:** 635-041-0065

**Rules Suspended:** 635-041-0065(T)

**Subject:** This amended rule extends the ongoing Columbia River Treaty Indian commercial gill net fishery in the John Day Pool, previously set to end at 6:00 p.m. Saturday, March 5, through 6:00 p.m. Saturday, March 12, 2016. Further modifications set a Treaty Indian commercial gill net fishery in the Bonneville Pool to begin at 6:00 a.m. Monday, March 14 and run through 6:00 p.m. Monday, March 21, 2016. Modifications are consistent with action taken March 3, 2016 by the Oregon and Washington Departments of Fish and Wildlife, in cooperation with the Columbia River Treaty Tribes, at a meeting of the Columbia River Compact.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-041-0065

### Winter Salmon Season

(1) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, and carp may be taken for commercial purposes in the Columbia River Treaty Indian platform and hook-and-line fisheries from all of Zone 6 beginning 6:00 a.m. Monday, February 1 through 6:00 p.m. Monday, March 21, 2016. White sturgeon between 38 and 54 inches in fork length taken in the Bonneville Pool and white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool or may be kept for subsistence purposes.

(a) Gear used in the fisheries described above is restricted to subsistence fishing gear which includes hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Fish landed during any open fishing period may be sold after the period closes.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp and white sturgeon may be taken for commercial purposes in the John Day Pool beginning 6:00 a.m. Monday, February 1 through 6:00 p.m. Saturday, March 12, 2016.

(a) Gear is restricted to gill nets. There are no mesh size restrictions.

(b) White sturgeon between 43 and 54 inches in fork length taken from the John Day Pool may be sold or kept for subsistence purposes. Fish landed during any open fishing period may be sold after the period closes.

(3) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp and white sturgeon may be taken for commercial purposes in the Bonneville Pool beginning 6:00 a.m. Monday, March 14 through 6:00 p.m. Monday, March 21, 2016.

(a) Gear is restricted to gill nets. There are no mesh size restrictions.

(b) White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be sold or kept for subsistence purposes. Fish landed during any open fishing period may be sold after the period closes.

(4) Closed areas as set forth in OAR 635-041-0045 are in effect.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 89, f. & cert. ef. 1-28-77; FWC 2-1978, f. & cert. ef. 1-31-78; FWC 7-1978, f. & cert. ef. 1-31-78; FWC 2-1979, f. & cert. ef. 1-25-79; FWC 13-1979(Temp), f. & cert. ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & cert. ef. 1-28-80; FWC 1-1981, f. & cert. ef. 1-19-81; FWC 6-1982, f. & cert. ef. 1-28-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 4-1984, f. & cert. ef. 1-31-84; FWC 2-1985, f. & cert. ef. 1-30-85; FWC 4-1986(Temp), f. & cert. ef. 1-28-86; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98

thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 19-2012(Temp), f. 3-2-12, cert. ef. 3-5-12 thru 6-15-12; DFW 20-2012(Temp), f. & cert. ef. 3-5-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 9-2013(Temp), f. 1-31-13, cert. ef. 2-1-13 thru 3-31-13; DFW 15-2013(Temp), f. 2-22-13, cert. ef. 2-27-13 thru 6-15-13; DFW 18-2013(Temp), f. 3-5-13, cert. ef. 3-6-13 thru 6-15-13; DFW 35-2013(Temp), f. & cert. ef. 5-21-13 thru 6-30-13; DFW 48-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 6-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 15-2014(Temp), f. 2-25-14, cert. ef. 2-26-14 thru 7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. ef. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; DFW 37-2014(Temp), f. & cert. ef. 5-6-14 thru 7-31-14; DFW 46-2014(Temp), f. 5-19-14, cert. ef. 5-20-14 thru 7-31-14; DFW 48-2014(Temp), f. 5-27-14, cert. ef. 5-28-14 thru 7-31-13; DFW 54-2014(Temp), f. 6-2-14, cert. ef. 6-3-14 thru 7-31-14; DFW 59-2014(Temp), f. 6-9-14, cert. ef. 6-10-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 9-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 3-31-15; DFW 13-2015(Temp), f. 2-19-15, cert. ef. 2-20-15 thru 3-31-15; DFW 19-2015(Temp), f. 3-11-15, cert. ef. 3-12-15 thru 3-31-15; Administrative correction, 4-21-15; DFW 38-2015(Temp), f. & cert. ef. 5-5-15 thru 7-31-15; DFW 46-2015(Temp), f. 5-18-15, cert. ef. 5-19-15 thru 7-31-15; DFW 48-2015(Temp), f. 5-26-15, cert. ef. 5-27-15 thru 7-31-15; DFW 55-2015(Temp), f. & cert. ef. 6-2-15 thru 7-31-15; DFW 60-2015(Temp), f. 6-8-15, cert. ef. 6-9-15 thru 7-31-15; DFW 67-2015(Temp), f. 6-10-15, cert. ef. 6-11-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 6-2016(Temp), f. 1-28-16, cert. ef. 2-1-16 thru 3-31-16; DFW 10-2016(Temp), f. 2-11-16, cert. ef. 2-12-16 thru 3-31-16; DFW 11-2016(Temp), f. 2-18-16, cert. ef. 2-19-16 thru 3-31-16; DFW 15-2016(Temp), f. 2-25-16, cert. ef. 2-26-16 thru 3-31-16; DFW 16-2016(Temp), f. 3-3-16, cert. ef. 3-5-16 thru 3-31-16

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## Department of Forestry Chapter 629

**Rule Caption:** Recreational- and commercial-use of State Forests lands.

**Adm. Order No.:** DOF 1-2016

**Filed with Sec. of State:** 3-11-2016

**Certified to be Effective:** 3-11-16

**Notice Publication Date:** 12-1-2015

**Rules Adopted:** 629-025-0021, 629-025-0022, 629-025-0090, 629-025-0098, 629-025-0099

**Rules Amended:** 629-025-0000, 629-025-0005, 629-025-0011, 629-025-0020, 629-025-0030, 629-025-0040, 629-025-0050, 629-025-0060, 629-025-0070, 629-025-0080

**Subject:** The proposed rules are intended to address challenges faced by the Department in implementing its recreation program on State Forest lands. Increases in use of facilities and changes in the types of uses have resulted in conflicts between recreating publics. Increased use has also created issues with sanitation, safety, and vandalism. Proposed changes are intended to reduce conflict and provide the Department with tools to address issues.

The proposed rules also include new rules regarding permitting, and health and safety standards for large commercial events, as directed by

the passage of House Bill 2453 in 2015.

The proposal includes the following actions:

- Amend 629-025-0000 to include commercial-use as a purpose of the rules.

- Amend 629-025-0005 to modify, add, and delete defined terms used in the rules.

# ADMINISTRATIVE RULES

- Amend 629-025-0011 to add commercial events to the list of activities that may require a permit from the State Forester.
- Amend 629-025-0020 to clarify the conditions and process for obtaining a permit for organized events.
- Adopt 629-025-0021 to provide the process and conditions for obtaining a large commercial event permit.
- Adopt 629-025-0022 to provide the health and safety standards required for a large commercial event.
- Amend 629-025-0030 to make changes to the fees for recreation on State Forest Lands.
- Amend 629-025-0040 to address public conduct with regard to waste, unattended property, fighting, indecency, and weed-free forage.
- Amend 629-025-0050 to remove prohibition on possession of loaded firearms and add prohibition on nudity in designated recreation areas.
- Amend 629-025-0060 to provide clarification on the presence of service animals and stock animals, and to address occupancy of campsites.
- Amend 629-025-0080 to provide clarification on when and how unattended personal property will be removed.
- Adopt 629-025-0090 to address how rules in this Rule Division will be enforced.
- Adopt 629-025-0099 to provide clarification on the penalty level for violations of rules in this Division.

**Rules Coordinator:** Sabrina Perez—(503) 945-7210

## 629-025-0000

### Purpose of the Rules

These rules establish standards for recreational- and commercial-use of State Forest Lands managed by the Forester. The objectives of these rules are: to protect the resources of State Forest Lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands. These rules are adopted pursuant to ORS 530.050 which gives the Forester the authority to adopt rules necessary for the management, protection, utilization and conservation of State Forest Lands acquired pursuant to ORS 530.010 to 530.040, and 526.291 to 526.294 which gives the department the authority to establish rules governing Large Commercial Events.

Stat. Auth.: ORS 526.291 - 526.294, 530.050

Stats. Implemented: ORS 526.287 - 526.299, 530.010 - 530.040, 530.990

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0005

### Definitions

As used in rules 629-025-0000 through 629-025-0099:

- (1) "Campground" means an area designated by the Forester for Camping that has designated campsites.
- (2) "Camping" means a Person or Persons occupying State Forest Lands overnight.
- (3) "Camping Area" means an area designated by the Forester for Camping that has no designated campsites.
- (4) "Camping Unit" means a tent, camper, camping trailer, RV, or other shelter designed to be used as a personal living space while Camping.
- (5) "Commercial Use" means use of State Forest Lands for business or financial gain.
- (6) "Day Use Area" means an area designated by the Forester for Recreational Use during specified hours where Camping is prohibited.
- (7) "Department" means Oregon Department of Forestry.
- (8) "Designated Recreation Area" means an area designated by the Forester, including but not limited to, Campgrounds, Camping Areas, Day Use Areas, trailheads, staging areas, and boat launch sites.
- (9) "Designated Trail" means any route on State Forest Land, other than a Forest Road, designated for a specific use by the Forester, which has been cleared of debris so that it is suitable for travel by motorized or non-motorized means.
- (10) "Forester" means the State Forester, or the Forester's designated representative.
- (11) "Forest Road" means a road constructed by the Department for ingress to and egress from forestland for the purpose of management, protection, growth, and conservation of forest resources by thinning, reseed-ing, brush control and other forest management operations.
- (12) Highway has the meaning found in ORS 801.305.
- (13) "Large Commercial Event"

- (a) Means a gathering that:
  - (A) Has an Organizer;
  - (B) Is held for the purpose of a shared or common activity or experience;
  - (C) Has more than 50 participating individuals or more than 15 Motor Vehicles of participating individuals present at any time; and
  - (D) Continues or is scheduled to continue for more than four consecutive hours.
- (b) Does not mean:
  - (A) An outdoor mass gathering regulated under ORS 433.735 to 433.770; or
  - (B) A gathering held by arrangement with the Department at a permanent facility or officially designated area that is designed and equipped for accommodating gatherings of that type and size.
- (14) "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion.
- (15) "Motorized Off-Road Zone" means an area on State Forest Land designated by the Forester where off-road use of motorized vehicles is permitted only on Designated Trails.
- (16) "Non-Motorized Zone" means an area on State Forest Land designated by the Forester where use of motorized vehicles is restricted to Forest Roads.
- (17) "Off-Highway Vehicle" means any vehicle capable of cross-country travel on other than Highways, including but not limited to automobiles, trucks, 4-wheel drive vehicle, motorcycles, snowmobiles, and bicycles.

### (18) "Organizer"

(a) Means a Person that organizes, holds or sponsors a Large Commercial Event and who directly or indirectly accepts moneys or other items of value, whether or not resulting in a profit, from one or more Persons participating or reasonably expected to participate in the gathering in exchange for:

- (A) Admittance;
- (B) Parking;
- (C) The receipt of on-site goods or services;
- (D) The reservation or rental of camping or commercial space;
- (E) Rights to sell on-site goods or services; or
- (F) On-site advertising rights.

### (b) Does not mean:

- (A) A Person acting in a regular business relationship with, on behalf of or under contract with the Department;
- (B) A Person that receives money only from a coapplicant for purposes of obtaining a permit under these Division rules; or
- (C) An individual receiving only hourly wages, commissions or tips for services personally provided by that individual.

### (19) "Person" has the meaning found in ORS 174.100.

(20) "Service Animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. Other species of animal, whether wild or domestic, trained or untrained, are not Service Animals for the purposes of this definition. The work or tasks performed by a Service Animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort or companionship do not constitute work or tasks for the purposes of this definition.

(21) "Sponsor" means a Person that that organizes, holds, or sponsors a Sponsored Event.

### (22) "Sponsored Event"

(a) Means a gathering that has all of the following characteristics:

- (A) Is held for the purpose of a shared or common activity or experience;
  - (B) Has more than 20 participating individuals or more than 10 Motor Vehicles of participating individuals present at any time; and
  - (C) Continues or is scheduled to continue for more than three consecutive hours.
- (b) Does not mean:
  - (A) A Large Commercial Event; or
  - (B) An outdoor mass gathering regulated under ORS 433.735 to 433.770.

(23) "State Forest Land" means land owned by the State of Oregon, and managed by the Forester.

(24) "Vehicle" means any device in, upon, or by which any Person or property is, or may be, transported or drawn upon a road and includes vehicles that are propelled or powered by any means.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

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Hist.: FB 23, f. 6-5-70, ef. 6-25-70; FB 36, f. 1-22-74, ef. 2-25-74; FB 3-1995, f. & cert. ef. 9-15-95, Renumbered from 629-026-0005; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0011

### Permits — General Regulations

(1) Permitting Authority: The Forester may require permits for the use of State Forest Lands including, but not limited to, for the following uses:

- (a) Sponsored Events;
- (b) Camping in Campgrounds or in Camping Areas on State Forest Land;
- (c) Parking at designated sites on State Forest Land;
- (d) Use of Day Use Areas; and
- (e) Commercial Use, including Large Commercial Events.

(2) Permit Duration; Suspension: Permits for use of State Forest Land may be issued for a day, season, or such other time period the Forester deems appropriate for the use involved. The Forester may suspend a permit if necessary to protect public health, public safety, forest resources or improvements, or to obtain compliance with these Division rules.

(3) Bonds: For Commercial Use or Sponsored Events, the Forester may require the posting of a cash or surety bond or other guarantee in such form and in such amount as the Forester deems appropriate and sufficient to defray the costs of restoration and rehabilitation of the State Forest Land that may be affected by the permitted use. Bonds and guarantees will be returned to the permittee upon satisfactory compliance with all permit stipulations, including restoration and rehabilitation requirements.

(4) Insurance: For Commercial Use or Sponsored Events, the Forester may require a permittee, at the permittee's expense, to obtain and keep in effect for the duration of the proposed event insurance coverages in types and amounts that are deemed satisfactory to the Forester, and which names the State of Oregon as an additional insured. The policy must stipulate that the Forester must be notified 30 days in advance of the termination or modification of the policy.

(5) Indemnity: For Commercial Use or Sponsored Events, the permittee must defend, indemnify, and hold harmless the State of Oregon against any responsibility or liability for damage, injury, or loss to Persons and property which may occur during the permitted use period or as a result of the permitted use.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0020

### Permits — Sponsored Events

(1) Permits Required: A Person must obtain a permit from the Forester to sponsor, promote or conduct any Sponsored Event on State Forest Land.

(2) The Forester may issue a permit for a Sponsored Event when the following requirements are satisfied:

- (a) Adequate sanitation, policing, medical facilities, traffic control and other necessary services are provided;
- (b) Conflict with traditional recreation activities is minimized;
- (c) All expenses, risks, and liabilities are borne by the Sponsors rather than the general public or the Department;
- (d) The health, well-being, and personal property of forest users, Persons, neighboring landowners and of the general public are protected; and

(e) Damage to forest resources or improvements is negligible or is reasonably mitigated.

(3) Permit Application Procedure: A Person requesting a permit for a Sponsored Event must complete and submit a permit application including the following information to the Forester at least 60 days prior to the date of the proposed event:

- (a) Date of the event;
- (b) A map of the proposed event area;
- (c) Estimated total and peak attendance at the proposed event;
- (d) Estimated total and peak demand for parking at the proposed event;
- (e) Name, address, date of birth and phone number of the Sponsor;
- (f) Description of the planned activities;
- (g) A plan for timely clean-up, and proposed mitigation and restoration activities to ensure potential damage to forest resources or improvements is negligible; and
- (h) Additional information the Forester deems necessary.

(4) Compliance With Other Rules: All activities must comply with applicable state and local codes, rules, and ordinances. Additional state and local permits required must be obtained by the Sponsor prior to the beginning of the activity.

(5) Approval or Denial of Permits: The Forester may approve, with conditions, or deny the permit application consistent with the policies set forth in these Division rules. The following must be considered in evaluating the permit applications:

(a) The ability of the Sponsor to finance, plan and manage the proposed activity in accordance with sanitation, safety, medical care, fire control, security, crowd, noise, and traffic control requirements, and in a manner consistent with the protection of forest resources or improvements;

(b) The extent to which the proposed activity, in both nature and timing, threatens interference with traditional recreational use or interferes with the convenience of neighboring landowners and the general public;

(c) The experience of the Sponsor in performing similar activities in the past; and

(d) Measures undertaken to mitigate any changes in traditional recreational use or damage to forest resources or improvements caused by the activity.

(6) Revocation of Permit: The Forester may revoke the permit effective immediately upon notice to the applicant in the event of any emergency, significant law enforcement problem, substantial threat to public welfare, safety or property arising from or likely to affect the activity, or upon any breach of permit conditions. The applicant must terminate the activity immediately upon receipt of notice from the Forester that the permit has been revoked. The Forester may refund, in whole or in part, the permit fee if a permit is revoked in accordance with this subsection only if such amount is not necessary to reimburse the Department for its reasonable and necessary costs related to administration, monitoring, or enforcement activities taken up to and through date of permit revocation.

(7) Permit Modification: The Forester may amend a Sponsored Event permit with the Sponsor's consent.

(8) Miscellaneous Provisions: An application for a Sponsored Event will only be considered by the Forester if:

(a) The Sponsor or its principal representative is at least 18 years of age; and

(b) The Sponsor or sponsor-organization has satisfied all outstanding liabilities and requirements arising out of any prior activity involving property under the jurisdiction of the Forester.

(9) Assignments: A permit is not transferrable and may not be assigned to any other Person without prior written approval of the Forester.

(10) Fees:

(a) Application Fee: The Forester may require a Sponsor to pay an application fee of \$150 for the processing and review of a Sponsored Event permit, which is refundable only if the application is withdrawn prior to any review of the application by the Department.

(b) Monitoring and Enforcement Fee:

(A) A Sponsor must pay a monitoring and enforcement fee when, at the Forester's sole discretion, the Forester deems Department personnel are required to undertake monitoring and enforcement of the permit conditions to protect the public, or forest resources or improvements. Situations that may require enforcement and monitoring personnel include, but are not limited to:

- (i) Activities involving open fire;
- (ii) Activities spanning large spatial areas;
- (iii) Activities involving the consumption of alcohol;
- (iv) Activities requiring traffic controls; or
- (v) Other activities posing significant risk to public or forest resource or improvement safety.

(B) The fee for monitoring and enforcement shall be billed at the actual hourly overtime rate for the assigned Department personnel at the time of the event. The Sponsor shall be responsible for all fees associated with monitoring and enforcement, including travel time of Department personnel to and from the site.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0021

### Permits — Large Commercial Events

(1) Permits Required: A Person must obtain a permit from the Forester to sponsor, promote or conduct a Large Commercial Event on State Forest Land.

(2) The Forester may issue a permit for a Large Commercial Event when the following requirements are satisfied:

(a) Compliance with, or the ability and willingness to comply with, applicable health and safety standards found in OAR 629-025-0022;

(b) Conflict with traditional recreation activities is minimized;

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(c) All expenses, risks, and liabilities are borne by the Organizer rather than the general public or the Department; and

(d) Damage to forest resources or improvements is negligible or is reasonably mitigated.

(3) Permit Application Procedure: A Person requesting a permit for a Large Commercial Event must complete and submit a permit application including the following information to the Forester at least 60 days prior to the date of the proposed event:

(a) Date of the event;

(b) A map of the proposed event area including potentially sensitive ecological areas;

(c) Estimated total and peak attendance at the proposed event;

(d) Estimated total and peak demand for parking at the proposed event;

(e) Name, address, date of birth and phone number of the Organizer;

(f) Description of the planned activities;

(g) A plan for timely clean-up, and proposed mitigation and restoration activities to ensure potential damage to forest resources or improvements is negligible; and

(h) Additional information the Forester deems necessary.

(4) Compliance With Other Rules: All activities must comply with applicable state and local codes, rules, and ordinances. Additional state and local permits required must be obtained by the Organizer prior to the beginning of the activity.

(5) Approval or Denial of Permits: The Forester may approve, with conditions, or deny the permit application consistent with the requirements of applicable law. The following must be considered in evaluating the permit applications:

(a) The ability of the Organizer to finance, plan and manage the activity in accordance with sanitation, safety, medical care, fire control, security, crowd, noise, and traffic control requirements, and consistent with the protection of forest resources or improvements;

(b) The extent to which the proposed activity, in both nature and timing, threatens interference with traditional recreational use or interferes with the convenience of neighboring landowners and the general public;

(c) Whether permanent alteration to or on State Forest Land may occur;

(d) Whether activities may continue for more than 120 hours in any 90 day period;

(e) Whether the Organizer has a history of:

(A) Acting as an Organizer for a gathering without obtaining a required Large Commercial Event permit; or

(B) Violating, or recklessly allowing others to violate, the terms and conditions of a Large Commercial Event permit issued to the Person.

(f) The experience of the Organizer in performing similar activities in the past; and

(g) Measures undertaken to mitigate any changes in customary forest usage or damage to forest resources or improvements caused by the activity.

(6) Revocation: The Forester may revoke the permit effective immediately on notice to the applicant in the event of any emergency, significant law enforcement problem, substantial threat to public welfare, safety or property arising from or is likely to affect the activity, or upon any breach of permit conditions. The applicant must terminate the activity immediately upon receipt of notice from the Forester that the permit has been revoked. The Forester may refund, in whole or in part, the permit fee if a permit is revoked in accordance with this subsection only if such amount is not necessary to reimburse the Department for its reasonable and necessary costs related to administration, monitoring, or enforcement activities taken up to and through date of permit revocation.

(7) Permit Modification: The Forester may amend a Large Commercial Event permit with the Organizer's consent.

(8) Miscellaneous Provisions: An application for a Large Commercial Event will only be considered by the Forester if;

(a) The Organizer or its principal representative is at least 18 years of age; and

(b) The Organizer or sponsor-organization has satisfied all outstanding liabilities and requirements arising out of any prior activity involving property under the jurisdiction of the Forester.

(9) Assignments: A permit is nontransferable and may not be assigned to any other Person without prior written approval of the Forester.

(10) Fees:

(a) Application Fee: An Organizer must pay an application fee of \$150 for the processing and review of a Large Commercial Event permit,

which is refundable only if the application is withdrawn prior to any review of the application by the Department.

(b) Monitoring and Enforcement Fee:

(A) An Organizer must pay a monitoring and enforcement fee when, at the Forester's sole discretion, the Forester deems Department personnel are required to undertake monitoring and enforcement of the permit conditions to protect the public or forest resources or improvements. Situations that may require enforcement and monitoring personnel include, but are not limited to:

(i) Activities involving open fire;

(ii) Activities spanning large spatial areas;

(iii) Activities involving the consumption of alcohol;

(iv) Activities requiring traffic controls; or

(v) Other activities posing significant risk to public or forest resource or improvement safety.

(B) The fee for monitoring and enforcement must be billed by the Department at the actual hourly overtime rate for the assigned Department personnel at the time of the event. The Organizer must be responsible for all fees associated with monitoring and enforcement, including, but not limited to, travel time of Department personnel to and from the site.

Stat. Auth.: ORS 526.291

Stats. Implemented: ORS 526.287 – 526.299

Hist.: DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0022

### Health and Safety Standards — Large Commercial Events

(1) Sewerage Facilities:

(a) Chemical toilets must be provided at a rate of at least one toilet per 80 persons or fraction thereof.

(b) Chemical toilets must be serviced daily with respect to sanitation, removal of contents, and recharging of chemical solution.

(c) All chemical toilets must be located so as to be easily and readily serviced by servicing vehicles.

(2) Refuse Storage and Disposal:

(a) All refuse and solid waste must be stored in fly-tight containers constructed of impervious material.

(b) Containers for refuse and solid waste storage must be provided at a minimum ratio of one 30 gallon container for each 16 persons or fraction thereof anticipated or one cubic yard of container capacity for each 125 persons or fraction thereof anticipated.

(c) All refuse and solid waste must be removed from storage containers at least once every 24 hours and transported and disposed of in a manner which is authorized and complies with state and local laws, ordinances, and regulations.

(d) Liquid wastes not containing human excreta must be disposed of in a seepage pit having a minimum depth of three feet and a lateral area of not less than 32 square feet. The pit must be backfilled with clean, coarse rock and be protected by a one-fourth inch screen which is removable and must effectively trap food particles and prevent other wastes from entering the backfilled rock.

(3) Water Supply: The water supply, water quality, and water storage and delivery systems must comply with the standards established under OAR 333-039-0015.

(4) Fire Protection:

(a) In addition to the requirements found in ORS 477, a Person must:

(A) Confine all Fires to camp stoves or fire grates or other fireproof structures constructed for such purposes. Such structures must be less than four feet in diameter or four feet in length;

(B) Clear all flammable material for a distance of five feet around and 10 feet above any fire grate or other fireproof structure used to contain a campfire;

(C) Extinguish every fire at the site before leaving the site; and

(D) Comply with fire prevention rules found in OAR 629, division 43 for all activities involving open fire, fire effects, bonfires, or other controlled or uncontrolled fires.

(b) A Person may not:

(A) Leave a fire unattended; or

(B) Discharge or cause to be discharged any firecrackers, explosives, torpedoes, rockets, fireworks, sky lanterns, or other flammable substances which could be harmful to Persons or forest resources without prior written permission of the Forester.

(5) Traffic:

(a) Motor Vehicles must be parked in a manner that eliminates blockage of parked Vehicles and allows Vehicles free access to exits at all times.

(b) A Vehicle may not block, obstruct or interfere with vehicular or pedestrian traffic on a Forest Road, parking area, Designated Trail, walk-

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way, pathway or common area. The Department may tow a Vehicle at the owner's expense if the Vehicle is found to obstruct, block or interfere with vehicular or pedestrian traffic or is parked in a fire lane, roadway, campsite, entry way, driveway, closed area or other location in a manner that threatens forest resources or improvements, impedes operations of a Designated Recreation Area, public safety, or any combination thereof.

## (6) Security Personnel:

(a) The Organizer must maintain an accurate count of individuals attending the Large Commercial Event and must provide adequate security arrangements to limit further admissions to the Large Commercial Event when the anticipated number of individuals have been admitted.

(b) The Organizer must secure a written statement from the chief law enforcement officer of the county in which the Large Commercial Event is to take place that arrangements for security and the orderly flow of traffic to and from the site complies with state and local laws, ordinances, and regulations, and is satisfactory with respect to anticipated number of participants and site.

## (7) Bonding and Insurance:

(a) Bonds: The Forester may require the posting of a cash or surety bond or other guarantee in such form and in such amount as determined by the Forester to be sufficient by the Forester to defray the costs of restoration and rehabilitation of the State Forest Land affected by the permitted use. Bonds and guarantees will be returned to the permittee upon satisfactory compliance with all permit conditions, including restoration and rehabilitation requirements.

(A) Claims against Organizer's bond for failure to comply with or perform other obligations under the permit must be processed in the following manner:

(i) The Department must provide notice in writing to Organizer and Organizer's surety of the nature of the failure to comply or the unperformed obligation, and must specify a date by which the failure must be remedied.

(ii) If Organizer fails to remedy the failure or to respond in writing with reasons adequate in Department's judgment to waive the failure within the time specified in Department's notice, Organizer must be deemed to be in default and Department must be entitled to make a claim against Organizer's bond on behalf of Department for an amount deemed reasonably sufficient to cure the failure.

(B) The Department reserves the right to invoke any remedy available to it under the permit or at law or in equity in the event Department is required to seek redress from Organizer's surety for a permit violation or default by Organizer including, without limitation, termination of the permit.

(b) Insurance: The Forester may require a permittee, at the permittee's expense, to obtain and keep in effect for the duration of the proposed event insurance coverages in types and amounts that are deemed satisfactory to the Forester, and which names the State of Oregon as an additional insured. The policy must stipulate that the Forester must be notified 30 days in advance of the termination or modification of the policy

(8) Siting Restrictions: A buffer of at least 200 feet, measured in horizontal distance, wherein a Person may not enter, occupy or physically disturb forest resources or improvements must be maintained between the Large Commercial Event site and all:

(a) Ecologically-sensitive areas, including streams, lakes and wetlands;

(b) Known cultural resources; and

(c) Forest practices as defined in ORS 527.620.

(9) Use of Alcohol: Alcohol may not be sold or consumed within one hour of the scheduled end time of the Large Commercial Event.

(10) Indemnity: The permittee must defend, indemnify, and hold harmless the State of Oregon against any responsibility or liability for damage, injury, or loss to Persons and property which may occur during the permitted use period or as a result of such use.

Stat. Auth.: ORS 526.291

Stats. Implemented: ORS 526.287 - 526.299

Hist.: DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0030

### Other Fees

(1) A Person must pay the applicable fee for use of Campgrounds, Camping Areas and other listed facilities and services.

(2) Payment of Fees: Unless posted otherwise, payment of fees must be made prior to receipt of the permit or use of the facilities and services. Permit fees are non-refundable. Overnight camping fees are for the use of facilities until 1:00 p.m. of the following day.

(3) Established Fees: Specific fees for permits, facilities and services, are as follows:

(a) Camping in a Campground at a:

(A) Vehicle site: \$15 per night;

(B) Walk-in site: \$10 per night;

(C) Group site: \$50 per night.

(b) A fee of \$5 per night, per Motor Vehicle must be paid by a Person who allows more than one automobile or two motorcycles to be parked overnight at a Designated Campsite reserved by that Person.

(c) Camping in a designated Camping Area: \$5 per night per Motor Vehicle.

(4) Firewood: Where conditions permit, firewood may be sold by the Forester.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0040

### General Forest Recreation Rules & Public Conduct

(1) Sanitation.

(a) On all State Forest Land, a Person may not in any manner, unless otherwise authorized, cause any rubbish, garbage, refuse, organic or inorganic waste, diseased or dead animals, recreational vehicle sewage, or other offensive matter or any abandoned property or material to be placed or left on State Forest Land. A Person may not:

(A) Dispose of any cans, bottles and garbage except in designated places or receptacles;

(B) Drain sewage or petroleum products or dump refuse or waste other than grey water except in places or receptacles provided for that purpose;

(C) Dispose of any household, commercial or industrial refuse or waste brought as such from private or municipal property, including but not limited to automobiles, household appliances and furnishings;

(D) Pollute or contaminate water supplies or water used for human consumption;

(E) Use a refuse container or disposal facility for any purpose other than for which it is supplied; or

(F) Remove items from containers designated for recyclables, garbage, sewage or waste without authorization from the Forester.

(b) A Person may not wash any clothing, dishware, cookware, or other materials in any lake, stream, river, well pump or other body of water on State Forest Land.

(c) A Person may not deposit human waste within 100 feet of any campsite, trail, or body of water. Human waste must be disposed of by burying to a depth of at least six inches.

(d) Where toilet or sewage facilities are provided, a Person may not dispose of human waste except in those facilities.

(2) Occupancy and Use. On State Forest Land, a Person may not:

(a) Camp longer than 21 days out of any 35-day period, more than a total of 60 days during a calendar year, or the period of time specifically authorized by the Forester in writing;

(b) Camp within 25 horizontal feet of the high water mark of any body of water or in other areas posted closed to Camping by the Department; or

(c) Leave personal property unattended longer than four days on State Forest Land or 48 hours in a Designated Recreation Area. Personal property left unattended longer than four days on State Forest Land or more than 48 hours in a Designated Recreation Area without permission of the Forester, may be removed by the Department; or

(d) Leave personal property or possessions overnight in a Day Use Area without prior written permission from the Forester.

(e) Unattended personal property is considered Camping for the purposes of determining the length of stay at a given site.

(3) Property and Resources. On all State Forest Land, unless under contract with the Forester, a Person may not:

(a) Deface, disturb, remove or destroy any public property, structures, or any scientific, cultural, archaeological or historic resource, natural object or area;

(b) Deface, remove or destroy plants or their parts, soil, rocks, or minerals, or cave resources.

(4) Animals.

(a) A horse or other animal may not be hitched or confined in a manner that may cause damage to any tree, shrub, improvement, or structure.

(b) The Forester may undertake any measures deemed necessary (including removal of the animal from State Forest Land or requiring the animal be kept under physical control) to protect forest resources or improvements and to prevent interference by the animal with the safety,

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comfort, and well-being of others, including Department of Forestry employees and its contractors.

(5) Construction of Trails and Shelters. On State Forest Land, a Person may not modify, construct, or cause to be constructed any trail, shelter, building, or other facility or improvement without written permission of the Forester.

(6) Firewood Collection.

(a) A Person Camping may collect and possess up to one quarter of a cord of firewood for their personal use while Camping on State Forest Land except where otherwise prohibited in these Division rules.

(b) A Person may not remove from State Forest Land firewood which has been collected for use while Camping on State Forest Land without a valid firewood permit except as allowed by ORS 164.813.

(c) Firewood must be collected only from dead and down material that is 12 inches or less in diameter at its largest point. No standing trees, living or dead, may be felled for conversion into firewood.

(7) Campfires.

(a) Fires must be confined to camp stoves or fire grates or other fireproof structures provided by the Department for such purposes. Such structures must be less than four feet in diameter or four feet in length.

(b) All flammable material must be cleared for a distance of five feet around and 10 feet above any fire grate or other fireproof structure used to contain a campfire.

(c) A fire may not be left unattended and every fire must be extinguished before its user leaves the site.

(8) Traffic Rules.

(a) When operating a Vehicle on State Forest Lands, a Person may not violate the basic speed rule or exceed posted speed limits, willfully endanger Persons or property, or act in a reckless, careless, or negligent manner.

(b) A Person may not obstruct or hinder the flow of traffic on a Forest Road.

(c) A Person may not operate a Vehicle on State Forest Road in violation of Oregon traffic laws.

(d) A Person may not block, obstruct or interfere with vehicular or pedestrian traffic on a Forest Road, parking area, trail, walkway, pathway or common area. The Department may tow a vehicle at the owner's expense if the Vehicle is left unattended for more than 72 hours or is parked in a fire lane, roadway, campsite, entry way, driveway, closed area or other location in a manner that threatens the resource, impedes operations of a Designated Recreation Area, public safety, forest practices as defined under ORS 527.620, or any combination thereof.

(9) Target Shooting.

(a) A Person may not:

(A) Place targets on live trees or shoot live trees for any purpose;

(B) Shoot across or along any road or trail;

(C) Shoot carelessly, recklessly, or without regard for the safety of any Person, or in a manner that endangers, or is likely to endanger, any Person or property;

(D) Shoot glass of any kind;

(E) Shoot appliances, furniture, or other materials determined by Department personnel or a law enforcement officer to be garbage;

(F) Shoot targets other than non-exploding targets commercially manufactured for the specific purpose of target shooting, except for paper targets privately manufactured by the Person or persons engaging in target shooting; or

(G) Engage in target shooting or other shooting related activity at times between one half-hour after sunset until one half-hour before sunrise.

(b) A Person engaged in target shooting must:

(A) Remove from State Forest Land all shell casings, targets, and other debris resulting from the target shooting activity; and

(B) Use an appropriately sized, non-flammable, natural backstop or a commercially-manufactured bullet recovery system of sufficient size to capture all projectiles.

(10) Concessions. A Person may not:

(a) Operate a concession on State Forest Land, either fixed or mobile, solicit, sell or offer for sale, peddle, hawk, or vend any goods, wares, merchandise, food, liquids, or services without written permission of the Forester;

(b) Advertise any goods or services by any means whatsoever.

(11) General Conduct. A Person may not:

(a) Use a metal detector or similar device on State Forest Land without written permission of the Forester;

(b) Obstruct, harass or interfere with any Department personnel or volunteer, or any peace officer in the performance of their duties;

(c) Enter or occupy any building, facility or portion of a Designated Recreation Area or Designated Trail that has been closed to public access;

(d) Occupy or interfere with access to a structure, office, lavatory or other facility in a manner which interferes with the intended use of such a structure or facility;

(e) Engage in fighting or promoting, instigating or encouraging fighting or similar violent conduct which may threaten the physical well-being of a Person;

(f) Engage in activities or conduct which creates a public nuisance or hazard; or

(g) Engage in public indecency as defined in ORS 163.465.

(12) On State Forest Land, a Person must use hay, straw, and other livestock forage that is certified by The Oregon Department of Agriculture to be weed-free according to North American Weed Management Association standards. A database of certified growers in Oregon may be obtained through The Oregon Department of Agriculture Weed Free Forage Program.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 4-2005, f. & cert. ef. 3-1-05; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0050

### Designated Recreation Areas

(1) State Forest Land designated by the Forester as "Designated Recreation Areas" may include, but are not limited to, Campgrounds, Camping Areas, Day Use Areas, trailheads, staging areas, and boat launch sites. Maps showing the Designated Recreation Areas must be kept on file at the Forester's office and the applicable District office, and must be available for public inspection during normal business hours.

(2) General Forest Recreation Rules as outlined in OAR 629-025-0040 apply to Designated Recreation Areas. In addition to those rules, the following rules apply:

(3) Occupancy and Use:

(a) At areas where Camping is permitted a Person may not camp longer than 14 days out of any 28 day period at a Designated Recreation Area.

(b) A Person must be 18 years of age or older to reserve and register for campsites in Designated Recreation Areas.

(4) Firewood: A Person may not collect firewood within the boundaries of any Designated Recreation Area.

(5) Firearms, Weapons, and Explosives: Within a Designated Recreation Area a Person may not:

(a) Hunt, pursue, trap, kill, injure, molest, or disturb the habitat of any bird or animal without first obtaining permission from the Forester;

(b) Discharge any firearm, pellet gun, bow and arrow, slingshot or other weapon capable of injuring any Person, bird, or animal; or

(c) Discharge or cause to be discharged any firecrackers, explosives, torpedoes, rockets, fireworks, sky lanterns, or other substances which could be harmful to visitors or forest resources without written permission of the Forester.

(6) Forest Resources and Improvements: A Person may not mutilate, deface, damage, or remove any table, bench, building, sign, marker, monument, fence, barrier, fountain, faucet, traffic recorder, or other structure or facility of any kind in a Designated Recreation Area.

(7) Parking: Automobiles, trailers, or other Motor Vehicles must be parked only in designated parking areas.

(8) Animals:

(a) Any dog, cat, horse, or other animal brought into or kept on State Forest Land must be kept under control at all times.

(b) An animal owner is responsible for the disposal of the animal's waste within Designated Recreation Areas.

(9) Offensive Behavior: A Person may not use abusive, threatening, boisterous, vile, obscene, or indecent language or gestures, or engage in demonstrations, disturbances, or riotous behavior in any Designated Recreation Area.

(10) Excessive Noise: A Person may not operate or use any noise-producing machine, vehicle device, or instrument in such a manner that is disturbing to another Person.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0060

### Campground and Day Use Areas

(1) Maps showing the Campground and Day Use Areas designated by the Forester must be kept on file at the Forester's office and the applicable



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District office, and available for public inspection during normal business hours.

(2) The General Forest Recreation Rules as outlined in OAR 629-025-0040 and the Designated Recreation Area rules as outlined in OAR 629-025-0050 apply to Campground and Day Use Areas. In addition to those rules, the following rules apply to Campgrounds and Day Use Areas:

(a) Sanitation: In Campground and Day Use Areas a Person may not, unless otherwise authorized:

(A) Clean fish, game, other food, clothing or household articles at any outdoor hydrant, pump, faucet or fountain, or restroom water faucet;

(B) Deposit human waste except in toilet or sewage facilities provided for that purpose.

(C) Leave bottles, cans, ashes, waste, paper, garbage, sewage, or other rubbish or refuse, except in receptacles designated for that purpose.

(b) Animals:

(A) A Person may not bring an animal into a Campground or Day Use Area unless the animal is on a leash not longer than six feet and secured to a fixed object or under control of a Person, or is otherwise physically restricted at all times. A Person may not bring an animal, other than Service Animals, into any building.

(B) A Person may not ride, drive, lead, or keep a saddle horse or other stock animal, such as llamas, alpacas, and mules, except on such roads, trails, or other areas designated for that purpose.

(C) The Forester has the authority to undertake any measures deemed necessary (including removal of the animal from the Campground or Day Use Area) to protect Campground or Day Use Area resources and to prevent interference by the animal with the safety, comfort, and well-being of a Person using Campground or Day Use Area.

(D) A Person may not keep a saddle horse or other stock animal such as llamas, alpacas and mules in a Campground or Day Use Area not designated for that purpose.

(E) An animal owner is responsible for the disposal of the animal's waste within a Campground or Day Use Area.

(c) Campfires:

(A) Fires in a Campground or Day Use Area must be confined to:

(i) Fire grates that are designed and provided by the Department for such use; or

(ii) Portable stoves in established campsites.

(B) A fire may not be left unattended and every fire must be extinguished before its user leaves the Campground or Day Use Area.

(d) Signs and Markers: A Person may not erect signs, markers, or inscriptions of any type except on boards or structures provided for that purpose.

(e) Camping:

(A) The Forester may designate and post Campgrounds or certain portions of Campgrounds for use by specified types of Camping equipment, such as tents, trailers, pickup campers, or other recreational vehicles, or for use by specified types of recreation use, such as equestrian use or Off-Highway Vehicle use.

(B) A campsite may not be occupied by more than eight people and two Motor Vehicles unless otherwise designated and posted by the Forester.

(C) The registered camper must physically occupy the campsite the first night after any belongings are left in the site or fees are paid. A camper must occupy the campsite each night during the entire length of stay unless other arrangements have been made with the Forester. If a Person has failed to pay the Camping fee for two consecutive days or has exceeded the length of stay time limit the Department may remove all possessions consistent with OAR 629-025-0080.

(D) The registered camper is responsible for the activities of all users of the campsite.

(E) A camper must maintain reasonable quiet between the hours of 10 p.m. and 7 a.m.

(F) Prohibit the use of any noise-producing machine, vehicle device, or instrument between the hours of 10 p.m. and 7 a.m.

(f) Traffic Rules: Posted speed limits in Campgrounds and Day Use Areas must be observed at all times.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0070

### Use of Roads and Trails

(1) A Person may not operate a Motor Vehicle off-road:

(a) Except on a trail designated for that purpose;

(b) Without an approved spark arrestor, as specified in OAR 629-043-0015;

(c) Without an adequate noise muffler as defined in ORS 821.220;

(d) Without a valid ATV registration, or snowmobile registration for snowmobiles; or

(e) From one half hour after sunset to one half hour before sunrise unless equipped with working head- and tail-lights.

(2) A Person may not operate a Motor Vehicle:

(a) On road cut banks or fill slopes, or in ditches along roads, except snowmobiles; or

(b) In a manner that damages trails, boardwalks, bridges, water bars, cement blocking, drainage pipes or any other improvement designed to maintain the integrity of the trail or improvement; or

(c) That is not licensed for use on Highways on a Forest Road in a Non-Motorized Zone, where such use is signed as prohibited.

(3) A Person may not:

(a) Operate an Off-Highway Vehicle or snowmobile in violation of ORS 821.010 through 821.320; or

(b) Hike, bicycle, use a horse, llama, or other stock animal, or other Motor Vehicle on a trail not designated for that purpose, or in a manner that damages trails, boardwalks, bridges, water bars, cement blocking, drainage pipes or any other improvement designed to maintain the integrity of the trail or improvement.

(4) Road and Trail Closures. The Forester may, at any time, close all or portions of Forest Roads or Designated Trails, or establish one-way traffic flow on a Forest Road or Designated Trail.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 4-2005, f. & cert. ef. 3-1-05; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0080

### Removing Unattended Personal Property

(1) The Forester may remove Unattended Personal Property from State Forest Lands. Items that, at the sole discretion of Department personnel, have no apparent utility or are in an unsanitary condition are considered garbage and may be discarded.

(2) Unattended Personal Property includes items that have been left on State Forest Land longer than four days or in Designated Recreation Areas for more than 48 hours and are reasonably recognizable as belonging to a Person and that have apparent utility.

(3) Weapons, drug paraphernalia, and items that reasonably appear to be either stolen or evidence of a crime, at the sole discretion of Department personnel, must be turned over to the appropriate law enforcement agency.

(4) Department personnel may separate Unattended Personal Property from garbage during cleanups. Garbage must be immediately discarded and Unattended Personal Property must be stored by the Department for no less than 30 days. During that period it must be reasonably available to Persons claiming ownership of the Unattended Personal Property.

(5) The Forester must arrange in advance for a location to store Unattended Personal Property. The storage facility must be reasonably secure and located at or near one of the Department's District offices. The address of the facility will not be publicized; however, a telephone number to arrange an appointment to pick up claimed Unattended Personal Property must be provided. The telephone number must reach an office that is staffed during normal business hours (8 a.m. to 5 p.m. weekdays). Appointments to claim Unattended Personal Property must only be made during normal business hours.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: DOF 4-2005, f. & cert. ef. 3-1-05; DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0090

### Enforcement, Evictions, and Exclusions

(1) A Person must observe and abide by all instructions, warnings, restrictions and prohibitions on posted signs and notices, or from Department personnel.

(2) The Forester may take actions to protect the safety or health of the public or forest resources or improvements, by:

(a) Seeking compliance from the public with any Division 25 rule;

(b) Ordering a Person who violates a Division rule to leave a Designated Recreation Area;

(c) Excluding a Person in violation of a Division rule from a Designated Recreation Area or multiple Designated Recreation Areas for a specified period of time.

(3) A peace officer may seek compliance with a Division rule from a Person.

(4) A peace officer may exclude, or recommend that the Forester exclude, a Person who violates a Division rule, federal, state, county or city

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law or court order, from a Designated Recreation Area or multiple Designated Recreation Areas for a specified period of time.

(5) The following situations are criminal trespass in the second degree, a Class C misdemeanor, per ORS 164.245:

- (a) A Person ordered to leave State Forest Land that remains present;
- (b) A Person excluded from State Forest Land that enters or remains present;

(c) A Person enters a closed or restricted portion of State Forest Land.  
Stat. Auth.: ORS 530.050  
Stats. Implemented: ORS 530.010 - 530.040  
Hist.: DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0098

### Criminal Penalty for Large Commercial Event Offense

An organizer commits a Class A misdemeanor if the organizer:

(1) Accepts money or other items of value in an exchange described under ORS 526.287(2)(a) prior to the issuance of a large commercial event permit required under ORS 526.291; or

(2) Recklessly allows the violation of a term or condition of a large commercial event permit issued to the organizer by the State Forestry Department.

Stat. Auth.: ORS 526.291  
Stats. Implemented: ORS 526.991  
Hist.: DOF 1-2016, f. & cert. ef. 3-11-16

## 629-025-0099

### Violations and Fines

(1) Except for violations arising from activities under contract with the State Board of Forestry or the Department, and subject to ORS 153.022, violation of any rule or order adopted pursuant to ORS 530.050 is a Class A violation.

(2) Multiple violations of any rule or order adopted pursuant to ORS 530.050 shall be considered a single violation. However, each day a violation continues shall be considered a separate violation.

(3) Violations and punishments set forth in this section are in addition to and not in lieu of the provisions of ORS 164.305 to 164.335.

Stat. Auth.: ORS 530.050  
Stats. Implemented: ORS 530.990  
Hist.: DOF 1-2016, f. & cert. ef. 3-11-16

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

**Rule Caption:** ODDS: Foster Homes for Children with Intellectual or Developmental Disabilities

**Adm. Order No.:** APD 1-2016(Temp)

**Filed with Sec. of State:** 2-23-2016

**Certified to be Effective:** 2-23-16 thru 8-20-16

**Notice Publication Date:**

**Rules Amended:** 411-346-0100, 411-346-0110, 411-346-0170, 411-346-0190, 411-346-0200

**Subject:** The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities (CFH).

These rules are being temporarily amended to:

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit to support an individual aged 18 through 20;
- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private

pay residential and non-residential HCB services and settings and person-centered service planning; and

- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services.

Under the HCB setting standards, child foster homes meet the definition of a provider owned, controlled, or operated residential setting. A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-346-0100

### Statement of Purpose

(1) The rules in OAR chapter 411, division 346 prescribe the standards and procedures for the provision of Developmental Disabilities-funded foster care services for children with intellectual or developmental disabilities in child foster homes certified by the Department of Human Services as a condition for certification and payment.

(2) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure children with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.

(a) A foster provider initially certified on or after January 1, 2016, must meet the requirements in OAR chapter 411, division 004, prior to being certified.

(b) A foster provider certified prior to January 1, 2016, must make measurable progress toward compliance with the rules in OAR chapter 411, division 004, and be in full compliance by September 1, 2018.

Stat. Auth.: ORS 409.050 & 443.835  
Stats. Implemented: ORS 430.215, 443.830, and 443.835  
Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0100, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-20-16

## 411-346-0110

### Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 346:

(1) "Abuse" means:

(a) "Abuse" as defined in ORS 419B.005 for a child less than 18 years of age; and

(b) "Abuse" as defined in OAR 407-045-0260 when an individual aged 18 to 21 resides in a certified child foster home.

(2) "Alternate Caregiver" means any person 18 years of age and older responsible for the care or supervision of a child in foster care.

(3) "Alternative Educational Plan" means any school plan that does not occur within the physical school setting.

(4) "Appeal" means the process for a contested hearing under ORS chapter 183 that a foster provider may use to petition the suspension, denial, non-renewal, or revocation of their certificate or application.

(5) "Applicant" means a person who wants to become a child foster provider, lives at the residence where a child in foster care is to live, and is applying for a child foster home certificate or is renewing a child foster home certificate.

(6) "Aversive Stimuli" means the use of any natural or chemical product to alter the behavior of a child, such as the use of hot sauce or soap in the mouth and spraying ammonia or lemon water in the face of a child. Psychotropic medications are not considered aversive stimuli.

(7) "Behavior Support" means the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of a child that prevents the child from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and provides cognitive supports to mitigate behavior. Behavior supports are provided in the home or community.

(8) "Case Plan" means the goal-oriented, time-limited, individualized plan of action for a child and the family of the child developed by the fam-

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ily and the Children, Adults, and Families Division of the Department for promotion of the safety, permanency, and well-being of the child.

(9) "Case Worker" means an employee of the Children, Adults, and Families Division of the Department.

(10) "CDDP" means "Community Developmental Disability Program".

(11) "Certificate" means a document issued by the Department that notes approval to operate a child foster home for a period not to exceed two years.

(12) "Certifying Agency" means the Department, CDDP, or an agency approved by the Department who is authorized to gather required documentation to issue or maintain a child foster home certificate.

(13) "Child" means:

(a) An individual who is less than 18 years of age who has a provisional determination of an intellectual or developmental disability by the CDDP; or

(b) An individual age 18 to 21 with an intellectual or developmental disability who is remaining in the same foster home for the purpose of completing their IEP based on the recommendation of the ISP team and an approved certification variance.

(14) "Child Foster Home" means a home certified by the Department that is maintained and lived in by the person named on the foster home certificate. A child foster home is considered a provider owned, controlled, or operated residential setting.

(15) "Child Foster Home Contract" means an agreement between a foster provider and the Department that describes the responsibility of the foster provider and the Department.

(16) "Child Placing Agency" means the Department, CDDP, or the OYA.

(17) "Clinical Criteria" means the criteria used by the Department or the Medically Fragile Children's Unit as described in OAR 411-350-0055 to assess the private duty nursing support needs of a child.

(18) "Commercial Basis" means providing and receiving compensation for the temporary care of individuals not identified as members of the household.

(19) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of a child. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(20) "Denial" means the refusal of the certifying agency to issue a certificate of approval to operate a child foster home because the certifying agency has determined that the home or the applicant is not in compliance with one or more of these rules.

(21) "Department" means the Department of Human Services.

(22) "DHS-CW" means the child welfare program area within the Children, Adults, and Families Division of the Department.

(23) "Discipline" means "behavior support" as defined in this rule.

(24) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(25) "Educational Surrogate" means the person who acts in place of a parent in safeguarding the rights of a child in the public education decision-making process:

(a) When the parent of the child cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of the parent of the child or young adult student.

(26) "Emergency Certificate" means a foster home certificate issued for 30 days.

(27) "Foster Care" means a child is placed away from their parent or guardian in a certified child foster home.

(28) "Foster Provider" means the certified care provider who resides at the address listed on the foster home certificate. A foster provider is considered a private agency for purposes of mandatory reporting of abuse.

(29) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for a child residing in a foster home is known as the Support Needs Assessment Profile (SNAP).

(30) "Home Inspection" means the on-site, physical review of the home of an applicant to assure the applicant meets all health and safety requirements within these rules.

(31) "Home Study" means the assessment process used for the purpose of determining the ability of an applicant to care for a child in need of foster care placement.

(32) "ICWA" means the Indian Child Welfare Act.

(33) "IEP" means "Individualized Education Program".

(34) "ISP" means "Individual Support Plan".

(35) "Licensed Medical Professional" means a person who meets the following:

(a) Holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in Oregon;

(B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(C) Physician's assistant licensed to practice in Oregon; and

(b) Whose training, experience, and competence demonstrate expertise in children's mental health and the ability to conduct a mental health assessment and provide psychotropic medication management for a child in foster care.

(36) "MAR" means medication administration record.

(37) "Member of the Household" means any adult or child living in the home, including an employee or volunteer assisting in the care provided to a child placed in the home. A child in foster care is not considered a member of the household.

(38) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing a child and obtaining all pertinent biopsychosocial information as identified by the child, the family of the child, and collateral sources. A mental health assessment:

(a) Addresses the condition presented by the child;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(39) "Misuse of Funds" includes, but is not limited to, a foster provider or staff person:

(a) Borrowing from, or loaning money to, a child in foster care;

(b) Witnessing a will in which the foster provider or a staff person is a beneficiary;

(c) Adding the name of the foster provider or staff person to the bank account of a child or other titles for personal property without approval of the child when of age to give legal consent, or the guardian of the child and authorization of the ISP team;

(d) Inappropriately expending or theft of the personal funds of a child;

(e) Using the personal funds of a child for the benefit of the foster provider or staff person; or

(f) Commingling the funds of a child with the funds of the foster provider or the funds of another child.

(40) "Monitoring" means:

(a) The observation of a certified child foster home by the Department or the designee of the Department to determine continuing compliance with these rules; and

(b) The periodic review of the implementation of services and supports identified in an ISP and the quality of services delivered.

(41) "Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing.

(42) "Occupant" means any person having official residence in a certified child foster home.

(43) "OHA" means "Oregon Health Authority".

(44) "OIS" means "Oregon Intervention System".

(45) "OYA" means "Oregon Youth Authority". OYA is the agency that has been given commitment and supervision responsibilities over a youth offender by order of the juvenile court under ORS 137.124 or other statute, until the time that a lawful release authority authorizes release or terminates the commitment or placement.

(46) "Permanent Foster Care" means the long term contractual agreement between a foster provider and the Children, Adults, and Families Division of the Department, approved by the juvenile court that specifies the responsibilities and authority of the foster provider and the commitment by the permanent foster provider to raise a child until the age of majority or until the court determines that permanent foster care is no longer the appropriate plan for the child.

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(47) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(48) "Private Duty Nursing" means the state plan nursing services described in OAR chapter 410, division 132 (OHA, Private Duty Nursing Services) and OAR 411-350-0055 that are determined medically necessary to support a child or young adult in a foster home.

(49) "Protected Health Information" means any oral or written health information that identifies a child and relates to the past, present, or future physical or mental health condition, health care treatment, or payment for health care treatment.

(50) "Qualified Mental Health Professional" means a licensed medical practitioner or any other meeting the minimum qualifications specified in OAR 309-019-0125.

(51) "Revocation" means the action taken by the certifying agency to rescind a child foster home certificate of approval after the certifying agency has determined that the foster provider or the child foster home is not in compliance with one or more of these rules.

(52) "Safeguarding Equipment" means a device used to provide support to a child for the purpose of achieving and maintaining functional body position, proper balance, and protecting the individual from injury or symptoms of existing medical conditions.

(53) "Significant Medical Needs" includes, but is not limited to, total assistance required for all activities of daily living, such as access to food or fluids, daily hygiene that is not attributable to the chronological age of a child, and frequent medical interventions required by a Nursing Service Plan or ISP for health and safety of the child.

(54) "Suspension" means an immediate, temporary withdrawal of the approval to operate a child foster home after the certifying agency determines a foster provider or the child foster home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of a child.

(55) "These Rules" mean the rules in OAR chapter 411, division 346.

(56) "Unauthorized Absence" means any length of time when a child is absent from a foster home without prior approval as specified in the ISP for the child.

(57) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in the mental or physical condition of a child.

(58) "Variance" means the temporary exemption from a regulation or provision of these rules that may be granted by the Department upon written application by the certifying agency.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0110, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 27-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 46-2014, f. 12-26-14, cert. ef. 12-28-14; APD 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-20-16

## 411-346-0170

### Personal Qualifications of the Applicant and Foster Provider

(1) The applicant and foster provider must:

(a) Be responsible, stable, emotionally mature adults who exercise sound judgment;

(b) Have the interest, motivation, and ability to nurture, support, and meet the mental, physical, developmental, and emotional needs of a child placed in the foster home;

(c) Be willing to receive training and have the ability to learn and use effective child-rearing practices to enable a child placed in the foster home to grow, develop, and build positive personal relationships and self esteem;

(d) Demonstrate the knowledge and understanding of positive supports and ways of helping a child in foster care build positive personal relationships, self-control, and self esteem;

(e) Respect the child's relationship with his or her parents and siblings and be willing to work in partnership with family members, agencies, and schools involved with the child to attain the goals as listed in the IEP, ISP, and Case Plan;

(f) Respect the child's privacy in accordance with the child's age;

(g) Have supportive ties with others who might support, comfort, and advise them, such as family, friends, neighborhood contacts, churches, or community groups;

(h) Demonstrate a lifestyle and personal habits free from abuse or misuse of alcohol or drugs;

(i) Be at least 21 years of age, unless otherwise specified through ICWA and requirements for placement of Native American children; and

(j) Be able to realistically evaluate which children they may accept, work with, and integrate into their family.

### (2) HEALTH QUALIFICATIONS.

(a) The applicant and foster provider must provide the Department with the health history of each member of the household, including physical and mental health services and treatment received. Within one working day, the foster provider must inform the Department if any member of the household has or develops a serious communicable disease or other serious health condition that may affect the provider's ability to care for the child, or may affect the health and safety of the child.

(b) The applicant, foster provider, and other adults in the household caring for a child in foster care must be physically and mentally able to perform the duties of a foster provider as described in these rules.

(c) The applicant, foster provider, and others in the household must be free from abuse or misuse of alcohol or drugs. In the case of alcoholism or substance abuse, the applicant, foster provider, or others in the household must demonstrate that they have been substance-free and sober for at least two years prior to making application for certification.

(d) When requested by the Department either during the application process or while certified, the applicant or foster provider must, at their expense and from a source acceptable to the Department, supply psychological, medical or physical, sex-offender, drug and alcohol, and psychiatric reports and evaluations to the Department.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0170, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-20-16

## 411-346-0190

### Standards and Practices for Care and Services

(1) The foster provider must:

(a) Provide structure and daily activities designed to promote the physical, social, intellectual, cultural, spiritual, and emotional development of the child in the child foster home;

(b) Provide playthings and activities in the foster home, including games, recreational and educational materials, and books, appropriate to the chronological age, culture, and developmental level of the child;

(c) In accordance with the ISP and as defined in the DHS-CW case plan (if applicable), encourage the child to participate in age-appropriate and developmentally-appropriate activities including, but not limited to, extracurricular, enrichment, cultural, and social activities, and support the participation of the child in such activities with family, friends, and on his or her own when appropriate;

(d) Promote the independence and self-sufficiency of the child by encouraging and assisting the child to develop new skills and perform age-appropriate tasks;

(e) In accordance with the ISP and as defined in the DHS-CW case plan (if applicable), ask the child in foster care to participate in household chores appropriate to the age and ability of the child that are commensurate with household chores expected of the children of the foster provider;

(f) Provide the child with reasonable access to a telephone and to writing materials;

(g) In accordance with the ISP and as defined in the DHS-CW Case Plan (if applicable), permit and encourage the child to have visits with family and friends;

(h) Allow regular contacts and private visits or phone calls with the CDDP services coordinator and the DHS-CW case worker (if applicable); and

(i) Not allow a child in foster care to baby-sit in the child foster home or elsewhere without permission of the CDDP services coordinator and the guardian.

### (2) RIGHTS OF A CHILD.

(a) The rights of a child are described in OAR 411-318-0010 (Individual Rights).

(b) The individual rights are provided as described in OAR 411-318-0010 (Individual Rights).

### (3) RELIGIOUS, ETHNIC, AND CULTURAL HERITAGE.

## ADMINISTRATIVE RULES

(a) The foster provider must recognize, encourage, and support the religious beliefs, ethnic heritage, cultural identity, and language of a child and the family of a child.

(b) In accordance with the ISP and the preferences of the guardian of the child, the foster provider must participate with the ISP team to arrange transportation and appropriate supervision during religious services or ethnic events for a child whose beliefs and practices are different from those of the foster provider.

(c) The foster provider may not require a child to participate in religious activities or ethnic events contrary to the beliefs of the child.

(4) PUBLIC EDUCATION. The foster provider:

(a) Must enroll each child of school age in public school within five school days of the placement and arrange for transportation;

(b) Must comply with any Alternative Educational Plan described in the IEP for the child;

(c) Must be actively involved in the school program for the child and must participate in the development of the IEP. The foster provider may apply to be the educational surrogate of the child if requested by the parent or guardian of the child;

(d) Must consult with school personnel when there are issues with the child in school and report to the guardian and CDDP services coordinator any serious situations that may require Department involvement;

(e) Must support the child in his or her school or educational placement;

(f) Must assure the child regularly attends school or educational placement and monitor the educational progress of the child; and

(g) May sign consent to the following school related activities:

(A) School field trips within the state of Oregon;

(B) Routine social events;

(C) Sporting events;

(D) Cultural events; and

(E) School pictures for personal use only unless prohibited by the court or legal guardian.

(5) ALTERNATE CAREGIVERS.

(a) The foster provider must arrange for safe and responsible alternate care.

(b) A child care plan for a child in foster care must be approved by the Department, the CDDP, or DHS-CW before it is implemented. When a child is cared for by a child care provider or child care center, the provider or center must be certified as required by the State Child Care Division (ORS 657A.280) or be a certified foster provider.

(c) The foster provider must have a Relief Care Plan approved by the certifying agency or the Department when using alternate caregivers.

(d) The foster provider must assure the alternate caregivers, consultants, and volunteers are:

(A) 18 years of age or older;

(B) Capable of assuming foster care responsibilities;

(C) Present in the home;

(D) Physically and mentally capable to perform the duties of the foster provider as described in these rules;

(E) Cleared by a background check as described in OAR 411-346-0150, including a DHS-CW background check;

(F) Able to communicate with the child, individuals, agencies providing care to the child, the CDDP services coordinator, and appropriate others;

(G) Trained on fire safety and emergency procedures;

(H) Trained on the ISP, Behavior Support Plan, and any related protocols for the child;

(I) Able to provide the care needed for the child;

(J) Trained on the required documentation for health, safety, and behavioral needs of the child;

(K) A licensed driver and vehicle insurance in compliance with the laws of the Driver and Motor Vehicle Services Division when transporting children by motorized vehicle;

(L) Not be a person who requires care in a foster care or group home; and

(M) Not be the parent or guardian of the child.

(e) When the foster provider uses an alternate caregiver and the child is staying at the home of the alternate caregiver, the foster provider must assure the home of the alternate caregiver meets the necessary health, safety, and environmental needs of the child.

(f) When the foster provider arranges for social activities of the child for less than 24 hours, including an overnight arrangement, the foster provider must assure that the person is responsible and capable of assum-

ing child care responsibilities and is present at all times. The foster provider still maintains primary responsibility for the child.

(6) FOOD AND NUTRITION.

(a) The foster provider must offer three nutritious meals daily at times consistent with those in the community.

(A) Daily meals must include food from the four basic food groups, including fresh fruits and vegetables in season, unless otherwise specified in writing by a licensed medical professional or qualified health care provider.

(B) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(C) Consideration must be given to cultural and ethnic background in food preparation.

(b) Children must be permitted to acquire, store, and access personal foods in the home in a manner consistent with age-typical practices for children living in the community and in accordance with the child's person-centered service plan.

(c) Any home canned food used must be processed according to the guidelines of Oregon State University extension services (<http://extension.oregonstate.edu/fch/food-preservation>).

(d) All food items must be used prior to the expiration date.

(e) The foster provider must implement special diets only as prescribed in writing by a licensed medical professional or qualified health care provider.

(f) The foster provider must prepare and serve meals in the foster home where the child lives. Payment for meals eaten away from the foster home (e.g. restaurants) for the convenience of the foster provider is the responsibility of the foster provider.

(g) When serving milk, the foster provider must only use pasteurized liquid or powdered milk for consumption by a child in foster care.

(h) A child who must be bottle-fed and cannot hold the bottle, or is 11 months or younger, must be held during bottle-feeding.

(7) CLOTHING AND PERSONAL BELONGINGS.

(a) The foster provider must assure that each child has his or her own clean, well-fitting, seasonal clothing appropriate to age, gender, culture, individual needs, and comparable to the community standards.

(b) A school-age child must participate in choosing his or her own clothing whenever possible.

(c) The foster provider must allow a child to bring and acquire appropriate personal belongings.

(d) The foster provider must assure that when a child leaves the child foster home the belongings of the child, including all personal funds, medications, and personal items, remain with the child. This includes all items brought with the child and obtained while living in the child foster home.

(8) BEHAVIOR SUPPORT PRACTICES.

(a) The foster provider must teach and support a child with respect, kindness, and understanding, using positive behavioral theory and practice. Unacceptable disciplinary practices include, but are not limited to:

(A) Physical force, spanking, or threat of physical force inflicted in any manner upon the child;

(B) Verbal abuse, including derogatory remarks about the child or the family of the child that undermine the self-respect of the child;

(C) Denial of food, clothing, or shelter;

(D) Denial of visits or contacts with family members, except when otherwise indicated in the ISP or the DHS-CW case plan (if applicable);

(E) Assignment of extremely strenuous exercise or work;

(F) Threatened or unauthorized use of protective physical intervention;

(G) Threatened or use of mechanical restraints;

(H) Punishment for bed-wetting or punishment related to toilet training;

(I) Delegating or permitting punishment of a child by another child;

(J) Threat of removal from the child foster home as a punishment;

(K) Use of shower or aversive stimuli as punishment;

(L) Group punishment for misbehavior of one child;

(M) Locking a child in a room or area inside or outside of the home; and

(N) Isolating or secluding the child from others.

(b) The foster provider must set clear expectations, limits, and consequences of behavior in a non-punitive manner.

(c) The foster provider may use a time-out only for the purpose of giving the child a short break for the child to regain control. If the foster provider uses time-out, the following conditions apply:

(A) Use of time-out must be approved by the ISP team and documented in the ISP.

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(B) Only common-use living areas of the home are to be used for time-out.

(C) Time-out is to be used for short duration and frequency as approved by the ISP team. The duration must be appropriate to the chronological age, emotional condition, and developmental level of the child.

(d) No child in foster care or other child in a child foster home is to be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury, or threats of harm as defined in ORS 419B.005 and OAR 407-045-0260.

(e) BEHAVIOR SUPPORT PLAN. For a child who has demonstrated a serious threat to self, others, or property and for whom it has been decided a Behavior Support Plan is needed, the Behavior Support Plan must be developed with the approval of the ISP team.

(f) PROTECTIVE PHYSICAL INTERVENTION. A protective physical intervention must be used only for health and safety reasons and under the following conditions:

(A) As part of the ISP team approved Behavior Support Plan.

(i) When protective physical intervention is employed as part of the Behavior Support Plan, the foster provider and alternate caregivers must complete OIS training prior to the implementation of the Behavior Support Plan.

(ii) The use of any modified OIS protective physical intervention must have written approval from the OIS Steering Committee prior to implementation. Documentation of the approval of the OIS Steering Committee must be maintained in the records for the child.

(B) As in a health-related protection prescribed by a physician or qualified health care provider, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for protection during the time that a medical condition exists.

(C) As an emergency measure if absolutely necessary to protect the child or others from immediate injury and only until the child is no longer an immediate threat to self or others.

(g) MECHANICAL RESTRAINT. The use of mechanical restraints is prohibited. Mechanical restraint is not:

(A) The use of acceptable infant safety products;

(B) The use of car safety systems, consistent with applicable (Oregon) state law for children without disabilities; or

(C) The use of safeguarding equipment when ordered by a physician or health care provider and approved by the ISP team.

(h) DOCUMENTATION AND NOTIFICATION OF USE OF PROTECTIVE PHYSICAL INTERVENTION.

(A) The foster provider must document the use of all protective physical interventions in an incident report. A copy of the incident report must be provided to the CDDP services coordinator and guardian.

(B) If an approved protective physical intervention is used, the foster provider must send a copy of the incident report within five business days to the CDDP services coordinator and guardian.

(C) If an emergency or non ISP team approved protective physical intervention is used, the foster provider must send a copy of the incident report within 24 hours to the CDDP services coordinator and guardian. The foster provider must make oral notification to the CDDP services coordinator and guardian no later than the next business day.

(D) The original incident report must be on file with the foster provider in the records for the child.

(E) The incident report must include:

(i) The name of the child to whom the protective physical intervention was applied;

(ii) The date, location, type, and duration of entire incident and protective physical intervention;

(iii) The name of the provider and witnesses or people involved in applying the protective physical intervention;

(iv) The name and position of the person notified regarding the use of the protective physical intervention; and

(v) A description of the incident, including precipitating factors, preventive techniques applied, description of the environment, description of any physical injury resulting from the incident, and follow-up recommendations.

(9) MEDICAL AND DENTAL CARE. The foster provider must:

(a) Provide care and services as appropriate to the chronological age, developmental level, and condition of the child, and as identified in the ISP;

(b) Assure that the orders of a physician, qualified health care provider, or other licensed medical professional are implemented as written;

(c) Inform the physicians or qualified health care providers of current medications and changes in health status and if the child refuses care, treatments, or medications;

(d) Inform the guardian and CDDP services coordinator of any changes in the health status of the child except as otherwise indicated in the DHS-CW Permanent Foster Care contract agreement and as agreed upon in the ISP;

(e) Obtain the necessary medical, dental, therapies, and other treatments of care including, but not limited to:

(A) Making appointments;

(B) Arranging for or providing transportation to appointments; and

(C) Obtaining emergency medical care.

(f) Have prior consent from the guardian of the child for medical treatment that is not routine, including surgery and anesthesia, except in cases where a DHS-CW Permanent Foster Care contract agreement exists;

(g) Keep current medical records. The records must include when applicable:

(A) Any history of physical, emotional, and medical problems, illnesses, and mental health status;

(B) Current orders for all medications, treatments, therapies, use of protective physical intervention, special diets, adaptive equipment, and any known food or medication allergies;

(C) Completed medication administration record (MAR) from previous months;

(D) Pertinent medical and behavioral information, such as hospitalizations, accidents, immunization records, including Hepatitis B status and previous TB tests, and incidents or injuries affecting the health, safety, or emotional well-being of the child;

(E) Documentation or other notations of guardian consent for medical treatment that is not routine including surgery and anesthesia;

(F) Record of medical appointments;

(G) Medical appointment follow-up reports provided to the foster provider; and

(H) Copies of previous mental health assessments, assessment updates including multi-axial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services.

(h) Provide, when requested, copies of medical records and medication administration records to the legal guardian of the child, CDDP services coordinator, and DHS-CW caseworker; and

(i) Provide copies, as applicable, of the medical records described in subsection (9)(g)(H) of this section to a licensed medical professional prior to a medical appointment or no later than the time of the appointment with the licensed medical professional.

(10) MEDICATIONS AND PHYSICIAN OR QUALIFIED HEALTH CARE PROVIDER ORDERS.

(a) There must be authorization by a physician or qualified health care provider in the file for the child prior to the usage of, or implementation of, any of the following:

(A) All prescription medications;

(B) Nonprescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Therapies and use of mechanical restraint as a health and safety related protection;

(E) Modified or special diets;

(F) Prescribed adaptive equipment; and

(G) Aids to physical functioning.

(b) The foster provider must have:

(A) A copy of the authorization in the format of a written order signed by a physician or a qualified health care provider;

(B) Documentation of a telephone order by a physician or qualified health care provider with changes clearly documented on the MAR, including the name of the person giving the order, the date and time, and the name of the person receiving the telephone order; or

(C) A current prescription or label from the manufacturer as specified by the order of a physician on file with the pharmacy.

(c) A provider or alternate caregiver must carry out orders as prescribed by a physician or a qualified health care provider. Changes may not be made without the authorization of a physician or a qualified health care provider.

(d) Each medication for a child, including refrigerated medication, must be clearly labeled with the label of the pharmacist or in the originally labeled container from the manufacturer and kept in a locked location or stored in a manner that prevents access by children.

(e) Unused, outdated, or recalled medications may not be kept in the child foster home and must be disposed of in a manner that prevents illegal

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diversion into the possession of people other than for which the medication was prescribed.

(f) The foster provider must keep a MAR for each child. The MAR must be kept for all medications administered by the foster provider or alternate caregiver to that child, including over the counter medications and medications ordered by physicians or qualified health care providers and administered as needed (PRN) for the child.

(g) The MAR must include:

(A) The name of the child in foster care;

(B) A transcription of the written order of the physician or licensed health care provider, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) A transcription of the printed instructions from the package for topical medications and treatments without an order from a physician or licensed health care provider;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN medication was administered;

(H) Documented effectiveness of any PRN medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

(J) Any known allergy or adverse drug reactions and procedures that maintain and protect the physical health of the child placed in the foster home.

(h) Any errors in the MAR must be corrected by circling the error and then writing on the back of the MAR what the error was and why.

(i) Treatments, medication, therapies, and special diets must be documented on the MAR when not used or applied according to the order of a physician or licensed health care provider.

(j) SELF-ADMINISTRATION OF MEDICATION. For any child who is self-administering medication, the foster provider must:

(A) Have documentation that a training program was initiated with approval of the ISP team or that training for the child was unnecessary;

(B) Have a training program that provides for retraining when there is a change in dosage, medication, and time of delivery;

(C) Provide for an annual review, at a minimum as part of the ISP process, upon completion of the training program;

(D) Assure that the child is able to handle his or her own medication regime;

(E) Keep medications stored in a locked area inaccessible to others; and

(F) Maintain written documentation of all training in the medical record for the child.

(k) The foster provider may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a licensed health care provider.

(l) Any medication that is used with the intent to alter the behavior of a child must be documented in the ISP for the child.

(m) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the foster provider must obtain a signed balancing test from the prescribing health care provider using the Balancing Test Form (form SDS 4110). Foster providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed as well as any side effects observed.

(n) PRN prescribed psychotropic medication is prohibited.

(o) A mental health assessment by a qualified mental health professional or licensed medical professional must be completed, except as noted in subparagraph (A) of this subsection, prior to the administration of a new medication for more than one psychotropic or any antipsychotic medication to a child in foster care.

(A) A mental health assessment is not required in the following situations:

(i) In a case of urgent medical need;

(ii) For a substitution of a current medication within the same class;

or

(iii) A medication order given prior to a medical procedure.

(B) When a mental health assessment is required, the foster provider:

(i) Must notify the DHS-CW caseworker when the child is in legal custody of DHS-CW; or

(ii) Must arrange for a mental health assessment when the child is a voluntary care placement.

(C) The mental health assessment:

(i) Must have been completed within three months prior to the prescription; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Whenever possible, information from the mental health assessment must be communicated to the licensed medical professional prior to the issuance of a prescription for psychotropic medication.

(p) Within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for the child in foster care, the foster provider must notify:

(A) The CDDP services coordinator; and

(B) The parent of the child when the parent retains legal guardianship or the person who has legal guardianship; or

(C) DHS-CW when DHS-CW is the legal guardian of the child.

(q) The notification from the foster provider to the parent or guardian and the CDDP services coordinator must contain:

(A) The name of the prescribing physician or qualified health care provider;

(B) The name of the medication;

(C) The dosage, any change of dosage, suspension, or discontinuation of the current psychotropic medication;

(D) The dosage administration schedule prescribed; and

(E) The reason the medication was prescribed.

(r) The foster provider must get a written informed consent prior to filling a prescription for any new psychotropic medication except in a case of urgent medical need from DHS-CW when DHS-CW is the legal guardian.

(s) The foster provider must cooperate as requested, when a review of psychotropic medications is indicated.

(11) NURSING SERVICES. When nursing services are provided to a child, the foster provider must:

(a) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the child; and

(b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(12) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a foster provider or alternate caregiver;

(F) Teaching and education of the foster provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude direct nursing services.

(c) A Nursing Service Plan must be present when Department funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in medical condition requires an update to the Nursing Service Plan.

(e) When community nursing services are provided to a child, the foster provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the child; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(f) A registered nurse providing community nursing services must:

(A) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048;

(B) Meet the qualifications described in OAR 411-048-0210; and

(C) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

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(g) A registered nurse providing community nursing services must comply with:

(A) Provider record and documentation requirements referenced in OAR 407-120-0100 -1505 for financial, clinical, and other records including the Provider Enrollment Agreement and electronic billing procedures;

(B) Department direct contracts (if applicable); and

(C) Service record requirements outlined in this rule.

(13) PRIVATE DUTY NURSING. As defined in OAR chapter 410, division 132 (OHA, Private Duty Nursing Services) and the Medicaid State Plan, private duty nursing services may be provided to a child or young adult aged 0 through 20 that resides in a foster home and meets the clinical criteria described in OAR 411-350-0055 (Private Duty Nursing).

(a) A Nursing Service Plan must be present when OHA funds are used for private duty nursing services. The services coordinator must authorize the provision of private duty nursing services as identified in an ISP.

(b) When private duty nursing services are provided, the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the child; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(c) A nurse providing private duty nursing services must be an enrolled Medicaid Provider as described in OAR 410-132-0200 (OHA, Provider Enrollment).

(14) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a foster provider or alternate caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

(15) CHILD RECORDS.

(a) GENERAL INFORMATION OR SUMMARY RECORD. The provider must maintain a record for each child in the home. The record must include:

(A) The name, date of entry into the foster home, date of birth, gender, religious preference, and guardianship status of the child;

(B) The names, addresses, and telephone numbers of the guardian, family, or other significant person of the child;

(C) The name, address, and telephone number of the preferred primary health care provider, designated back up health care provider and clinic, dentist, preferred hospital, medical card number and any private insurance information, and Oregon Health Plan choice of the child;

(D) The name, address, and telephone number of the school program for the child; and

(E) The name, address, and telephone number of the CDDP services coordinator and representatives of other agencies providing services to the child.

(b) EMERGENCY INFORMATION. The foster provider must maintain emergency information for each child receiving foster care services in the child foster home. The emergency information must be kept current and must include:

(A) The name of the child;

(B) The address and telephone number of the child;

(C) The physical description of the child, which may include a picture and the date it was taken, and identification of:

(i) The race, gender, height, weight range, hair, and eye color of the child; and

(ii) Any other identifying characteristics that may assist in identifying the child if the need arises, such as marks or scars, tattoos, or body piercing.

(D) Information on the abilities and characteristics of the child including:

(i) How the child communicates;

(ii) The language the child uses or understands;

(iii) The ability of the child to know how to take care of bodily functions; and

(iv) Any additional information that may assist a person not familiar with the child to understand what the child may do for him or herself.

(E) The health support needs of the child including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person needs to know when taking care of the child;

(iv) Special dietary or nutritional needs such as requirements around textures or consistency of foods and fluids;

(v) Food or fluid limitations due to allergies, diagnosis, or medications the child is taking that may be an aspiration risk or other risk for the child;

(vi) Additional special requirements the child has related to eating or drinking such as special positional needs or a specific way foods or fluids are given to the child;

(vii) Physical limitations that may affect the ability of the child to communicate, respond to instructions, or follow directions;

(viii) Specialized equipment needed for mobility, positioning, or other health related needs;

(ix) The emotional and behavioral support needs of the child including:

(I) Mental health or behavioral diagnosis and the behaviors displayed by the child; and

(II) Approaches to use when supporting the child to minimize emotional and physical outbursts.

(x) Any court ordered or guardian authorized contacts or limitations;

(xi) The supervision requirements of the child and why; and

(xii) Any additional pertinent information the provider has that may assist in the care and support of the child if a natural or man-made disaster occurs.

(c) EMERGENCY PLANNING. The foster provider must post emergency telephone numbers in close proximity to all phones utilized by the foster provider or alternate caregivers. The posted emergency telephone numbers must include:

(A) Telephone numbers of the local fire, police department, and ambulance service if not served by a 911 emergency services; and

(B) The telephone number of any emergency physician and additional people to be contacted in the case of an emergency.

(d) WRITTEN EMERGENCY PLAN.

(A) Foster providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all children in foster care in the event of an emergency or disaster. The Emergency Plan must:

(i) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the responsibilities of the foster provider and alternative caregiver.

(ii) Consider the needs of the child and address all natural and human-caused events identified as a significant risk for the child foster home such as a pandemic or an earthquake.

(iii) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place when unable to relocate for a minimum of three days under the following conditions:

(I) Extended utility outage;

(II) No running water;

(III) Inability to replace food supplies; and

(IV) An alternate caregiver is unable to provide relief care or additional support and care.

(iv) Include provisions for evacuation and relocation that identifies:

(I) The duties of the alternate caregivers during evacuation, transporting, and housing of the child, including instructions to notify the parent or legal guardian of the child, the Department or the designee of the Department, the CDDP services coordinator, and DHS-CW as applicable, of the plan to evacuate or the evacuation of the child foster home as soon as the emergency or disaster reasonably allows;

(II) The method and source of transportation;

(III) Planned relocation sites that are reasonably anticipated to meet the needs of the child;

(IV) A method that provides people unknown to the child the ability to identify each child by the name of the child and to identify the name of the supporting provider for the child; and

(V) A method for tracking and reporting to the Department or the designee of the Department and the local CDDP, the physical location of each child in foster care until a different entity resumes responsibility for the child.

(v) Address the needs of the child including provisions to provide:

(I) Immediate and continued access to medical treatment, information necessary to obtain care, treatment, food, and fluids for the child during and after an evacuation and relocation;

(II) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(III) Behavior support needs anticipated during an emergency; and

(IV) The supports needed to meet the life-sustaining and safety needs of the child.



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(B) The foster provider must provide and document all training to alternate caregivers regarding the responsibilities of the alternate caregiver for implementing the Emergency Plan.

(C) The foster provider must re-evaluate and revise the Emergency Plan at least annually or when there is a significant change in the child foster home.

(D) The foster provider must complete the Emergency Plan Summary, on the form supplied by the Department, and must send the Emergency Plan Summary to the Department annually and upon change of foster provider or location of the child foster home.

(e) INDIVIDUAL SUPPORT PLAN (ISP). Within 60 days of placement, the ISP for a child must be prepared and updated at least annually.

(A) If requested by the child or guardian, the foster provider must participate with the ISP team in the development and implementation of the ISP to address the behavior, medical, social, financial, safety, and other support needs of the child.

(B) Prior to, or upon entry to, or exit from the child foster home, the foster provider must participate in the development and implementation of a Transition Plan for the child.

(i) The Transition Plan must include a summary of the services necessary to facilitate the adjustment of the child to the child foster home or after care plan; and

(ii) Identify the supports necessary to ensure the health, safety, and any assessments and consultations needed for ISP development.

(f) FINANCIAL RECORDS.

(A) The foster provider must maintain a separate financial record for each child. Errors must be corrected with a single strike through and initialed by the person making the correction. The financial record must include:

(i) The date, amount, and source of all income received on behalf of the child;

(ii) The room and board fee that is paid to the foster provider at the beginning of each month;

(iii) The date, amount, and purpose of funds disbursed on behalf of the child; and

(iv) The signature of the person making the entry.

(B) Any single transaction over \$25 purchased with the personal funds of the child, unless otherwise indicated in the ISP for the child, must be documented in the financial record for the child and include the receipt.

(C) The ISP team may address how the personal spending money of a child is managed.

(D) If the child has a separate commercial bank account, records from the account must be maintained with the financial record for the child.

(E) The personal funds of a child must be maintained in a safe manner and separate from the funds of other members of the household.

(F) Misuse of funds may be cause for suspension, revocation, or denial of renewal of the child foster home certificate.

(g) PERSONAL PROPERTY RECORD.

(A) The foster provider must maintain a written record of the property of a child of monetary value of more than \$25 or that has significant personal value to the child, parent, or guardian, or as determined by the ISP team. Errors must be corrected with a single strike through and initialed by the person making the correction.

(B) Personal property records are not required for children who have a court approved Permanent Foster Care contract agreement unless requested by the guardian of the child.

(C) The personal property record must include:

(i) The description and identifying number, if any;

(ii) The date when the child brought in the personal property or made a new purchase;

(iii) The date and reason for the removal from the record; and

(iv) The signature of the person making the entry.

(h) EDUCATIONAL RECORDS. The foster provider must maintain the following educational records when available:

(A) The report cards for the child;

(B) Any reports received from the teacher or the school;

(C) Any evaluations received as a result of educational testing or assessment; and

(D) Disciplinary reports regarding the child.

(i) Child records must be available to representatives of the Department, the certifying agency, and DHS-CW conducting inspections or investigations, as well as to the child, if appropriate, and the guardian or other legally authorized people.

(j) Child records must be kept for a period of three years. If a child moves or the foster home closes, copies of pertinent information must be transferred to the new home of the child.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0190, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 46-2014, f. 12-26-14, cert. ef. 12-28-14; APD 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-20-16

## 411-346-0200

### Environmental Standards

(1) GENERAL CONDITIONS.

(a) The buildings and furnishings must be clean and in good repair and grounds must be maintained and accessible according to the needs of the children residing in the home.

(b) Walls, ceilings, windows, and floors must be of such character to permit frequent washing, cleaning, or painting.

(c) There must be no accumulation of garbage, debris, or rubbish.

(d) The home must have a safe, properly installed, maintained, and operational heating system. Areas of the home used by the child in foster care must be maintained at normal comfort range during the day and during sleeping hours. During times of extreme summer heat, the provider must make reasonable effort to make the child comfortable using available ventilation, fans, or air-conditioning.

(2) EXTERIOR ENVIRONMENT.

(a) The premises must be free from objects, materials, and conditions that constitute a danger to the occupants.

(b) Swimming pools, wading pools, ponds, hot tubs, and trampolines must be maintained to assure safety, kept in clean condition, equipped with sufficient safety barriers or devices to prevent injury, and used by a child in foster care only under direct supervision by the provider or approved alternate caregiver.

(c) The home must have a safe outdoor play area on the property or within reasonable walking distance.

(3) INTERIOR ENVIRONMENT.

(a) KITCHEN.

(A) Equipment necessary for the safe preparation, storage, serving, and cleanup of meals must be available and kept in working and sanitary condition.

(B) Meals must be prepared in a safe and sanitary manner that minimizes the possibility of food poisoning or food-borne illness.

(C) If the washer and dryer are located in the kitchen or dining room area, soiled linens and clothing must be stored in containers in an area separate from food and food storage prior to laundering.

(b) DINING AREA. The home must have a dining area so the child in foster care may eat together with the foster family.

(c) LIVING OR FAMILY ROOM. The home must have sufficient living or family room space that is furnished and accessible to all members of the family, including the child in foster care.

(d) BEDROOMS. Bedrooms used by the child in foster care must:

(A) Have adequate space for the age, size, and specific needs of each child;

(B) Be finished and attached to the house, have walls or partitions of standard construction that go from floor to ceiling.

(C) Have an entrance door that:

(i) Opens directly to a hallway or common use room without passage through another bedroom or common bathroom; and

(ii) Meets the following requirements for the use of locks:

(I) Locks must be single action release; and

(II) For a child under the age of 18, a lock is only permitted when the ISP team has determined that a lock is a safe and appropriate means to support the privacy and independence of the child; or

(III) For a child age 18 or older, a lock is required unless there is a health or safety risk and an individually-based limitation has been implemented in accordance with OAR 411-004-0040.

(D) Have windows that open, provide sufficient natural light, and ventilation with window coverings that take into consideration the safety, care needs, and privacy of the child;

(E) Have no more than four children to a bedroom;

(F) Have safe, age appropriate furnishings that are in good repair provided for each child, including:

(i) A bed or crib with a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, and a water proof mattress cover if the child is incontinent;

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(ii) A private dresser or similar storage area for personal belongings that is readily accessible to the child;

(iii) A closet or similar storage area for clothing that is readily accessible to the child; and

(iv) An adequate supply of clean bed linens, blankets, and pillows. Bed linens are to be properly fitting and provided for each child's bed.

(G) Be on the ground level for a child who is non-ambulatory or has impaired mobility;

(H) Provide flexibility in the decoration for the personal tastes and expressions of the child placed in the provider's home;

(I) Be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies or be equipped with a working monitor;

(J) Have no three-tier bunk beds in bedrooms occupied by a child in foster care; and

(K) Not be located on the third floor or higher from the ground level.

(e) A child of the foster provider may not be required to sleep in a room also used for another purpose in order to accommodate a child in foster care.

(f) The foster provider may not permit the following sleeping arrangements for a child placed in their home:

(A) Children of different sexes in the same room when either child is over the age of five years of age; and

(B) Children over the age of 12 months sharing a room with an adult.

(g) BATHROOMS.

(A) Bathrooms must have:

(i) Tubs or showers, toilets, and sinks operable and in good repair with hot and cold water;

(ii) A sink located near each toilet;

(iii) At least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(iv) Hot and cold water in sufficient supply to meet the needs of the child for personal hygiene. Hot water temperature sources for bathing and cleaning areas that are accessible by the child in foster care may not exceed 120 degrees F;

(v) Grab bars and non-slip floor surfaces for toilets, tubs, or showers for the child's safety as necessary for the child's care needs; and

(vi) Barrier-free access to toilet and bathing facilities with appropriate fixtures for a child who utilizes a wheel chair or other mechanical equipment for ambulation. Barrier free must be appropriate for the non-ambulatory child's needs for maintaining good personal hygiene.

(B) The foster provider must provide each child with the appropriate personal hygiene and grooming items that meet each child's specific needs and minimize the spread of communicable disease.

(C) Window coverings in bathrooms must take into consideration the safety, care needs, and privacy of the child.

(4) GENERAL SAFETY.

(a) The foster provider must protect the child from safety hazards.

(b) Stairways must be equipped with handrails.

(c) A functioning light must be provided in each room and stairway.

(d) In homes with a child in foster care three years of age or less, or a child with impaired mobility, the stairways must be protected with a gate or door.

(e) Hot water heaters must be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(f) Adequate safeguards must be taken to protect a child who may be at risk for injury from electrical outlets, extension cords, and heat-producing devices.

(g) The foster home must have operable phone service at all times that is available to all persons in the foster home, including when there are power outages. The home must have emergency phone numbers readily accessible and in close proximity to the phone.

(h) The foster provider must store all medications, poisonous chemicals, and cleaning materials in a way that prevents access by a child.

(i) The foster provider must restrict a child's access to potentially dangerous animals. Only domestic animals may be kept as pets. Pets must be properly cared for and supervised.

(j) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by local ordinances must be made available to the Department upon request.

(k) The foster provider must take appropriate measures to keep the house and premises free of rodents and insects.

(l) To protect the safety of a child in foster care, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the child.

(m) The foster provider must have first aid supplies in the home in a designated place easily accessible to adults.

(n) There must be emergency access to any room that has a lock.

(o) An operable flashlight, at least one per floor, must be readily available in case of emergency.

(p) House or mailbox numbers must be clearly visible and easy to read for easy identification by emergency vehicles.

(q) Use of video monitors must only be used as indicated in the ISP or BSP.

(5) FIRE SAFETY.

(a) Smoke alarms must be installed in accordance with manufacturer's instructions, equipped with a device that warns of low battery, and maintained to function properly.

(A) A smoke alarm must be installed in each bedroom, adjacent hallways leading to the bedrooms, common living areas, basements, and at the top of every stairway in multi-story homes.

(B) Ceiling placement of smoke alarms is recommended. If wall-mounted, smoke alarms must be mounted as per the manufacturer's instructions.

(b) At least one fire extinguisher, minimally rated 2:A:10:B:C, must be visible and readily accessible on each floor, including basements. A qualified professional who is well versed in fire extinguisher maintenance must inspect every fire extinguisher at least once per year. All recharging and hydrostatic testing must be completed by a qualified entity properly trained and equipped for this purpose.

(c) Use of space heaters must be limited to only electric space heaters equipped with tip-over protection. Space heaters must be plugged directly into the wall. Extension cords may not be used with space heaters. Freestanding kerosene, propane, or liquid fuel space heaters may not be used in the foster home.

(d) An Emergency Evacuation Plan must be developed, posted, and rehearsed at least once every 90 days with at least one drill practice per year occurring during sleeping hours. Alternate caregivers and other staff must be familiar with the Emergency Evacuation Plan and a new child placed in foster care must be familiar with the Emergency Evacuation Plan within 24 hours. Fire drill records must be retained for one year.

(A) Fire drill evacuation rehearsal must document the date, time for full evacuation, location of proposed fire, and names of all persons participating in the evacuation rehearsal.

(B) The foster provider must be able to demonstrate the ability to evacuate all children in foster care from the home within three minutes.

(e) Foster homes must have two unrestricted exits in case of fire. A sliding door or window that may be used to evacuate a child may be considered a usable exit.

(f) Barred windows or doors used for possible exit in case of fire must be fitted with operable quick release mechanisms.

(g) Every bedroom used by a child in foster care must have at least one operable window, of a size that allows safe rescue, with safe and direct exit to the ground, or a door for secondary means of escape or rescue.

(h) All external and inside doors must have simple hardware with an obvious method of operation that allows for safe evacuation from the home. A home with a child that is known to leave their place of residence without permission must have a functional and activated alarm system to alert the foster provider.

(i) Fireplaces and wood stoves must include secure barriers to keep a child safe from potential injury and away from exposed heat sources.

(j) Solid or other fuel-burning appliances, stoves, or fireplaces must be installed according to manufacturer's specifications and under permit, where applicable. All applicants applying for a new child foster home certificate after July 1, 2007 must have at least one carbon monoxide sensor installed in the home in accordance with manufacturer's instructions if the home has solid or other fuel-burning appliances, stoves, or fireplaces. All foster providers certified prior to July 1, 2007 and moving to a new location that uses solid or other fuel-burning appliances, stoves, or fireplaces, must install a carbon monoxide sensor in the home in accordance with manufacturer's instructions prior to being certified at the new location.

(k) Chimneys must be inspected at the time of initial certification and if necessary the chimney must be cleaned. Chimneys must be inspected annually unless the fireplace and or solid fuel-burning appliance was not used through the certification period and may not be used in the future. Required annual chimney inspections must be made available to the certifying agency during the certification renewal process.

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(l) A signed statement by the foster provider and certifying agency assuring that the fireplace, or solid fuel-burning appliance, or both may not be in use must be submitted to the Department with the renewal application if a chimney inspection is not completed.

(m) Flammable and combustible materials must be stored away from any heat source.

## (6) SANITATION AND HEALTH.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, the water source must be tested for coliform bacteria by a certified agent yearly and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) All plumbing must be kept in good working order. If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, and removed weekly.

## (d) SMOKING.

(A) The foster provider may not provide tobacco products in any form to a child under the age of 18 placed in their home.

(B) A child in foster care may not be exposed to second hand smoke in the foster home or when being transported.

## (7) TRANSPORTATION SAFETY.

(a) The foster provider must ensure that safe transportation is available for children to access schools, recreation, churches, scheduled medical care, community facilities, and urgent care.

(b) If there is not a licensed driver and vehicle at all times there must be a plan for urgent and routine transportation.

(c) The foster provider must maintain all vehicles used to transport a child in a safe operating condition and must ensure that a first aid kit is in each vehicle.

(d) All motor vehicles owned by the foster provider and used for transporting a child must be insured to include liability.

(e) Only licensed adult drivers may transport a child in foster care in a motor vehicle. The motor vehicle must be insured to include liability.

(f) When transporting a child in foster care, the driver must ensure that the child uses seat belts or appropriate safety seats. Car seats or seat belts must be used for transporting a child in accordance with the Department of Transportation under ORS 815.055.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0200, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-20-16

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**Rule Caption:** Homecare Workers Enrolled in the Consumer-Employed Provider Program

**Adm. Order No.:** APD 2-2016(Temp)

**Filed with Sec. of State:** 3-2-2016

**Certified to be Effective:** 3-2-16 thru 8-28-16

**Notice Publication Date:**

**Rules Amended:** 411-031-0020, 411-031-0040, 411-031-0050

**Subject:** The Department of Human Services (Department) is immediately amending OAR 411-031 to bring the rules into compliance with new federal and state law and collective bargaining requirements in regards to homecare workers. The proposed rule changes:

- Permit the Department to begin calculating, tracking, and paying homecare workers for travel time between consumer-employers. This is a new requirement mandated by the United States Department of Labor (DOL) and the 2015-2019 Collective Bargaining Agreement between the Oregon Home Care Commission and the Service Employees International Union, Local 503, OPEU.

- Enable the Department to comply with Senate Bill 622, which adds homecare workers to the list of "Mandatory Reporters". The rules establish reporting standards and a process for what happens if a homecare worker does not report as they are required to do.

- Permit homecare workers to appeal suspensions of their provider enrollment more quickly and to proceed to administrative hearing

more easily than the current process allows. These temporary rules bring the Department into compliance with ORS 183.310.

- Minor grammar, formatting, and housekeeping changes were done to align the rules with other current program rule and definition changes.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-031-0020

### Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 031:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Ability or Willingness to Maintain Consumer-Employer Confidentiality" means a homecare worker is able and willing to keep personal information about a consumer-employer private.

(3) "Abuse" means abuse as defined by OAR 411-020-0002, 407-045-0260, and 943-045-0260.

(4) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for the individual's health and safety. Activities include eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior as defined in OAR 411-015-0006.

(5) "ADL" means "activities of daily living" as defined in this rule.

(6) "Administrative Review" means the internal process the Department uses to review a decision to terminate or not to terminate a homecare worker's provider enrollment.

(7) "Adult" means any person at least 18 years of age.

(8) "Adult Protective Services" mean the services provided in response to the need for protection from abuse described in OAR chapter 411, division 020, chapter 407, division 045, and chapter 943, division 045.

(9) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(10) "APD" means "Aging and People with Disabilities".

(11) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities in a planning and service area. The terms AAA and Area Agency on Aging are inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(12) "Base Pay Rate" means the hourly wage to be paid to homecare workers, without any differentials, established in the Collective Bargaining Agreement.

(13) "Burden of Proof" means the existence or nonexistence of a fact is established by a preponderance of evidence.

(14) "Career Homecare Worker" means a homecare worker with an unrestricted provider enrollment. A career homecare worker has a provider enrollment that allows the homecare worker to provide services to any eligible in-home services consumer.

(15) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. The case manager authorizes and implements an individual's service plan and monitors the services delivered as described in OAR chapter 411, division 028.

(16) "Collective Bargaining Agreement" means the ratified Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503. The Collective Bargaining Agreement is maintained on the Department's web site: (<http://www.dhs.state.or.us/spd/tools/cm/homecare/index.htm>). Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(17) "Community Transportation" means non-medical transportation a homecare worker provides to a consumer-employer:

(a) Using the homecare worker's personal vehicle; and

(b) Provided in accordance with the consumer-employer's authorized service plan.

(18) "Consumer" or "Consumer-Employer" means an individual eligible for in-home services.

(19) "Consumer-Employed Provider Program" refers to the program wherein a provider is directly employed by a consumer to provide either hourly or live-in in-home services. In some aspects of the employer and employee relationship, the Department acts as an agent for the consumer-employer. These functions are clearly described in OAR 411-031-0040.

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(20) "Department" means the Department of Human Services.

(21) "Disability" means a physical, cognitive, or emotional impairment, which for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006.

(22) "Enhanced Homecare Worker" means a homecare worker who is certified by the Oregon Home Care Commission to provide services for consumers who require assistance with certain medically-driven services and supports.

(23) "Established Work Schedule" means the work schedule established by the consumer-employer to best meet the consumer's assessed needs and agreed to by the homecare worker employed by the consumer. A homecare worker adheres to the established work schedule by arriving to work on time, requesting absence from work in a timely manner, and notifying the consumer-employer of unscheduled absences in a timely manner.

(24) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(25) "Fiscal Improprieties" means a homecare worker committed financial misconduct involving a consumer's money, property, or benefits.

(a) Fiscal improprieties include, but are not limited to:

(A) Financial exploitation;

(B) Borrowing money from a consumer;

(C) Taking a consumer's property or money;

(D) Accepting or receiving items or services purchased for the homecare worker by a consumer-employer;

(E) Forging a consumer's signature;

(F) Falsifying payment records;

(G) Claiming payment for hours not worked;

(H) Claiming hours for ADL, IADL or 24-hour availability care during the same time hours are claimed for travel;

(I) Repeatedly working or claiming to work hours not prior authorized on a consumer-employer's service plan;

(J) Claiming hours worked for a consumer-employer while receiving paid time off for a consumer-employer; or

(K) Intentional acts committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a homecare worker and a consumer-employer with whom the homecare worker is related unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or OAR 407-045-0260, has been substantiated based on an adult protective services investigation.

(26) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide either hourly or live-in services to the consumer.

(a) The term homecare worker includes:

(A) A consumer-employed provider in the Spousal Pay and Oregon Project Independence Programs;

(B) A consumer-employed provider that provides state plan personal care services; and

(C) A relative providing Medicaid in-home services to a consumer living in the relative's home.

(b) The term homecare worker does not include an Independent Choices Program provider or a personal support worker enrolled through Developmental Disabilities Services or the Addictions and Mental Health Division.

(27) "Hourly Services" mean the in-home services, including activities of daily living and instrumental activities of daily living, that are provided by homecare workers to consumer-employers at regularly scheduled times.

(28) "IADL" means "instrumental activities of daily living" as defined in this rule.

(29) "Imminent Danger" means there is reasonable cause to believe an individual's life or physical, emotional, or financial well-being is in danger if no intervention is immediately initiated.

(30) "Individual" means an older adult or an adult with a disability applying or eligible for services.

(31) "In-Home Services" mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(32) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(33) "Live-In Services" mean services provided when an individual requires and receives assistance with activities of daily living and instru-

mental activities of daily living throughout a 24-hour work period by one homecare worker.

(34) "Mandatory Reporter" means an individual who is required under ORS 124.050-060 to report the abuse or suspected abuse of a child, an older adult, or the resident of a nursing facility, to the Department or to a law enforcement agency.

(35) "Medically-Driven Services and Supports" means medical or behavioral treatments, assessed by a case manager and included in a consumer's service plan, which a consumer requires in addition to assessed ADL, IADL and live-in services.

(36) "Non-Motorized Transportation" means traveling on foot, riding a bicycle, traveling in a wheelchair or scooter, or other similar means of transportation.

(37) "Office of Administrative Hearings" means the Office described in ORS 183.605-690 established within the Employment Department to conduct contested case proceedings, and other such duties, on behalf of designated state agencies.

(38) "Older Adult" means any person at least 65 years of age.

(39) "Oregon Homecare Commission" means the commission established and operated pursuant to Article XV, Section 11, of the Oregon Constitution, and ORS 410.595-625.

(40) "Oregon Homecare Workers Benefits Trust" means the trust that administers homecare workers' medical benefits and paid time off as set forth in the Collective Bargaining Agreement.

(41) "Oregon Project Independence" means the program of in-home services described in OAR chapter 411, division 032.

(42) "Paid Time Off" means time where a homecare worker is not providing services to a consumer and is instead being paid through the Oregon Homecare Workers Benefits Trust.

(43) "Personal Support Worker" has the meaning given in OAR 411-375-0010(23).

(44) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.

(45) "Provide Services as Required" means a homecare worker provides services to a consumer as described in the consumer's service plan.

(46) "Provider" means the person who renders the services.

(47) "Provider Enrollment" means a homecare worker's authorization to work as a provider employed by a consumer for the purpose of receiving payment for authorized services provided to consumers of the Department. Provider enrollment includes the issuance of a Medicaid provider number.

(48) "Provider Number" means an identifying number issued to each homecare worker who is enrolled as a provider through the Department.

(49) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.

(50) "Relief Homecare Worker" means a homecare worker who works for a consumer-employer when the consumer-employer's regularly scheduled homecare worker is absent.

(51) "Representative" or "Consumer-Employer's Representative" means any of the following:

(a) A person appointed by a consumer-employer to participate in service planning on the consumer-employer's behalf.

(b) A consumer-employer's natural support with longstanding involvement in assuring the consumer-employer's health, safety, and welfare.

(c) A person, other than the consumer, who, on the consumer's behalf, assumes or is given any of the employer responsibilities listed in OAR 411-030-0040(8).

(52) "Restricted Homecare Worker" means the Department or Area Agency on Aging has placed restrictions on a homecare worker's provider enrollment as described in OAR 411-031-0040.

(53) "Self-Management Tasks" means "Instrumental Activities of Daily Living" as defined in this rule.

(54) "Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a homecare worker possesses the physical, mental, or emotional skills or abilities necessary to perform services and meet the needs of consumers.

(55) "State Minimum Wage" or "Minimum Wage" means the rate of pay set forth in ORS 653.025.

(56) "These Rules" mean the rules in OAR chapter 411, division 031.

(57) "Unacceptable Background Check" means a check that produces information related to a person's background that precludes the person from being a homecare worker for the following reasons:

(a) The person applying to be a homecare worker has been disqualified under OAR 407-007-0275;

# ADMINISTRATIVE RULES

(b) A homecare worker enrolled in the Consumer-Employed Provider Program for the first time, or after any break in enrollment, after July 28, 2009 has been disqualified under OAR 407-007-0275; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(58) "Unwelcome Nuisance to the Workplace" means unwelcome guests or pets invited by a homecare worker into a consumer's home, resulting in the consumer's dissatisfaction or a homecare worker's inattention to the consumer's required service needs.

(59) "Violates the Protective Service and Abuse Rules" means, based on a substantiated allegation of abuse, a homecare worker was found to have violated the protective service and abuse rules described in OAR chapter 411, division 020, chapter 407, division 045, or chapter 943, division 045.

(60) "Violated the Requirement to Maintain a Drug-Free Workplace" means there was a substantiated complaint against a homecare worker for:

(a) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of a consumer, while in the consumer's home or care setting, or while transporting the consumer; or

(b) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to a consumer or while in the consumer's home or care setting.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; SPD 26-2010, f. 11-29-10, cert. ef. 12-1-10; SPD 13-2012(Temp), f. & cert. ef. 9-26-12 thru 3-25-13; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13; SDP 18-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 47-2013, f. 12-13-13, cert. ef. 12-15-13; ADP 2-2016(Temp), f. & cert. ef. 3-2-16 thru 8-28-16

## 411-031-0040

### Consumer-Employed Provider Program

The Consumer-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes a provider is required for activities of daily living (ADLs), instrumental activities of daily living (IADLs), and twenty-four hour availability. The hourly structure assumes a provider is required for ADLs and IADLs during specific substantial periods. Except as indicated, all of the following criteria apply to both hourly and live-in providers:

(1) **EMPLOYMENT RELATIONSHIP.** The relationship between a provider and a consumer is that of employee and employer. A homecare worker shall not be a representative, (see OAR 411-031-0020(51)), for a consumer-employer for whom the homecare worker currently provides paid services.

(2) **CONSUMER-EMPLOYER JOB DESCRIPTIONS.** A consumer-employer or consumer-employer's representative is responsible for creating and maintaining a job description for a potential provider in coordination with the services authorized by the consumer's case manager.

(3) **HOMECARE WORKER LIABILITIES.** The only benefits available to homecare workers are those negotiated in the Collective Bargaining Agreement and as provided in Oregon Revised Statute. This Agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare workers are not state employees.

(4) **CONSUMER-EMPLOYER ABSENCES.** When a consumer-employer is absent from his or her home due to an illness or medical treatment and is expected to return to the home within a 30 day period, the consumer's live-in provider may be retained to ensure the live-in provider's presence upon the consumer's return or to maintain the consumer's home for up to 30 days at the rate of pay immediately preceding the consumer's absence.

(5) **SELECTION OF HOMECARE WORKER.** A consumer-employer or consumer-employer's representative carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The consumer-employer or consumer-employer's representative has the right to employ any person who successfully meets the provider enrollment standards described in section (8) of this rule. The Department or AAA office determines whether a potential homecare worker meets the enrollment standards needed to provide services authorized and paid for by the Department.

(6) **EMPLOYMENT AGREEMENT.** A consumer-employer or consumer-employer's representative retains the full right to establish an employer-employee relationship with a person at any time after the per-

son's Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. Payment for services is not guaranteed until the Department has verified that a person meets the provider enrollment standards described in section (8) of this rule and notified both the employer and homecare worker in writing that payment by the Department is authorized.

(7) **TERMS OF EMPLOYMENT.** A consumer-employer or consumer-employer's representative must establish terms of an employment relationship with an employee at the time of hire. The terms of employment may include dismissal or resignation notice, work scheduling, absence reporting, and any sleeping arrangements or meals provided for live-in or hourly employees. Termination and the grounds for termination of employment are determined by a consumer-employer or consumer-employer's representative. A consumer-employer or consumer-employer's representative has the right to terminate an employment relationship with a homecare worker at any time and for any reason.

(8) **PROVIDER ENROLLMENT.**

(a) **ENROLLMENT STANDARDS.** A homecare worker must meet all of the following standards to be enrolled with the Department's Consumer-Employed Provider Program:

(A) The homecare worker must maintain a drug-free work place.

(B) The homecare worker must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. The Department or AAA may allow a homecare worker to work on a preliminary basis in accordance with OAR 407-007-0315 if the homecare worker meets the other provider enrollment standards described in this section of the rule.

(C) The homecare worker must have the skills, knowledge, and ability to perform, or to learn to perform, the required work.

(D) The homecare worker's U.S. employment authorization must be verified.

(E) The homecare worker must be 18 years of age or older. The Department may approve a restricted enrollment, as described in section (8)(d) of this rule, for a homecare worker who is at least 16 years of age.

(F) The homecare worker must complete an orientation as described in section (8)(e) of this rule.

(G) The homecare worker must have a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(b) **DENIAL OF PROVIDER ENROLLMENT.** The Department or AAA may deny an application for provider enrollment in the Consumer-Employed Provider Program when the applicant:

(A) Has violated the requirement to maintain a drug-free workplace;

(B) Has an unacceptable background check;

(C) Lacks the skills, knowledge and ability to adequately or safely perform the required work;

(D) Violates the protective service and abuse rules in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045;

(E) Commits fiscal improprieties;

(F) Fails to provide services as required;

(G) Lacks the ability or willingness to maintain consumer-employer confidentiality;

(H) Introduces an unwelcome nuisance to the workplace;

(I) Fails to adhere to an established work schedule;

(J) Has been sanctioned or convicted of a criminal offense related to a public assistance program;

(K) Fails to perform the duties of a mandatory reporter;

(L) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other Federal Health Care Programs; or

(M) Fails to provide a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(c) **BACKGROUND CHECKS.**

(A) When a homecare worker is approved without restrictions following a background check fitness determination, the approval must meet the homecare worker provider enrollment requirement statewide whether the qualified entity is a state-operated Department office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Background check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against a homecare worker, a new fitness determination is conducted resulting in a change in approval status; or

## ADMINISTRATIVE RULES

(ii) Approval has ended because the Department has inactivated or terminated a homecare worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior background check approval for another Department provider type is inadequate to meet background check requirements for homecare worker enrollment.

(D) Background rechecks are conducted at least every other year from the date a homecare worker is enrolled. The Department or AAA may conduct a recheck more frequently based on additional information discovered about a homecare worker, such as possible criminal activity or other allegations.

(d) **RESTRICTED PROVIDER ENROLLMENT.**

(A) The Department or AAA may enroll an applicant as a restricted homecare worker. A restricted homecare worker may only provide services to one specific consumer.

(i) Unless disqualified under OAR 407-007-0275, the Department or AAA may approve a homecare worker with a prior criminal record under a restricted enrollment to provide services to a specific consumer who is a family member, neighbor, or friend after conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370.

(ii) Based on an applicant's lack of skills, knowledge, or abilities, the Department or AAA may approve the applicant as a restricted homecare worker to provide services to a specific consumer who is a family member, neighbor, or friend.

(iii) Based on an exception to the age requirements for provider enrollment approved by the Department as described in subsection (a)(E) of this section, a homecare worker who is at least 16 years of age may be approved as a restricted homecare worker.

(B) To remove restricted homecare worker status and be designated as a career homecare worker, the restricted homecare worker must complete a new application and background check and be approved by the Department or AAA.

(e) **HOMECARE WORKER ORIENTATION.** Homecare workers must participate in an orientation arranged through a Department or AAA office. The orientation must occur within the first 30 days after the homecare worker becomes enrolled in the Consumer-Employed Provider Program and prior to beginning work for any specific Department or AAA consumers. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a homecare worker fails to complete an orientation within 90 days of provider enrollment, the homecare worker's provider number is inactivated and any authorization for payment of services is discontinued.

(f) **INACTIVATED PROVIDER ENROLLMENT.** A homecare worker's provider enrollment may be inactivated when:

(A) The homecare worker has not provided any paid services to any consumer in the last 12 months;

(B) The homecare worker's background check results in a closed case pursuant to OAR 407-007-0325;

(C) The homecare worker informs the Department or AAA the homecare worker is no longer providing services in Oregon;

(D) The homecare worker fails to participate in an orientation arranged through a Department or AAA office within 90 days of provider enrollment;

(E) The homecare worker, who at the time is not providing any paid services to consumers, is being investigated by Adult Protective Services for suspected abuse that poses imminent danger to current or future consumers; or

(F) The homecare worker's provider payments, all or in part, have been suspended based on a credible allegation of fraud pursuant to federal law under 42 CFR 455.23.

(g) **ENHANCED HOMECARE WORKER ENROLLMENT.** A homecare worker who meets the enhanced homecare worker criteria in OAR 411-031-0020(22) may receive payment at the enhanced hourly rate for providing ADL and IADL services as set forth in the Collective Bargaining Agreement when:

(A) The homecare worker is employed by a consumer whose service plan indicates the need for medically-driven services and supports;

(B) The consumer's service plan specifically authorizes the homecare worker to provide the medically driven services and supports; and

(C) The homecare worker provides the medically driven services and supports as set forth in the service plan.

(h) **EFFECTIVE DATE OF ENHANCED HOMECARE WORKER RATE PAYMENT.** A homecare worker who meets the enhanced homecare worker criteria identified in section (g)(A) through (C) of this rule may receive the enhanced rate effective the first day of the month following the

month in which the homecare worker began providing medically-driven services and supports to the consumer.

(9) **PAID TIME OFF.**

Homecare workers have access to and receive compensation for paid time off through the Oregon Homecare Workers' Benefits Trust.

(a) A homecare worker scheduling paid time off must notify the consumer-employer's APD or AAA case manager before taking paid time off.

(b) The decision to approve or deny a homecare worker's request to schedule paid time off is made by the homecare worker's consumer-employer or the consumer-employer's representative.

(c) When a homecare worker schedules paid time off, the APD or AAA office will make reductions to the homecare worker's authorized hours commensurate with the number of hours the homecare worker plans to take as scheduled paid time off.

(d) Under no circumstances will a homecare worker be required to secure a relief homecare worker or ensure that services are provided to a consumer-employer during the homecare worker's scheduled time off.

(e) When a homecare worker plans to provide services as a relief homecare worker, the relief homecare worker must contact the consumer-employer's APD or AAA case manager for authorization prior to providing relief services and payment for the scheduled relief care hours.

(10) **DEPARTMENT FISCAL AND ACCOUNTABILITY RESPONSIBILITY.**

(a) **DIRECT SERVICE PAYMENTS.** The Department makes payment to a homecare worker on behalf of a consumer for all in-home services. The payment is considered full payment for the Medicaid home and community-based services rendered. A homecare worker shall not demand or receive additional payment for Medicaid home and community-based services from a consumer or any other source. Additional payment to homecare workers for the same home and community-based services covered by Medicaid is prohibited.

(b) **TIMELY SUBMISSION OF CLAIMS.** In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) **ANCILLARY CONTRIBUTIONS.**

(A) **FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA).** Acting on behalf of a consumer-employer, the Department applies applicable FICA regulations and:

(i) Withholds a homecare worker-employee contribution from payments; and

(ii) Submits the consumer-employer contribution and the amounts withheld from the homecare worker-employee to the Social Security Administration.

(B) **BENEFIT FUND ASSESSMENT.** The Workers' Benefit Fund pays for programs that provide direct benefits to injured workers and the workers' beneficiaries and assist employers in helping injured workers return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Department calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the consumer-employer, the Department:

(i) Deducts a homecare worker-employees' share of the Benefit Fund assessment rate for each hour or partial hour worked by each paid homecare worker;

(ii) Collects the consumer-employer's share of the Benefit Fund assessment for each hour or partial hour of paid services received; and

(iii) Submits the consumer-employer's and homecare worker-employee's contributions to the Workers' Benefit Fund.

(C) The Department pays the consumer-employer's share of the unemployment tax.

(d) **STATE AND FEDERAL INCOME TAX WITHHOLDING.**

(A) The Department withholds state and federal income taxes on all payments to homecare workers, as indicated in the Collective Bargaining Agreement.

(B) A homecare worker must complete and return a current Internal Revenue Service W-4 form to the Department or AAA's local office. The Department applies standard income tax withholding practices in accordance with 26 CFR 31.

(11) **REIMBURSEMENT FOR TRANSPORTATION.**

(a) A homecare worker is reimbursed at the mileage reimbursement rate established in the Collective Bargaining Agreement when the homecare worker uses his or her own personal motor vehicle for transporting a consumer, if prior authorized by a consumer's case manager. If unscheduled transportation needs arise during non-office hours, the homecare worker must explain the need for the transportation to the consumer-

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employer's case manager, and the transportation must be approved by the consumer-employer's case manager before reimbursement.

(A) A homecare worker who travels directly between the home or care setting of one consumer-employer and the home or care setting of another consumer-employer will be paid at the base pay rate for the time spent traveling directly between the homes or care settings. For the purposes of this rule, "Travel Directly" means a homecare worker's travel from one consumer-employer's home or care setting to another consumer-employer's home or care setting is not interrupted other than to:

- (i) Eat a meal;
- (ii) Purchase fuel for the vehicle being used for the travel;
- (iii) Use a restroom; or
- (iv) Change buses, trains or other modes of public transit.

(B) The total time spent traveling directly between all of a homecare worker's consumer-employers may not exceed 10 percent of the total work time the homecare worker claims during a pay period. Unless otherwise specified in statute or rule, the amount of time a homecare worker may take to travel directly from one consumer-employer's home or care setting to another consumer-employer's home or care setting may not exceed one hour.

(C) When a homecare worker uses the homecare worker's own vehicle to travel directly between two consumer-employers the Department shall determine the time needed for a homecare worker to travel directly based on a time estimate published in a common, publicly-available, web-based mapping program.

(D) When a homecare worker uses public transportation to travel directly, payment for travel time shall be based on the public transportation providers' scheduled pick-up and drop-off times for the stops nearest the consumer-employers' homes or care settings.

(E) When a homecare worker uses non-motorized transportation to travel directly, payment for travel time shall be based on a time estimate published in a common, publicly-available, web-based mapping program.

(F) Claims for travel time exceeding the Department's time estimates may require a written explanation from the homecare worker. Time claimed in excess of the Department's time estimate may not be paid.

(G) A homecare worker shall not be paid for time spent in transit to or from the homecare worker's own residence.

(b) Medical transportation through the Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in a consumer's service plan is considered a prior resource.

(c) The Department is not responsible for vehicle damage or personal injury sustained when a homecare worker uses his or her own personal motor vehicle for DMAP or community transportation, except as may be covered by workers' compensation.

(d) Except as set forth in (a) of this section, homecare workers shall not receive any mileage reimbursement.

(12) **BENEFITS.** Workers' compensation, health insurance, and paid time off are available to eligible homecare workers as described in the Collective Bargaining Agreement. In order to receive homecare worker services, a consumer-employer must consent and provide written authorization to the Department for the provision of workers' compensation insurance for the consumer-employer's employee.

(13) **OVERPAYMENTS.** An overpayment is any payment made to a homecare worker by the Department that is more than the homecare worker is authorized to receive.

(a) Overpayments are categorized as follows:

(A) **ADMINISTRATIVE ERROR OVERPAYMENT.** The Department failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(B) **PROVIDER ERROR OVERPAYMENT.** The Department overpays the homecare worker due to a misunderstanding or unintentional error.

(C) **FRAUD OVERPAYMENT.** "Fraud" means taking actions that may result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation, or failure to account for payments or money received. "Fraud" also means spending payments or money the homecare worker was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department determines, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Control Unit determines when to pursue a Medicaid fraud allegation for prosecution.

(b) Overpayments are recovered as follows:

(A) Overpayments are collected prior to garnishments, such as child support, Internal Revenue Service back taxes, or educational loans.

(B) Administrative or provider error overpayments are collected at no more than 5 percent of the homecare worker's gross wages.

(C) The Department determines when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) When a person is no longer employed as a homecare worker, any remaining overpayment is deducted from the person's final check. The person is responsible for repaying an overpayment in full when the person's final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 18-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 4-29-08; SPD 6-2008, f. 4-28-08, cert. ef. 4-29-08; SPD 16-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10; SPD 26-2010, f. 11-29-10, cert. ef. 12-1-10; SPD 13-2012(Temp), f. & cert. ef. 9-26-12 thru 3-25-13; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13; SPD 18-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 47-2013, f. 12-13-13, cert. ef. 12-15-13; ADP 2-2016(Temp), f. & cert. ef. 3-2-16 thru 8-28-16

## 411-031-0050

### Termination, Administrative Review, and Hearing Rights

(1) **EXCLUSIONS TO APPEAL AND HEARING RIGHTS.** The following are excluded from the administrative review and administrative hearing rights process described in this rule:

(a) Terminations based on a background check. The homecare worker has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.

(b) Homecare workers who have not worked in the last 12 months. The provider enrollment may become inactivated, but may not be terminated. To activate the provider enrollment number, the homecare worker must complete an application and background check.

(c) Homecare workers who fail to complete a background recheck.

(d) Homecare workers who are denied a provider enrollment number at the time of initial application.

(e) Homecare workers who are not currently providing services to any consumers and whose provider enrollment is inactivated while an Adult Protective Services investigation is being completed.

(f) Homecare workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other federal programs.

(2) **REFERRAL OF POTENTIAL VIOLATIONS TO APD CENTRAL OFFICE.** When an APD or AAA office has reason to believe a homecare worker has committed one or more of the violations listed in section (3) of this rule, the APD or AAA office shall refer the alleged violation to APD central office using the Department-approved referral form. The homecare worker who allegedly committed the violation shall be provided a copy of the completed referral form.

(3) **VIOLATIONS RESULTING IN TERMINATION OF PROVIDER ENROLLMENT.** APD central office may terminate a homecare worker's provider enrollment when a homecare worker:

(a) Has violated the requirement to maintain a drug-free work place;

(b) Has an unacceptable background check;

(c) Lacks the skills, knowledge, and ability to adequately or safely perform the required work;

(d) Violates the protective service and abuse rules in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045;

(e) Commits fiscal improprieties;

(f) Fails to provide services as required;

(g) Lacks the ability or willingness to maintain consumer-employer confidentiality;

(h) Introduces an unwelcome nuisance to the workplace;

(i) Fails to adhere to an established work schedule;

(j) Has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under any public assistance program;

(k) Fails to perform the duties of a mandatory reporter;

(l) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other federal health care programs; or

(m) Fails to provide a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(4) **ADMINISTRATIVE REVIEW.** Upon receiving an APD or AAA office's referral of an alleged violation listed in section (3)(a) or (3)(c)-(m)

# ADMINISTRATIVE RULES

of this rule, APD central office shall complete an administrative review within 30 days.

(a) The administrative review provides an opportunity for APD central office to review the local office's referral and decide whether to terminate a homecare worker's provider enrollment.

(b) The administrative review may include the provision of new evidence, either by the homecare worker or by the APD or AAA office, which APD central office may consider in reaching its decision.

(c) As a part of the administrative review, the homecare worker and a union representative may take part in an administrative review conference with APD central office.

(d) After an administrative review conference, APD central office will conclude the administrative review within 10-business days. The administrative review process is concluded when APD central office sends the homecare worker a written notice. If, based on the administrative review, APD central office determines a homecare worker did not violate one or more of the subsections of section (3) of this rule, APD central office shall send a written notice of this determination to the APD or AAA office and to the homecare worker.

(e) Upon agreement of both parties, an extension of the 10-business day deadline may occur.

(5) NOTICE OF PROPOSED TERMINATION OF HOMECARE WORKER PROVIDER ENROLLMENT. When APD central office proposes to terminate a homecare worker's provider enrollment, the homecare worker shall be provided with a written Notice of Proposed Termination of Homecare Worker Provider Enrollment. The notice must:

(a) Include a short and plain explanation of the reason for the proposed termination;

(b) Indicate the date the Notice of Proposed Termination of Homecare Worker Provider Enrollment was sent to the homecare worker;

(c) Cite the rules supporting the decision to issue the Notice of Proposed Termination of Homecare Worker Provider Enrollment;

(d) List the effective date of the proposed termination; and

(e) Inform the homecare worker of the homecare worker's appeal rights, including:

(A) The right to union representation;

(B) How to request a contested case hearing; and

(C) The right to continue working until a final order resolves the contested case.

(f) For terminations based on substantiated protective service allegations, complainants, witnesses, the name of the alleged victim and protected health information are not to be disclosed in or with the notice.

(6) NOTICE OF EMERGENCY TERMINATION OF HOMECARE WORKER PROVIDER ENROLLMENT. When an alleged violation presents imminent danger to current or future consumers, APD central office may issue a Notice of Emergency Termination of Homecare Worker Provider Enrollment. A Notice of Emergency Termination of Homecare Worker Provider Enrollment must:

(a) Include a short and plain explanation of the reason for the emergency termination;

(b) Indicate the date the Notice of Emergency Termination of Homecare Worker Provider Enrollment was sent to the homecare worker;

(c) Cite the rules that support APD central office's decision to issue the Notice of Emergency Termination of Homecare Worker Provider Enrollment;

(d) List the effective date of the Notice of Emergency Termination of Homecare Worker Provider Enrollment; and

(e) Inform the homecare worker of the homecare worker's appeal rights, including:

(A) The right to union representation;

(B) How to request a contested case hearing; and

(C) The right to continue working until a final order resolves the contested case.

(7) ADMINISTRATIVE HEARINGS. If APD central office sends a homecare worker a Notice of Proposed Termination of Homecare Worker Provider Enrollment or an Emergency Termination of Homecare Worker Provider Enrollment, the homecare worker may complete a request for an administrative hearing.

(a) The homecare worker's request for an administrative hearing must:

(A) Be in writing;

(B) Be postmarked no later than 14 days after the date of the Notice of Proposed Suspension of Homecare Worker Provider Enrollment or Emergency Suspension of Homecare Worker Provider Enrollment was sent; and

(C) Specify the issues or decisions being appealed and the reasons for the appeal.

(b) The Department shall refer the homecare worker's administrative hearing request to the Office of Administrative Hearings as described in OAR chapter 137, division 003.

(c) When the Department refers an administrative hearing request, under these rules, to the Office of Administrative Hearings, the Department shall indicate on the referral whether the Department is authorizing a proposed order, a proposed and final order, or a final order.

(d) A homecare workers who completes an administrative hearing request may take part in an informal conference with a Department hearing representative before the administrative hearing.

(e) No additional hearing rights have been granted to homecare workers by this rule other than the right to a hearing on the issue of Department's decision to terminate the homecare worker's provider enrollment.

(8) TERMINATION IF NO ADMINISTRATIVE HEARING REQUEST FILED. If a homecare worker is sent a Notice of Proposed Termination of Provider Enrollment or a Notice of Emergency Termination of Provider Enrollment and does not request an administrative hearing within 14 days of the date the Notice of Proposed Termination of Provider Enrollment or a Notice of Emergency Termination of Provider Enrollment was sent, APD central office shall send the homecare worker a Final Order by Default in accordance with OAR 137-003-0670. Once the time period for appeal has expired, the provider enrollment is terminated by the Department.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; Administrative correction 7-20-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13; SPD 47-2013, f. 12-13-13, cert. ef. 12-15-13; ADP 2-2016(Temp), f. & cert. ef. 3-2-16 thru 8-28-16

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**Rule Caption:** Payment Limitations in Community-Based Care Settings

**Adm. Order No.:** APD 3-2016

**Filed with Sec. of State:** 3-4-2016

**Certified to be Effective:** 3-18-16

**Notice Publication Date:** 1-1-2016

**Rules Adopted:** 411-027-0170

**Rules Amended:** 411-027-0005

**Rules Repealed:** 411-027-0005(T), 411-027-0170(T)

**Subject:** The Department of Human Services (Department) is permanently updating OAR 411-027 to make permanent temporary changes that became effective September 21, 2015 that add the home and community based care facility rates as a new rule to the division. Adding the rates in to the rule will allow the Department to provide a more public process for rate changes and allow the Department to pay providers of Medicaid services. In order to add these rates into the rule, OAR 411-027-0170 was added as a new rule with the current rate table information. Rules that were impacted by this change will also be amended.

Minor grammar, formatting, and housekeeping changes were done to align the rules with other current program rule and definition changes.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-027-0005

### Definitions

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition and behavior as described in OAR 411-015-0006.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Aging and People with Disabilities (APD)" means the division of Aging and People with Disabilities, within the Department of Human Services.

(5) "APD" means "Aging and People with Disabilities" as defined in this rule.

(6) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and



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coordinated system of services to older adults and adults with disabilities in a planning and service area. The term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210-300.

(7) "Assessment" means the process of evaluating the functional impairment levels for service eligibility, including an individual's requirements for assistance or independence in performing activities of daily living and instrumental activities of daily living and determining nursing facility services. The Department requires use of the Client Assessment and Planning System (CA/PS) as the tool used to determine service eligibility and planning.

(8) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology, service animals, general household items, or furniture used to assist and enhance an individual's independence in performing any activity of daily living.

(9) "CA/PS" means the "Client Assessment and Planning System" as defined in this rule.

(10) "Case Manager" means an employee of the Department or Area Agency on Aging, who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements the service plan and monitors the services delivered.

(11) "Central Office" means the main office of the Department, Division, or Designee.

(12) "Client Assessment and Planning System (CA/PS)":

(a) Is the single entry data system used for:

(A) Completing a comprehensive and holistic assessment;

(B) Surveying an individual's physical, mental, and social functioning; and

(C) Identifying risk factors, individual choices and preferences, and the status of service needs.

(b) The CA/PS documents the level of need and calculates the individual's service priority level in accordance with the rules in OAR chapter 411, division 015, calculates the service payment rates, and accommodates individual participation in service planning.

(13) "Consumer Choice" means an individual has been informed of alternatives to nursing facility services and has been given the choice of institutional services, Medicaid home and community-based service options, or the Independent Choices Program.

(14) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536, that provides hourly contracted in-home services to individuals served by the Department or Area Agency on Aging.

(15) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of the available services under the Medicaid home and community-based service options, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (defined in OAR 411-015-0005) not paid for by the Department.

(16) "Department" means the Department of Human Services (DHS).

(17) "Exception" means an approval for:

(a) Payment of a service plan granted to a specific individual in his or her current residence or in the proposed residence identified in the exception request that exceeds the CA/PS assessed service payment levels for individuals residing in community-based care facilities or the maximum hours of service as described in OAR 411-030-0070 for individuals residing in his or her own home or the home of a relative.

(b) A live-in or shift care service plan granted to a specific individual that does not otherwise meet the criteria as described in OAR 411-030-0068 based upon the service needs of the individual as determined by the Department.

(c) A service plan granted to a specific individual and a homecare worker to exceed the limitations as described in OAR 411-030-0070 (6) based upon the service needs of the individual as determined by the Department.

(d) An "exceptional rate" or "exceptional payment." The approval of an exception is based on the service needs of the individual and is contingent upon the individual's service plan meeting the requirements in OAR 411-027-0020, 411-027-0025, and 411-027-0050.

(18) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide either hourly or live-in services to the eligible consumer.

(a) The term homecare worker includes consumer-employed providers in the Spousal Pay and Oregon Project Independence Programs. The term homecare worker also includes consumer-employed providers that provide state plan personal care services to older adults and adults with physical disabilities. Relatives providing Medicaid in-home services to an individual living in the relative's home are considered homecare workers.

(b) The term homecare worker does not include Independent Choices Program providers or personal care attendants enrolled through the Office of Developmental Disability Services or the Addictions and Mental Health Division.

(19) "Hourly Services" mean the in-home services, including activities of daily living and instrumental activities of daily living, that are provided at regularly scheduled times.

(20) "IADL" means "instrumental activities of daily living" as defined in this rule.

(21) "ICP" means "Independent Choices Program" as defined in this rule.

(22) "Independent Choices Program (ICP)" means the self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services identified in a service plan and prior approved by the Department or Area Agency on Aging.

(23) "Individual" means the person applying for, or eligible for, services. The term "individual" is synonymous with "client", "participant", "consumer", and "consumer-employer."

(24) "In-Home Services" mean those activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(25) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(26) "Live-In Services" mean the in-home services provided when an individual requires and receives assistance with activities of daily living and instrumental activities of daily living throughout a 24-hour work period by one homecare worker.

(27) "Natural Supports" or "Natural Support System" means resources and supports (e.g. relatives, friends, significant others, neighbors, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential "natural support". The natural support is required to have the skills, knowledge and ability to provide the needed services and supports.

(28) "Rate Schedule" means the rate schedule maintained by the Department in OAR 411-027-0170 and posted at <http://www.oregon.gov/DHS/PROVIDERS-PARTNERS/LICENSING/NFLU/Documents/rateschedule.pdf>. Printed copies may be obtained by contacting the Department of Human Services, Aging and People with Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(29) "These Rules" mean the rules in OAR chapter 411, division 027. Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.070  
Hist.: SPD 7-2008, f. 5-29-08, cert. ef. 6-1-08; APD 4-2014(Temp), f. & cert. ef. 3-20-14 thru 9-16-14; APD 33-2014, f. & cert. ef. 9-2-14; APD 18-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16; ADP 3-2016, f. 3-4-16, cert. ef. 3-18-16

## 411-027-0170

### Rate Schedule for Home and Community-Based Services

(1) Rates below are in effect starting July 1, 2015.

(2) Monthly Rates:

(a) Residential Care Facilities:

(A) Base — \$1371.00.

(B) Base plus 1 add-on — \$1636.00.

(C) Base plus 2 add-ons — \$1901.00.

(D) Base plus 3 add-ons — \$2166.00.

(E) Hourly Exception Rate — \$12.00 per hour.

(b) Adult Foster Homes: Rates shall be paid in accordance with the terms of collective bargaining agreements negotiated between the Service Employees International Union and the State of Oregon.

(c) Assisted Living Facilities:

(A) Level 1 — \$1,100.00.

(B) Level 2 — \$1,363.00.

(C) Level 3 — \$1,711.00.

(D) Level 4 — \$2,148.00.

(E) Level 5 — \$2,586.00.

(d) Memory Care Facilities (Endorsed Units Only) — \$3,596.00 per month.

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(e) Contracted In-Home Care Agencies Rate — \$21.80 per hour.  
(f) Home Delivered Meals Rate — \$9.54 per meal.  
Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.070  
Hist.: APD 18-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16; ADP 3-2016, f. 3-4-16, cert. ef. 3-18-16

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**Rule Caption:** Nursing Assistant Training and Competency Evaluation Program (NATCEP)

**Adm. Order No.:** APD 4-2016

**Filed with Sec. of State:** 3-15-2016

**Certified to be Effective:** 4-1-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 411-070-0470, 411-089-0030

**Subject:** The Department of Human Services (Department) is permanently updating the rules for nursing facilities in OAR 411-070-0470 and OAR 411-089-0030 to make changes related to the Nursing Assistant Training and Competency Evaluation Program (NATCEP). The changes:

- Improve the description of reimbursable fees and costs for both Medicaid facilities and individuals.

- Remove redundant rule language.

- Strengthen facility requirements to inform new hire CNAs of the reimbursement program.

- Ensure a more reasonable timeline for the CNA's reimbursement by changing the timeframe from 12 months to 3 months.

- Expand the Department's authority by establishing a tracking and enforcement process. Changes to OAR 411-089 will allow for the enforcement of OAR 411-070-0470.

The Department also removed redundant rule language, updated the rules to match current Department terminology, and performed minor grammar, punctuation, formatting, and housekeeping changes.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-070-0470

### Nursing Assistant Training and Competency Evaluation Programs Request for Reimbursement

(1) The Omnibus Budget Reconciliation Act (OBRA) of 1987 and 1990 requires that any nursing assistant employed in a nursing facility completes a competency evaluation program. Medicaid reimburses a Medicaid certified nursing facility for the Medicaid share of the allowable cost directly related to meeting the nursing assistant training and competency evaluation requirement.

(2) A facility must notify, in writing, the nursing assistants upon hire that the nursing assistant may receive reimbursement up to 12 months after completing a Nursing Assistant Training and Competency Evaluation Program (NATCEP) training program. Failure to notify or failure to reimburse an eligible nursing assistant, shall result in an assessment for imposition of sanctions.

(3) The nursing facility must reimburse newly employed Certified Nursing Assistants who have personally paid for NATCEP costs. The facility is not required to reimburse the nursing assistant in cases where the expenses were paid by an employer or education training program or reimbursed by a previous employer.

(4) REQUEST FOR REIMBURSEMENT. Medicaid certified nursing facilities must file a NATCEP request for reimbursement with the Department that meets the following standards:

(a) As of January 1, 2013, all requests for reimbursement must be submitted electronically. A facility must submit a request for reimbursement within 12 months after completing a NATCEP training program or reimbursing a nursing assistant as described in section (3) of this rule. The request for reimbursement must identify all costs incurred and related revenues (not including NATCEP payments from the Department) received during the reporting period.

(b) A request for reimbursement must:

(A) Be submitted electronically on a system provided by the Department.

(B) Include actual costs incurred and paid by the facility. The Department may not reimburse a facility prospectively.

(C) Include all revenue (not including NATCEP payments from the Department) received by the facility for conducting the approved nursing assistant training. All revenue must be used to offset the costs incurred and paid in the reporting period.

(D) The facility must maintain and have available for review the appropriate documentation, as described in section (8) of this rule, to support each specific area identified for payment by the Department. Failure to provide required documentation, when requested, shall result in an overpayment to the facility. The facility must repay any overpayment to the Department within 60 days of receipt of notification.

(E) Include all appropriate NATCEP costs and revenues only. NATCEP costs, including costs disallowed, must not be reimbursed as part of the facility's bundled rate. However, NATCEP costs, revenues, and reimbursement must be included on the facility's annual Nursing Facility Financial Statement (NFFS).

(F) Include only true and accurate information. If a facility knowingly, or with reason to know, files a request for reimbursement containing false information, such action must constitute cause for termination of the facility's provider agreement with the Department. Providers filing false requests for reimbursements may be referred for prosecution under applicable statutes.

(5) CHARGING OF FEES PROHIBITED. The nursing facility must not charge a trainee any fee for participation in NATCEP or for any textbooks or other materials required for NATCEP if the trainee is employed by or has an offer of employment from a nursing facility on the date on which the NATCEP begins.

(6) FEES PAID BY EMPLOYER.

(a) All charges and materials required for NATCEP and fees for nursing assistant certification must be paid by the nursing facility if it offered employment at the facility on the date training began.

(b) If a nursing assistant who is not employed by a Medicaid certified facility or does not have an offer of employment by a Medicaid nursing facility on the date on which the NATCEP began becomes employed by, or receives an offer for employment from a nursing facility within 12 months after completing a NATCEP, the employing facility must reimburse the nursing assistant within the first three months of employment. Reimbursement must include any NATCEP fees for tuition, enrollment and textbook costs, testing fees, or other required course materials up to the amount determined by the Department that was paid by the nursing assistant. Evidence the nursing assistant paid for training must include receipt of payment and the graduation certificate from the school.

(c) Such reimbursement must be calculated on a pro rata basis. The reimbursement must be determined by dividing the cost paid by the nursing assistant by 12 and multiplying by the number of months during this 12-month period that the nursing assistant worked for the facility. The facility must claim the appropriate pro rata amount on each request for reimbursement it submits not to exceed the lesser of 12 months or the total number of months the nursing assistant was employed at that facility. The facility must maintain evidence provided by the nursing assistant of the training costs incurred at an approved training facility.

(d) A facility shall reimburse a nursing assistant before submitting a request for reimbursement from the Department.

(7) FACILITY REIMBURSEMENT BY THE DEPARTMENT. The Department shall reimburse the facility for the Medicaid portion of the costs described in this section unless limited by the application of section (4) of this rule. This portion is calculated by multiplying the eligible costs paid by the facility by the percentage of resident days that are attributable to Medicaid residents during the reporting period. The Department's payment to the facility for the NATCEP cost is in addition to payments based upon the facility's bundled rate.

(a) EMPLOYEE COMPENSATION. Reimbursement for trainer hours must not exceed one and a one-third times the number of hours required for certification. A facility may claim reimbursement for the portion of an employee's compensation attributable to nursing assistant training if:

(A) The employee meets the qualifications of 42 CFR 483.152 and OAR chapter 851, division 061;

(B) The employee directly conducts training or testing in an approved program;

(C) The employee's compensation, including benefits, is commensurate with other licensed nurse compensation paid by the facility;

(D) The employee's total compensated hours do not exceed 40 in any week during which NATCEP reimbursement is claimed;

(E) No portion of the claimed reimbursement is for providing direct care services while assisting in the training of nursing assistants if providing direct care services is within the normal duties of the employee; and

(F) The facility provides the Department with satisfactory documentation to support the methodology for allocating costs between facility operation and NATCEP.

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(b) **TRAINING SPACE AND UTILITIES.** Costs associated with space and utilities are eligible only if the space and utilities are devoted 100 percent to the NATCEP. The facility must provide documentation satisfactory to the Department to support the need for, and use of, the space and utilities.

(c) **TEXTBOOKS AND COURSE MATERIALS.** A portion of the cost of textbooks and materials is eligible if textbooks and materials are used primarily for NATCEP. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50 percent. The facility must provide satisfactory documentation supporting the NATCEP need for and percentage of use of textbooks and materials.

(d) **EQUIPMENT.** A portion of the cost of equipment is eligible if used primarily for NATCEP. However, equipment purchased for \$500 or more per item, must be prior approved by the Department to qualify for reimbursement. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50 percent. The facility must maintain satisfactory documentation supporting the NATCEP need for and percentage of use of the equipment. Disposition of equipment and software purchased in whole or in part under the Title XIX Medicaid Program must meet the requirements of the facility's provider agreement.

(e) **CERTIFICATION FEES.** Nursing assistant certification and recertification fees paid to the Oregon State Board of Nursing for facility employees are eligible.

(f) **REIMBURSEMENT FOR NURSING ASSISTANTS.** Reimbursement provided to nursing assistants pursuant to section (6) of this rule are eligible. The training must have occurred at an approved training center, including nursing facilities in Oregon or other states. If a facility chooses to reimburse the nursing assistant's full amount in one request, the facility may not recoup payment from a nursing assistant if the nursing assistant's employment ends, regardless of cause.

(g) **CONTRACT TRAINERS.** Payment for nursing assistant training classes provided under contract by persons who meet the qualifications of 42 CFR 483.152 are eligible for reimbursement. For this purpose, either the facility or the contractor must be approved for NATCEP. Allowable contract trainer payments shall be limited to the lesser of actual cost or the salary calculation described in section (7)(a) of this rule.

(h) **INELIGIBLE COSTS — TRAINEE WAGES.** Wages paid to nursing assistants in training are not eligible for NATCEP reimbursement, but may be claimed as part of the daily reimbursement costs.

(i) **REIMBURSEMENT FOR COMBINED CLASSES.** If two or more Medicaid certified facilities cooperate to conduct nursing assistant training, the Department shall not reimburse any participating facility for the combined training class until all participating facilities have filed a request for reimbursement. For a combined class, the Department shall apportion reimbursement to participating facilities pro rata based on the number of students enrolled at the completion of the first 30 hours of classroom training or in any other equitable manner agreed to by the participating facilities. However, when cooperating facilities file separate NATCEP requests for reimbursements, nothing in this section authorizes the Department to deny or limit reimbursement to a facility based on a failure to file or a delay in filing by a cooperating facility.

(8) **RECORDKEEPING, AUDIT, SANCTIONS, REPORTING, AND APPEAL.**

(a) The facility must maintain supportive documentation for a period of not less than three years following the date of submission of the NATCEP request for reimbursement. This documentation must include records in sufficient detail to substantiate the request for reimbursement. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved. The records must be maintained in a condition that can be audited.

(b) Each facility must submit a quarterly NATCEP report to the Department using the Department's approved method and format. The report must provide an accurate monthly account of nursing assistant new hires, which includes date of hire, date of completion of an approved Nursing Assistant Level 1 training program, and the date of reimbursement.

(A) The facility must submit the report to the Department no later than the end of the month immediately following the end of each calendar quarter. (Example: For the calendar quarter ending March 31, the report must be received no later than April 30.)

(B) Upon the Department's request, the facility must provide documentation to support the quarterly report including payroll records.

(c) All requests for reimbursements are subject to audit at the discretion of the Department. The facility shall be notified in writing of the amount to be reimbursed and of any adjustments to the request for reim-

bursement. Payment of any amounts due to the Department must be made within 60 days of the date of notification to the facility.

(d) Sanctions and remedies may be provided pursuant to OAR chapter 411, division 89. One or more remedies may be imposed by the Department when a facility fails to comply with state regulations. The remedy(s) issued by the Department may be based upon findings of noncompliance with one or more requirements of participation.

(e) A facility is entitled to an informal conference and contested case hearing pursuant to ORS 183.413 through 183.470, as described in OAR 411-070-0435, to protest the reimbursement amount or the adjustment. If no written request for an informal conference or contested case hearing is made within 30 days, the decision becomes final.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 414.070

Stats. Implemented: ORS 410.070

Hist.: SSD 8-1992, f. 7-29-92, cert. ef. 8-1-92; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09; SPD 16-2012(Temp), f. 12-31-12, cert. ef. 1-1-13 thru 6-30-13; SPD 7-2013, f. 4-10-13, cert. ef. 5-1-13; APD 4-2016, f. 3-15-16, cert. ef. 4-1-16

## 411-089-0030

### Civil Penalties

(1) **CONSIDERATIONS.** In determining the amount of a civil penalty the Department shall consider:

(a) Any prior violations of statute or rule by the facility or licensee that relates to operation of a nursing facility;

(b) The financial benefits, if any, realized by the facility as a result of the violation, such as costs avoided as a result of not having obtained sufficient staffing, equipment, or supplies;

(c) The gravity of the violation, including the actual and potential threat to health, safety, and well-being of residents, the duration of the threat or number or times the threat occurred, and the number of residents threatened;

(d) The severity of the actual or potential harm caused by the violation, including whether the actual or potential harm included loss of life or serious physical or emotional injury;

(e) The facility's history of correcting violations and preventing recurrence of violations; and

(f) Exhibit 89-1, Civil Penalty Chart, which is incorporated by reference and is a part of this rule.

(2) **SINGLE VIOLATION CIVIL PENALTIES.** Violations of any requirement within any part of the following statutes, rules, or sections of the following rules are a violation that may result in a civil penalty after a single occurrence.

(a) Violations involving direct resident care, feeding, or sanitation involving direct resident care, including any violation of:

(A) OAR 411-085-0060 (Specialty Nursing Facilities);

(B) OAR 411-085-0200(2) (Facility Employees);

(C) OAR 411-085-0210 to 411-085-0220 (Facility Policies, Quality Assurance);

(D) OAR 411-085-0360 (Abuse);

(E) OAR 411-086-0010 to 411-086-0020 (Administrator, Director of Nursing Services);

(F) OAR 411-086-0040 (except section (3)) (Admission of Residents);

(G) OAR 411-086-0050 to 411-086-0060 (Day Care, Assessment, and Care Plan);

(H) OAR 411-086-0110 to 411-086-0150 (Nursing Services);

(I) OAR 411-086-0200 to 411-086-0260 (Physician, Dental, Rehabilitative, Activity, Social, Dietary, and Pharmaceutical Services);

(J) OAR 411-086-0300 (except section (6)) (Clinical Records);

(K) OAR 411-086-0310 to 411-086-0360 (Employee Orientation and Training, Disaster Preparation, Infection Control, Smoking, Furnishings, and Equipment);

(L) OAR 411-087-0100(1)(a) and (c) (Repair and Cleanliness); or

(M) OAR 411-087-0440 (Alarm and Nurse Call Systems).

(b) Violation involving failure to provide staff-to-resident ratio, including any violation of:

(A) OAR 411-086-0030 (except section (1)) (RN Care Manager); or

(B) OAR 411-086-0100 (Nursing Staffing).

(c) Violation of any rule adopted pursuant to ORS 441.610, including:

(A) OAR 411-085-0300 to 411-085-0350 (Resident Rights);

(B) OAR 411-086-0040(3) (Advance Directives);

(C) OAR 411-086-0300(6) (Record Retention); or

(D) OAR chapter 411, division 088 (Rights Regarding Transfers).

(d) Violation of ORS 441.605 (Resident Rights) or any general or final order of the Department.

# ADMINISTRATIVE RULES

(e) Violation of OAR 411-070-0470(2), (3), (5), (6), (8) (Nursing Assistant Training and Competency Evaluation Programs Reimbursement).

(3) CIVIL PENALTIES REQUIRING REPEAT VIOLATIONS. Violation of any Department rule not listed in section (2) of this rule is subject to a civil penalty under the following circumstances:

(a) Such violation is determined to exist on two consecutive surveys, inspections, or visits; and

(b) The Department prescribed a reasonable time for elimination of the violation at the time of, or subsequent to, the first citation.

(4) AMOUNT OF CIVIL PENALTY.

(a) Violation of any requirement or order listed in section (2) of this rule is subject to a civil penalty of not more than \$500 for each day the violation occurs, unless otherwise provided by this section.

(b) Violation of any requirement listed in section (3) of this rule is subject to a civil penalty of not more than \$500 per violation, unless otherwise provided by this section.

(c) Violation involving resident abuse that resulted in serious injury or death is subject to a civil penalty of not less than \$500 nor more than \$1,000, or as otherwise required by federal law (ORS 441.995(3) and 441.715(1)(c)).

(d) The Department shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed \$15,000 in any 90-day period.

(A) To impose this civil penalty, the Department shall establish:

(i) The abuse arose from deliberate or other than accidental action or inaction;

(ii) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(iii) The person substantiated for the abuse had a duty of care toward the resident.

(B) For the purposes of this civil penalty, the following definitions apply:

(i) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(ii) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(iii) "Sexual abuse" means any form of sexual contact between an employee of a nursing facility or a person providing services in the nursing facility and a resident of that facility, including, but not limited to, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(iv) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct the licensee is responsible, to comply with applicable Oregon Administrative Rules.

(5) ADMINISTRATOR SANCTIONS — NURSING FACILITY CLOSURES. Any individual who is or was the administrator of a facility and fails or failed to comply with the requirements at OAR 411-085-0025(2)(d)(e)(f)(h), 411-085-0025(3)(a), or 411-088-0070(1)(g), (3)(d), or (4):

(a) Are subject to a civil monetary penalty as follows:

(A) A minimum of \$500 for the first offense;

(B) A minimum of \$1,500 for the second offense; and

(C) A minimum of \$3,000 for the third and subsequent offenses.

(b) May be subject to exclusion from participation in any Federal health care program as defined in section 1128B(f) of the Patient Protection and Affordable Care Act; and

(c) Are subject to any other penalties that may be prescribed by law.

(6) PAYMENT TO BE CONSIDERED ADMISSION OF VIOLATION. Unless the Department agrees otherwise, for purposes of history of the facility, any payment of a civil penalty is treated by the Department as a violation of the statutes or rules alleged in the civil penalty notice for which the civil penalty was paid.

(7) All penalties recovered are deposited in the Quality Care Fund.

(8) NOTICE. The Department's notice of its intent to impose a civil penalty shall include the statements set out in OAR 411-089-0040(3)(a)-(f) and shall also include a statement that if the licensee fails to request a hearing within 10 days of the date the notice was mailed, the licensee shall have waived the right to a hearing.

(9) HEARING REQUEST.

(a) If the Department issues a notice of intent to impose a civil penalty, the licensee is entitled to a hearing in accordance with ORS Chapter 183.

(b) A request for a hearing must be in writing and must be received by the Department within 10 days of the date the notice of intent to impose a civil penalty was mailed to the licensee. The hearing request must include an admission or denial of each factual matter alleged in the notice and must affirmatively allege a short plain statement of each relevant affirmative defense the licensee may have. The Department may extend the time allowed for submission of the admission or denial and affirmative defenses for up to 30 calendar days.

(10) DEFAULT ORDER. If a hearing is not timely requested, if the licensee withdraws a hearing request, or fails to appear at a scheduled hearing, the Department may enter a final order by default imposing the civil penalty. In the event of a default, the Department's file on the subject of the civil penalty automatically becomes a part of the record for purposes of proving the Department's prima facie case.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715 & 441.990

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715 & 441.990

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10; APD 5-2014, f. 3-31-14, cert. ef. 4-1-14; APD 51-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15; APD 13-2015, f. 6-24-15, cert. ef. 6-28-15; APD 4-2016, f. 3-15-16, cert. ef. 4-1-16

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**Rule Caption:** In-Home Services

**Adm. Order No.:** APD 5-2016

**Filed with Sec. of State:** 3-15-2016

**Certified to be Effective:** 3-18-16

**Notice Publication Date:** 2-1-2016

**Rules Adopted:** 411-030-0068

**Rules Amended:** 411-030-0020, 411-030-0070, 411-030-0080, 411-030-0100

**Rules Repealed:** 411-030-0020(T), 411-030-0068(T), 411-030-0070(T), 411-030-0080(T), 411-030-0100(T)

**Subject:** The Department of Human Services (Department) is permanently updating OAR 411-030 to make permanent temporary changes that became effective September 21, 2015. The amendments:

- Revise the definition and eligibility requirements for live-in services

- Define and add eligibility requirements for shift services.

- Change the eligibility requirements for services received in the Spousal Pay and the Independent Choices Programs.

- Fix minor grammar, formatting, punctuation, and housekeeping issues in the rules.

**Rules Coordinator:** Kimberly Colkitt-Hallman — (503) 945-6398

**411-030-0020**

**Definitions**

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 030:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition, and behavior as defined in OAR 411-015-0006.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Architectural Modifications" means any service leading to the alteration of the structure of a dwelling to meet a specific service need of an eligible individual.

(5) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to individuals in a planning and service area. The term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(6) "Assessment" or "Reassessment" means an assessment as defined in OAR 411-015-0008.

(7) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any activity of daily living. Assistive devices include the use of

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service animals, general household items, or furniture to assist the individual.

(8) “Business Days” means Monday through Friday and excludes Saturdays, Sundays, and state or federal holidays.

(9) “CA/PS” means the “Client Assessment and Planning System” as defined in this rule.

(10) “Case Manager” means an employee of the Department or Area Agency on Aging who assesses the service needs of an individual applying for services, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements an individual’s service plan and monitors the services delivered as described in OAR chapter 411, division 028.

(11) “Client Assessment and Planning System (CA/PS)”:

(a) Is a single entry data system used for:

(A) Completing a comprehensive and holistic assessment;

(B) Surveying an individual’s physical, mental, and social functioning; and

(C) Identifying risk factors, individual choices and preferences, and the status of service needs.

(b) The CA/PS documents the level of need and calculates an individual’s service priority level in accordance with the rules in OAR chapter 411, division 015, calculates the service payment rates, and accommodates individual participation in service planning.

(12) “Consumer” or “Consumer-Employer” means an individual eligible for in-home services.

(13) “Consumer-Employed Provider Program” refers to the program described in OAR chapter 411, division 031 wherein a provider is directly employed by a consumer to provide either hourly or live-in in-home services.

(14) “Contingency Fund” means a monetary amount that continues month to month, if approved by a case manager, that is set aside in the Independent Choices Program service budget to purchase identified items that substitute for personal assistance.

(15) “Contracted In-Home Care Agency” means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536 that provides hourly contracted in-home services to individuals receiving services through the Department or Area Agency on Aging.

(16) “Cost Effective” means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual’s service needs. Those choices consist of all available services under the Medicaid home and community-based service options, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.

(17) “Debilitating Medical Condition” means the individual’s condition is severe, persistent, and interferes with the individual’s ability to function and participate in most activities of daily living.

(18) “Department” means the Department of Human Services (DHS).

(19) “Discretionary Fund” means a monetary amount set aside in the Independent Choices Program service budget to purchase items not otherwise delineated in the monthly service budget or agreed to be savings for items not traditionally covered under Medicaid home and community-based services. Discretionary funds are expended as described in OAR 411-030-0100.

(20) “Disenrollment” means either voluntary or involuntary termination of a participant from the Independent Choices Program.

(21) “DMAP” means the Oregon Health Authority, Division of Medical Assistance Programs.

(22) “Employee Provider” means a worker who provides services to, and is a paid provider for, a participant in the Independent Choices Program.

(23) “Employment Relationship” means the relationship of employee and employer involving an employee provider and a participant.

(24) “Exception” means the following:

(a) An approval for payment of a service plan granted to a specific individual in their current residence or in the proposed residence identified in the exception request that exceeds the CA/PS assessed service payment levels for individuals residing in community-based care facilities or the maximum hours of service as described in OAR 411-030-0070 for individuals residing in their own homes or the home of a relative.

(b) An approval for a live-in or shift care service plan granted to a specific individual that does not otherwise meet the criteria as described in OAR 411-030-0068 based upon the service needs of the individual as determined by the Department.

(c) An approval of a service plan granted to a specific individual and a homecare worker to exceed the limitations as described in OAR 411-030-0070(6) based upon the service needs of the individual as determined by the Department.

(d) “Exceptional rate” or “exceptional payment.” The approval of an exception is based on the service needs of the individual and is contingent upon the individual’s service plan meeting the requirements in OAR 411-027-0020, 411-027-0025 and 411-027-0050.

(25) “FICA” is the acronym for the Social Security payroll taxes collected under authority of the Federal Insurance Contributions Act.

(26) “Financial Accountability” refers to guidance and oversight which act as fiscal safeguards to identify budget problems on a timely basis and allow corrective action to be taken to protect the health and welfare of individuals.

(27) “FUTA” is the acronym for Federal Unemployment Tax Assessment which is a United States payroll (or employment) tax imposed by the federal government on both employees and employers.

(28) “Homecare Worker” means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide either hourly or live-in services to the eligible consumer.

(a) The term homecare worker includes:

(A) A consumer-employed provider in the Spousal Pay and Oregon Project Independence Programs;

(B) A consumer-employed provider that provides state plan personal care services to individuals; and

(C) A relative providing Medicaid in-home services to an individual living in the relative’s home.

(b) The term homecare worker does not include an Independent Choices Program provider or a personal support worker enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(29) “Hourly Services” mean the in-home services, including activities of daily living and instrumental activities of daily living, that are provided at regularly scheduled times, not including live-in services.

(30) “Household” means a group of individuals that live together within the same dwelling. For homeless individuals, the household consists of the individuals who consider themselves living together.

(31) “IADL” means “instrumental activities of daily living” as defined in this rule.

(32) “ICP” means “Independent Choices Program” as defined in this rule.

(33) “Independent Choices Program (ICP)” means a self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services identified in the participant’s service plan and prior approved by the Department or Area Agency on Aging.

(34) “Individual” means a person age 65 or older, or an adult with a physical disability, applying for or eligible for services.

(35) “Individualized Back-Up Plan” means a plan incorporated into an Independent Choices Program service plan to address critical contingencies or incidents that pose a risk or harm to a participant’s health and welfare.

(36) “In-Home Services” mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(37) “Instrumental Activities of Daily Living (IADL)” mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(38) “Liability” refers to the dollar amount an individual with excess income contributes to the cost of service pursuant to OAR 461-160-0610 and 461-160-0620.

(39) “Live-In Services” mean services provided when an individual requires and receives assistance with activities of daily living and instrumental activities of daily living throughout a 24-hour work period by one homecare worker.

(40) “Medicaid OHP Plus Benefit Package” means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(41) “Natural Supports” or “Natural Support System” means resources and supports (e.g. relatives, friends, neighbors, significant others, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential “natural support”. The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

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(42) "Oregon Project Independence (OPI)" means the program of in-home services described in OAR chapter 411, division 032.

(43) "Participant" means an individual eligible for the Independent Choices Program.

(44) "Provider" means the person who renders the services.

(45) "Rate Schedule" means the rate schedule maintained by the Department at <http://www.dhs.state.or.us/spd/tools/program/osip/rateschedule.pdf>. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301-1064.

(46) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.

(47) "Representative" is a person either appointed by an individual to participate in service planning on the individual's behalf or an individual's natural support with longstanding involvement in assuring the individual's health, safety, and welfare. There are additional responsibilities for an Independent Choices Program (ICP) representative as described in OAR 411-030-0100. An ICP representative is not a paid employee provider regardless of relationship to a participant.

(48) "Service Budget" means a participant's plan for the distribution of authorized funds that are under the control and direction of the participant within the Independent Choices Program. A service budget is a required component of the participant's service plan.

(49) "Service Need" means the assistance an individual requires from another person for those functions or activities identified in OAR 411-015-0006 and 411-015-0007.

(50) "Shift Services" are hourly services provided by an awake homecare worker, Independent Choices Program employee provider, or contracted in-home care agency provider to an individual who is authorized to receive a minimum of 16 hours of services (496 hours per month) during a 24-hour work period. Individuals that have ventilator dependency and have quadriplegia or similar conditions and utilize 24 hours of awake hourly services (744 hours per month) may have homecare workers paid above the rate schedule.

(51) "Spouse" means a person that is legally married to an individual as defined in OAR 461-001-0000.

(52) "SUTA" is the acronym for State Unemployment Tax Assessment. State unemployment taxes are paid by employers to finance the unemployment benefit system that exists in each state.

(53) "These Rules" mean the rules in OAR chapter 411, division 030.

(54) "Workweek" is defined as 12:00 a.m. on Sunday through 11:59 p.m. on Saturday.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 5-1987, f. & ef. 7-1-87; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 3-2007(Temp), f. 4-11-07, cert. ef. 5-1-07 thru 10-28-07; SPD 17-2007, f. 10-26-07, cert. ef. 10-28-07; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 10-2013(Temp), f. & cert. ef. 5-23-13 thru 11-19-13; SPD 16-2013(Temp), f. & cert. ef. 7-1-13 thru 11-19-13; SPD 43-2013, f. 10-31-13, cert. ef. 11-1-13; APD 9-2014(Temp), f. 4-17-14, cert. ef. 4-21-14 thru 10-18-14; APD 35-2014, f. & cert. ef. 10-1-14; APD 19-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16; APD 5-2016, f. 3-15-16, cert. ef. 3-18-16

## 411-030-0068

### Live-In Services and Shift Services

(1) Individuals with service plans that meet the definition of live-in services or shift services must meet subsections (a) and either (b) or (c) of this section of the rule.

(a) The provision of assistance with at least one ADL or IADL task must be required sometime during each hour the individual is awake in order to ensure the safety and well-being of the individual.

(b) The individual is assessed as full assist in mobility or elimination as defined in OAR 411-015-0006, and has at least one of the following conditions:

(A) A debilitating medical condition that includes, but is not limited to, any of the following symptoms:

- (i) Cachexia;
- (ii) Severe neuropathy;
- (iii) Coma;
- (iv) Persistent or reoccurring stage 3 or 4 wounds;
- (v) Late stage cancer;
- (vi) Frequent and unpredictable seizures; or
- (viii) Debilitating muscle spasms.

(B) A spinal cord injury or similar disability with permanent impairment.

(C) An acute care or hospice need that is expected to last no more than six months.

(c) The individual is assessed as full assist in cognition as defined in OAR 411-015-0006 and meets all of the following criteria:

(A) A diagnosis of traumatic brain injury, dementia or a related disorder, or a debilitating mental health disorder that meets the criteria described in OAR 411-015-0015(2); and

(B) Has one of the following assessed needs as defined in OAR 411-015-0006:

- (i) Full assist in danger to self or others.
- (ii) Full assist in wandering.
- (iii) Full assist in awareness.
- (iv) Full assist in judgment.

(2) The following limitations apply:

(a) A homecare worker providing live-in services must be available to address the service needs of an eligible individual as they arise throughout an entire 24-hour period. A homecare worker is not providing live-in services if the homecare worker is outside the individual's home or building during the homecare worker's on-duty hours and the homecare worker engages in activities that are unrelated to the provision of the individual's ADL or IADL services and supports. A homecare worker is not providing live-in services if they are offsite and are not performing direct ADL or IADL services.

(b) Hourly services by another homecare worker or contracted in-home agency may be authorized in addition to live-in services for any task that requires more than one homecare worker to simultaneously perform the task, or to allow a live-in homecare worker to sleep for at least five continuous hours during a 24-hour work period.

(c) A homecare worker who is providing live-in services for an individual may not also provide hourly services for the same individual.

(3) Individuals with assessments that were created prior to August 31, 2015 may continue receiving live-in services or shift services until one of the following occurs:

(a) The individual moves from an in-home setting that does not meet the requirements of OAR 411-030-0033 for more than 30 days and later moves to an in-home setting that meets the requirements of OAR 411-030-0033. A new assessment and service plan must be completed to evaluate and determine if the individual meets the criteria described in section (1) of this rule.

(b) The individual ends his or her live-in services or shift services for more than 30 days. A new assessment must be completed to evaluate and determine if the individual meets the criteria described in section (1) of this rule.

(c) A reassessment is created on or after August 31, 2015 that requires a new service plan

(4) If the individual chooses to receive live-in or shift services, and the individual resides in an in-home setting that meets the requirements of OAR 411-030-0033 on or after August 31, 2015, a reassessment must be completed to evaluate and determine if the individual meets the criteria described in section (1) of this rule.

(5) Individuals who currently receive live-in services for at least four days a week, or are receiving hours under live-in services in the Independent Choices Program, and who have been determined not to meet the criteria for live-in services per section (1) of this rule after an assessment created on or after August 31, 2015, may be granted an exception by central office under the following circumstances:

(a) The individual must be eligible for 159 hours of live-in services on the most recent assessment prior to August 31, 2015, and be assessed as meeting one of the following as defined in OAR 415-015-0006:

(A) Full assist in mobility and at least a substantial assist in ambulation or an assist in transfers.

(B) Full assist in cognition.

(C) Full assist in at least two ADLs under elimination.

(b) Exceptions granted under subsection (a) of this rule must end when the identified homecare worker per subsection (a) of this rule or the primary provider under the Independent Choices Program is no longer employed by the individual.

(6) An exception may be granted by central office to authorize a live-in plan if an individual does not meet section (1) of this rule to meet the exceptional needs of the individual as defined by the Department.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: APD 19-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16; APD 5-2016, f. 3-15-16, cert. ef. 3-18-16

# ADMINISTRATIVE RULES

## 411-030-0070

### Maximum Hours of Service

#### (1) LEVELS OF ASSISTANCE FOR DETERMINING SERVICE PLAN HOURS.

(a) "Minimal Assistance" means an individual is able to perform the majority of an activity but requires some assistance from another person.

(b) "Substantial Assistance" means an individual is able to perform only a small portion of the tasks that comprise an activity without assistance from another person.

(c) "Full Assistance" means an individual needs assistance from another person through all phases of an activity every time the activity is attempted.

#### (2) MAXIMUM MONTHLY HOURS FOR ADL.

(a) The planning process uses the following limitations for time allotments for ADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

##### (A) Eating:

- (i) Minimal assistance, 5 hours;
- (ii) Substantial assistance, 20 hours;
- (iii) Full assistance, 30 hours.

##### (B) Dressing and Grooming:

- (i) Minimal assistance, 5 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 20 hours.

##### (C) Bathing and Personal Hygiene:

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 25 hours.

##### (D) Mobility:

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 25 hours.

##### (E) Elimination (Toileting, Bowel, and Bladder):

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 20 hours;
- (iii) Full assistance, 25 hours.

##### (F) Cognition and Behaviors:

- (i) Minimal assistance, 5 hours;
- (ii) Substantial assistance, 10 hours;
- (iii) Full assistance, 20 hours.

(b) Service plan hours for ADL may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that activity of daily living as determined by a service assessment applying the parameters in OAR 411-015-0006.

(c) For households with two or more eligible individuals, each individual's ADL service needs must be considered separately. In accordance with section (3)(c) of this rule, authorization of IADL hours is limited for each additional individual in the home.

(d) Hours authorized for ADL are paid at the rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for ADLs paid at the rates in accordance with the rate schedule. Participants of the Independent Choices Program may determine their own employee provider pay rates, but must follow all applicable wage and hour rules and regulations.

#### (3) MAXIMUM MONTHLY HOURS FOR IADL.

(a) The planning process uses the following limitations for time allotments for IADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

##### (A) Medication and Oxygen Management:

- (i) Minimal assistance, 2 hours;
- (ii) Substantial assistance, 4 hours;
- (iii) Full assistance, 6 hours.

##### (B) Transportation or Escort Assistance:

- (i) Minimal assistance, 2 hours;
- (ii) Substantial assistance, 3 hours;
- (iii) Full assistance, 5 hours.

##### (C) Meal Preparation:

- (i) Minimal assistance:
  - (I) Breakfast, 4 hours;
  - (II) Lunch, 4 hours;
  - (III) Supper, 8 hours.
- (ii) Substantial assistance:
  - (I) Breakfast, 8 hours;

(II) Lunch, 8 hours;

(III) Supper, 16 hours.

(iii) Full assistance:

(I) Breakfast, 12 hours;

(II) Lunch, 12 hours;

(III) Supper, 24 hours.

(D) Shopping:

(i) Minimal assistance, 2 hours;

(ii) Substantial assistance, 4 hours;

(iii) Full assistance, 6 hours.

(E) Housecleaning:

(i) Minimal assistance, 5 hours.

(ii) Substantial assistance, 10 hours.

(iii) Full assistance, 20 hours.

(b) Hours authorized for IADL are paid at the rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for IADLs paid at the rates in accordance with the rate schedule. Participants of the Independent Choices Program may determine their own employee provider pay rates, but must follow all applicable wage and hour rules and regulations.

(c) When two or more individuals eligible for IADL task hours live in the same household, the assessed IADL need of each individual must be calculated. Payment is made for the highest of the allotments and a total of four additional IADL hours per month for each additional individual to allow for the specific IADL needs of the other individuals.

(d) Service plan hours for IADL tasks may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that IADL task as determined by a service assessment applying the parameters in OAR 411-015-0007.

#### (4) PAYMENT FOR LIVE-IN SERVICES.

(a) Payment for live-in services is authorized only when an individual employs a live-in homecare worker or enrolls in the Independent Choices Program and meets the requirements of OAR 411-030-0068. Individuals who meet these criteria may be authorized 159 hours a month for the provision of this service until December 31, 2015.

(b) Effective January 1, 2016, payment for live-in services is authorized only when an individual employs a live-in homecare worker or enrolls in the Independent Choices Program and meets the requirements of OAR 411-030-0068. Individuals that meet these criteria will be authorized to receive at least 16 hours per day (496 hours per month). Additional hours may be authorized by the Department to meet the needs of the individual during the hours of the homecare worker's scheduled sleep period if the homecare worker's scheduled sleep period is routinely disrupted.

(c) Rates for live-in services are paid in accordance with the rate schedule.

(d) When a live-in homecare worker is employed less than seven days per week, the total service hours must be prorated.

(5) When one or more eligible individuals in the same household is eligible for and receiving in-home services, the amount of hours authorized is subject to the following maximums:

(a) If any eligible individual in a specific household is receiving live-in services, the combined authorized hours for all eligible individuals in the same household may not exceed 19 hours within any 24-hour period or 589 hours per month.

(b) Hourly and shift service plans may not exceed 24 hours within any 24-hour period or 744 hours per month in the same household.

(6) Beginning August 31, 2015, at the creation of a new service plan resulting from an assessment or when a homecare worker begins employment with an individual, the following limitations to the authorized hours a homecare worker may work will apply:

(a) Hourly or shift service plans of no more than 220 hours per month, not to exceed 50 hours per workweek per individual.

(b) Hourly or shift services plan of no more than 16 hours of awake care during a 24-hour work period.

(7) A provider may not receive payment from the Department for more than the total amount authorized by the Department on the service plan authorization form under any circumstances. All service payments must be prior-authorized by a case manager.

(8) Case managers must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment, housing accommodations, and alternative service resources (as defined in OAR 411-015-0005) that may reduce the need for paid assistance.

(9) The Department may authorize paid in-home services only to the extent necessary to supplement potential or existing resources within an individual's natural supports system.

# ADMINISTRATIVE RULES

(10) Payment by the Department for Medicaid home and community-based services are only made for the tasks described in this rule as ADL, IADL tasks, and live-in services. Services must be authorized to meet the needs of an eligible individual and may not be provided to benefit an entire household.

## (11) EXCEPTIONS TO MAXIMUM HOURS OF SERVICE.

(a) To meet an extraordinary ADL service need that has been documented, the hours authorized for ADL may exceed the full assistance hours (described in section (2) of this rule) as long as the total number of ADL hours in the service plan does not exceed 145 hours per month.

(b) Monthly service payments that exceed 145 ADL hours per month may be approved by the Department when the exceptional payment criteria identified in OAR 411-027-0020 and 411-027-0050 is met.

(c) As long as the total number of IADL task hours in the service plan does not exceed 85 hours per month and the service need is documented, the hours authorized for IADL tasks may exceed the hours for full assistance (as described in section (3) of this rule) for the following tasks and circumstances:

(A) Housekeeping based on medical need (such as immune deficiency);

(B) Short-term extraordinary housekeeping services necessary to reverse unsanitary conditions that jeopardize the health of an individual; or

(C) Extraordinary IADL needs in medication management or service-related transportation.

(d) Monthly service plans that exceed 85 hours per month in IADL tasks may be approved by the Department when an individual meets the exceptional payment criteria identified in OAR 411-027-0020 and 411-027-0050.

(e) One or more individuals in the same household may exceed the maximums in section (5) of this rule in the following circumstances:

(A) The service plan authorizes payment that requires the assistance of more than one homemaker worker to simultaneously perform a specific task.

(B) The service plan authorizes an additional hourly provider when the individual requires care throughout a 24 hour period and the live-in homemaker worker is not able to receive five continuous hours of sleep.

(C) The ADLs of two or more individuals in the same household require a homemaker worker for each individual at the same time.

(f) A homemaker worker may be authorized to provide services totaling more than 220 hours per month or 50 hours per workweek per individual if they are prior authorized by the Department. In emergency situations, when the Department is not available, a homemaker worker may work critical hours, but must notify the Department within two business days.

(g) A homemaker worker may be authorized by the Department to work more than 16 hours of hourly services during a 24-hour work period if an unanticipated need arises that requires the homemaker worker to remain awake in order to provide the necessary care.

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

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stat. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SDDSD 8-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; SDDSD 3-2000, f. 4-11-00, cert. ef. 4-12-00; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 24-2011(Temp), f. 11-15-11, cert. ef. 1-1-12 thru 6-29-12; SPD 6-2012, f. 5-31-12, cert. ef. 6-1-12; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13; APD 11-2014, f. & cert. ef. 5-1-14; APD 19-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16

## 411-030-0080

### Spousal Pay Program

(1) The Spousal Pay Program is one of the hourly service options under in-home services for those who qualify.

(2) ELIGIBILITY. An individual may be eligible for the Spousal Pay Program when all of the following conditions are met:

(a) The individual has met all eligibility requirements for in-home services as described in OAR 411-030-0040;

(b) The individual requires full assistance in at least four of the six ADLs described in OAR 411-015-0006 as determined by the assessment described in OAR chapter 411, division 015;

(c) The individual has met all eligibility requirements as described in OAR 411-030-0068(1)(b).

(d) The individual would otherwise require nursing facility services without Medicaid in-home services;

(e) The individual's service needs exceed in both extent and duration the usual and customary services rendered by one spouse to another;

(f) The spouse demonstrates the capability and health to provide the services and actually provides the principal services, including the majority of service plan hours, for which payment has been authorized;

(g) The spouse meets all requirements for enrollment as a homemaker worker in the Consumer-Employed Provider Program as described in OAR 411-031-0040; and

(h) The Department has reviewed the request and approved program eligibility at enrollment and annually upon re-assessment.

## (3) PAYMENTS.

(a) All payments must be prior authorized by the Department or the Department's designee.

(b) The hours authorized to the spousal pay provider in an individual's service plan must consist of one-half of the assessed hours for IADLs and all of the hours for specific ADLs based on the service needs of the individual. Service plans that authorize a spousal pay provider are not eligible for live-in services.

(c) Except as described otherwise in subsection (d) of this section, spousal pay providers are paid at hourly homemaker worker rates for ADLs and IADLs as defined in the rate schedule.

(d) Homemaker workers who marry their consumer-employer are not paid under the spousal pay program. Service plans are based on the needs of the consumer. Hours assigned must reflect the service needs with no reduction in hours. The consumer does not need to meet the spousal pay eligibility criteria as described in section (3) of this rule. Hours authorized in CA/PS will be completed in the same manner as other in-home service plans, which include hourly, live-in or independent choices program.

(e) Spousal pay providers may not claim payment from the Department for hours that the spousal pay provider did not work.

(4) Spousal pay providers are subject to the provisions in OAR chapter 411, division 031 governing homemaker workers enrolled in the Consumer-Employed Provider Program.

(5) Individuals receiving Spousal Pay Program services who have excess income must contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620.

(6) All Spousal Pay Program service plans with live-in hours in effect before January 1, 2016 will transition to hourly plans by January 1, 2016.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 411.802 & 411.803

Hist.: SSD 4-1984, f. 4-27-84, ef. 5-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93, Renumbered from 411-030-0027; SDDSD 2-2000, f. 3-27-00, cert. ef. 4-1-00; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 3-2007(Temp), f. 4-11-07, cert. ef. 5-1-07 thru 10-28-07; SPD 17-2007, f. 10-26-07, cert. ef. 10-28-07; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 13-2012(Temp), f. & cert. ef. 9-26-12 thru 3-25-13; SPD 4-2013, f. 3-25-13, cert. ef. 3-26-13; SPD 10-2013(Temp), f. & cert. ef. 5-23-13 thru 11-19-13; SPD 43-2013, f. 10-31-13, cert. ef. 11-1-13; APD 19-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16; APD 5-2016, f. 3-15-16, cert. ef. 3-18-16

## 411-030-0100

### Independent Choices Program

(1) The Independent Choices Program (ICP) is an In-Home Services Program that empowers participants to self-direct their own service plans and purchase goods and services that enhance independence, dignity, choice, and well-being.

(2) The ICP is limited to a maximum of 2,600 participants.

(a) The Department establishes and maintains a waiting list for individuals eligible for in-home services requesting ICP after the ICP has reached its maximum.

(b) The Department enters eligible individuals' names on the waiting list according to the date the individual applied for participation in ICP.

(c) As vacancies occur, eligible individuals on the waiting list are offered the ICP according to his or her place on the waiting list.

(d) Individuals on the waiting list may receive services through other appropriate Department programs for which they are eligible.

## (3) INITIAL ELIGIBILITY REQUIREMENTS.

(a) To be eligible for the ICP an individual must:

(A) Meet all requirements for in-home services as described in these rules;

(B) Develop a service plan and budget to meet the needs identified in his or her CA/PS assessment;

(C) Sign the ICP participation agreement;

(D) Have or be able to establish a checking account;

(E) Provide evidence of a stable living situation for the past three months; and

(F) Demonstrate the ability to manage money as evidenced by timely and current utility and housing payments.



## ADMINISTRATIVE RULES

(b) If a participant is unable to direct and purchase his or her own in-home services, the participant must have a representative to act on the participant's behalf. The "representative" is the person assigned by the participant to act as the participant's decision maker in matters pertaining to the ICP service plan and service budget. A representative must:

(A) Complete a background check pursuant to OAR chapter 407, division 007 and receive a final fitness determination of approval; and

(B) Sign and adhere to the "Independent Choices Program Representative Agreement" on behalf of the participant.

(c) If a participant is unable to manage ICP cash payment accounting, tax, or payroll responsibilities and does not have a representative, the participant must arrange and purchase the ongoing services of a fiscal intermediary, such as an accountant, bookkeeper, or equivalent financial services.

(A) A participant, or the participant's representative who has met the eligibility criteria in subsection (b) of this section, may also choose to use a fiscal intermediary.

(B) The participant is responsible for any fees or payment to the fiscal intermediary and may allocate the fees or payment from discretionary or other non-ICP funds.

(4) **DISENROLLMENT CRITERIA.** Participants may be disenrolled from the ICP voluntarily or involuntarily. Participants who are disenrolled from the ICP may not reapply for six months. After the six month disenrollment period, an individual may re-enroll and must meet all ICP eligibility requirements. If the ICP enrollment cap has been reached, participants who were disenrolled are added to the waiting list.

(a) **VOLUNTARY DISENROLLMENT.** Participants or representatives must provide notice to the Department of intent to discontinue participation in the ICP. The participant or the representative must meet with the Department to reconcile remaining ICP cash payment either within 30 days of the date of disenrollment or before the termination date, whichever is sooner.

(b) **INVOLUNTARY DISENROLLMENT.** The participant may be involuntarily disenrolled from the ICP when the participant, representative, or employee provider does not adequately meet the participant's service needs or carry out any of the following ICP responsibilities:

(A) Non-payment of employee's wages, as stated in the service budget.

(B) Failure to maintain the participant's health and well-being by obtaining personal care as evidenced by:

(i) Decline in functional status due to the failure to meet the participant's needs; or

(ii) Substantiated complaints of self-neglect, neglect, or other abuse on the part of the employee provider or representative.

(C) Failure to purchase goods and services according to the participant's service plan.

(D) Failure to comply with the legal or financial obligations as an employer.

(E) Failure to maintain a separate ICP checking account or commingling ICP cash benefit with other assets.

(F) Inability to manage the cash benefit as evidenced by two or more incidents of overdrafts of the participant's ICP checking account during the last cash benefit review period.

(G) Failure to deposit monthly service liability payment into the ICP checking account.

(H) Failure to maintain an individualized back-up plan (as part of the participant's service plan) resulting in a negative consequence.

(I) Failure to sign or follow the ICP Participation Agreement.

(J) Failure to select a representative within 30 days if a participant needs a representative and does not have one.

(5) **INTERRUPTION OF SERVICES.** The ICP cash benefit is terminated when a participant is absent from the home for longer than 30 days due to illness or medical treatment. The cash benefit may resume upon the participant's return to the home, providing ICP eligibility criteria is met.

(6) **SELECTION OF EMPLOYEE PROVIDERS.**

(a) The participant or representative carries full responsibility for locating, screening, interviewing, hiring, training, paying, and terminating employee providers. The participant or representative must comply with Immigration and Customs Enforcement laws and policies.

(b) The participant or representative must assure the employee provider's ability to perform or assist with ADL, IADL, and live-in service needs.

(c) Employee providers must complete a background check pursuant to OAR chapter 407, division 007. If a record of a potentially disqualifying

crime is revealed, the participant or representative may employ the provider at the participant's or representative's discretion.

(d) A representative may not be an employee provider regardless of relationship to the participant.

(e) A participant's relative may be employed as an employee provider.

(7) **CASH BENEFIT.**

(a) The cash benefit is determined based on the participant's CA/PS assessment of need, service plan, level of assistance standards in OAR 411-030-0070, and natural supports.

(b) The cash benefit is calculated by adding the ADL task hours, the IADL task hours, and the live-in services hours that the participant is eligible for as determined in the CA/PS assessment, at the rates according to the Department's rate schedule.

(c) The following services, which are approved by the case manager and paid for by the Department, are excluded from the ICP cash benefit:

(A) Long-term care community nursing;

(B) Contracted community transportation;

(C) Medicaid home delivered meals; and

(D) Emergency response systems.

(d) The cash benefit includes the employer's portion of required FICA, FUTA, and SUTA.

(e) The cash benefit is directly deposited into a participant's ICP designated checking account.

(8) **SERVICE BUDGET.**

(a) The service budget must identify the cash benefit, the discretionary and contingency funds if applicable, the reimbursement to an employee provider, and all other expenditures. The service budget must be initially approved by a Department or AAA case manager.

(b) The participant may amend the service budget as long as the amendments relate to meeting the participant's service needs and are within ICP program guidelines.

(c) A budget review to assure financial accountability and review service budget amendments must be completed at least every six months.

(9) **CONTINGENCY FUND.**

(a) The participant may establish a contingency fund in the service budget to purchase identified items that are not otherwise covered by Medicaid or the Supplemental Nutrition Assistance Program (SNAP) that substitute for personal assistance and allow for greater independence.

(b) The contingency fund must be approved by the case manager, identified in the service budget, and related to service plan needs.

(c) Contingency funds may be carried over into the next month's budget until the item is purchased.

(10) **DISCRETIONARY FUND.**

(a) The participant may establish a monthly discretionary fund in the service budget to purchase items that directly relate to the health, safety, and independence of the participant and are not otherwise covered under Medicaid home and community-based services or delineated in the monthly service budget.

(b) The maximum amount of discretionary funds may be up to 10 percent of the participant's cash benefit not including employee taxes.

(c) The discretionary fund must be approved by the case manager, identified in the service budget, and related to service plan needs.

(d) Discretionary funds must be used by the end of the month.

(11) **ISSUING BENEFITS.**

(a) The service plan and service budget must be prior approved by the case manager before the first ICP cash benefit is paid.

(b) A cash benefit is considered issued and received by the participant when the direct deposit is made to the participant's ICP bank account or a benefit check is received by the participant.

(c) The cash benefit is exempt from resource calculations for other Department programs only while in the ICP bank account and not commingled with other personal funds.

(d) The cash benefit is not subject to assignment, transfer, garnishment, or levy as long as the cash benefit is identified as a program benefit and is separate from other money in the participant's possession.

(12) **CASE MANAGER RESPONSIBILITIES.**

(a) The case manager is responsible to review and authorize service plans and service budgets that meet the ICP program criteria.

(b) If a participant is disenrolled, the case manager must review eligibility for other Medicaid long term care and community-based service options and offer other alternatives if the participant is eligible.

(c) At least every six months, a Department or AAA case manager must complete a service budget review to assure financial accountability and review service budget amendments.

# ADMINISTRATIVE RULES

(13) HEARING RIGHTS. ICP participants have contested case hearing rights as described in OAR chapter 461, division 025.

(14) ICP eligible participants who were determined eligible before August 31, 2015 may continue his or her current service plan until a new assessment and service plan is completed.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08; SPD 13-2008, f. & cert. ef. 9-24-08; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 14-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 44-2013, f. 12-13-13, cert. ef. 12-15-13; APD 19-2015(Temp), f. & cert. ef. 9-21-15 thru 3-18-16; APD 5-2016, f. 3-15-16, cert. ef. 3-18-16

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## Department of Human Services, Child Welfare Programs Chapter 413

**Rule Caption:** Identification and Consideration of Potential Adoptive Resources

**Adm. Order No.:** CWP 3-2016(Temp)

**Filed with Sec. of State:** 2-24-2016

**Certified to be Effective:** 2-24-16 thru 8-21-16

**Notice Publication Date:**

**Rules Amended:** 413-120-0730

**Subject:** The Department of Human Services, Office of Child Welfare Programs, is adopting temporary rules to authorize the DHS Director to make exceptions to the order of preference for identification of potential adoptive resources when it is determined in the best interest of the child.

**Rules Coordinator:** Kris Skaro—(503) 945-6067

### 413-120-0730

#### Order of Preference for Identification of Potential Adoptive Resources

(1) Except as provided in sections (2) and (3) of this rule, when identifying potential adoptive resources for a child or sibling group, the caseworker must consider the needs and the best interest of each child, and assess the knowledge, skills, and abilities of each potential adoptive resource in the following order of preference:

(a) Except when (c) of this section applies, a relative as defined in OAR 413-120-0000(63)(a)-(c).

(b) Except when (c) of this section applies, a relative as defined in OAR 413-120-0000(63)(d).

(c) When a child or sibling group has a current caretaker as defined in OAR 413-120-0000(26), the current caretaker and a relative as defined in OAR 413-120-0000(63)(a)-(d).

(d) A general applicant.

(e) When an individual would otherwise meet the definition of current caretaker, except for being a relative as defined in OAR 413-120-0000(d), the individual is considered a current caretaker for purposes of this section.

(2) For an Indian child, the caseworker must comply with ICWA and OAR 413-070-0100 to 413-070-0260.

(3) For a refugee child, the caseworker must comply with OAR 413-070-0300 to 413-070-0380.

(4) When an exception to the order of preference in section (1) of this rule is determined in the best interest of the child, the Child Welfare Program Manager must submit a written request to the Child Permanency Program Manager.

(5) When a request for exception is received, the Child Permanency Program Manager will submit it to the DHS Director or designee for review and consideration. Within 30 days of receipt of the written request, the DHS Director or designee must determine whether to grant the exception.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10; CWP 4-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 20-2011, f. & cert. ef. 9-19-11; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 3-2016(Temp), f. & cert. ef. 2-24-16 thru 8-21-16

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

**Rule Caption:** Increasing rates for some child care providers

**Adm. Order No.:** SSP 7-2016(Temp)

**Filed with Sec. of State:** 2-17-2016

**Certified to be Effective:** 3-1-16 thru 6-28-16

**Notice Publication Date:**

**Rules Amended:** 461-155-0150

**Rules Suspended:** 461-155-0150(T)

**Subject:** OAR 461-155-0150 about child care eligibility standard, payment rates, and copayments is being amended to implement rate increases negotiated between the Department and the AFSCME child care provider union. This rule was previously amended by temporary rule on January 1, 2016 to implement rate increases for license-exempt providers and child care centers. These new changes increase rates for registered family and certified family providers. See amended rule text at [http://www.dhs.state.or.us/policy/selfsufficiency/ar\\_temporary.htm](http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm) to see specific rate changes based on location of the provider, age of the child, and type of billing.

**Rules Coordinator:** Kris Skaro—(503) 945-6067

### 461-155-0150

#### Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 2 years.

(b) Toddler: For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 2 years to 3 years.

(c) Preschool: A child aged 3 years to 6 years.

(d) School: A child aged 6 years or older.

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral, or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, clinical social worker, or any additional sources in OAR 461-125-0830.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Office of Child Care.

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Office of Child Care as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Office of Child Care Certification rules (see OAR 414-300-0000).

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in subsection (b) of this section.

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

## ADMINISTRATIVE RULES

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (b) or (f) of this section.

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Office of Child Care.

(3) The following provisions apply to child care payments:

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate and is designated as the primary provider for the case.

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.

(d) Unless required by the circumstances of the client or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care; and

(B) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(4) The following tables are the child care rates based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly): [Tables not included. See ED. NOTE.]

(5) Except to the extent provided otherwise in section (12) of this rule, this section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) At initial certification, the ERDC eligibility standard is met for a need group (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180(6). The eligibility standard for a need group of eight applies to any need group larger than eight.

(b) During the certification period (see OAR 461-001-0000) and at recertification the ERDC eligibility standard is met for a need group of eight or less if monthly countable income for the need group during the 12 month period is less than 85 percent state median income (SMI) or 250 percent FPL, whichever is higher, as described in OAR 461-155-0180(8) and (9). The eligibility standard for a need group of eight applies to any need group larger than eight.

(c) The minimum monthly ERDC copay is \$25.

(d) For a filing group (see OAR 461-110-0310) whose countable income is at or below 50 percent of the 2007 FPL, the copay is \$25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.

(e) For a filing group whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:

(A) Divide the filing group's countable income by the 2007 FPL, drop all digits beyond two decimal points, subtract 0.5, and multiply this difference by 0.12.

(B) Add .015 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income used to determine the copay amount. Multiply this sum by the filing group's countable income and round to the nearest whole dollar.

(f) The 2007 federal poverty level used to determine copay amounts under subsections (d) and (e) of this section is set at the following amounts:

(6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (4) of this rule.

(b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.

(7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

(8) The number of payable billed hours of care for a child is limited as follows:

(a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed the amounts in paragraphs (A) or (B) of this subsection:

(A) 125 percent of the number of child care hours authorized:

(i) Under OAR 461-160-0040(2) and (5); or

(ii) To participate in activities included in a case plan (see OAR 461-001-0025) including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client.

(B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client meets the criteria for extra hours under section (10) of this rule.

(b) In the ERDC program, for a client who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time).

(c) In the TANF program, for a client who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(d) In the ERDC program, employed caretakers eligible under OAR 461-135-0400 may have education hours added to the authorized work hours. Education hours may not exceed authorized work hours and combined hours may not exceed 215 hours per month. Education hours are hours required to participate in coursework that leads to a certificate, degree, or job-related knowledge or skills attainment at an institution of higher education approved to receive federal financial aid.

(9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:

(a) The amount billed by the provider or providers; or

(b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.

(10) The limit allowed by section (9) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this section, a client has special circumstances when it is necessary for the client to obtain child care in excess of 215 hours in a month to perform the requirements of his or her employment or training required to keep current employment, not including self-employment. This is limited to the following situations:

(a) The commute time to and from work exceeds two hours per day.

(b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.

(c) The caretaker works a split shift and it is not feasible to care for the child between shifts.

(d) The caretaker consistently works more than 40 hours per week.

(11) The payment available for care of a child who meets the special needs criteria described in subsection (e) of section (1) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age.

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(12) Starting May 1, 2012:

(a) The minimum monthly ERDC copay is \$27.

(b) Except as stated in subsection (a) of this section, the Department adds 10 percent to the monthly client copay amount set under section (5) of this rule by multiplying the copay amount by 1.1 and rounding down to the nearest whole dollar.

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(13) A provider caring for a child in a contracted child care slot with the Department will be paid the lesser of the monthly rate provided in section (4) of this rule or the amount charged by the provider.

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

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, OL 2015, ch 698

Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.070, 411.122, 411.141, 412.006, 412.049, 418.485, Or Laws 2015, ch 698

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 13-2012(Temp), f. & cert. ef. 4-10-12 thru 10-7-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 31-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 35-2013, f. & cert. ef. 11-1-13 thru 3-30-14; SSP 8-2014, f. & cert. ef. 3-31-14; SSP 14-2015(Temp), f. & cert. ef. 3-23-15 thru 9-18-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 33-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16; SSP 7-2016(Temp), f. 2-17-16, cert. ef. 3-1-16 thru 6-28-16

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**Rule Caption:** Updating income standards to reflect changes to Federal Poverty Level

**Adm. Order No.:** SSP 8-2016

**Filed with Sec. of State:** 2-18-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 11-1-2015

**Rules Amended:** 461-155-0290, 461-155-0291, 461-155-0295

**Subject:** OAR 461-155-0290 (income standards for QMB-BAS), 461-155-0291 (income standards for QMB-DW), and 461-155-0295 (income standards for QMB-SMB and QMB-SMF) are being amended to reflect the annual updates to the Federal Poverty Level that happen every March. These amendments keep Oregon in line with current federal standards for Department Medicaid programs.

**Rules Coordinator:** Kris Skaro—(503) 945-6067

## 461-155-0290

### Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2016 federal poverty level. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.404

Stats. Implemented: ORS 411.060, 411.070, 411.404

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 8-2012, f. & cert. ef. 3-1-12; SSP 6-2013, f. & cert. ef. 3-1-13; SSP 4-2014(Temp), f. 2-4-14, cert. ef. 3-1-14 thru 8-28-14; SSP 7-2014, f. & cert. ef. 3-7-14; SSP 8-2015, f. 2-27-15, cert. ef. 3-1-15; SSP 8-2016, f. 2-18-16, cert. ef. 3-1-16

## 461-155-0291

### Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2016 federal poverty level (see OAR 461-155-0290).. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.404

Stats. Implemented: ORS 411.060, 411.070, 411.404

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 8-2012, f. & cert. ef. 3-1-12; SSP 6-2013, f. & cert. ef. 3-1-13; SSP 4-2014(Temp), f. 2-4-14, cert. ef. 3-1-14 thru 8-28-14; SSP 7-2014, f. & cert. ef. 3-7-14; SSP 8-2015, f. 2-27-15, cert. ef. 3-1-15; SSP 8-2016, f. 2-18-16, cert. ef. 3-1-16

## 461-155-0295

### Income Standard; QMB-SMB, QMB-SMF

(1) Eligibility for QMB-SMB requires income greater than 100 percent (see OAR 461-155-0290) but less than 120 percent of the federal poverty level. The adjusted income standard for QMB-SMB is 120 percent of the 2016 federal poverty level. [Table not included. See ED. NOTE.]

(2) Eligibility for QMB-SMF requires income equal to or greater than 120 percent (see section (1) of this rule) but less than 135 percent of the federal poverty level. The adjusted income standard for QMB-SMF is 135 percent of the 2016 federal poverty level. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 8-2012, f. & cert. ef. 3-1-12; SSP 6-2013, f. & cert. ef. 3-1-13; SSP 4-2014(Temp), f. 2-4-14, cert. ef. 3-1-14 thru 8-28-14; SSP 7-2014, f. & cert. ef. 3-7-14; SSP 8-2015, f. 2-27-15, cert. ef. 3-1-15; SSP 8-2016, f. 2-18-16, cert. ef. 3-1-16

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**Rule Caption:** Expanding pilot project to provide assistance with Social Security disability benefits to eligible clients

**Adm. Order No.:** SSP 9-2016(Temp)

**Filed with Sec. of State:** 2-23-2016

**Certified to be Effective:** 3-1-16 thru 4-1-16

**Notice Publication Date:**

**Rules Amended:** 461-125-0370

**Rules Suspended:** 461-125-0370(T)

**Subject:** OAR 461-125-0370 about disability as the basis of need is being amended to expand a pilot project to clients served by the Aging and People with Disabilities (APD) offices in Canby or Milwaukie, Oregon. The program allows individuals who meet certain requirements to request assistance from the Department with Social Security disability applications and administrative appeals. Eligible clients must have a disability under OAR 461-125-0370(1)(c), receive SNAP benefits, receive benefits from one of the OCCS Medical Programs, and be served by the APD office in Canby, Estacada, or Milwaukie, Oregon.

**Rules Coordinator:** Kris Skaro—(503) 945-6067

## 461-125-0370

### Disability as the Basis of Need

(1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), an individual meets the eligibility requirement to have a disability if the requirements of one of the following subsections are met:

(a) The individual is receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as the individual remains eligible for SSDI or SSI.

(b) The individual was eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue

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to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.

(c) The Department has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. §§ 404.1505 or 416.905.

(d) The Social Security Administration (SSA) has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2; or meets the definition of disability in 20 C.F.R. §§ 404.1505 or 416.905.

(2) If the Department finds the individual eligible for OSIPM in the absence of a disability determination by SSA, the individual remains eligible, provided that the individual continues to meet the disability criteria for eligibility for OSIPM, until SSA denies the disability claim in a final administrative decision.

(3) For OSIP and OSIPM, a disability determination made by SSA that is unfavorable to an individual is binding on the Department unless the requirements of at least one of the following subsections are met (see 42 C.F.R. § 435.541(c)(1) and (c)(4)):

(a) SSA made the determination for a reason other than disability.

(b) The individual alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.

(c) More than 12 months after the most recent SSA determination denying disability, the individual alleges that his or her condition has changed or deteriorated since that SSA determination, and the individual has not made application to SSA based on these allegations.

(d) The individual alleges less than 12 months after the most recent SSA determination denying disability that the condition which SSA evaluated has changed or deteriorated since that SSA determination; and one or both of the following apply:

(A) The individual has requested reconsideration or reopening of the most recent SSA determination denying disability and SSA has declined to consider the new allegations.

(B) It is clear that the individual no longer meets SSI eligibility requirements unrelated to disability status but may satisfy comparable Medicaid eligibility requirements.

(4) If a binding SSA disability determination is not in place, the determination of disability to qualify for OSIPM is made by the Presumptive Medicaid Disability Determination Team (PMDDT), composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports, other evidence relating to the individual's physical or mental impairments, and (as necessary) to determine the capacities of the individual to perform substantial gainful activity, as specified in 20 C.F.R. Part 416, Subpart J (see 42 C.F.R. § 435.541(f)(2)).

(5) The Presumptive Medicaid Disability Determination Team (PMDDT) obtains and reviews medical reports and other non-medical evidence pertaining to the individual and the claimed disability. The medical report and non-medical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR Part 416, Subpart I. The PMDDT then makes a decision about medical eligibility and whether and when a redetermination will be made (see 42 C.F.R. § 435.541(f)(1) and (3)).

(6) In the OSIP-EPD and OSIPM-EPD programs, an individual is disabled (see OAR 461-001-0035) or has a disability (see OAR 461-001-0035) if the individual has a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for SSI or SSDI under 20 C.F.R. Part 404. The determination is made as follows:

(a) A determination by SSA that the individual is disabled or has a disability is accepted by the Department.

(b) If the individual was determined to have a disability by SSA and lost their SSDI eligibility due to their own income, the SSA determination remains effective for one year from the date that the individual loses eligibility for SSDI.

(c) If there is no currently effective SSA determination finding the individual has a disability, the case is referred to the Department's central office for a disability determination (see OAR 461-001-0035) using the standards of 20 C.F.R. Parts 404 and 416 and considering all relevant medical and vocational information.

(d) For OSIPM-EPD, an individual is engaging in substantial gainful activity (SGA, see OAR 461-001-0035) if the earnings of the individual are at or above the EPD Income Standard.

(e) For OSIPM-EPD, any work activity engaged in during the OSIPM-EPD application process or certification period is not evaluated as past relevant work (PRW, see OAR 461-001-0035).

(7) An individual who is served by a branch office (see OAR 461-001-0000) and who has been determined by the Presumptive Medicaid Disability Determination Team (PMDDT) to have a disability (see section (1) of this rule) may receive free assistance from the Department with applications and administrative appeals for Social Security benefits based on a disability for purposes including, but not limited to, meeting the requirement to pursue assets under OAR 461-120-0330.

(8) An individual may receive free assistance from the Department with applications and administrative appeals for Social Security benefits based on a disability for purposes including, but not limited to, meeting the requirement to pursue assets under OAR 410-200-0220 if the individual:

(a) Is determined to have a disability under subsection (1)(c) of this rule;

(b) Receives benefits from one of the OCCS Medical Programs (see OAR 461-001-0000);

(c) Receives SNAP benefits; and

(d) Is served by the Aging and People with Disabilities (APD) office in Canby, Estacada, or Milwaukie, Oregon.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.121, 411.404, 411.706, 411.816, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.050, 411.060, 411.070, 411.121, 411.404, 411.704, 411.706, 411.816, 413.085, 414.685

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 9-2003(Temp), f. & cert. ef. 4-11-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 20-2014(Temp), f. & cert. ef. 8-1-14 thru 1-28-15; SSP 22-2014(Temp), f. 8-29-14, cert. ef. 9-1-14 thru 1-28-15; SSP 27-2014(Temp), f. & cert. ef. 10-1-14 thru 1-28-15; SSP 31-2014(Temp), f. & cert. ef. 12-8-14 thru 1-28-15; SSP 5-2015, f. & cert. ef. 1-29-15; SSP 26-2015(Temp), f. 9-29-15, cert. ef. 10-5-15 thru 4-1-16; SSP 9-2016(Temp), f. 2-23-16, cert. ef. 3-1-16 thru 4-1-16

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**Rule Caption:** Amending rule relating to the time limit on SNAP benefits for ABAWD clients

**Adm. Order No.:** SSP 10-2016(Temp)

**Filed with Sec. of State:** 3-2-2016

**Certified to be Effective:** 3-2-16 thru 8-2-16

**Notice Publication Date:**

**Rules Amended:** 461-135-0520

**Rules Suspended:** 461-135-0520(T)

**Subject:** OAR 461-135-0520 about the eligibility requirements for ABAWD (able-bodied adults without dependents) in the SNAP program is being amended to more clearly state the federal law that limits an ABAWD to three "countable months" of SNAP benefits as a member of any household. (Oregon's statewide waiver of the federal time limit expired on December 31, 2015. Effective January 1, 2016, the time limit applies to ABAWD clients who reside in Multnomah or Washington County.)

The rule text showing proposed changes is available at [http://www.dhs.state.or.us/policy/selfsufficiency/ar\\_temporary.htm](http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm).

**Rules Coordinator:** Kris Skaro—(503) 945-6067

## 461-135-0520

### Eligibility Requirements for ABAWD; SNAP

This rule establishes eligibility (see OAR 461-001-0000) requirements for receipt of SNAP benefits for certain adults.

(1) An able-bodied adult without dependents (ABAWD) means an individual 18 years of age or over, but under the age of 50, without dependents. For the purpose of this definition, "without dependents" means there is no child (see OAR 461-001-0000) under the age of 18 years in the filing group (see OAR 461-110-0310 and 461-110-0370).

(2) Except as provided otherwise in this rule, an ABAWD who resides in Multnomah or Washington County is ineligible to receive food benefits for more than three countable months (see section (3) of this rule) during January 1, 2016 to December 31, 2018.

(3) "Countable months" means months within the 36-month period of January 1, 2016 to December 31, 2018 in which an individual as a member of any household receives SNAP benefits in Oregon or in any other state, unless at least one of the following applies:

(a) The individual resided for any part of the month in a county identified in a waiver approved by United States Department of Agriculture on the limitation on eligibility for SNAP benefits contained in section 6(o)(2)

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of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)). Under the waiver, the time limit in section (2) of this rule does not apply to residents of the following counties: Baker, Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Malheur, Marion, Marrow, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler, and Yamhill.

(b) Benefits were prorated for the month.

(c) The individual was exempt (see OAR 461-130-0305) for any part of the month under OAR 461-130-0310(3)(a)(A) to (J).

(d) The individual participated in one or more of the activities in paragraphs (A) to (D) of this subsection for 20 hours per week averaged monthly. For purposes of this rule, 20 hours per week averaged monthly means 80 hours per month. (Activities may be combined in one month to meet the 20 hours per week averaged monthly requirement.)

(A) Work for pay, in exchange for goods or services, or as a volunteer.

(i) Work in exchange for goods and services includes bartering and in-kind work.

(ii) Voluntary work hours must be verified by the employer.

(ii) For self-employed individuals, countable income after deducting the costs of producing income must average at least the federal minimum wage times 20 hours per week.

(B) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105 220, 112 Stat. 936 (1998).

(C) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93 618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).

(D) Comply with the employment and training requirements described in OAR 461-001-0020, 461-130-0305, and 461-130-0315. Work search activities must be combined with other work-related activities to equal 20 hours per week and may not exceed 9 hours per week.

(e) The individual complied with the Workfare requirements in OAR 461-190-0500.

(4) An ABAWD must submit evidence to the Department on the issue of whether a month is countable within 90 days following the last day of the month in question.

(5) An ABAWD who is ineligible under section (2) of this rule but otherwise eligible may regain eligibility if the requirements of subsections (a) or (b) of this section are met.

(a) The individual becomes exempt under OAR 461-130-0310(3)(a)(A) to (I).

(b) The individual, during a consecutive 30-day period during which the individual is ineligible, meets the requirements of subsection (3)(d) of this rule.

(A) Eligibility established under this subsection for an applicant begins on the date the individual files a new application for food benefits and continues as long as the individual meets the requirements of subsection (3)(d) of this rule and is otherwise eligible. If not eligible on the filing date (see OAR 461-115-0040), eligibility begins the date all other eligibility requirements are met.

(B) There is no limit to how many times an individual may regain eligibility under this subsection during January 1, 2016 to December 31, 2018. However, an individual may only receive benefits without meeting the requirements of subsection (3)(d) of this rule for a total of 6 countable months during January 1, 2016 to December 31, 2018.

(c) See OAR 461-180-0010 to add an individual to an open SNAP case after the individual has regained eligibility under this section.

(6) An individual who regains eligibility under section (5) of this rule and later fails to comply with the participation requirements of subsection (3)(d) of this rule may receive a second set of food benefits for three consecutive countable months. The countable months are determined as follows:

(a) If the individual stopped participation in a work program, countable months start when the Department notifies the individual he or she is no longer meeting the work requirement.

(b) If the individual stopped participation in a work program, countable months start when the individual notifies the Department he or she is no longer meeting the work requirement.

(c) If a change occurred which results in an individual becoming subject to the time limit in section (2) of this rule and the change was required to be reported under rules in OAR chapter 461, division 170, the countable months start when the change occurred.

(d) If a change occurred which results in an individual becoming subject to the time limit and the change was not required to be reported under rules in OAR chapter 461, division 170, countable months start when the

Department notifies the individual he or she must meet the work requirement.

(7) This section is a placeholder to establish criteria the Department will use to grant exemptions to ABAWD who are ineligible if the Department receives special exemptions from the Food and Nutrition Service.

(8) An ABAWD involved in the activities specified in subsection (3)(d) or (3)(e) of this rule or an activity listed in the individual's case plan (see OAR 461-001-0020) is eligible for support service payments necessary for transportation or other costs related to completing the activity as allowed by OAR 461-190-0360.

[Publication: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.121, 411.816

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.121, 411.816, 411.825, 411.837

Hist.: AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 8-2001, f. & cert. ef. 5-1-01; AFS 8-2002, f. & cert. ef. 5-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 6-2016(Temp), f. & cert. ef. 2-5-16 thru 8-2-16; SSP 10-2016(Temp), f. & cert. ef. 3-2-16 thru 8-2-16

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**Rule Caption:** Amending citizenship and alien status requirements to add an exception for children in Head Start

**Adm. Order No.:** SSP 11-2016(Temp)

**Filed with Sec. of State:** 3-4-2016

**Certified to be Effective:** 3-4-16 thru 8-30-16

**Notice Publication Date:**

**Rules Amended:** 461-120-0110

**Subject:** The Department of Human Services, Office of Self-Sufficiency Programs, is adopting temporary rules in OAR 461-120-0110 to include a waiver of the proof of citizenship requirements for children participating in the Head Start program.

The rule text showing proposed changes is available at [http://www.dhs.state.or.us/policy/selfsufficiency/ar\\_temporary.htm](http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm).

**Rules Coordinator:** Kris Skaro—(503) 945-6067

## 461-120-0110

### Citizenship and Alien Status Requirements

(1) Except as provided in section (5) of this rule, in all programs except the CAWEM, ERDC, REF, and REFM programs, to be a member of a benefit group (see OAR 461-110-0750) an individual must meet the requirements of at least one of the following subsections:

(a) Be a citizen of the United States;

(b) Meet the alien status requirements in OAR 461-120-0125;

(c) Be a citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands; or

(d) Be a national from American Samoa or Swains Islands.

(2) In the CAWEM program, to be a member of the benefit group an individual must meet the eligibility requirements of OAR 461-135-1070.

(3) In the ERDC program, the need group (see OAR 461-110-0630) and benefit group must include a child who meets the requirements of section (1) of this rule except that:

(a) For children enrolled in programs that are subject to Head Start Performance Standards and are supported by both Head Start and CCDF funds, parents must submit verification of Head Start enrollment in lieu of other documentation; and

(b) For children in contracted programs, a Head Start eligibility checklist may be used as verification.

(4) In the REF and REFM programs, to be a member of the need group and the benefit group an individual must meet the alien status requirements of OAR 461-120-0125.

(5) In the TA-DVS and TANF programs, a victim of domestic violence (see OAR 461-001-0000) is not subject to section (1) of this rule when OAR 461-135-1200 applies.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 1-2000, f. 1-13-00,

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cert. ef. 2-1-00; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; Administrative correction 10-22-09; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 11-2016(Temp), f. & cert. ef. 3-4-16 thru 8-30-16

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**Rule Caption:** Amending rules about child care provider eligibility

**Adm. Order No.:** SSP 12-2016(Temp)

**Filed with Sec. of State:** 3-14-2016

**Certified to be Effective:** 3-14-16 thru 7-17-16

**Notice Publication Date:**

**Rules Amended:** 461-165-0180

**Rules Suspended:** 461-165-0180(T)

**Subject:** OAR 461-165-0180 about child care provider eligibility requirements is being amended to create a finding of non-compliant for child care providers who have failed to meet certain eligibility requirements that cannot be immediately remedied. Providers in non-compliant status are ineligible for payment for six months but may reapply after six months by submitting information to the Department for review. The rule text showing proposed changes is available at [http://www.dhs.state.or.us/policy/selfsufficiency/ar\\_temporary.htm](http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm).

**Rules Coordinator:** Kris Skaro—(503) 945-6067

## 461-165-0180

### Eligibility of Child Care Providers

(1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless the Department determines, following a preliminary or final fitness determination (see OAR 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other subject individual (see OAR 407-007-0210(30)(a)(A), (B), (F), (I), and (P)) is not eligible for payment.

(2) Ineligibility for payment may result from any of the following:

(a) A finding of “denied”. A provider may be denied under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in OAR 407-007-0210, the Department finds substantial risk to the health or safety of a child (see OAR 461-001-0000) in the care of the provider, the provider must be denied and is ineligible for payment. A provider who has been denied has the right to a hearing under OAR 407-007-0330.

(b) A finding of “failed”. A provider may be failed if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet an eligibility requirement of this rule not covered in subsection (d) of this section. While the provider is in failed status:

(A) The Department does not pay any other child care provider for child care at the failed provider’s site.

(B) The Department does not pay a child care provider at another site if the failed provider is involved in the child care operation unless the Department determines that the reasons the provider is in failed status are not relevant to the new site.

(c) A provider with a status of “failed” may reapply at any time by providing the required documents and information to the Department for review.

(d) A finding of “non-compliant”. A provider may be non-compliant if the Department determines and provides notice that the provider does not meet an eligibility requirement in the following subsections and paragraphs of section (7) of this rule: (d), (e), (h), (i), (j), (k), (L), (o)(H), (I) (L), or (u) or in section (10) of this rule. A provider who has been determined non-compliant may challenge this status by requesting a contested case hearing subject to the requirements and limitations of OAR 461-025. While the provider is in non-compliant status:

(A) The provider is ineligible for payment for at least six months.

(B) The Department does not pay any other child care provider for child care at the non-compliant provider’s site.

(C) The Department does not pay a child care provider at another site if the non-compliant provider is involved in the child care operation unless the Department determines that the reasons the provider is in non-compliant status are not relevant to the new site.

(e) A provider with a status of “non-compliant” may be eligible for payments after the six month ineligibility period ends if the provider has been approved following reapplication, including providing the required documents and information to the Department for review.

(f) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(3) The provider must submit a completed Child Care Provider Listing Form (DHS 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client. The provider and each individual identified under section (4) of this rule must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police (OSP), Federal Bureau of Investigation (FBI), and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider, each individual described in section (4) of this rule, and each subject individual described in OAR 407-007-0210(30)(a)(A), (B), (F), (I) or (P) must fully disclose all requested information as part of the records check.

(4) This rule also establishes additional requirements for the following individuals:

(a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a child in care.

(b) The child care provider and each individual the provider uses to supervise a child in his or her absence.

(c) In the case of a provider who provides care for a child in the provider’s home:

(A) Each individual 16 years of age or older who lives in the provider’s home; and

(B) Each individual who visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.

(5) To receive payment or authorization for payment, the provider must meet the requirements of either subsection (a) or (b) of this section:

(a) Currently be certified or registered with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 unless legally exempt, and be in compliance with the applicable rules. The provider must also complete the Department’s listing process and be approved by the Department.

(b) If legally exempt from being certified or registered with the OCC, complete the Department’s background check process and be approved by the Department.

(6) Each individual described in section (4) of this rule must:

(a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250.

(b) Provide, in a manner specified by the Department, information required to conduct CH, FBI, OSP, and CPS records checks and determine whether the provider meets health and safety requirements.

(c) Have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.

(7) Each provider must:

(a) Obtain written approval from their certifier or certifier’s supervisor if the provider is also certified as a foster parent.

(b) Be 18 years of age or older and in such physical and mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a child in care.

(c) Not be in the same filing group (see OAR 461-110-0350) as the child cared for and cannot be the parent (see OAR 461-001-0000) of a child in the filing group.

(d) Allow the Department to inspect the site of care while child care is provided.

(e) Keep daily attendance records showing the arrival and departure times for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep written records of any attendance that is not able to be recorded in the Child Care Billing and Attendance Tracking (CCBAT) system. These written records must be retained for a minimum of 12 months and provided to the Department upon request.

(f) Be the individual or facility listed as providing the child care. The provider may only use someone else to supervise a child on a temporary basis if the person was included on the most current listing form and the provider notifies the Department’s Direct Pay Unit.

(g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(h) Report to the Department’s Direct Pay Unit within five days of occurrence:

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(A) Any arrest or conviction of any subject individual or individual described in section (4) of this rule.

(B) Any involvement of any subject individual or individual described in section (4) of this rule with CPS or any other agencies providing child or adult protective services.

(C) Any change to the provider's name or address including any location where care is provided.

(D) The addition of any subject individual or individual described in section (4) of this rule.

(E) Any reason the provider no longer meets the requirements under this rule.

(i) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(j) Supervise each child in care at all times.

(k) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider. This includes anyone under the influence (see section (11) of this rule).

(L) Allow the custodial parent of a child in his or her care to have immediate access to the child at all times.

(m) Inform a parent of the need to obtain immunizations for a child.

(n) Take reasonable steps to protect a child in his or her care from the spread of infectious diseases.

(o) Ensure that the home or facility where care is provided meets all of the following standards:

(A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.

(B) The home or facility has safe drinking water.

(C) The home or facility has a working smoke detector on each floor level and in any area where a child naps.

(D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child. Gates and enclosures have the Juvenile Products Manufacturers Association (JPMA) certification seal to ensure safety.

(E) Any firearm, ammunition, and other items that may be dangerous to children, including but not limited to alcohol, inhalants, tobacco and e-cigarette products, matches and lighters, any legally prescribed or over-the-counter medicine, cleaning supplies, paint, plastic bags, and poisonous and toxic materials are kept in a secure place out of a child's reach.

(F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

(G) The home or facility has a telephone in operating condition.

(H) No one may smoke or carry any lighted smoking instrument, including e-cigarettes or vaporizers, in the home or facility or within ten feet of any entrance, exit, window that opens, or any ventilation intake that serves an enclosed area, during child care operational hours or anytime child care children are present. No one may use smokeless tobacco in the home or facility during child care operational hours or anytime child care children are present. No one may smoke or carry any lighted smoking instrument, including e-cigarettes and vaporizers, or use smokeless tobacco in motor vehicles while child care children are passengers.

(I) No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) on the premises (see section (11) of this rule) during child care operational hours or anytime child care children are present. No one under the influence of alcohol, controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) may be on the premises during child care operational hours or anytime child care children are present. No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) in motor vehicles while child care children are passengers.

(J) Is not a half-way house, hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.

(K) Is not a structure:

(i) Designed to be transportable; and

(ii) Not attached to the ground, another structure, or to any utilities system on the same premises.

(L) Controlled substances (except lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana, marijuana edibles, and other products containing marijuana), marijuana plants, deriv-

atives, and associated paraphernalia may not be on the premises during child care operational hours or anytime child care children are present.

(p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.

(q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(r) Complete registration for the CCBAT system within 45 days of the date of the registration notice.

(s) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.

(t) Place infants to sleep on their backs.

(u) Not hold a medical marijuana card; or distribute, grow, or use marijuana (including medical marijuana) or any controlled substance (except lawfully prescribed and over-the-counter medications).

(8) Child Care providers who are License Exempt or Registered Family Child Care Providers with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170 must complete the "Basic Child Care Health and Safety" two-hour, web-based training or the three-hour Oregon Kids Healthy and Safe (OKHS) classroom training prior to being approved by the Department.

(a) Prior to June 16, 2014, a provider who sends the Department a Child Care Provider Listing and Provider Information Sheet (DHS 7494) with a revision date of March 2013, or those who attempt to take the web-based training but are unable due to technical difficulties at the training site, will not be failed for not meeting this training requirement.

(b) License Exempt or Registered Family Child Care Providers who are exempt from this training are those who state at least one of the following:

(A) English is a second language.

(B) No internet access is available.

(9) A child care provider not subject to certification or registration with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250, must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:

(a) Receives funds from the Department; and

(b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

(10) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be under the influence.

(11) For purposes of these rules:

(a) "Premises" means the home or facility structure and grounds, including indoors and outdoors and space not directly used for child care.

(b) "Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

Stat. Auth.: ORS 181.537, 409.050, 411.060, 411.070

Stats. Implemented: ORS 181.537, 329A.340, 409.010, 409.050, 409.610, 411.060, 411.070, 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 5-2014(Temp), f. 2-4-14, cert. ef. 3-1-14 thru 8-28-14; SSP 10-2014(Temp), f. & cert. ef. 4-1-14 thru 8-28-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 21-2014(Temp), f. & cert. ef. 8-13-14 thru 2-9-15; SSP 6-2015, f. 1-30-15, cert. ef. 2-1-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 3-2016(Temp), f. & cert. ef. 1-20-16 thru 7-17-16; SSP 12-2016(Temp), f. & cert. ef. 3-14-16 thru 7-17-16



# ADMINISTRATIVE RULES

## Department of State Police Chapter 257

**Rule Caption:** Agency procedures for sex offender registration and for forwarding registrations to OSP.

**Adm. Order No.:** OSP 1-2016

**Filed with Sec. of State:** 3-7-2016

**Certified to be Effective:** 3-7-16

**Notice Publication Date:** 2-1-2016

**Rules Adopted:** 257-070-0100, 257-070-0110, 257-070-0120, 257-070-0130

**Rules Amended:** 257-070-0015

**Rules Repealed:** 257-070-0010

**Subject:** This rule outlines the procedures agencies who register sex offenders will use to complete a registration and forward that information to the Oregon State Police.

The rule provides procedures for completing the registrations online and for transmission of information to the Oregon State Police.

The rule states that the Oregon State Police will update sex offender registry records and keep them electronically. The Oregon State Police will no longer keep paper records.

**Rules Coordinator:** Shannon Peterson—(503) 934-0183

### 257-070-0015

#### Definitions

As used in these rules:

(1) “Another United States court” means a federal court; military court; tribal court of a federally recognized Indian tribe; court in a state other than Oregon; or a court of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

(2) “Electronic signature” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(3) “Predatory sex offender” means an adult person who has been determined to be predatory prior to January 1, 2014 under former ORS 181.585 to 181.589.

(4) “Registerable sex offender” means an adult person who is required to report and be registered as a sex offender under ORS 181.806, 181.807, or 181.809 either before, on, or after January 1, 2014.

(5) “Registering agency” and “registering agencies” means a local police department, county sheriff’s office, or a regional Oregon State Police office.

(6) “Sex offender” means a person convicted, adjudicated or found guilty of a crime:

(a) That would constitute a sex crime if convicted in this state; or

(b) Which the person would have to register as a sex offender in another United States court’s jurisdiction, or as required under federal law; regardless of whether the crime would constitute a sex crime in this state.

(7) “Sex offender web site” means an internet web site established for criminal justice agencies and maintained by the Department that contains information about registered sex offenders.

(8) “Sex offender registration form” means information regarding sex offenders that is formatted, inscribed, stored and retrievable on a Department approved medium.

(9) “Victim” means a person, or the legal guardian of a person, who is:

(a) The victim of a sex crime listed in ORS 181.805 the commission of which resulted in a conviction, a finding of guilty except for insanity, or a finding that a youth was within the jurisdiction of the juvenile court for an act which, if committed by an adult, would constitute a sex crime; or

(b) Any person who is named in a criminal complaint as a victim of a sex crime listed in ORS 181.805 who in the course of any judicial proceeding is acknowledged by the defendant to be the victim of a sex crime listed in ORS 181.805.

Stat. Auth.: ORS 181.814

Stats. Implemented: ORS 181.800 - 181.845

Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91; OSP 3-1994, f. & cert. ef. 8-1-94; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05; OSP 1-2016, f. & cert. ef. 3-7-16

### 257-070-0100

#### Registration Process for Registering Agencies

(1) The Department will provide a secure internet website to enable registering agencies to register sex offenders. Except as authorized under subsection (5) of this administrative rule, registering agencies shall use the Department’s secure internet website to complete and forward to the Department an electronic sex offender registration form for each registerable sex offender. For purposes of this administrative rule, an electronic sex offender registration form is forwarded to the Department when the registering agency:

(a) Fully completes the sex offender registration form using the Department’s secure internet website; and

(b) Submits the sex offender registration form to the Department by pressing the designated submission button.

(2) Registering agencies shall complete a separate sex offender registration form for each type of sex offender registration event required by law, which includes but is not limited to, initial registrations, annual registrations, changes of address, changes in employment, or changes in higher education facilities.

(3) Registering agencies shall submit separate electronic sex offender registration forms when simultaneous sex offender registration events occur (for example, if a registerable sex offender changes residence at the same time the registerable sex offender is also required to complete an annual sex offender registration form, the registering agency shall complete two separate electronic sex offender registration forms: one for the change of residence registration event and one for the annual registration event).

(4) When registering sex offenders, a registering agency’s representative shall:

(a) Log in to the Department’s secure internet website to complete and forward the sex offender registration form;

(b) Follow the instructions posted on the Department’s secure internet website;

(c) Require registerable sex offenders to:

(A) Electronically complete the entire sex offender registration form;

(B) Electronically initial the sex offender registration form where required; and

(C) Provide an electronic signature.

(d) Ensure that the sex offender registration form is complete and accurate; and

(e) Upload the sex offender registration form and photograph(s) of the registerable sex offender, along with any required fingerprints, to the Department’s secure website; and

(f) Electronically forward the sex offender registration form, photographs, and required fingerprints to the Department.

(5) Registering agencies shall electronically forward sex offender registration forms and related information to the Department unless a technical problem prevents access to the Department’s secure internet website or the electronic transmission of the sex offender registration form and related materials to the Department. Registering agencies may only use a paper sex offender registration form if a technical problem exists that prevents a registering agency from electronically submitting a sex offender registration form and related materials to the Department. If a registering agency uses a paper sex offender registration form, the registering agency shall send a Law Enforcement Data System (LEDS) Administrative Message without delay, and shall submit the paper form to the Department within three (3) business days by regular mail. If an agency is unable to submit an Administrative Message via LEDS, the agency shall notify the Department by email. A paper sex offender registration form is submitted to the Department when the registering agency deposits the paper sex offender registration form, properly addressed and prepaid, into the U.S. Postal Service.

(6) In addition to electronically completing and submitting a sex offender registration form for each registerable sex offender registered, a registering agency during registration shall:

(a) Photograph the registerable sex offender. Registering agencies also may photograph any identifying scars, marks or tattoos physically present on the registerable sex offender, and include those photographs with the materials submitted to OSP SOR; and

(b) Fingerprint the registerable sex offender, unless the registerable sex offender’s fingerprints already exist in the Department’s record file. Registering agencies shall check LEDS for the registerable sex offender’s record. If the registerable sex offender has not been fingerprinted, the registering agency shall fingerprint the registerable sex offender and send the fingerprints to the Department’s Criminal Justice Information Services (CJIS) division within three (3) business days in a CJIS approved manner.

Stat. Auth.: ORS 181.810

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Stats. Implemented: ORS 181.810  
Hist.: OSP 1-2016, f. & cert. ef. 3-7-16

## 257-070-0110

### Registration Requirements for Registerable Sex Offenders

(1) Registerable sex offenders shall only register with a registering agency in their county of residence.

(2) Registerable sex offenders shall submit to registration as directed by the registering agency and as required by law.

(3) When registering with a registering agency, each registerable sex offender shall:

(a) Provide all information necessary to complete the sex offender registration form;

(b) Sign the form by electronic signature or as directed by the registering agency; and

(c) Submit to being photographed and, if required, fingerprinted.

Stat. Auth.: ORS 181.805 - 181.810

Stats. Implemented: ORS 181.805 - 181.810

Hist.: OSP 1-2016, f. & cert. ef. 3-7-16

## 257-070-0120

### Recordkeeping

(1) Once a sex offender registration form is received by the Department, the Department will:

(a) Update the Department's sex offender registry records; and

(b) Retain an electronic copy of the sex offender registration form.

(2) The Department will not retain paper copies of sex offender registration forms.

Stat. Auth.: ORS 181.810, 192.001 - 192.190

Stats. Implemented: ORS 181.810, 192.001 - 192.190

Hist.: OSP 1-2016, f. & cert. ef. 3-7-16

## 257-070-0130

### Internet Notification of Predatory Sex Offenders

The Department shall utilize the sex offender web site to make information available to the public regarding all predatory sex offenders unless or until:

(1) The designating agency notifies the Department that the predatory designation for the sex offender is incorrect;

(2) The predatory sex offender is assessed and classified by the Board of Parole and Post-Prison Supervision as either a level one or level two sex offender; or

(3) December 1, 2018.

Stat. Auth.: OL 2013, Ch. 708 §7 (HB 2549), OL 2015, ch. 820 §27 (HB 2320)

Stats. Implemented: OL 2013, Ch. 708 §7 (HB 2549), OL 2015, Ch. 820 §27 (HB 2320)

Hist.: OSP 1-2016, f. & cert. ef. 3-7-16

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## Higher Education Coordinating Commission Chapter 715

**Rule Caption:** Clarifying HECC's Allotment Authority for Public University and OHSU Funds

**Adm. Order No.:** HECC 1-2016

**Filed with Sec. of State:** 2-19-2016

**Certified to be Effective:** 2-19-16

**Notice Publication Date:** 1-1-2016

**Rules Amended:** 715-013-0005

**Rules Repealed:** 715-013-0005(T)

**Subject:** This rule clarifies that the HECC has delegated the authority to its executive director or designee to distribute all relevant funds to Public Universities and Oregon Health Sciences Universities in the amounts and for the purposes specified by the Oregon Legislature. It makes no substantive change in any allocation formulas by which these funds are distributed and does not impact the net amount any institution will receive for any program in any way.

**Rules Coordinator:** Kelly Dickinson—(503) 947-2379

## 715-013-0005

### Allotment Authority

(1) Effective December 23, 2014, the Higher Education Coordinating Commission delegates to the Executive Director, or designee, authority in all areas of fiscal and administrative responsibility necessary for the execution of Commission policy relating to the allotment of funds to public universities and Oregon Health Sciences University.

(2) The Executive Director, or designee, shall have the authority to distribute funds to public universities and to Oregon Health Sciences

University in the amounts appropriated to the HECC for public universities and Oregon Health Sciences University by the Oregon Legislature.

(a) Funds shall only be distributed to public universities and Oregon Health Sciences University for the specific purposes outlined in statute or by the Oregon Legislature.

(b) This section shall be construed to apply to all distributions of funds by the HECC to public universities and Oregon Health Sciences University, including but not limited to:

(A) Funds distributed through the Student Success and Completion Model as outlined in OAR 715-013-0025 and OAR 715-013-0040.

(B) Funds distributed to Oregon Health Sciences University for support of its Schools of Medicine, Nursing and Dentistry as well as to provide funds to its education, public health and rural health programs.

(C) Funds distributed to state programs as authorized by law or legislative action.

(D) Statewide Public Service programs as authorized by law or legislative action.

(E) Funds allocated to the Sports Lottery Account as authorized by ORS 461.543.

(F) Any other funds authorized by the Oregon Legislature to the HECC for distribution to public universities or Oregon Health Sciences University.

Stat. Auth.: ORS 351.738

Stats. Implemented: ORS 351.735(3)(f), ORS 351.054(2)

Hist.: HECC 2-2015, f. & cert. ef. 3-16-15; HECC 15-2015(Temp), f. & cert. ef. 12-14-15 thru 6-10-16; HECC 1-2016, f. & cert. ef. 2-19-16

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**Rule Caption:** Amending the rule to adopt the new school applicant fee schedule.

**Adm. Order No.:** HECC 2-2016

**Filed with Sec. of State:** 3-9-2016

**Certified to be Effective:** 3-9-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 715-045-0007

**Subject:** The amendments adopt Private Career School (PCS) fees in rule because the current fees were scheduled to sunset in statute. The amendments to OAR 715-045-0007 would not increase the fees but adopt the existing fees in rule. The Oregon Department of Education, where the Private Career Schools unit was previously housed, was given 2 years in statute to adopt the fee schedule in rule assuming during the two years no suggested revisions were proposed. Now under the authority of the Commission, the PCS unit needs to have the fees adopted in rule prior to their scheduled sunset.

**Rules Coordinator:** Kelly Dickinson—(503) 947-2379

## 715-045-0007

### License Fees

(1)(a) Before issuing a career school license under ORS 345.010 to 345.450, the Executive Director shall collect a nonrefundable, annual license fee based on the fee schedule below in OAR 715-045-0007(1)(c) for In-State Schools and OAR 715-045-0007(1)(d) for Out-of-State Schools.

(b) For purposes of ORS 345.080, "tuition income" means "gross tuition income," as that term is defined at OAR 715-045-0001 and 715-045-0007.

(c) In-State Schools: Tuition Income Range — Fee:

(A) \$0–15,000 — \$600;

(B) 15,001–50,000 — 800;

(C) 50,001–125,000 — 1,000;

(D) 125,001–250,000 — 1,425;

(E) 250,001–500,000 — 1,850;

(F) 500,001–750,000 — 2,275;

(G) 750,001–1,000,000 — 2,700;

(H) Over 1,000,000 — 3,125.

(d) Out-of-state Schools: Tuition Income Range — Fee:

(A) \$0–50,000 — \$1,850;

(B) 50,001–250,000 — 2,275;

(C) 250,001–500,000 — 2,700;

(D) 500,001–750,000 — 3,125;

(E) 750,001–1,000,000 — 3,550;

(F) Over 1,000,000 — 3,975.

(2) Applications for a new license must be accompanied by a nonrefundable application fee, based on the fourth step of the fee schedule above in OAR 715-045-0007(1).

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(3) The Commission shall collect a nonrefundable fee of \$12 to conduct a search of a closed career school's transcripts and, if any are found, provide four copies of a former student's transcript. If more than four copies are requested, the requestor shall pay a nonrefundable fee of \$2 for each additional copy.

(4) Teacher registration applications shall be accompanied by a non-refundable application fee of \$75.

(5) Requests to verify a teacher's registration, training, or experience shall be accompanied by a nonrefundable verification fee of \$25.

(6) Applications for teacher trainee registrations must be accompanied by a nonrefundable registration fee of \$7.

(7) Requests to determine whether an out-of-state applicant for a cosmetology license is qualified to take a test of the Board of Cosmetology shall be accompanied by a nonrefundable review fee of \$25.

(8) The Commission shall collect a nonrefundable fee of \$100 for processing:

(a) Career school license renewal applications submitted after the applicable due date established in OAR 715-045-0062. This fee shall be in addition to any civil penalties that may be assessed for renewal applications that are not submitted in compliance with the requirements of OAR 715-045-0062 and any other applicable rules.

(b) Payments to the Tuition Protection Fund established under ORS 345.110 after the due dates established in OAR 715-045-0029. This fee shall be in addition to any civil penalties that may be assessed for payments to the Fund that are not submitted in compliance with the requirements of OAR 715-045-0029 and any other applicable rules.

(9) The Commission shall collect the annual, nonrefundable cosmetology school inspection fee of \$100 established in ORS 345.450 from schools teaching hair design, barbering, esthetics, or nail technology. This inspection fee shall be transferred to the Health Licensing Office.

(10)(a) The Commission shall assess a nonrefundable fee of \$200 for investigations of career schools when the commission determines that a career school has violated any provision of ORS 345.010 to 345.450, or any rule adopted pursuant to ORS 345.010 to 345.450.

(b) If the Commission must engage an individual or business, such as a forensic accountant or an attorney, for assistance in conducting an investigation, then the commission shall assess a nonrefundable fee in an amount equal to the investigative costs incurred by the commission; however, the amount of the fee may not exceed \$5,000.

(11) Applications for a new program must be accompanied by a non-refundable application fee of \$1,000 for each new program submitted for review and approval which was not offered at the time of the career school's initial application to the Commission.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0002, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; Renumbered from 581-045-0007 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 9-2014, f. & cert. ef. 12-18-14; HECC 7-2015(Temp), f. & cert. ef. 6-25-15 thru 12-21-15; HECC 12-2015, f. & cert. ef. 9-21-15; HECC 13-2015(Temp), f. & cert. ef. 9-23-15 thru 3-20-16; HECC 2-2016, f. & cert. ef. 3-9-16

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**Rule Caption:** Amending the PCS Personnel Rules to grant more flexibility for schools and teachers.

**Adm. Order No.:** HECC 3-2016

**Filed with Sec. of State:** 3-9-2016

**Certified to be Effective:** 3-9-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 715-045-0001, 715-045-0012

**Subject:** The proposed amendments to 715-045-0012(9), 715-045-0012(11)(e), 715-045-0012(13)(a), and 715-045-0012(13)(a)(C)(c) are non-substantive changes. The amendments to 715-045-0012(3)(b) and 715-045-0012(3)(c) clarify language and define current practices in rule.

The amendments to 715-045-0012 (3)(d)(A) increase flexibility for career school teachers by allowing a combination of two years of work experience, two years of education, or any combination of both in the subject that they instruct. The amendments to 715-045-0012(3)(d)(B) require that new teacher work experience must have been within the last five years. This rule now allows the Executive Director to grant a waiver if the teacher does not meet the requirement.

The amendments to 715-045-0012(3)(d)(C) require that if a credential or qualifying examination is required for employment in the field, then the two years of experience must include one year of work

experience as a certified practitioner in the subject in which they instruct.

The amendments to 715-045-0012(3)(d)(D) to allow the Executive Director to grant a waiver from the requirements written above upon receipt of a written request from the school in limited circumstances. In previous years the language allowed the Commission to grant a waiver and that flexibility to support schools in industries or schools that are located in remote areas of the state is again included in rule. The amendments to 715-045-0012(3)(f) develop adequate work experience requirements for specific industries in collaboration with specific licensing agencies instead of having to issue multiple waivers.

The amendments to 715-045-0012(4) remove the restriction on product representatives and allows more flexibility in enrichment. The amendments to 715-045-0012(5)(b) to require career schools indicate the start and end date of substitute teachers. The amendments to 715-045-0012(7)(c) clarify that the continuing education requirement no longer requires Commission approval and therefore, the amendments to 715-045-0001 remove the Commission approval requirement in the definition.

**Rules Coordinator:** Kelly Dickinson—(503) 947-2379

## 715-045-0001

### Definitions

The following definitions apply to OAR 715-045-0001 through 715-045-0210, unless otherwise indicated by the context:

(1) "Ability to benefit" is a term used in reference to federal Title IV federal student aid regulations and the methods of determining whether a student has the requisite academic skills necessary to successfully complete a program of study, to be used only for the purposes of establishing eligibility for Title IV funding.

(2) "Addendum" used in reference to a school's catalog means a separate document that contains revisions of policies or other information appearing in the school catalog. Information listed in an addendum to a catalog should be incorporated into the catalog at the next printing of the catalog. An addendum does not include errata, but errata can appear on the same page as addendum information, if properly labeled.

(3) "Advertising" means any form of public notice used in recruiting and promoting activities, however disseminated, including but not limited to print media, catalogs, and other school publications, signs, mailing pieces, radio or television ads, audiovisual material, and the internet on behalf of a licensed school.

(4) "Agent" has the meaning given in ORS 345.010(1).

(5) "Application for admission" or "admission application" means a form, separate from the enrollment agreement, which is submitted by an applicant prior to the signing of the enrollment agreement and evaluated by the school for admission purposes. Schools may charge a non-refundable application fee; however, the fee must be clearly identified on the application.

(6) "Application fee," when used in reference to a school's admissions process, or "admission fee" means the initial fee charged by a school to cover those expenses incurred by the school in establishing an admissions file for a prospective student. The application or admission fee is not inclusive of and does not preclude other fees necessary to assess the suitability of a student for the intended program, or that student's appropriate level of placement in the program based on prior training, education, or experience. At the school's option, the application fee may be non-refundable. The school shall not charge an application fee of more than \$50.00.

(7) "Approved" means accepted by the Higher Education Coordinating Commission or by the commission's executive director in matters relating to school licensing requirements.

(8) "Assessment" or "Performance Assessment" when used in reference to the instructional program, as outlined in OAR 715-045-0009, means a performance-based evaluation of an applicant's progress towards mastery of the stated competencies of the instructional program.

(9) "At-risk" means the school demonstrates a pattern or history of one or more of the following conditions that the Executive Director of the Higher Education Coordinating Commission determines, may cause potential serious problems for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility or reporting;

(b) Misrepresentation;

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(c) Frequent substantiated complaints filed with the Higher Education Coordinating Commission;

(d) A decrease in enrollment from the previous reporting period of 50 percent or more or 25 students, whichever is greater;

(e) Staff turnover from the previous reporting period of 50 percent or more or three staff, whichever is greater; and

(f) If conditions listed in paragraphs (d) and (e) of this subsection can be shown to be caused by unusual circumstance or reason the school may request an exemption from an "at risk" designation. Exemption request will be evaluated by the Executive Director of the Higher Education Coordinating Commission.

(10) "Auxiliary facility" means a facility that does not use or list its address as a school location and:

(a) Absorbs a temporary overload that the principal facility cannot accommodate; or

(b) Provides a specialized training facility away from the principal school location; or

(c) Provides training under contract that is not open to general enrollment; or

(d) Is a site approved by the Higher Education Coordinating Commission for teaching a short-term course that is taught by registered teachers from the principal facility.

(11) "Barbering" has the meaning given in ORS 690.005.

(12) "Bona fide organization or group" means any body or entity that is nationally chartered or recognized by a national or state educational/occupational policy board that has operated or functioned in good faith without fraud or deceit for at least 25 years.

(13) "Capacity to complete" means that a student has the cognitive or physical capacity to complete a program of study, with or without reasonable accommodations, and become employment eligible in the specific field of training for which they are enrolling. A school has an obligation to determine whether applicants have capacity to complete during the admissions process, and to assess this capacity when information is obtained or received by the school through any means which suggests the student may not have capacity to complete the program. Any information obtained shall be treated as confidential and kept in a secure manner. Capacity to complete must be assessed before enrollment is completed; however, if information is received by the school after instruction has commenced that cognitive or physical circumstances exist that may impede a student's satisfactory progress through their program of study, capacity to complete must be assessed immediately after receipt of such information, and appropriate adjustments, accommodations, or tuition refunds made.

(14) "Chairperson" means the person who is responsible for overseeing the business of the advisory committee.

(15) "Class" means a scheduled meeting of persons for instructional purposes.

(16) "Clinic lab" or "clinic floor" means a place where students perform assigned instructional tasks identified in the approved curriculum on models or the general public.

(17) "Completion" means the student has satisfactorily finished all the requirements of the program in which he or she is enrolled, has fulfilled the terms of the enrollment agreement, and has been awarded an appropriate certificate, diploma, or completion document.

(18) "Continuing education" means the enrollment in and completion of ongoing instruction outside the normal teaching schedule, which upgrades a teacher's skills and knowledge with the intent of making the teacher more proficient and current in subject matter taught, instructional methodology, or other skills and knowledge relevant to the teaching of adult learners.

(19) "Course" means an aggregation of classes to achieve a completed set of competencies.

(20) "Discount" means a specified amount of money to be deducted at the time of enrollment from the costs associated with an instructional program, according to a specified set of criteria. The criteria and details of any discounts offered by a school will be given to all persons eligible to receive the discount, and documented and maintained as part of a school's approved advertising. A discount that is granted must be listed as a discount on the enrollment agreement, and is not revocable.

(21) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex or sexual orientation, or any other protected class.

(22) "Distance learning instruction" means education provided by written correspondence or any electronic medium for students enrolled in a

private career school in pursuit of an identified occupational objective, but not attending classes at an approved school site or training establishment.

(23) "Enrollment" means a student has agreed to the purchase of a course or program of instruction offered by a school and has signed an enrollment agreement, however named, that commits both the student and the school to a legal and binding obligation. Instruction in a program or course may not begin without a signed enrollment agreement in place.

(24) "Enrollment fee" means the fee a school charges that covers those expenses incurred by a school in processing the student enrollment agreement and establishing a student records system. The enrollment fee is limited to 15% of the total tuition cost, or \$150, whichever is less, and is identified as an enrollment fee on the student enrollment agreement.

(25) "Errata" in reference to a school's catalog means a listing of errors appearing in a school's published catalog and the corrections of those errors. Errors do not include revisions to policies or other information in the catalog. Errata may be published only via electronic means, at the discretion of the school, in which case a reference in the school catalog must be included that specifies the URL or website where errata may be found. Errors included on the errata list should be corrected in the next printing of the school's catalog.

(26) "Esthetics" has the meaning given in ORS 690.005.

(27) "Evaluation fee" means any fee, however named, covering those expenses incurred by a school in evaluating a prospective student's prior training, education, experience, or other indicators of beginning level of mastery in technical program competencies before enrolling in a program of instruction at the school, or for other uses of an assessment for competency evaluation (e.g., licensing reciprocity) approved by the Executive Director of the Higher Education Coordinating Commission. The evaluation fee shall not exceed the reasonable costs incurred by the school in administering and scoring the assessment, preparing official documentation, providing appropriate feedback to the applicant, and designing a program of study based on the assessment results (if applicable).

(28) "Executive Director" means the Executive Director of the Higher Education Coordinating Commission, or the executive director's designee.

(29) "Fiscal reporting period" means the period of time for which the school provides financial information required by the Higher Education Coordinating Commission. The fiscal reporting period is identified by the school owner in the initial license application and must remain consistent unless a written request for a change is approved by the Superintendent. The fiscal reporting period may be the calendar year or another 12-month time period.

(30) "Fund" means the private career school Tuition Protection Fund (TPF).

(31) "Grant," as used in reference to tuition assistance, means actual funds made available through any source to prospective or enrolled students through an application process whereby applicants must meet predetermined criteria and may or may not be required to maintain a certain status or performance criteria in order to retain the award. For in-house grants, funds in the amount of the full amount of the award for grants awarded on an annual basis will be deposited by the school in an account separate from the school's operating funds at the time of the award, or at the beginning of each new year of an on-going award, and drawn out by the school as the tuition is earned. For third party grants, all monies received by the school on behalf of the student will be deposited into an account separate from the school's operating funds and drawn out as the tuition is earned. In-house grants are revocable only in the amount that has not been earned by the student, according to the terms of the grant award, which are to be articulated to the recipient of the award and agreed upon by signature through an official award letter. The signed award letter will be kept in the student's file, and a copy given to the student. Any grant awarded a student from any source will be documented on the enrollment agreement as a grant at the time of the award. If the award is made after the initial enrollment agreement has been signed, a rider to that agreement must be executed and attached.

(32) "Gross tuition income" means all direct tuition charges from programs for which the school is licensed under OAR chapter 715, division 45, including any laboratory fee. Total gross tuition income does not include:

(a) Tuition refund;

(b) Enrollment and application fees; or

(c) Costs for books, supplies, tools, and equipment purchased by students.

(33) "Hair design" has the meaning given in ORS 690.005.

(34) "In default" is defined in ORS 345.115(5) as "when a course or program is discontinued or canceled or the school closes prior to completion of contracted services."

## ADMINISTRATIVE RULES

(35) "Incentive," as used in reference to tuition assistance, means a monetary reward or inducement offered by a school for the purpose of encouraging or motivating a student to perform a specific action, such as completing or course or instructional program within a certain period of time. Any terms or conditions that apply to an incentive must be published by the school, and maintained as part of the school's approved advertising. Students who are working towards an incentive award will have in their file a copy of the terms and conditions of the incentive along with a record of the date each condition is satisfied. Once all conditions have been satisfied the incentive is considered earned and cannot be cancelled or revoked. A rider to the enrollment agreement must be prepared at the time of award detailing the application of the incentive to the student's outstanding financial obligation.

(36) "License" means a license to operate a private career school.

(37) "Nail technology" has the meaning given in ORS 690.005.

(38) "On-site review" means a visit to the school by authorized staff from the Higher Education Coordinating Commission who may review the facilities, classrooms, and school records; talk with students, staff, and administrators; and determine whether the school is in compliance with Oregon law.

(39) "Operating" or "operation" means any form of marketing, advertising, instruction, recruitment, or any other activity regulated under ORS Chapter 345 and OAR chapter 715, division 45.

(40) "Placement" means the student has been employed in the occupation for which trained.

(41) "Post-secondary" for the purposes of recognizing private career schools in Oregon as institutions of post-secondary study means any school licensed under ORS Chapter 345 that:

(a) Admits as regular students, or maintains as a majority of its enrollment, those students who have earned a recognized high school diploma, the equivalent of a recognized high school diploma, or a GED certificate, or who are beyond the age of compulsory education in the State of Oregon, and

(b) Is authorized by the Higher Education Coordinating Commission to offer one or more educational programs beyond secondary education.

(42) "Probation" means that a school has been officially notified by the Executive Director of the Higher Education Coordinating Commission that it has deficiencies that must be corrected within a specified time.

(43) "Program" means an aggregation of courses to meet an identified occupational objective.

(44) "Program advisory committee" means a representative group appointed by the school, which advises the school ownership and administration.

(45) "Program improvement plan" or "school improvement plan" means a written plan that describes how the school will resolve or comply with violations of state rule or regulation assessed, or correct any deficiencies identified, by the Executive Director of the Higher Education Coordinating Commission, and usually includes interim outcome measures to track progress towards the overall improvement goals.

(46) "Pro rata" means in accordance with a fixed proportion.

(47) "Published Class Schedule" (for the purpose of calculating tuition charges) means the period of time between the commencement of classes and the student's last date of attendance as offered by the school and scheduled by the student.

(48) "Recruiting" means personally soliciting or attracting a person or persons by a school or its agent(s) with the intention of actively pursuing enrollment in the school. Recruiting does not include leaving materials at or near an office or other site for a person to pick up of his or her own accord or handing a brochure or other materials to a person.

(49) "Registration" means the process by which directors, agents, or teachers either request registration by the Superintendent to teach at the school or notify the Superintendent of their appointment of an agent to represent the school.

(50) "Reporting period" means the period of time that corresponds with the school's fiscal year on which the school bases all individual program student completion and placement reporting that must be submitted to the Higher Education Coordinating Commission. The school's fiscal year may be the calendar year or another 12-month time period.

(51) "Resident instruction" means education provided at an approved school site or training establishment for students enrolled in and attending classes at the school facility in pursuit of an identified occupational objective.

(52) "Revocation" as referenced in OAR 715-045-0012 means that the Executive Director of the Higher Education Coordinating Commission has notified an employee of a licensed private career school that because of

violations of 715-045-0012(9)(a)-(c) the commission's approval of the employee's registration is permanently withdrawn. When notice of revocation is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under the Administrative Procedures Act, ORS Chapter 183.

(53) "Revoke" means the Higher Education Coordinating Commission terminates the school license. When the license is revoked, the school is not authorized to continue operating. Probation or suspension may, but is not required to, precede revocation.

(54) "Rider" means an attachment, schedule, amendment, or other writing that is added to the enrollment agreement that alters the terms, conditions, or financial obligation of the original instrument without altering the instrument in its entirety. The contents of a rider to the enrollment agreement are understood to be incorporated into the enrollment agreement.

(55) "Scholarship" means actual funds, from any source, made available to prospective or enrolled students through an application process whereby applicants must meet predetermined criteria and may or may not be required to maintain a certain status in order to retain the award. For in-house scholarships, funds in the amount of the full amount of the award for scholarships awarded on an annual basis will be deposited by the school in an account separate from the school's operating funds at the time of the award, or at the beginning of each new year of an on-going award, and drawn out by the school as the tuition is earned. For third party scholarships, all monies received by the school on behalf of the student will be deposited into an account separate from the school's operating funds and drawn out as the tuition is earned. In-house scholarships are revocable according to the terms of the scholarship award, which are to be articulated to the recipient of the award and agreed upon by signature through an official award letter. The signed award letter will be kept in the student's file, and a copy given to the student. Any scholarship awarded a student from any source will be documented on the enrollment agreement as a scholarship at the time of the award. If the award is made after the initial enrollment agreement has been signed, a rider to that agreement must be executed and attached.

(56) "Self-directed instruction" means a course of instruction or an instructional program in which the instructional materials and curriculum are sufficient in design and scope to prepare a student for the program's occupational objectives without the provision of direct instruction. These objectives can be achieved without regular or scheduled interaction either by mail, telephone, or in person between the student and faculty employed by the school and do not require the school to measure attendance or lesson completion for satisfactory progress.

(57) "School" or "career school" or "private career school" has the meaning given in ORS 345.010(4).

(58) "Short term course" means a course no longer than 16 clock hours in duration.

(59) "State advisory committee" means a representative, statutory advisory committee appointed by the Superintendent of Public Instruction, consisting of members who shall serve for terms of three years ending June 30.

(60) "Structured work experience" or "externship" means a worksite educational activity that correlates the value of classroom training and on-site job performance, is an integral part of the student's training plan, and is supervised/evaluated by appropriate school personnel.

(61) "Supplement" in reference to a school's catalog means a document that is separate from the catalog and which contains new information not appearing in the catalog, or information that is related, but in addition, to information already appearing in the catalog. Information contained in a catalog supplement may or may not need to be incorporated into the catalog at the next regular revision and printing of the catalog.

(62) "Suspension" as referenced in OAR 715-045-0012 means that the Executive Director of the Higher Education Coordinating Commission has notified an employee of a licensed private career school that because of violations of 715-045-0012(9)(a)-(c) the commission's approval of the employee's registration is temporarily withdrawn. When notice of suspension is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under the Administrative Procedures Act, ORS Chapter 183.

(63) "Suspend" means the Executive Director of the Higher Education Coordinating Commission has notified a school that because of deficiencies, it may not advertise, recruit, enroll students, or begin instruction of new students, but may remain open to complete training of currently enrolled students. Probation may, but is not required to precede suspension.

# ADMINISTRATIVE RULES

(64) "Teachout" means a defaulting school or the Higher Education Coordinating Commission makes provisions for students enrolled at the time of the default to complete a comparable program at no additional cost beyond the original enrollment agreement with the defaulting school. Teachout arrangements, if made by the defaulting school, shall be approved in advance by the commission's executive director and, if ongoing, approved annually by the executive director.

(65) "Transcript" means a written record that shall include, but is not limited to, name and address of student, first and last date of attendance, all programs or courses undertaken, grades achieved, whether the courses or programs were successfully completed, and signature of a school official.

(66) "Tuition" means money or other compensation paid or credited to a school by a student or on behalf of a student that is applied to the costs of instruction and training actually received or to be received by the student.

(67) "Tuition aid" or "Tuition assistance" means any award of monetary value, including, but not limited to, scholarships, grants, discounts, or incentives offered by a career school or by a third party, that is received by a student who will enroll in, or is enrolled in, a specific program of instruction, and is:

(a) Provided directly to the student for the purposes of covering, in full or in part, the costs of tuition or other allowed educational expenses incurred by the student, or

(b) Paid or credited to a career school on behalf of the student by the school or a third party for the purpose of covering, in full or in part, the costs of tuition or other allowed educational expenses incurred by the student.

(68) "Withdrawal fee" means any fee, however named, covering those expenses incurred by a school in processing student paperwork relating to program changes (i.e., course additions/drops or transfers) or withdrawal from school and so identified on the student enrollment agreement.

Stat. Auth.: ORS 345.020

Stats. Implemented: ORS 345.030 & 345.325

Hist.: 1 EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07; ODE 13-2008, f. & cert. ef. 5-23-08; ODE 13-2008, f. & cert. ef. 5-23-08; ODE 3-2010, f. & cert. ef. 2-8-10; ODE 27-2012, f. 9-13-12, cert. ef. 9-17-12; Renumbered from 581-045-0001 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 3-2016, f. & cert. ef. 3-9-16

## 715-045-0012

### Personnel

(1) A career school shall establish, publish, and enforce specific written policies that set standards for the staff's:

- (a) Professional performance and conduct;
- (b) Evaluation; and
- (c) Continuing education.

(2) Career schools shall employ as teachers only those individuals who are registered with the Commission and who meet the applicable requirements of this rule. All applications for teacher registration shall:

- (a) Be recorded on forms provided by the Commission;
- (b) Indicate the specific subjects the prospective teacher will teach;
- (c) Be signed by the prospective teacher and a director at the school;

and

(d) Be accompanied by relevant official transcripts, letters, and documents that confirm that the teacher meets the minimum requirements listed in subsections (3) and (4) of this rule.

(3) Individuals applying for registration as career school teachers must:

- (a) Be at least 18 years of age
- (b) Hold all Oregon licenses, permits, certificates, or other credentials, as well as successfully pass any examinations, legally required for employment in the field in which they teach. In limited circumstances, the Executive Director may grant a waiver from this requirement upon receipt of a written request from the school showing that a credential issued by another state would be accepted as an equivalent by the state in which the school is located.

(c) Have graduated from high school as evidenced by a photocopy of the applicant's high school diploma, a high school transcript indicating graduation, or a foreign equivalent. As an alternative, the applicant may show evidence of a General Education Development (GED) certificate or a transcript indicating graduation, from a postsecondary program which would typically require completion of high school, or an equivalent course of study, as a condition of admission. The Executive Director may grant a waiver to this requirement upon written request from the school.

- (d) Have met the following experience requirements.

(A) Have at least two years of work experience or two years of education, or any combination of both, in the subject that they instruct. One year of experience is defined as 1,875 hours of work, education or training per year (37.5 hours per week times 50 weeks). Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time experience (3750 hours).

(B) For new teachers the work experience must have been within the last five years. The Executive Director may grant a waiver upon written request from the school.

(C) If a credential or qualifying examination is required for employment in the field by the state in which the school is located, the two years of experience must include at least one year of work experience as a certified practitioner in the subject in which they instruct, following certification or licensure. The Executive Director may grant a waiver upon written request from the school.

(D) In limited circumstances, the Executive Director may grant a waiver from the requirements written above upon receipt of a written request from the school.

(e) Pay the applicable registration fee specified in OAR 715-045-0007.

(f) Notwithstanding the work experience, education and training requirement specified in paragraph (d) of this subsection, the Commission may outline specific, industry/field requirements, in collaboration with state licensing agencies for non-cosmetology fields of practice.

(g) Notwithstanding the work experience, education and training requirement specified in paragraph (d) of this subsection, an applicant applying for registration to teach hair design, barbering, esthetics, nail technology, or some other cosmetology field or area of practice at a career school offering cosmetology programs may qualify to teach by completing a Commission-approved:

(A) 1,000 hour cosmetology teacher training program offered by a licensed career school, if the applicant possesses a valid credential from the Health Licensing Office; or

(B) 200 hour cosmetology teacher training program, if the applicant taught hair design, barbering, esthetics, nail technology, or some other cosmetology field or area of practice in another state whose licensing requirements are less than those established by the State of Oregon, or if the applicant's Commission-issued teacher registration expired three or more years ago.

(4) Career schools offering programs in hair design, barbering, esthetics, nail technology, or some other cosmetology field or area of practice may use individuals who are not registered teachers for the purpose of providing specialized training that enhances the students program of instruction. Such specialty trainers, also known as resource persons, may not provide more than a total of:

- (a) 340 hours of instruction in a hair design program;
- (b) 270 hours of instruction in a barbering program;
- (c) 100 hours of instruction in an esthetics program; or
- (d) 100 hours of instruction in a nail technology program.

(5)(a) In emergency situations, not to exceed three months, schools may hire substitute teachers who are the best-qualified persons available. Under no circumstances shall students be allowed to substitute as approved teachers.

(b) Within 14 days of hiring a substitute teacher, a career school must provide written notice to the Commission. The notice must include, at a minimum, the substitute teacher's name, telephone number, mailing address, and e-mail address, the start date and estimated end date for the substitute teaching, as well as a list of the programs and courses the substitute teacher will teach and, if applicable, copies of the substitute teacher's credentials.

(6) If a school utilizes any form of teacher assistants, aides, or trainees, it shall establish and maintain policies that set forth qualifications, duties, procedures for use of these personnel, and maintain a copy of these policies for review by the Commission. Teacher assistants, aides, or trainees:

- (a) May not be used as substitutes or replacements for regular teachers;
- (b) Must work under the direct supervision of a registered teacher; and
- (c) May evaluate students only under direct supervision of a registered teacher.

(7)(a) The school shall have and implement written policies to promote improvement of teacher competency in their fields and in levels of performance in their teaching assignments. A recommended minimum for continuing education is 30 hours during each three-year period.

# ADMINISTRATIVE RULES

(b) If a credential or qualifying examination is required for employment in a field by the state in which the school is located, then a registered teacher preparing students to enter that field must comply with any applicable continuing education requirements.

(c) Notwithstanding paragraph (b) of this subsection, registered teachers who teach hair design, barbering, esthetics, nail technology, or some other cosmetology field or area of practice at a career school offering cosmetology programs must complete a minimum of 30 hours of continuing education three years after the date their registration was issued or reissued.

(8) Teacher registrations shall expire three years after the date the registration was issued. To renew a teacher registration, a registered teacher must submit a completed teacher registration form to the Commission accompanied by:

(a) The applicable registration fee specified in OAR 715-045-0007;

(b) Evidence that the teacher has satisfied any applicable continuing education requirements;

(c) If applicable, evidence that the teacher possesses a valid credential required by the state in which the school is located for employment in the field the teacher is preparing students to enter; and

(d) A listing of the career schools where the registered teacher has taught during the previous three years, as well as the programs and courses taught by the teacher.

(9) School directors must have at least two years of experience in school or business administration, teaching, or other experience directly related to their duties within the school's organization. The experience must have been obtained within the last five years. Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time experience. Full-time work experience is a minimum of 1,875 hours per year (37.5 hours per week times 50 weeks). Qualified persons who do not meet the criteria in section (11) of this rule may be appointed as directors with prior approval by the Executive Director and with a letter as required in subsection (12)(c) of this rule.

(10) Owners and directors, administrators, agents, supervisors, and instructors (hereinafter collectively "employees") subject to registration, licensure, or approval pursuant to ORS 345.010 to 345.450 are subject to suspension, revocation, or other discipline if the employee:

(a) Is charged with knowingly making any false statements in the application for a license, registration, or approval;

(b) Is charged with gross neglect of duty; or

(c) Is charged with gross unfitness.

(11) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following acts constitute gross neglect of duty:

(a) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(b) Substantial deviation from professional standards of competency;

(c) Violation of any ethical standard contained in OAR 715-045-0012(12);

(d) Engaging in acts in violation of laws or rules applicable to the profession;

(e) Failure or refusal to respond to questions, to provide information, or to furnish documents to a Commission representative pursuant to review, assessment, or investigation; or

(f) Any other statement or act or omission not consistent with personal integrity, ethics, or honesty.

(12) Gross unfitness is any conduct that renders an owner or employee unqualified to perform duties. The following acts constitute gross unfitness:

(a) Convictions of a crime or offense specified in subsection (12) of this rule or engaging in such wrongful acts even in the absence of a conviction;

(b) Commission of fraud, misrepresentation, or deceit;

(c) Commission of unfair, deceptive, or unlawful trade practices as defined in the Oregon Unlawful Trade Practices Act.

(13) No licensed school shall be owned by or employ an individual who is not of good moral character and reputation.

(a) Upon review by the Commission the Executive Director may find a person not to be of good moral character and reputation when the person:

(A) Has been convicted of a felony or a misdemeanor that involves the illegal use, sale or possession of a controlled substance, or that involves any sexual offense, or any violent offense;

(B) Has been convicted of an offense involving fraud or misrepresentation, or has committed fraud, misrepresentation, or deceit or has committed unfair, deceptive, or unlawful trade practices regulated by the Oregon Unlawful Trade Practices Act (ORS 646.605-646.652), or

(C) Is currently subject to suspension or revocation of a Commission-issued license or registration.

(b) The Executive Director shall not make a finding that a person is not of good moral character and reputation solely for the reason that the person has been convicted of a crime, but shall consider the relationship of the facts that support the conviction and all intervening circumstances as they relate to the specific occupational standards and requirements; and

(c) If the prospective employee has been convicted of a crime listed in subsection (13) of this rule, the Executive Director shall request a letter of recommendation from the employing school and the individual's most recent employer, parole officer, or other appropriate professional source. The Executive Director shall fully consider such recommendation along with all other supporting materials submitted by the prospective employee. The Executive Director, after reviewing submitted materials, may approve an employee registration on a probationary basis for a period not to exceed one year. Upon completion of the probationary period, if no further violation of subsection (12) has occurred, the probationary status will be removed.

(14) The school shall set minimum expectations and provide training for all instructional personnel and supervisors of instructional personnel in:

(a) Curriculum and Instruction — including the educator's competent application of:

(A) The school approved curriculum; and

(B) Effective teaching strategies; and

(b) Supervision and Evaluation of Students — including the educator's responsibility to:

(A) Record progress of individual students;

(B) Evaluate student performance; and

(C) Use effective classroom management;

(c) Ethics — including the educator's responsibility to:

(A) Know, respect, and obey all policies of the school;

(B) Exemplify personal integrity, ethics, and honesty;

(C) Keep student information confidential; and

(D) Avoid exploiting students for personal profit or advantage.

Stat. Auth.: ORS 345.080, 345.325, & 345.400

Stats. Implemented: ORS 345.325 & 345.400

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02;

ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07;

Renumbered from 581-045-0012 by HECC 2-2014, f. & cert. ef. 4-23-14; HECC 6-2014, f. & cert. ef. 12-18-14; HECC 3-2016, f. & cert. ef. 3-9-16

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## Higher Education Coordinating Commission, Office of Degree Authorization Chapter 583

**Rule Caption:** Update rules to reflect 2015 legislation that amended duties and responsibilities.

**Adm. Order No.:** ODA 1-2016

**Filed with Sec. of State:** 2-19-2016

**Certified to be Effective:** 2-19-16

**Notice Publication Date:** 1-1-2016

**Rules Adopted:** 583-030-0051, 583-030-0052, 583-030-0053, 583-030-0054, 583-030-0056

**Rules Amended:** 583-001-0000, 583-001-0005, 583-001-0015, 583-030-0005, 583-030-0009, 583-030-0010, 583-030-0015, 583-030-0016, 583-030-0020, 583-030-0025, 583-030-0030, 583-030-0032, 583-030-0035, 583-030-0036, 583-030-0041, 583-030-0042, 583-030-0043, 583-030-0045, 583-030-0046, 583-030-0049, 583-050-0006, 583-050-0011, 583-050-0014, 583-050-0016, 583-050-0026, 583-050-0027, 583-050-0028, 583-050-0036, 583-050-0040

**Rules Repealed:** 583-030-0011, 583-030-0051(T), 583-030-0052(T), 583-030-0053(T), 583-030-0054(T), 583-030-0056(T), 583-001-0000(T), 583-001-0005(T), 583-001-0015(T), 583-030-0005(T), 583-030-0009(T), 583-030-0010(T), 583-030-0015(T), 583-030-0016(T), 583-030-0020(T), 583-030-0025(T), 583-030-0030(T), 583-030-0032(T), 583-030-0035(T), 583-030-0036(T), 583-030-0042(T), 583-030-0043(T), 583-030-0045(T), 583-030-0046(T), 583-030-0049(T), 583-050-0006(T), 583-050-0011(T), 583-050-0014(T), 583-050-0016(T), 583-050-0027(T), 583-050-0028(T), 583-050-0036(T), 583-050-0040(T), 583-030-0041(T), 583-050-0026(T)

**Subject:** The Commission is amending OAR 583-001-0000, 583-001-0005, 583-001-0015, 583-030-0016, 583-030-0020, 583-030-0025, 583-030-0030, 583-030-0032, 583-030-0035, 583-030-0036,

# ADMINISTRATIVE RULES

583-030-0041, 583-030-0046, 583-030-0049, 583-050-0006, 583-050-0011, 583-050-0014, 583-050-0016, 583-050-0027, 583-050-0028, 583-050-0036, 583-050-0040 for purposes of general clean-up and clarifying rule language.

The Commission's delegation of authority is clarified in OAR 583-001-0000.

The Commission is amending OAR 583-030-0005, 583-030-0009 and 583-030-0010 in order to repeal references to the exclusionary rule per passage of Senate Bill 218 (2015 Oregon Legislative Assembly) which deleted this allowance. OAR 583-030-0015 is being amended to reflect the change in definitions after the repeal of the exclusionary rule and request for exemption. The Commission is amending 583-030-0015 to include the definition of probation per passage of House Bill 3516 (2015 Oregon Legislative Assembly).

The Commission is repealing OAR 583-030-0011 to reflect changes in federal guidelines referencing state authorization, 34 Code of Federal Regulations (CFR) 600.9. Suspending OAR 583-030-0011 will also reflect changes in House Bill 2870.

The Commission is amending 583-030-0035 for clean-up and clarifying language. This rule defines monetary compensation when referencing how teachers and administrators are paid at ODA schools. The rule is further amended to define the extent to which schools can contract with third party entities. The requirements of the school catalog are amended to include average total student loan debt students leave the school with. The Commission is amending 583-030-0035(12) to require schools submit a fact sheet for review by the Commission staff and to be available for students.

The Commission is amending 583-030-0042 for purposes of defining annual reporting in rule and what factors the Commission will request from schools on an annual basis.

The Commission is amending 583-030-0043 and 583-030-0045 for purposes of addressing schools placed at risk, or on probation, suspension status and the requirements placed on them. The rule further identifies the Commission's authority to extend the probation, suspension or revocation.

The Commission is adopting 583-030-0056, 583-030-0051, 583-030-0052, 583-030-0053 and 583-030-0054 to produce administrative procedures in order to reflect House Bill 3516 (2015 Oregon Legislative Assembly) which amended ORS 348.606 to require surety bonds and letters of credit. HB 3516 also requires the Commission to define "probation" and outline regulatory steps for schools under probation.

The Commission is amending 583-050-0026 to clarify the Commission's authority over invalid degrees and issuing cease and desist letters for degree users. It also clarifies the Commission's authority to issue penalties and the administrative hearings.

**Rules Coordinator:** Kelly Dickinson—(503) 947-2379

## 583-001-0000

### Notice of Proposed Rule

Effective January 13, 2015:

(1) Pursuant to ORS 351.735(6), the Higher Education Coordinating Commission (Commission) may delegate certain of its powers, duties or functions to the Executive Director of the agency of the Commission. Effective July 1, 2012, the Commission delegates to the Executive Director general powers, duties and functions of the Commission under ORS Chapter 348 as described in the following rules under this Chapter:

- (a) OAR 583-030-0005 through 583-030-0056
- (b) OAR 583-050-006 through 583-050-0040
- (c) OAR 583-070-0002 through 583-070-0020

(2) The Executive Director may delegate any of the powers to Commission staff, except not to temporary employees or contractors, as deemed appropriate.

(2) Before permanently adopting, amending, or repealing any permanent rule, the Higher Education Coordinating Commission (Commission) shall give notice of the proposed adoption, amendment, or repeal:

(a) In the Secretary of State's Bulletin, referred to in ORS 183.360, at least 21 days prior to the effective date of the rule;

(b) By mailing or emailing, at least 28 days before the effective date of the rule, a copy of the notice to persons on the Commission's mailing and emailing lists established pursuant to ORS 183.335(8);

(c) By mailing or emailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and,

(d) By mailing or emailing a copy of the notice to persons, organizations, and publications identified by the Commission and established educational, student, and parent organizations that have submitted mailing or emailing addresses to the Commission.

(3) Persons who wish to receive written or emailed copies of notices of proposed rulemaking from the Commission may write or email the Commission and request that they be placed on the Commission's mailing or emailing lists.

(4) The Commission may update the mailing and emailing lists described in this rule annually by requesting persons to confirm that they wish to remain on the lists. If a person does not respond to a request for confirmation within 28 days of the date the Commission sends the request, the Commission will remove the person from the Commission's mailing and emailing lists. Any person removed from the mailing or emailing lists will be returned to the mailing or emailing list upon request, provided that the person provides a mailing address or emailing address to which notice may be sent.

Stat. Auth.: ORS 183.335, 183.341(4), 348.606, & 351.728

Stats. Implemented: ORS 183.335

Hist: ECC 21, f. & ef. 11-28-75; ECC 1-1984, f. & ef. 11-28-84; ODA 2-2000, f. 7-7-00, cert. ef. 7-20-00; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-001-0005

### Model Rules of Procedure

Effective January 13, 2015. Pursuant to the provisions of ORS 183.341, the Commission adopts the Attorney General's Model and Uniform Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2012.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Office of Degree Authorization.]

Stat. Auth.: ORS 183 & 348

Stats. Implemented: ORS 183.341

Hist: ECC 22, f. & ef. 1-13-76; ECC 4-1978, f. & ef. 4-12-78; ECC 1-1980, f. & ef. 2-19-80; ECC 2-1981, f. & ef. 12-16-81; ECC 2-1983, f. & ef. 11-7-83; ECC 1-1986, f. & ef. 9-20-86; ODA 2-2000, f. 7-7-00, cert. ef. 7-20-00; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-001-0015

### Establishing Fees for Public Record

Effective January 13, 2015. A fee may be imposed on any school or person requesting services or information from the Commission pertaining to the administration of its functions under ORS 348.594 to 348.615. The amount of the fee shall be established by the manager to whom the Commission has delegated the responsibility to manage the Commission's functions under ORS 348.594 to 348.615. The amount of the fee shall be sufficient to recover designated expenses incurred by the Commission in carrying out the administration of ORS 348.594 to 348.615. Any fees collected by the Commission, for services that are the responsibility of the manager, shall be deposited in the Degree Authorization Account established under ORS 348.601 and used exclusively for purposes directly related to the duties and functions of the Commission under the authority of the manager as delegated by the Commission.

Stat. Auth.: ORS 348.603

Stats. Implemented: ORS 348.603

Hist.: ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0005

### Purpose and Scope

Effective September 10, 2015:

(1) These rules implement ORS 348.594 to 348.615 and 348.992 insofar as each section therein relates to ORS 348.606, which provides that a school must meet state standards and be approved by the Higher Education Coordinating Commission (Commission) before it may confer or offer to confer any academic degree, or provide services purporting to lead to a degree, by establishing the standards and the procedures to implement the standards or to verify any exemption or exclusion.

(2) These rules apply to any school offering degrees and credits from within Oregon to recipients anywhere. The rules further apply to any school offering degrees and credits from outside of Oregon, in connection with



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learning or evaluation meant to occur within this state. These rules further apply to anyone affiliated with a school in the following ways:

- (a) Maintaining an office or mailing address in the state; or
- (b) Conducting any part of the instruction program or support activities from or in the state.
- (3) Exclusions to the rule are described in OAR 583-030-0009.
- (4) Complete and partial exemptions and modifications are described in OAR 583-030-0010 and 583-030-0011.

Stat. Auth.: ORS 348.594 & 348.606  
Stats. Implemented: ORS 348.594, 348.603 & 348.606  
Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998 f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0009

### Exclusions

Effective September 10, 2015. These rules do not apply to: Postsecondary schools that do not offer degrees or credits viable toward a degree, absent an articulation agreement with an authorized school, but do confer certificates and diplomas in instructional programs for the purpose of instructing, training, or preparing students for any profession. Such schools are subject to ORS chapter 345.

Stat. Auth.: ORS 348.594 - 348.615, 2005 SB 1039 (2005 Laws 546)  
Stats. Implemented: ORS 348.594 - 348.615  
Hist.: ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0010

### Exemptions

Effective September 10, 2015:

(1) The standards and procedures in these rules shall not apply to an Oregon public institution that is authorized and governed by the Commission under ORS Chapter 351.

(2) A school is exempt on religious grounds if the school meets the requirements of ORS 348.604 and 348.608. No rules in this division are applicable to a religious-exempt school, except as permitted by ORS chapter 348.

(3) A regionally accredited nonprofit school or separately regionally accredited campus of a nonprofit school that has operated at least one program approved by the Commission, or its predecessor agencies, in Oregon for at least five consecutive years is exempt unless otherwise noted under ORS Chapter 351 for the investigation and resolution of student complaints.

Stat. Auth.: ORS 348.604 & 348.606  
Stats. Implemented: ORS 348.597, 348.604, 348.605  
Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; ECC 3-1981, f. & ef. 12-16-81; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2010, f. & cert. ef. 11-16-10; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0015

### Definitions of Terms

Effective September 10, 2015. The following definitions have particular application to one or more provisions of this division.

(1) "Academic year" means approximately nine months, conventionally during fall, winter, and spring.

(2) "Accredited" means approved to offer degrees at a specified level by an agency or association recognized as an accreditor in the U.S. by the U.S. Secretary of Education or having candidacy status with an agency or association whose pre-accreditation category is recognized specifically by the U. S. Secretary of Education as an assurance of future accreditation.

(3) "At risk" means the school demonstrates one or more of the following conditions that the Commission determines may cause potential serious problems for the continued successful operation of the organization: Failure to meet the standards of financial responsibility; Misrepresentation; Frequent substantiated complaints filed with the Commission; Significant decrease in enrollment from the previous reporting year; or Significant staff turnover from the previous reporting year.

(4) "Certificate" means a formal academic award that signifies, purports, or may generally be taken to signify completion of a course of instruction for which college or university-level academic credit is given

but which is shorter or more limited than that leading to a degree. Certificate includes the term "diploma" if used to mean a similar award. A certificate may be at the undergraduate or graduate level.

(5) "Class hour" or "contact hour" means approximately one hour of direct communication between a teacher and one or more students, minus time for rest or change of classes. Conventionally this has been a fifty-minute period.

(6) "Confer a degree" means give, grant, award, bestow, or present orally or in writing any symbol or series of letters or words that would lead the recipient to believe a degree had been obtained.

(7) "Credit," when the full term is "postsecondary or college credit," means indication or certification by a school that a student has completed a unit of study, demonstrated achievement or proficiency, or manifested measured learning outside of school so as to have satisfied a portion of the requirements for a degree or for any other academic recognition offered by the school.

(8) "Credit hour" means one postsecondary credit resulting from one of the following intended to result from at least 2 hours of student work out of class (or in equivalent lab time) for each contact hour in class, totaling:

- (a) Approximately 45 hours of student work in a semester;
- (b) Approximately 30 hours of student work in a quarter;
- (c) An equivalent amount of student work under an alternate term calendar schedule approved by Office of Degree Authorization; or
- (d) Equivalent student work demonstrated by student performance on a nationally recognized examination or evaluation acceptable to the Commission.

(9)(a) "Degree" means any academic or honorary title, rank, or status that may be used for any purpose, which is designated by a symbol or series of letters or words such as, but not limited to, associate, bachelor, master, or doctor, and forms or abbreviations thereof that signifies, purports, or may generally be taken to signify:

(A) Completion of a course of instruction at the college or university level;

(B) Demonstration of achievement or proficiency comparable to such completion; or

(C) Recognition for nonacademic learning, public service, or any other reason of distinction comparable to such completion.

(b) "Degree" does not refer to a certificate or diploma signified by a series of letters or words unlikely to be confused with a degree, clearly intended not to be mistaken for a degree, and represented to students and the public in ways that prevent such confusion or error.

(10) "Executive Director" means the executive director of the Commission, or the executive director's designee.

(11) "External degree" means a degree that can be earned mostly or entirely through correspondence, electronic recordings, or subscription telecommunications, rather than by resident instruction, except that some assistance may be provided for students face-to-face by school adjuncts in capacities such as advisor, mentor, tutor, clinic or practicum supervisor, topical speaker, occasional seminar leader, evaluator, or member of a thesis or study committee.

(12) "First-professional degree" means master's or doctor's degree conferred upon completion of a course of study for which admission into some schools may be gained with less than a baccalaureate, but for which pre-admission and professional study together invariably require more time than is required for a bachelor's degree alone, regardless of how many matriculants already have a bachelor's degree.

(13) "Full-time equivalent" or "FTE" means the number of students, teachers, or other personnel, any member of which may be engaged full time or part time, who in combined time expended would be the equivalent of one full-time unit of the kind being described.

(14) "Full-time student" means a student who is engaged in academic study as the student's primary occupation, thus ordinarily requiring 35 to 45 hours per week divided between interaction with teachers and independent preparation.

(15) "Graduate degree" or "post-baccalaureate degree" means a master's or doctor's degree conferred upon completion of a course of study for which admission can be gained only through possession of a bachelor's degree satisfactory to the school offering the graduate instruction.

(16) "General Education" is a term that includes liberal education and other nonvocational courses outside a student's major field.

(17) "Liberal Arts and Sciences courses" means courses in the following subjects:

(a) The humanities, such as language, literature, philosophy, religious thought, and fine arts (not emphasizing performance skills);

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(b) The social sciences, such as anthropology, cultural geography, general history, religious history and culture, economics, political science, general psychology, and sociology; and

(c) The natural sciences, such as Biology, biological psychology, chemistry, physics, geology and physical geography, mathematics.

(18) "Limited resident instruction" means instruction by an accredited school consisting of less than 50 percent of a degree or certificate program offered to more than one student at a physical site in Oregon, when the providing school is not otherwise authorized to offer degrees in Oregon.

(19) "Lower-division instruction" means course content and teaching at a level appropriate for first- and second-year postsecondary students generally (including all community college and associate degree instruction), but available to more advanced students who have no prior experience in the subject.

(20) "Non-Oregon school" means any school controlled from outside the state.

(21) "Offer a degree" means announce, advertise, declare, or imply orally or in writing the willingness or intention to confer a degree directly or to cause a degree to be conferred by agreement or arrangement with any person or school.

(22) "Oregon school" means any postsecondary school or organized group of postsecondary schools that has its principal executive offices in Oregon or is otherwise controlled effectively from within this state, regardless of the number of students served in various locations.

(23) "Practicum" means that portion of a degree program that involves a supervised field placement in a professional or workplace environment. For purposes of these rules, also includes "internship."

(24) "Professional and vocational courses" include, but are not limited to, courses in the following subjects: agriculture and forestry (or wildlife management), architecture and design, business and public administration, broadcasting or journalism, computer technology, education, engineering and related technologies, health professions, home economics, law, library science, military science, parks and leisure studies, physical education and recreation, protective services, religious services, artistic performance or physical activity courses, or practical and general information courses such as personal health, career planning, human relations, public speaking, elementary writing, elementary mathematics, and computer fundamentals.

(25) "Probation" means that a school has been officially notified by the Commission that it has deficiencies that must be corrected within a specified time based upon an inspection or other investigation that reveals lack of compliance with ORS 348.606 to 348.612 or the standards of OAR chapter 583, division 30, or when the school fails to meet the requirements set forth by the Commission while on "at risk" status.

(26) "Quarter" means one third of an academic year, typically 9-12 weeks in length and divided among fall, winter and spring.

(27) "Regionally accredited" means approved to offer degrees at a specified level by a regional institutional accreditor recognized for that purpose by the U.S. Secretary of Education.

(28) "Religious degree" means a degree with a title in theology or religious occupation(s).

(29) "Residential degree" means a degree earned primarily through resident instruction.

(30) "Resident instruction" means face-to-face teaching and learning at a school's main campus or other major facility with a regularity designed to accommodate full-time students and others who need continuous access to teachers and related resources on site.

(31)(a) "Restricted degree" means an external or semi-residential degree offered exclusively to employees or members of contracting organizations, which receive on their own premises services that may include direct or televised teaching by regular or adjunct faculty members of the school.

(b) "Restricted degree" does not mean a degree program that is open to all members of the general public who are qualified for admission.

(32) "School" means any person or persons and any organization or group of organizations, whether incorporated or not, engaging or appearing to engage in the activities of an educational entity or institution of learning, whether or not naming itself a school, college, university, institute, academy, seminary, conservatory, or similar term. The activities attributable to a school include but are not limited to teaching, measurement of achievement or proficiency, or recognition of educational attainment or comparable public distinction.

(33) "Semester" means half an academic year, typically 15-16 weeks in length, conventionally including a fall semester from September through December and a spring semester from January through May.

(34) "Semi-residential degree" means a degree that can be earned through a combination of residential and external methods but requires a substantial portion of learning from structured face-to-face teaching at a school's main campus or other major facility, or at a temporary instructional site where students meet in groups.

(35) "State academic standards" for Oregon means the standards provided in OAR 583-030-0035.

(36) "Term" means a segment of an academic year, ordinarily a semester or quarter but sometimes less. Term is the preferred descriptor for degree program courses using a nontraditional calendar.

(37) "Upper-division instruction" means course content and teaching appropriate for third- and fourth-year students or others with a strong background in the subject. Upper-division instruction is not offered in associate degree programs or by community colleges.

Stat. Auth.: ORS 348.594 & 348.606, 2015 SB 218 enrolled; 2015 HB 3516.

Stats. Implemented: ORS 348.594, 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0016

### Exclusive Use of Term "University"

Effective January 13, 2015. The term "university" refers exclusively to a school that is authorized to offer bachelor's degrees together with graduate or first professional degrees, or to an organization that constitutes a formal consortium of schools so authorized. Any entity that calls itself "university" without authorization but with serious intent will be referred to the Department of Justice for enforcement under ORS 646. 605 to 646.652, Oregon's Unlawful Trade Practices Act.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.596, 348.603 & 348.606

Hist.: EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0020

### Exercise of Office Authority

Effective September 10, 2015:

(1) A school that intends to offer to anyone from within Oregon or offer to Oregon residents from outside the state any form of instruction, lecture, training, tutoring, seminar, workshop, examination, evaluation, or other service represented as contributing credit or otherwise leading toward a specified or unspecified degree or certificate that will or might be conferred anywhere shall notify the Commission at least 6 months in advance and then promptly supply all information the Commission requests. Failure to notify the Commission in advance, or to provide information as directed, may result in permanent denial of approval for the school to offer any services in or from Oregon, as well as administrative action, up to and including assessment of civil penalties.

(2) Schools that offer no degrees in Oregon but want to offer a certificate are subject to the requirements of ORS chapter 345 and OAR chapter 715, division 45.

(3) Schools intending to apply for authorization or exemption from the Commission shall provide the Commission with information about the school's ownership and structure, proposed programs, and relationships to other institutions, if any. On the basis of this preliminary information, the Commission's executive director will determine whether the school:

(a) Must apply for state authorization to offer instruction or related services leading to one or more degrees under the standards of OAR 583-030-0035 or 583-030-0036;

(b) Is exempt for other than religious reasons under ORS 348.597;

(c) Is eligible for exemption under ORS 348.604 and therefore has a choice of standard state approval or religious exemption.

(4) A school that applies for degree authorization or exemption shall use forms and follow procedures determined by the Commission. Failure to comply constitutes good reason to reject an application. Such school shall be open to inspection and may be inspected at any time to verify its statements and to examine facilities. Inspection of a school and evaluation of its application will be performed by state officials or consultants at the Executive Director's discretion, and results will be utilized as the Commission considers appropriate. Information from other examiners, such as accreditors or professional licensing agencies, may accompany

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materials submitted by the school and may be used by the Commission at its discretion.

(5) Authorization to offer instruction or related services leading to a degree applies to specific curricula and services for specific periods:

(a) Authorization is normally given for the state as a whole, but may be limited by the Commission in order to ensure program quality or operational stability.

(b) The Commission, on the basis of judgment about the relationship between a curriculum and a degree title, may require revision of title. Degree titles may not contain the name of organizations, companies or products.

(c) Authorization is given for a specific degree for a fixed period of not less than two or more than four calendar years. The executive director may vary the length of approval periods by up to one year subject to the four-year limit in order to consolidate applications or renewals for the convenience of the school or the Commission.

(6) Authorization to offer instruction or related services leading to a degree expires at the end of the period for which it is given, without right or presumption of renewal, except that an authorized school having submitted a complete and timely application for renewal continues to be authorized until such time as a review or revocation procedure may determine otherwise. After discontinuing its offer of an authorized degree before the end of the period of authorization, a school shall not reinstate the degree without permission from the Commission. A program shall be deemed discontinued if a period of two academic years passes without any students being enrolled in the program.

(7) Authorization to offer instruction or related services leading to a degree is subject at all times to supplemental review if the school appears to be at risk or approaching probation, suspension or revocation for proper cause according to procedures described in OAR 583-030-0045.

(8) Approval of a degree by the Commission does not constitute approval of the program as training for professional practice when the state licenses or otherwise regulates professional practice. Applicants must also seek approval from the appropriate state licensing entity.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.597, 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0025

### General Conditions Required for Residential or Semi-residential Degree Program Authorization

Effective January 13, 2015. All applicant schools must meet the following conditions to apply for initial or renewed authorization to offer a residential or semi-residential degree to Oregon residents or to offer any degree from within Oregon to persons anywhere.

(1) A school must appoint a responsible administrator who resides within the state and has a business address and telephone within the state, who may transact the essential business of application, and who in any case shall be made an informed party to all such business. If a non-Oregon-based school plans a small or narrowly specialized operation within this state, the executive director may permit the applicant to use an out-of-state administrator.

(2) All programs must be designed to allow all students to work toward a degree at a rate equivalent to at least half-time study.

(3) No school shall be eligible to apply for authorization to offer in or from Oregon any instruction or other services leading to a doctor's degree before it has obtained accreditation or pre-accreditation candidacy at or above the bachelor's degree level recognized by the U.S. Secretary of Education. However, offer of doctoral programs in another state by an unaccredited school will not automatically disqualify such school from authorization to offer degrees below the doctoral level in Oregon. The only exception to this provision is that a proposed school offering one or more doctoral programs leading to professional licensure in a field in which Oregon has such licensure may apply for approval from the Commission. In such cases, the school proposing to offer doctoral programs may apply for Commission approval only if the program is designed and intended to meet the standards for licensure required by the appropriate Oregon professional licensing board.

(4) A foreign (non-U.S.) school is eligible to apply for Oregon approval if it is approved to offer degrees by the appropriate agency in its home country and the Commission finds that its home country has adequate

oversight of academic programs. Foreign schools are not limited to offering in Oregon the same degrees for which they have approval in their home country, but may not offer degrees at a higher level in Oregon than those for which they have authorization in their home country.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2005, f. & cert. ef. 3-3-05; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0030

### Application Procedure

Effective September 10, 2015:

(1) A school seeking initial degree authorization should allow three months to prepare its application and six additional months for review by the Commission. Approval of exempt degrees and abbreviated reviews for certain external or semi-residential degrees or for limited or restricted residential instruction may require less time. To be considered timely, a complete application for renewal of an existing authorization must be submitted six months before the date that authorization expires, and a school seeking renewal is fully responsible for beginning the procedure.

(2) In order to be valid, application must be made by the method determined by the Commission, including completion according to instruction of any forms provided for the purpose. Modification will be allowed by explicit permission only. The applicant school shall submit any information requested by the Commission and may submit such supplemental information as it considers pertinent. The Commission will provide advice.

(3) Program approval may be made conditional on approval of employees hired after the approval date.

(4) Application for authorization to offer a degree or to provide services leading to a degree in whole or in part must be accompanied by payment of the fee described in OAR 583-030-0046 or such reduced fee as is determined by the Commission in special circumstances. Several curricula leading to the same degree may be submitted as part of a single application.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2004, f. & cert. ef. 1-14-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0032

### Review Process for Degrees

Effective January 13, 2015:

(1) Review of an application to offer instruction or related services leading to a degree or certificate includes evaluation of the school and its proposed programs in relation to the state academic standards set forth in OAR 583-030-0035, or modified under 583-030-0036 for a non-Oregon school that will offer limited resident instruction in Oregon.

(2) Pursuant to OAR 583-030-0036, the Commission at its discretion may employ an abbreviated review procedure with adjusted fee for a non-Oregon school offering limited or restricted instruction in Oregon for an external degree.

(3) Review of free-standing certificate or diploma programs offered by degree-granting schools, or credit-bearing courses offered by schools that do not issue degrees in their own name will generally follow the model for associate degrees.

(4) In the course of evaluation, the Commission's staff will ordinarily inspect the facilities and records of an applicant school and interview officials, employees, or students of the school as necessary to obtain sufficient information. The staff may also interview employers of school graduates and representatives of organizations that appear closely related to the school.

(5) Where competency in a particular academic discipline is essential to an evaluation, the Commission's executive director may seek expert advice in that discipline. However, adequacy of instruction in a discipline will ordinarily be judged by faculty credentials in relation to the standards, by curricular content in comparison with similar programs of established quality, and by educational resources and student performance. Where competency in a particular occupation or profession is needed for an evaluation, the executive director will seek expert advice from the corresponding state licensing board.

(6) The Commission will not review sectarian content of curriculum for degrees with a religious title or significant religious content; the state's

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only concern will be to ensure that the curriculum has a reasonable structure related to credits awarded.

(7) The review culminates in preparation of findings, including explanation of any failure to satisfy a standard, which are provided to the applicant in a formal report. Approval is not granted until all standards are satisfied. If a standard cannot be satisfied in a reasonable length of time, approval will be denied.

(8) Refusal by the Commission to authorize an applicant school to offer instruction or related services leading to a degree is subject to right of review as provided in ORS 348.615 by an action brought for trial without jury in the circuit court of the county in which the school is located. A school or putative school having no physical location in Oregon at which students are served shall bring any such action in the circuit court of Marion County.

Stat. Auth.: ORS 348.606  
Stats. Implemented: ORS 348.603 & 348.606  
Hist.: ECC 22, f. & ef. 12-22-75; ECC 26, f. & ef. 6-8-77; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; Renumbered from 583-030-0040, ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0035

### Standards for Schools Offering Degree Programs In or From Oregon

Effective September 10, 2015. In order to receive and hold authorization to offer in or from Oregon instruction or related services leading to one or more degrees, a school must remain open to inspection at all times and continuously satisfy each of the following standard requirements as written, except where the Commission approves modification under OAR 583-030-0036 or substitution under 583-030-0011. Standards are applicable to all programs.

(1) Name. The school shall use for doing business publicly a name that is consistent with its purpose and educational programs.

(2) Control.

(a) All persons responsible for upper management policy must be individually qualified by education, experience, and record of conduct to assure effective management, ethical practice, and the quality of degrees and services offered. Boards must collectively demonstrate financial, academic, managerial and any necessary specialized knowledge, but individual members need not have all of these characteristics. Any controlling organization or owner is subject to this standard.

(b) Administrators shall be paid by fixed salary and not by commission. Commission includes monetary and nonmonetary compensation. Any portion of payment that is based on enrollment of students recruited by the administrator or the administrator's staff is considered payment by commission.

(c) Teachers shall be paid by fixed salary and not by commission. Commission includes monetary and nonmonetary compensation. Any portion of payment that is based on enrollment of students recruited by the teacher is considered payment by commission.

(d) Nonprofit Schools:

(A) Persons who control a nonprofit school shall demonstrate a commitment to the school's best interest as a public trust.

(B) A nonprofit school shall have a published policy that is followed in practice against conflicts of interest at all organizational levels.

(e) For-profit Schools:

(A) A school operated for profit shall disclose fully to the Commission the specific financial interest of any involved organization or person, except that a large group of shareholders may be described generally. Any person or entity holding at least 5 percent of voting or common shares in a for-profit school must be named and the percentage of holdings disclosed. All business activities of interested organizations or persons are subject to disclosure.

(B) All board members, administrators, or owners of five percent or more of shares of an applicant school or parent corporation must disclose with explanation the following:

(i) Any prior felony convictions.

(ii) Any known violations of federal financial aid rules by a school of which the person was a board member or employee.

(iii) Any known violations of the policies of an accreditor by a school of which the person was a board member or employee.

(iv) Any previous or current ownership or administration of a school that closed or filed for bankruptcy.

(3) Organization.

(a) The school and any parent organization shall be organized so as to distribute responsibility clearly among positions in a logical structure that

is consistent with services offered and qualifications needed to fulfill the duties of the positions. An individual may occupy more than one position.

(b) The school shall satisfy the Commission that all upper executive officers and other administrators are individually qualified by education, experience, and record of conduct to assure competent management, ethical practices, and effective educational service. Unless an exception is approved by the Commission's executive director because of sufficient compensatory qualification, administrators above the entry level shall have experience related to their present duties, and all administrators with authority over academic programs shall possess appropriate degrees earned from schools that are regionally accredited or otherwise determined by the Commission to be acceptable.

(c) The school shall make available to the Commission an administrator generally responsible for school operations within the state and transaction of business with the Office. Unless an exception is approved by the Commission's executive director because of sufficient compensatory qualification, that administrator shall possess a degree at least as high as any offered by the school in connection with operations in Oregon, together with appropriate administrative experience.

(d) There shall be an academic officer for the entire school responsible for faculty and academic programs offered in or from Oregon. Unless an exception is approved by the Commission's executive director because of sufficient compensatory qualification, that officer shall possess at least a master's degree and shall possess a doctor's degree if the school offers any graduate or non-baccalaureate professional degree. That officer shall have experience in teaching and academic administration, both experiences appropriate to the level, size, and complexity of the school.

(e) There shall be a business officer for the entire school responsible for accounting and managerial services. Unless an exception is approved by the Commission's executive director because of unusual compensatory qualification, that officer shall possess at least a bachelor's degree in a business-related field, together with appropriate administrative experience.

(4) Teachers.

(a) The school must obtain and keep official transcripts for all teaching faculty.

(b) The school shall satisfy the Commission that all teachers are individually qualified by education and experience to give expert instruction or evaluation in their specialties. Unless an exception is approved by the Commission's executive director because of sufficient compensatory qualification, teachers shall be qualified for the various levels of instruction or evaluation as described below, with degrees earned from schools that are accredited by a federally recognized accreditor or otherwise determined by the Commission to be acceptable.

(c) Standards applicable to specific degree levels. A person who does not hold the appropriate level and major degree as stated in subparagraphs (B) through (E) of this paragraph may demonstrate qualification by showing at least 12 semester or 18 quarter credits in the field at a level higher than the current teaching assignment combined with appropriate professional experience in the field. Teaching experience cannot be used to replace professional experience if this option is exercised, except for teacher education programs.

(A) Teachers in programs leading to degrees in the fine arts, including but not limited to art, music, dance, cooking, theater, photography, writing and other programs involving a significant creative element, may demonstrate qualifications with a documented combination of academic and creative work.

(B) Standards applicable to associate degree programs: A teacher on a faculty offering associate's degrees ordinarily shall possess a bachelor's degree appropriate to the subject taught or evaluated, except that compensatory nonacademic qualifications will be more readily accepted by the Office in programs leading to occupational degrees leading to professional licensure or the fine arts. Where the degree emphasizes transfer courses in the arts and sciences (primarily Associate of Arts degrees), the teacher ordinarily shall possess an appropriate master's degree.

(C) Standards applicable to bachelor's degree programs: A teacher on a faculty offering bachelor's degrees ordinarily shall possess an appropriate graduate degree in the field currently taught.

(D) Standards applicable to master's degree programs: A teacher on faculty offering master's degrees ordinarily shall possess an appropriate doctor's degree and some teaching experience, except that up to half of the teachers in an occupational or professional degree program may substitute for the doctorate a master's degree together with occupational or professional licensure or equivalent certification and related work experience. More substitutions may be permitted where the terminal degree for teach-

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ers in an occupational or professional field is not generally considered to be a doctorate.

(E) Standards applicable to doctoral degree programs: A teacher on a faculty offering doctor's degrees ordinarily shall possess an appropriate doctor's degree and substantial graduate or first-professional teaching experience, including experience overseeing advanced independent study or student practice, except that the doctor's degree alone may suffice for teaching courses at the master's level generally or at any level in the teacher's particular subspecialty.

(d) There shall be sufficient numbers of teachers and so distributed so as to give effective instructional and advisory attention to students in all programs offered by the school.

(e) A school having an undergraduate FTE student-faculty ratio of greater than 30:1 or a graduate FTE student-faculty ratio of greater than 20:1 for students taught in or from Oregon must demonstrate that students and faculty have adequate opportunities for one-to-one interaction.

(f) A school that does not have at least one full-time teacher resident in Oregon or directly teaching Oregon students in each specialty must demonstrate with specific examples the adequacy of faculty contribution to organizational integrity and continuity, to academic planning, and to resident student development.

(g) The school shall have a faculty development policy that continuously improves their knowledge and performance.

(h) The school must provide the Commission with annual data regarding turnover of full-time teachers. The Commission may limit use of part-time teachers upon finding that such turnover or use results in substandard education of students.

(i) The school shall demonstrate an effort when hiring teachers to avoid dependence on its own most recent graduates. No more than 20 percent of all applicant school teachers can hold their highest degree from the applicant school unless fewer than 10 schools in the United States offer the highest degree available in the field. Schools offering solely religious degrees are exempt from this requirement.

(j) A teacher of an academic or scientific discipline within an occupational or professional degree program (e.g., economics within a business program, psychology within education, anatomy within nursing) ordinarily shall possess the appropriate degree in the discipline rather than a non-disciplinary occupational or professional degree. Lower-division undergraduate courses may be taught by those with non-disciplinary degrees who have demonstrable and extensive acquaintance with the discipline.

(5) Credit. The school shall award credit toward degrees proportionate to work done by students and consequent upon the judgment of qualified teachers and examiners. Credits are generally expressed as either semester (SCH) or quarter credit hours (QCH). One semester credit represents approximately 45 hours of on-task student work in a semester (usually two study hours per faculty contact hour). A quarter credit hour represents approximately 30 hours of student work in a quarter. Credit hours earned through nontraditional learning schedules shall have proportionate value to credit hours based on customary term lengths.

(a) Instructional methods:

(A) Credit awarded by the school shall be based solely upon the judgment of teachers who have had extensive direct contact with the students who receive it, with the exception of methods listed in these rules if approved in advance by Commission's executive director.

(B) At least one academic year of credit toward any degree, most of it near the end, shall represent teaching or direct evaluation by faculty members employed by the school, except that the Commission may approve a lesser amount for an associate's degree.

(C) Credit may be awarded for distance learning if the school demonstrates that it has adequate methods in place to ensure that student work is sufficient both in quality and quantity to meet the Commission's requirements, courses are developed and taught by qualified faculty and there will be sufficient interaction between students and faculty and, if possible, among students. The Commission may limit or disallow credit awarded for any type of distance learning if the school cannot demonstrate adequate oversight and quality control measures.

(D) Transfer credit integral to the school's approved degree curriculum may be awarded at the corresponding degree level for academic work documented by other schools that are accredited, authorized to confer degrees in or from Oregon, or otherwise individually or categorically approved by the Commission. Such credit must be at a "C" grade or above, and converted as needed from semester, quarter or nontraditional calendar systems.

(b) Non-instructional Methods. No more than one year of an academic program can be completed using any combination of the non-instruc-

tional methods set forth in subparagraphs (A), (B), and (C) of this paragraph:

(A) Advanced Placement credit integral to the approved degree curriculum may be awarded in the lower-division up to a limit of one academic year for passing examinations constructed by testing organizations satisfactory to the Commission.

(B) Challenge examination credit as an actual component of the approved degree curriculum may be awarded only for successful performance on a final course examination, or on a similar test covering all course content, given by the school in lieu of requiring class attendance. No more than 25 percent of a program may be earned through challenge examinations.

(C) Noncollegiate learning integral to the approved degree curriculum may be awarded credit only at the undergraduate level for learning validated by a student portfolio, a credit evaluation guide issued by the American Council on Education, or a similar criterion. Such learning must be formulated through sufficient contact between teacher and student, communicated competently in terms of ideas (e.g., concept, generalization, analysis, synthesis, proof) rather than mere description, and judged by faculty members or contracted experts demonstrably qualified to evaluate it. Upper-division credit of this type may be awarded only in academic fields in which the school employs its own faculty. No more than 25 percent of an undergraduate degree program may be earned through award of credit for noncollegiate work.

(6) Curriculum. The school shall assure the quality of all attendant teaching, learning, and faculty-student interaction. The curriculum shall have a structure that reflects faculty responsibility for what is to be learned overall, as well as in each course, and thus for the logical sequence and increasing difficulty of subjects and instructional levels. While requirements are sometimes listed in both semester and quarter credit hours, the Commission usually states credit hours as semester credit hours. If quarter credits are not listed, colleges using the quarter system should multiply the stated credits by 1.5 to obtain the correct requirement in quarter credit hours (QCH) under quarter systems. These are the basic requirements for different kinds of degrees available in Oregon. The Commission's executive director may approve minor variations from these curriculum standards in order to allow programs to operate efficiently.

(a) Undergraduate Programs. All associate and bachelor's degrees require one year (at least 6 semester (SCH) or 9 quarter credit hours (QCH) or equivalent alternate term credit hours) of English composition or equivalent Commission-approved writing courses. Students may meet this requirement by achieving a score on a nationally normed test that would permit a waiver of English composition requirements or the award of academic credit in English composition at an accredited college or university.

(b) Associate's Degrees. An associate's degree requires at least two academic years (60 semester credit hours or 90 quarter credit hours) in FTE postsecondary study. The degree requires at least 15 SCH or 22 QCH in general education courses, including the undergraduate English composition requirement.

(A) Associate of Arts. A full-transfer degree, the A.A. requires two academic years applicable to B.A. or B.S. study fulfilling baccalaureate liberal arts requirements. A major is optional. Thus, the A.A. requires 24 SCH (36 QCH) in the liberal arts and sciences, with at least 6 hours (9 QCH) each in the humanities, sciences, and social sciences.

(B) Associate of Science. A limited-transfer degree, the A.S. requires a major and two academic years applicable to professional or technical baccalaureate study. The A.S. degree requires 24 SCH (36 QCH) in the humanities, sciences and social sciences, or in non-vocational courses closely related to them.

(C) Associate, Professional or Technical. A terminal degree, the professional or technical associate's degree requires a major (Degree title examples: Associate of Applied Arts, Associate of Applied Science, Associate of Technology, Associate of Occupational Studies, Associate of Business, Associate of Religion). In addition to the major requirements, this degree requires the basic 15 SCH or 22 QCH in general education courses, including the English composition requirement.

(c) Bachelor's Degrees. A bachelor's degree, or baccalaureate, requires at least four academic years (120 SCH or 180 QCH) in FTE postsecondary study. At least 40 semester credit hours (60 QCH) shall be in upper-division courses, and no more than two academic years of instruction (no more than 50 percent of credit hours used for the degree) shall be from schools that do not offer baccalaureate degrees.

(A) General Education: The degree requires one academic year (at least 30 SCH or 45 QCH) of general education, which includes the one-year undergraduate English composition requirement.

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(B) Major Field: The degree requires distinct specialization, i.e., a "major," which entails approximately one academic year of work (30 SCH or 45 QCH) in the main subject, with 20 SCH (30 QCH) in the upper division and 15 SCH (22 or 23 QCH) of upper-division hours taught by the resident faculty. A dual major simply doubles these numbers.

(C) An interdisciplinary major is also permitted. It requires two academic years (60 SCH) in either three or four disciplines, with at least 15 hours in each discipline and at least 9 upper-division hours in each. A school may offer a major or an interdisciplinary option in any field in which it has more than one fully qualified teacher if at least one teaches full time.

(D) Degrees. The following bachelor's degree names, levels and types are available in Oregon:

(i) Bachelor of Arts. An arts degree, the B.A. requires competency in a foreign language and one academic year in the humanities, i.e., 30 SCH, of which 12 can be in foreign languages. The language competency requirement is equivalent to the 12 hours, the second-year level, and ESL students can satisfy it with 12 hours of English language and literature. As general education outside the major, the B.A. requires 24 SCH in the liberal arts and sciences, with at least 6 hours in each of the three areas: humanities, social sciences, and natural sciences.

(ii) Bachelor of Science. A science degree, the B.S. requires one academic year in the social or natural sciences, i.e., 30 SCH, of which 12 can be in mathematics and state-approved computer courses. As general education outside the major, the B.S. requires 24 SCH in the liberal arts and sciences, with at least 6 hours in each of the three areas: humanities, social sciences, and natural sciences.

(iii) Bachelor, Professional. As general education outside the major, the professional bachelor's degree requires 24 SCH hours in the liberal arts and sciences, with at least 6 hours in each of the three liberal arts and sciences areas: humanities, social sciences, and natural sciences.

(iv) Bachelor, Technical. As general education outside the major, the technical bachelor's degree requires 24 SCH in the liberal arts and sciences, or in non-vocational courses closely related to them, with at least 3 semester hours in each of the three areas: humanities, social studies, and natural sciences, and a total of at least 9 in the two areas most unrelated to the major.

(d) Graduate Degrees. A graduate curriculum shall reflect a concept of the graduate school as a group of scholars, the faculty members of which have had extensive collegiate teaching experience and are engaged in the advancement of knowledge. A graduate degree must involve teaching by such qualified faculty and cannot be earned solely by testing and/or portfolio review.

(A) A master's degree shall require at least one full academic year in FTE post-baccalaureate study, except that a first-professional master's degree may be authorized for study beyond fulfillment of undergraduate requirements approved by the Commission if the total period of study is at least five academic years. The curriculum shall specialize in a single discipline or single occupational or professional area and culminate in a demonstration of mastery such as a research thesis, a work of art, or the solution of a practical professional problem.

(B) A doctor's degree shall require at least three academic years in specialized post-baccalaureate FTE study, except that a first-professional doctor's degree may be authorized for four academic years of study beyond fulfillment of undergraduate requirements approved by the Commission. Study for a closely related master's degree may be counted toward doctoral requirements. The doctor's degree shall represent a student's ability to perform independently basic or applied research at the level of the professional scholar or to perform independently the work of a profession that involves the highest levels of knowledge and expertise. Requirements for the degree shall include demonstration of mastery of a significant body of knowledge through comprehensive examination, unless a graduate must pass a similar examination in order to be admitted to professional practice in Oregon. The curricular program of a research degree shall be appropriately broad and shall manifest full understanding of the level and range of doctoral scholarship, the function of a dissertation and its defense, the nature of comprehensive examination, and the distinction between matriculation and degree candidacy.

(7) Learning. The school shall require each student to complete academic assignments and demonstrate learning appropriate to the curriculum undertaken.

(a) Teachers or evaluators shall inform students clearly using a syllabus or similar instrument of what should be learned in each course and how it will be measured.

(b)(A) Expectations of student performance shall be increased with each ascending step in degree level. Higher degrees must represent an

increase in the difficulty of work and expectations of students, not simply an accumulation or increase in quantity of student work.

(B) Evidence of expectation (e.g., syllabi and sample exams) and performance (e.g., student grades) shall be retained for all academic courses for at least one year.

(c) The school shall require students to make continuous progress toward a degree while they are enrolled and liable for tuition and shall suspend or dismiss those who do not make such progress, except that a period of probation with guidance may be instituted in order to obviate separation of a student who can be expected to improve immediately. Continuous progress for students receiving Title IV federal student aid shall be defined according to federal Title IV standards. Students not receiving Title IV federal student aid shall meet the school's own published standards for satisfactory progress.

(d) Grading and appeal procedures shall be fair and administered equitably, and criteria of student progress shall be validated by research if not obviously valid.

(8) Recruitment:

(a) The school is responsible for ensuring that its recruitment agents are knowledgeable about the school's:

(A) History and accreditation;

(B) Programs of study;

(C) Admission and assessment requirements;

(D) Ability to assist in providing housing and/or job placement;

(E) Financial policies and procedures, including the point at which students can expect to receive financial aid disbursements;

(F) Refund policy;

(G) Graduation requirements and rates;

(H) Rules and regulations; and

(I) Placement rates if they are used in recruiting.

(b) The school is responsible for insuring that its recruitment agents are providing accurate, realistic information about the school, its policies and achievements, and its ability to assist students.

(c) A prospective student shall receive a complete description of the school and its policies, including an estimate of annual or program costs, before being enrolled. This estimate is not binding on the institution but must give prospective students a reasonable idea of their financial commitment.

(d) Where a degree or certificate implies preparation for a specific occupation, the school shall explain clearly the true relationship between its curriculum and subsequent student qualification for occupational practice, including employment rates in the field and graduates' success rates in passing licensure examinations if applicable. Employment rates in the field claimed by a particular program shall treat graduates as employed in the field only if the position in which the graduate is employed meets the following conditions.

(A) is at least half-time.

(B) is usually filled by a person with a credential of the kind offered by the program or is one in which holders of such a credential have a competitive advantage in the workplace because of training of the kind provided by the program.

(C) employs the graduate within six months of program completion in a position that is intended to be permanent, i.e. not for a defined period of time. The school has the burden of showing that the position is intended to be permanent.

(e) The school shall take precautions to avoid unrealistic expectation of housing availability and cost when the school does not provide housing and job placement, including part-time employment and practica during the student's enrollment.

(f) A claim made to attract students shall be documented by evidence available to any person on request. The school shall make no attempt to attract anyone who does not appear likely to benefit from enrollment, and no attempt to attract students on any basis other than instruction and campus life appropriate to an educational institution.

(g) Outside the regular student financial aid process, there shall be no discounting of tuition as an incentive to enroll.

(h) The school shall not contract with a third-party entity, independent contractor or corporation for the recruitment or enrollment of students where payment to the third-party is based wholly or in part on a commission basis. Commission includes monetary and nonmonetary compensation.

(9) Admission. The school shall offer admission only on receipt of evidence that the applying student can reasonably expect to complete a degree and to benefit from the education obtained.

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(a) A student admitted to undergraduate degree study for the first time shall have either a standard high school diploma, a comparable credential issued outside the United States or a GED. Home-schooled students without a standard diploma or GED may only be admitted if they can demonstrate the ability to perform college-level academic work through use of an ability-to-benefit test. Modified diplomas, extended diplomas and other kinds of K-12 leaver certificates are not considered diplomas for purposes of college admissions. Students holding such nonstandard certificates can be admitted only through use of an ability-to-benefit test.

(b) A student admitted to undergraduate degree study with undergraduate experience shall have a record of successful performance therein or else a record of responsibility and achievement following unsuccessful collegiate performance.

(c) A student admitted to graduate degree study shall have a baccalaureate degree from a school that is accredited, authorized to confer degrees in Oregon, or otherwise approved by the Commission either individually or by category.

(d) A student admitted to first-professional degree study shall have at least three academic years of accredited or Commission-approved undergraduate credit, graded average or better, including pre-professional courses specified by the school and approved by the commission.

(10) Guidance. The school shall help students to understand the curriculum and to make the best use of it.

(a) There shall be a program of general orientation for new students.

(b) Each student shall be assigned a qualified academic advisor to assist individually in planning, course selection, learning methods, and general adjustment.

(c) The school shall provide career guidance to the extent that curriculum is related to a specific prospective occupation or profession.

(11) Student Affairs. Through both services and supervision the school shall demonstrate commitment to the success of individual students and to maintenance of an atmosphere conducive to learning.

(a) Rules of student conduct shall be reasonable, sufficiently specific, fully communicated, systematically and equitably enforced, and accompanied by policy and practice of disciplinary due process, including notice and hearing and related rights.

(b) Health, counseling or psychological services provided to students must meet requirements for professional practice in Oregon.

(c) Housing where provided or endorsed by the school shall be conducive to study and adequately supervised.

(d) Financial aid services shall be provided by qualified administrators.

(e) Placement services where provided shall be described clearly to students, and the school shall take precautions to avoid unrealistic expectations of placement.

(f) Records documenting relationships between the school and a student shall be open to that student, who may request changes or enter dissenting comments, and the content of records shall be objective and fair. Records that originate with a third-party regarding a complaint against a student shall be open to the student so long as all identifying information such as names and addresses shall be redacted prior to producing the records to the student. The private notes of a counselor are not to be considered educational records and shall not be transmitted as such, either inside or outside the school. All medical records are confidential, subject to state and federal laws and shall not be released without permission of the patient.

(g) There shall be available to undergraduate students and responsible for student affairs an official who possesses knowledge, skill, and managerial experience particularly appropriate to the function, unless the Commission waives this requirement. In general, waivers are granted only for small startup schools in their first approval cycle and for schools that mainly teach people who are of nontraditional age (23 or older) or already in the workforce.

(h) Every school shall distribute a student handbook or similar publication describing services and regulations, unless such descriptions are complete in the school's main catalog.

(12) Information. The school shall be scrupulously ethical in all communication with the public and with prospective students. School publications, advertisements, and statements shall be wholly accurate and in no way misleading. Reference to state approval shall be limited to that described in OAR 583-030-0041. Reference to accreditation shall be limited to that defined in OAR 583-030-0000.

(a) The school shall publish at least every two years a catalog or general bulletin. The catalog shall contain a table of contents and adequate information concerning period covered, school name and address, tele-

phone numbers, state approval, purpose, relationship to occupational qualification, faculty and administrators (listing position or teaching specialization together with all earned degrees and their sources, omitting unearned degrees and not confusing professional licenses with degrees), degree requirements and curricula, academic calendar, credit policy in accordance with subsection (5) of this rule, transferability of credit to other schools, admission requirements and procedures, academic advising and career planning, academic policies and grading, rules of conduct and disciplinary procedure, student services (e.g., counseling, health, placement, housing, food, bookstore, activities, organizations), student records, library, facilities, fees and refunds, estimated total expenses, financial aid and job opportunities for current students. Electronic publication meets this standard provided that the electronic catalog is provided to the Commission, is available to students upon request, and is maintained securely with the school as the official version in order to avoid confusion if electronic versions are changed. Paper copies of the school catalog shall be maintained by the school and made available to the Commission and students upon request.

(b) A school without regional accreditation shall print in a separate section of its catalog titled "transfer of credit to other schools" a statement warning students verbatim that "transfer of credit is always at the discretion of the receiving school, generally depends on comparability of curricula, and may depend on comparability of accreditation." Other comments may follow concerning the school's documented experience in credit transferability, but it must be clear that a student should make no assumptions about credit transfer.

(c) A school authorized to offer instruction or related services leading to one or more degrees under the standards in OAR 583-030-0035 shall provide students, prior to enrollment, a copy of a basic program and school fact page for each program for which a certificate or degree is offered. The fact page shall include information regarding:

(A) The total cost of the program;

(B) Programmatic and institutional accrediting bodies;

(C) Transfer of credit to other accredited institutions, listing of any transfer articulation agreements with other institutions and in an attached document make available to students the related transfer articulation prerequisite information;

(D) Program length, and the average time students take to graduate by program, and at whole school level;

(E) Graduation rate;

(F) Median borrowing (federal and private loans) amount, and median annual loan payments of students;

(G) Loan default rate;

(H) Job placement success which is defined as a percent of students who are employed in the field of study (by program);

(I) Median starting salary for graduates;

(J) Gainful employment results as outlined under U.S. Department of Education accountability metrics; and

(i) The Commission, at its discretion, may waive the requirement above for non-career/non-vocational academic programs offered by regulated Oregon non-profits.

(ii) A school authorized to offer instruction shall submit to the Commission a copy of the program fact page for each program on or before September 1 of each year commencing 2016; however, for the school year 2015-2016 the fact page documents shall be provided within 90 days of the date of the promulgation of the rules.

(13) Credentials. The school shall provide accurate and appropriate credit transcripts for students who enroll and diplomas for students who graduate.

(a) The school shall maintain for every past and present student, and shall issue at the request of any student who is not delinquent in fee payment, a current transcript of credits and degrees earned. The transcript shall identify the school fully and explain the academic calendar, length of term, credit structure, and grading system. It shall identify the student and show all prior degrees earned, details of any credit transferred or otherwise awarded at entry, and periods of enrollment. It shall include for each period of enrollment every completed course or module with an understandable title, number of credits earned, and grade received. The transcript shall note with or without explanation if the student is not immediately eligible to continue enrollment, e.g., for reasons of academic probation or suspension.

(b) Upon satisfaction of degree requirements and payment of all fees owed, the school shall provide the graduating student with a diploma in a form approved by the Commission, appropriately documenting conferral of the degree.

(14) Records. The school shall keep accurate and secure records affecting students. There shall be at all times complete duplicate transcript

## ADMINISTRATIVE RULES

information kept in a location away from the original transcripts, such that duplicates and originals are not exposed to risk of simultaneous damage. In addition to transcripts, which may never be destroyed, the school shall maintain detailed records documenting the significant parts of its formal relationship with each student including: financial transactions and accounts, admission qualifications, validation of advanced standing, instructor course records as posted to transcripts, and status changes due to unsatisfactory performance or conduct. Such supporting records shall be kept in a secure location for a period of at least three years after a student has discontinued enrollment. Instructor course records other than those posted to transcripts shall be kept for at least one year.

(15) Library. The school shall provide or arrange for its faculty and students direct or electronic access to verbal and sensory materials sufficient in all subjects of the curriculum to support instruction and to stimulate research or independent study.

(a) The school may arrange for comprehensive privileges from libraries of other organizations, provided it can prove convenient access and extensive use, but the school shall retain full responsibility for adequacy of resources available to students.

(b) Library services shall be under the direction of a person educated professionally in library and information studies, except that the Commission may waive this requirement where the range of academic fields represented is narrow.

(c) Library resources shall be current, well distributed among fields in which the institution offers instruction, cataloged, logically organized, and readily located.

(d) The school should conform to the following guidelines for library services unless it can justify a deviation on the basis of unusual educational requirements.

(A) With the exception of those in specialized associate's degree programs, students should receive direct, contracted or electronic access to a minimal basic collection equivalent to that held by accredited schools offering similar programs. The applicant school must demonstrate this capability by submitting to the Commission copies of contractual arrangements with resource providers and related resource references that will be available to students.

(B) Staff should include a professional librarian for each 1,000 students, with clerical support adequate to relieve librarians of all non-professional duties.

(C) Students should have full access to all resources for at least 40 hours per week, and all services should be available for 20 hours per week. The facility, whether provided by the college directly or by contract, should seat no less than 10 percent of the students enrolled unless the program is primarily intended to train practitioners in technical or fine arts fields, in which case a lower percentage may be requested. If the school meets the library standard largely by electronic means, electronic services must be available to a comparable portion of the student body for a comparable period.

(16) Facilities. The school shall have buildings and equipment sufficient for the achievement of all educational objectives.

(a) Buildings in general, including student or faculty housing units, shall be uncrowded, safe, clean, well furnished, and in good repair; and they shall be well lighted, heated, ventilated, and protected from noise. School grounds, where provided, shall be appropriately used and adequately maintained.

(b) Instructional facilities shall be adequate and conducive to learning. There shall be no less than 15 square feet per student station in classrooms, with at least one station for every two FTE students enrolled. Total classroom and study area, including library space for reading, shall be no less than 10 square feet per FTE student.

(c) Laboratory space and instructional equipment shall be inventoried, its use explained on the resulting report, and its adequacy defended on criteria obtained from experts and documented by the school. A laboratory ordinarily shall have no less than 30 square feet per student station.

(d) Clinical facilities and other public service areas shall be appropriate for instruction of students as well as for service to patients or clients.

(e) Faculty offices shall be sufficient to prevent crowding and to allow private conversations with students.

(17) Finance. The school shall have financial resources sufficient to ensure successful continuing operation and to guarantee full refund of any unearned tuition. There shall be competent financial planning using complete and accurate records. The school shall demonstrate satisfaction of this standard upon application, and thereafter annually, by submitting independently audited financial statements with opinion by a certified public accountant.

(a) Financial reports shall be prepared in a format acceptable to the Commission, clearly delineating assets and liabilities and informatively classifying revenues by source and expenditures by function. In some cases, the Commission at its discretion may accept an audited balance sheet with opinion, together with annual operating statements that have been reviewed by the auditor. A school that is a subsidiary shall submit financial statements of the parent corporation on request. The Commission's Executive Director may require a special investigative audit and report.

(b) Current assets shall be entirely tangible and such that the school is not dependent for solvency on substantial increases in receivables collection rate, gifts, tuition rates, or enrollment. Prospective tuition for which a student is not legally liable is not an asset and shall not be shown as a receivable or other balance sheet asset. Tuition collected but still subject to refund shall be shown as a "prepaid" or "unearned" tuition liability.

(c) A school unable to demonstrate financial strength may be required at the discretion of the Commission's Executive Director to increase the amount of its surety bond or letter of credit in an amount equal to the largest amount of prepaid tuition held at any time. The bond or letter of credit would be subject to claims for tuition refund only.

(d) The school shall carry casualty and general liability insurance sufficient to guarantee continuity in case of accident or negligence, and it shall provide or else require by policy professional liability insurance for all of its officers and employees.

(18) Fees and Refunds. The school shall maintain fee and refund policies that are fair, uniformly administered, and clearly explained in the school catalog as well as in any contract made with students. A student shall not be enrolled without having received the explanatory material. The school shall not change its tuition or fees more than once during a calendar year.

(a) Tuition shall be charged by the credit hour or by fixed rate for instruction during an academic semester, quarter, or shorter term. No student is obligated for tuition charged for a term that had not commenced when the student withdrew or a term that was truncated by cessation of school services. The student may make a claim on a surety bond or letter of credit under OAR 583-030-0051 and OAR 583-030-0052.

(b) Except as noted below in this section, fees not included in tuition shall not exceed five percent of full-time tuition for any term in which separate fees are charged. One-time application or admission fees may exceed 5 percent of first-term tuition but shall not exceed \$200. Lab or equipment fees related to the actual necessary operational costs of specific courses may exceed 5 percent of tuition provided that the fees are made known to students prior to enrollment in the course. Nominal fees for late payments, course withdrawals and the like are acceptable.

(c) After classes begin for a term, a student who withdraws from a course is eligible for a partial refund through the middle week of the term. Refunds shall be based on unused instructional time and shall be prorated on a weekly basis for schools using a semester, quarter, or nontraditional calendar. Refund rates shall not be differentiated on the criteria of a student's source of income or loan repayment obligations except as otherwise required by law without specific Commission approval.

(d) Any fees for credit transferred, for credit attempted or earned by examination or portfolio must be based on the actual cost of service to administer such credits. This is ordinarily less than the cost of regular instruction. The mere award of credit does not justify a fee.

(e) Academic policies shall not artificially prolong the enrollment of a failing student with the effect of increasing financial obligation.

(f) Separation from the school for reason of discipline or other administrative action shall not cause forfeiture of ordinary refund amounts.

(19) Evaluation. The school shall, in order to improve programs, evaluate its own educational effectiveness continually in relation to purpose and planning, including in all aspects the opinions of students. There shall be evaluation of present curriculum and instruction, of attrition and reasons for student withdrawal, and of performance by students after their graduation. In addition to the comments of graduates, employer opinions and licensing examination records should be used in the post-graduation study.

(20) Fair Practice. Notwithstanding the absence of a specific standard or prohibition in this rule, no school authorized to offer degrees or seeking to qualify for such authorization shall engage in any practice that is fraudulent, dishonest, unethical, unsafe, exploitive, irresponsible, deceptive, or inequitable and thus harmful or unfair to persons with whom it deals.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; ECC 3-1981, f. & ef. 12-16-81; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2002, f. & cert. ef. 2-19-02; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04;



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Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 2-2010, f. & cert. ef. 11-16-10; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0036

### Schools With Limited Resident Instruction in Oregon

Effective January 13, 2015:

(1) Accredited schools offering limited resident instruction in Oregon are reviewed using modified standards and procedures under the following conditions:

(a) Courses are highly specialized or offered for a period of less than three years;

(b) Information from the school is clear;

(c) Advice and assistance are accessible for students;

(d) Tuition refund policies meet requirements established by the Commission;

(e) Program evaluation is done systematically by the school;

(f) Curricula for Oregon students are identical to those at a main campus;

(g) Instruction relayed either live or on recordings is received in Oregon just as it was presented during resident instruction;

(h) Academic assignments and testing and grading policies for Oregon students are identical to those for students on a main campus; and

(i) All members of the faculty teaching from Oregon or teaching Oregon students hold degrees meeting Oregon standards.

(2) If limited or restricted residential instruction is authorized, the client organization must ensure full library services, employ persons qualified by a higher degree and experience to judge the quality of the degree program, and appoint a site coordinator who will assist with any inspections and provide information to the Commission.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0041

### Authorization Statement in School Catalog

Effective January 13, 2015:

(1) Upon receipt of authorization to offer instruction or related services leading to one or more degrees, and until such time as that authorization has expired or been revoked, an Oregon school shall print the following statement prominently on the inside front cover, facing page, or other page approved by the Commission of its catalog and any general bulletin, shall include the statement with any internet web site announcement, and may publish the statement in other school announcements. Choose one descriptive term from each parenthetical pair.

This school (is) (is a unit of) a (business) (nonprofit) corporation authorized by the State of Oregon to offer and confer the academic (degree) (degrees) described herein, following a determination that state academic standards will be satisfied under OAR chapter 583, division 30. Inquiries concerning the standards or school compliance may be directed to the Commission (use current address).

(2) A non-Oregon school shall print or affix the above statement on the inside front or back cover (preferred) or on an appropriate page approved by Commission's executive director of every catalog distributed in Oregon.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 2-2000, f. 7-7-00, cert. ef. 7-20-00; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0042

### Reporting Requirements

Effective September 10, 2015:

(1) A school authorized to offer instruction or related services leading to one or more degrees under the standards in OAR 583-030-0035 shall submit to the Commission annually, a detailed listing of students including personal student information, such as; personal identification, demographic and program information in a form and format as directed by the Commission. In addition, in a form provided by the Commission, a brief report of activities and planning in the academic or fiscal year just ended. In its report, the school shall describe any important changes in academic or administrative policies, facilities or locations of instruction, and organi-

zation or personnel. The school shall also supply data such as teacher turnover and student enrollment, completion, and placement as requested on state forms provided by the Commission, together with current catalogs and the latest independent financial audit not previously submitted. Between annual reports, the school shall send to the Commission promptly qualification forms of new owners, governing board members, officers, administrators, or teachers serving Oregon students, and shall send immediately the details of any possible or anticipated change of ownership or governance or any other matter having extensive effect on the school.

(2) A school authorized to offer instruction or related services leading to one or more degrees under OAR 583-030-0011 shall report as described in the preceding paragraph, except that reporting of new governing board members, officers, administrators, or teachers is not required. The reporting of any possible or anticipated change of ownership or governance or other major change should be immediate.

(3) A non-Oregon school authorized to offer instruction or related services leading to one or more degrees but without resident instruction or with limited resident instruction in Oregon under OAR 583-030-0036, shall submit to the Commission annually, a detailed listing of students including personal student information, such as; personal identification, demographic and program information in a form and format as directed by the Commission. In addition, in a form provided by the Commission, a brief report of activities and planning in the academic or fiscal year just ended insofar as Oregon students would be affected. In its report, the school shall describe as they might affect Oregon residents any important changes in academic or administrative policies, facilities or locations of instruction, and organization or personnel. The school shall also supply Oregon enrollment and degrees-granted data on a state form provided by the Commission, together with current catalogs and the latest independent financial audit not previously submitted. Between annual reports, the school shall send to the Commission's executive director immediately details of any possible or anticipated change of ownership, governance, curriculum, Oregon site coordinator, teachers or other matter having potential importance to Oregon students. This provision does not apply to a non-Oregon school authorized in Oregon through a reciprocity agreement, such as the State Authorization Reciprocity Agreement (SARA).

(4) A school that offers exempt religious degrees is subject to the annual self-certification requirements set forth in ORS 348.608.

(5) An authorized degree-granting school shall continue during the period of its authorization to respond promptly to any requests made by the Commission's executive director for general or particular information and shall supply the information as directed. Monthly reporting will be required for a school determined to be at risk.

(6) A school that ceases to offer any authorized or exempted degree or the instruction related thereto, other than during regular academic recesses, shall notify the Commission's executive director immediately and may not reinstate the degree program without permission.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.596 & 348.606

Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0043

### Duty to Notify Employees and Students of Change in Status

Effective September 10, 2015. Any school that has been placed on probation, or suspension status shall immediately, in writing, notify all employees, students and prospective students of the change in status. A posting of the change in status should be visible on the school's website or other official platform of the school, including all information bulletins at the school site.

Any school for which degree authorization has expired or been revoked or suspended shall immediately in writing notify all employees and students of its change in status. The school shall not lead students or employees to conclude that restoration of degree granting is assured.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.606

Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

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583-030-0045

## At-Risk, Probation, Revocation or Suspension of Authorization

Effective September 10, 2015:

(1) A school determined to be “at risk” at any time, will be required to provide:

- (a) A corrective action/school improvement plan acceptable to the Commission within 30 days after being notified by the Commission;
- (b) A revised Surety Bond or letter of credit if appropriate; and
- (c) A monthly report for up to 12 months. During that time the school shall demonstrate improvement or the Commission shall proceed with further action of probation, suspension, or revocation as deemed necessary.

(2) Whenever an inspection or other investigation reveals lack of compliance with Oregon Revised Statutes, ORS 348.606 to 348.612 or standards of OAR chapter 583, division 30, the Commission may determine the school is at risk. Upon such determination, or when the school fails to meet the requirements set forth by the Commission while on an “at risk” status, the Commission shall officially notify the school in writing that the school has been placed on probation and provide the school with a report of deficiencies. When deemed appropriate, the Commission may initiate immediate suspension or revocation proceedings and schools will be provided due process through the provisions allowed in sections 2 and 3 of this rule. If the Commission elects to place the school on probation, the school shall have a grace period of 20 calendar days after date of notification to report on actions that the school has taken to correct these deficiencies:

- (a) The school’s response shall indicate corrective action taken and/or a program improvement plan for correcting any remaining deficiencies;
- (b) If violations cited are not corrected within the 20 day period, or if a program improvement plan submitted to correct the violations is not acceptable to the Commission, the director shall send notice to formally place the school on probation, revoke or suspend the school’s authorization;
- (c) The school may request a hearing within 21 calendar days of receipt of the Commission’s notice of probation, to revoke or suspend the school’s license; and

(d) A school and program that has been placed on probation shall not engage in any advertising, recruitment or student enrollment activities, or begin the instruction of any new students during the period of probation. Until it satisfies the requirements set by the Commission, the school must notify enrolled students, employees and any prospective students in writing that the institution has been placed on “probation” by the Commission. The school must also place notice of the probation at the physical site of the school, if there is such, and on any website or other official platform of the school. The notification to students, prospective students, and staff shall be immediate upon the school receiving the Commission’s determination notice.

(3) The Commission, after a hearing before an Administrative Law Judge, may under ORS 348.612, revoke or suspend authorization given to a school to confer or offer to confer degrees in or from Oregon, or to offer instruction or related services in or from Oregon purporting to lead to a degree in whole or in part. Revocations resulting from a change in state or federal law or judicial ruling do not require the use of a hearing officer.

(4) A hearing to consider a proposed revocation or suspension shall be held only after the affected school has been given written notice of the time and place of such hearing 21 days in advance.

(5) Revocation or suspension of degree authorization applies to a school as a whole, inasmuch as failure to satisfy any state requirement for offer of any degree constitutes failure to satisfy all requirements applicable to the school. Refusal by a school to discontinue any substandard offer or practice, regardless of the quality of any other offer or practice, will lead the Commission to propose revocation or suspension of approval and/or civil or criminal action.

(6) A school whose degree authorization is revoked shall be considered for reinstatement only after one year and only when the Commission’s Executive Director is satisfied that causes of the revocation have been entirely removed. Application for reinstatement from a school in revoked status shall comply with all requirements for a new applicant.

(7) A school whose degree authorization is suspended shall be considered for reinstatement only when the Commission’s Executive Director is satisfied that causes of the suspension have been entirely removed. Application for reinstatement from a school in suspended status shall comply with all requirements for a renewing applicant.

(8) Grounds for revoking or suspending the degree authorization of a school include changes in state or federal law or judicial rulings affecting the status of a school or its failure to provide services it has guaranteed to students in writing; failure to supply records and other information to the Commission as directed; falsification of any information supplied to the

Commission, students, or the public; failure to comply with all applicable requirements of OAR chapter 583, division 30; and failure to prove to the satisfaction of the Commission’s Executive Director on request compliance with any such requirement with respect to which the school’s current performance is questioned specifically by the Commission as a result of routine monitoring or individual complaint.

(9) Revocation or suspension requires a school to immediately cease and desist from offering in or from Oregon any degree, instruction, or related services purporting to lead to a degree in whole or in part, except that the Commission at its discretion may permit a revoked or suspended school to complete an academic term already in progress on the date of the action. During such period of completion the school may not enroll new students, and it may not offer to those already enrolled any instruction or services purporting to lead to a degree that would be earned and conferred later than the immediate end of the term in progress. Completion of such term with good faith and fair dealing toward currently enrolled students or reasons for failure to so complete the term shall be factors in any subsequent consideration of a revoked or suspended school for reinstatement.

(10) A separate revocation process for schools exempted on religious grounds is listed in ORS 348.608.

(11) For schools that are part of a corporate entity, limited liability company, general partnership or similar organization, the Commission may extend the at risk, probation, suspension or revocation determination to all entities owned and controlled by the corporation, limited liability company, general partnership or similar organization in regards to their operations in Oregon. Furthermore, while on probation or suspension the Commission may opt to not review or approve any new programs or submittals from the institution, parent company or subsidiaries until all the deficiencies have been addressed to the satisfaction of the Commission.

(12) A school and program that has been placed on suspension shall not engage in any advertising, recruitment or student enrollment activities, or begin the instruction of any new students during the period of suspension. The school must notify enrolled students, employees and any prospective students in writing that the institution has been placed on suspension by the Commission. The school must also place notice of the suspension at the physical site of the school, if there is such, and on any website or other official platform of the school. The notification to students, prospective students, and staff shall be immediate upon the school receiving the Commission’s determination notice.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603, 348.606 & 348.612

Hist.: ECC 22, f. & ef. 12-22-75; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 2-2000, f. 7-7-00, cert. ef. 7-20-00; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2004, f. & cert. ef. 1-14-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

583-030-0046

## Fees and Expenses

Effective January 13, 2015:

(1) Each application from a school seeking new or renewed authorization to confer or offer to confer a degree, or through instruction or related services to provide academic credit applicable to a degree, shall be accompanied by payment of a fee to the “Higher Education Coordinating Commission.” There is no entitlement to refund of a paid fee under any circumstances. The fee is intended to recover the expenses of carrying out a review and providing services to a school during its period of authorization.

(2) The fees imposed by the Commission for reviewing applications seeking new or renewed authorization to confer or offer to confer a degree are based on the schedule established by the Legislative Assembly in ORS 348.606.

(c) Fee discounts.

(A) In reviewing simultaneous application for two or more degrees, the Commission, at its discretion, may reduce the fee for review of a degree that is closely related in type and content to one on the same level for which the full fee is paid. Such a reduction ordinarily depends on the provision of instruction by a single faculty for both degrees. Degrees on the same level using at least 50 percent of the same courses, taught by at least 50 percent of the same faculty, will be treated as one degree application for review and fee purposes.

(B) The Commission, at its discretion, may also reduce the fee when institution size, low faculty and administrative turnover, stability of ownership or board membership or other factors substantially reduce staff time required for evaluation and subsequent oversight and service. Such reductions are limited to 20 percent below the basic fee.

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(C) The fee for religious-exempt schools may not exceed the lesser of the actual cost to the Commission of determining the school's compliance with the requirements for an exemption under ORS 348.604, and may not exceed \$1,000.

(3) Application from a school for authorization to offer instruction or related services providing academic credit applicable to a degree offered only by another school or schools shall be accompanied by fees proportionate to those established in the paragraph immediately above. However, such fees may be discounted at the discretion of the Commission to reflect a program of reduced dimension if and only when the necessary review analysis is concomitantly reduced.

(4) When the Commission's Executive Director finds it necessary to pay an expert outside consultant for assistance in reviewing an application, or when it incurs other unusual expenses in the course of review, all costs thus incurred may be charged to the applicant school in addition to the basic fee.

Stat. Auth.: ORS 183 & 348  
Stats. Implemented: ORS 348  
Hist.: ECC 1-1982(Temp), f. & cert. ef. 3-12-82; ECC 2-1982, f. & cert. ef. 9-8-82; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2000, f. & cert. ef. 2-29-00; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0049

### Criminal and Civil Penalties

Effective January 13, 2015:

(1) Without authorization from the Commission as provided in this rule, any offer of a degree or of services purporting to lead to a degree in whole or in part is a Class B misdemeanor under ORS 348.992. Complaints may be brought to a prosecutor against any person acting individually or on behalf of an organization or group.

(2) Without authorization from the Commission as provided in this rule, any offer of a degree or of services purporting to lead to a degree in whole or in part may be a violation of Oregon's Unlawful Trade Practices Act (UTPA), ORS 646.605 to 646.652. The Commission may in addition request injunctive relief or a civil penalty against violators. Complaints may be brought to the Oregon Department of Justice against any person acting individually or in concert with others.

Stat. Auth.: ORS 348.606  
Stats. Implemented: ORS 348.606 & 348.992  
Hist.: EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0051

### Surety Bonds Generally

Effective September 10, 2015:

(1) A properly executed surety bond shall:

(a) Be with a corporate surety licensed to do business in Oregon;

(b) Be signed by an authorized agent of the surety or one having power of attorney;

(c) Bear a bond number;

(d) Be filed within the time stated on the bond, with the Commission and retained by the Commission;

(e) Be executed to the State of Oregon;

(f) Be in a form approved by the Attorney General as posted on the Commission's website.

(2) The surety must provide the original bond document to the agency. The surety shall submit the documents directly to the Commission on or before September 1 of each year commencing 2016, however, for the school year 2015-2016, the documents shall be provided within 90 days of the date of the promulgation of these rules.

Stat. Auth.: ORS 348.080 - 348.612  
Stats. Implemented: SB 218 (2015), HB 3516 (2015), HB 2870 (2015)  
Hist.: ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0052

### Letters of Credit Generally

Effective September 10, 2015:

(1) A Letter of Credit shall be in a form approved by the Attorney General as posted on the Commission's website.

(2) A Letter of Credit shall be an irrevocable Letter of Credit issued by an insured institution as defined in ORS 706.008 or, in the case of an out of state public institution, a Letter of Credit can be issued by the authorizing agency of the school.

(3) A Letter of Credit received at the Commission office from an insured institution or authorizing agency. The bank or financial institution or authorizing agency must provide the original document to the agency. The bank or financial institution or authorizing agency shall submit the documents directly to the Commission on or before September 1 of each year commencing 2016, however, for the school year 2015-2016, the documents shall be provided within 90 days of the date of the promulgation of these rules.

Stat. Auth.: ORS 348.080 - 348.612  
Stats. Implemented: SB 218 (2015), HB 3516 (2015), HB 2870 (2015)  
Hist.: ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0053

### Entity Name Required on Bond or Letter of Credit

Effective September 10, 2015:

(1) The name of the entity as it appears on the bond or letter of credit must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond or letter of credit must include the name of the sole proprietor;

(b) If the entity is a partnership, limited partnership or joint venture, the bond or letter of credit must include the names of all partners and any other business names used;

(c) If the entity is a limited liability partnership or limited liability company, the bond or letter of credit must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a corporation or trust, the bond or letter of credit must be issued showing the corporate or trust name; or

(2) If at any time an entity amends its entity name, the Commission must be notified within 30 days of the date of the change.

(3) The inclusion or exclusion of business name(s) on a bond or letter of credit does not limit the liability of an entity. Complaints against a licensed school will be processed regardless of business names used by an entity

Stat. Auth.: ORS 348.080 - 348.612  
Stats. Implemented: SB 218 (2015), HB 3516 (2015), HB 2870 (2015)  
Hist.: ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0054

### Cancellation of Bond or Letter of Credit by Surety or Institution

Effective September 10, 2015: The corporate surety for a bond obtained pursuant to this section, or the insured institution for a Letter of Credit obtained pursuant to this section, must notify the Commission if the bond or letter of credit is canceled for any reason. The surety or institution is liable under the bond or letter of credit until the latest of the following dates:

(1) The date specified in the notice to the Commission that the bond or letter of credit is canceled;

(2) The 30th business day after the date the surety or institution mails the notice to the Commission that the bond or letter of credit is canceled; or

(3) The date on which the Commission receives the notice from the surety or institution that the bond or letter of credit is canceled.

Stat. Auth.: ORS 348.080 - 348.612  
Stats. Implemented: SB 218 (2015), HB 3516 (2015), HB 2870 (2015)  
Hist.: ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-030-0056

### Bond and Letter of Credit Amounts; Amount Reductions

Effective September 10, 2015:

(1) Unless otherwise provided in sections (2) or (3), or as provided in OAR 583-030-0035(17)(c), a surety bond shall be in an amount, equal to the rolling annual average of prepaid tuition.

(a) For a school that has operated in Oregon for one year or more, the rolling annual average of prepaid tuition is defined as half of the average of unearned tuition at the start of each term when tuition is due. Schools shall average the unearned tuition at the beginning of each semester or quarter for the prior year for which academic credit hours were awarded and/or authorized, and divide by two. At the discretion of the Commission the tuition income of non-Oregon based enrolled students may be part of the calculation of the rolling average. "Unearned tuition" is as is described in OAR 583-030-0035(18)(a).

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(b) For a school that has operated in Oregon for less than one year, the rolling annual average of prepaid tuition will be a reasonable amount established at the director's discretion based on the school's financial projections and estimate of the rolling average of Oregon enrollment and tuition income during the first year of operation, or \$25,000 whichever is greater. At the discretion of the Commission, the tuition income of non-Oregon based enrolled students may be part of the calculation of the rolling average.

(c) For a non-Oregon publicly owned school, the rolling annual average of prepaid tuition is the gross tuition income received from all Oregon enrolled students from the previous year divided by four, or \$25,000 whichever is less. At the discretion of the Commission, the tuition income of non-Oregon based enrolled students may be part of the calculation of the rolling average.

(2) Notwithstanding section (1), a school may obtain a bond or letter of credit in an amount less than its rolling annual average of prepaid tuition upon the approval of the Commission. Eligibility for a reduced bond or letter of credit is as follows:

(a) A school may receive a reduction in the amount of its bond or letter of credit up to 50 percent of its rolling annual average of prepaid tuition if it demonstrates to the Commission's satisfaction that it:

(A) Has received a United States Department of Education, Federal Financial Aid, financial responsibility composite score of 1.5 or greater for the last two consecutive years;

(B) Has not been sanctioned in the last two years, is not at risk, probation, suspension or revocation by the Commission or its institutional accreditor;

(C) Is not under investigation by the United States Department of Education or any other federal agency for a violation that could result in loss of Title IV aid privileges and does not otherwise have any restrictions or warning pertaining to its eligibility for federal programs;

(D) Is not under review for potential probation, suspension or revocation of its operational or degree-granting authority by any state; or

(E) It has an Oregon campus that does not participate in Federal Financial Aid, and meets the requirements set forth above in OAR 583-030-0054(2)(a)(A) through OAR 583-030-0054(2)(a)(D). The school has established a stable operation for the last two years, and demonstrates in its financial planning and audited financial statements that it has dedicated cash reserves for refunds, and demonstrates the capacity to refund unearned tuition.

(b) A school may receive a reduction in the amount of its bond or letter of credit up to 75 percent of its rolling annual average of prepaid tuition if it demonstrates to the Commission's satisfaction that it:

(A) Has received a United States Department of Education, Federal Financial Aid, financial responsibility composite score of 1.5 or greater for the last five consecutive years;

(B) Has not been sanctioned in the last five years, is not at risk, probation, suspension or revocation by the Commission or its institutional accreditor;

(C) Is not under investigation by the United States Department of Education or any other federal agency for a violation that could result in loss of Title IV aid privileges and does not otherwise have any restrictions or warning pertaining to its eligibility for federal programs;

(D) Is not under review for potential probation, suspension or revocation of its operational or degree-granting authority by any state; or

(E) It has an Oregon campus that does not participate in Federal Financial Aid, and meets the requirements set forth above in OAR 583-030-0054(2)(b)(A) through OAR 583-030-0054(2)(b)(D). The school has established a stable operation for the last five years, and demonstrates in its financial planning and audited financial statements that it has dedicated cash reserves for refunds, and demonstrates the capacity to refund unearned tuition.

(3) Publicly owned institutions located outside of this state are required to issue a letter of credit or surety bond. The letter of credit can be issued by the authorizing agency in the state where the school is located, guaranteeing that the state of origin shall provide any refunds or other financial compensation required by Oregon law in the event that the institution cannot or declines to do so.

(4) Commencing 2016, a school approved by the Commission to confer any academic degree under ORS 348.606 must obtain a surety bond or letter of credit on an annual basis on or before September 1. However for the school year 2015-2016, the documents shall be provided within 90 days of the date of the promulgation of these rules.

Stat. Auth.: ORS 348.080 - 348.612  
Stats. Implemented: HB 3516 (2015)

Hist.: ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0006

### Purpose and Scope

Effective January 13, 2015:

(1) This rule implements Oregon Revised Statutes (ORS) 348.594 to 348.615 and 348.992 insofar as each section therein relates to ORS 348.609, intended to protect postsecondary institutions, businesses and other employers, professional licensing boards, patients and clients of degree holders, and all citizens from any person claiming to possess a valid academic degree that in fact was issued by a fraudulent or non-existent school, by a non-educational entity posing as a school, by a nonstandard school without the use of a disclaimer, or by any entity in violation of applicable statutes or administrative rules.

(2) In order to be valid in Oregon as a public credential usable for general academic or professional purposes, under ORS 348.609 a claimed degree must have been awarded by a school that:

(a) Has accreditation recognized by the U.S. Department of Education or has the foreign equivalent of such accreditation; or

(b) Has been approved through the Higher Education Coordinating Commission (Commission) to offer and confer degrees in Oregon; or

(c) Is located in the United States and has been found by the Commission acting through the Commission to meet standards of academic quality comparable to those of an institution located in the United States that has accreditation, recognized by the U.S. Department of Education, to offer degrees of the type and level claimed by the person; or

(d) Is an Oregon school that has achieved exemption from state oversight on religious grounds; or

(e) If unaccredited, has the legal authority from a U.S. state or foreign country to issue degrees usable as educational credentials in the jurisdiction of issue.

(3) This rule applies to any claim to possess an academic degree made by any person acting within the state, acting outside the state while domiciled within the state, or acting outside the state on behalf of an organization that is located within the state.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603 & 348.609

Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0011

### Definitions of Terms

Effective January 13, 2015:

(1) "Academic Standards" means those standards in 583-030-0035 or the equivalent standards of an accrediting body that relate to admission requirements, length of program, content of curriculum, award of credit and faculty qualifications.

(2) "Accredited" means accredited and approved to offer degrees at the specified level by an agency or association recognized as an accreditor by the U.S. Secretary of Education, under the 1965 Higher Education Act as amended at the time of recognition, or having candidacy status with such an accrediting agency or association whose pre-accreditation is also recognized specifically for HEA purposes by the Secretary of Education.

(3) "Claim a degree" means to present orally, or in writing or in electronic form any symbol or series of letters or words that would lead the listener or reader to believe a degree had been received and is possessed by the person speaking or writing, for purposes related to employment, application for employment, professional advancement, qualification for public office, teaching, offering professional services or any other use as a public credential, whether or not such use results in monetary gain.

(4) "College level work" required for a degree means academic or technical work at a level demonstrably higher than that required in the final year of high school and demonstrably higher than work required for degrees at a lower level than the degree in question. From lowest to highest, degree levels are associate, bachelor's, master's and doctoral. Professional degree levels may vary. College level work is characterized by analysis, synthesis and application in which students demonstrate an integration of knowledge, skills and critical thinking. Awards of credit for achieving appropriate scores on Commission-approved nationally normed college-level examinations such as those from College Level Examination Program, American Council on Education, Advanced Placement or New York Regents meets this standard.

(5)(a) "Degree" means any earned or honorary title, rank, or status designated by a symbol or by a series of letters or words-such as, but not

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limited to, associate, bachelor, master, doctor, and forms or abbreviations thereof, that signifies, purports, or may generally be taken to signify:

(A) Completion of a course of instruction at the college or university level;

(B) Demonstration of achievement or proficiency comparable to such completion; or

(C) Recognition for non-academic learning, public service, or other reason of distinction comparable to such completion.

(b) "Degree" does not refer to a certificate or diploma signified by a series of letters or words unlikely to be confused with a degree, clearly intended not to be mistaken for a degree, and represented to the public so as to prevent such confusion or error.

(6) "Confer a degree" means give, grant, award, bestow, or present orally or in writing any symbol or series of letters or words that would lead the recipient to believe it was a degree that had been received.

(7) "Diploma mill" or "degree mill" means an entity that meets any one of the following conditions as defined in ORS 348.594:

(a) A school against which a court or public body, as defined in ORS 174.109, has issued a ruling or finding, after due process procedures, that the school has engaged in dishonest, fraudulent or deceptive practices related to the award of degrees, academic standards or student learning requirements; or

(b) Is an entity without legal authority as a school to issue degrees valid as credentials in the jurisdiction that authorizes issuance of degrees.

(8) "Disclaimer" when appended to a published reference to a degree means the following statement from statute: "(Name of school) does not have accreditation recognized by the United States Department of Education and has not been approved by the Higher Education Coordinating Commission."

(9) "Earned degree" means a degree awarded based on academic work evaluated and accepted by qualified faculty in the context of a specific degree program, based on the Carnegie credit system as set forth in OAR 583-030-0035(5) or an equivalent as determined by the Commission's executive director.

(10) "Foreign equivalent of such accreditation" means authorization by a non-U.S. government found by the Commission's executive director to have adequate academic standards. This determination may be made through one or more of the following methods at executive director's discretion:

(a) Direct investigation of foreign standards;

(b) Reliance on an evaluation and determination made by the American Association of Collegiate Registrars and Admissions Officers (AACRAO); or

(c) Evaluation of the transferability of courses and degrees earned in the foreign country to accredited Oregon institutions at similar degree levels.

(11) "Honorary Degree" means a credential awarded by an accredited or approved school in recognition of the recipient's personal merits unrelated to academic achievement demonstrated through course work or equivalent work taken at the awarding school.

(12) "Nonstandard School" means a degree provider that has legal authority to issue degrees valid in its authorizing jurisdiction, but which does not meet the requirements to be a standard school.

(13) "School" includes a person, organization, school or institution of learning that confers or offers to confer an academic degree upon a person or to provide academic credit applicable to a degree. The activities attributable to a school include instruction, measurement of achievement or proficiency, or recognition of educational attainment or comparable public distinction.

(14) "Standard School" means a school that meets the requirements of ORS 348.609 for degree use without a disclaimer.

(15) "Valid degree" means a degree issued by a standard school or by a nonstandard school if the disclaimer required by ORS 348.609(2) is used.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603 & 348.609

Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 3-2000, f. & cert. ef. 8-8-00; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2005, f. & cert. ef. 3-3-05; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; ODA 1-06, f. & cert. ef. 6-23-06; ODA 1-2008, f. & cert. ef. 2-7-08; ODA 3-2010, f. & cert. ef. 11-16-10; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0014

### Unaccredited Degrees

Effective January 13, 2015:

(1) Users of unaccredited degrees may use the degrees in the following ways.

(a) Unaccredited degrees that have achieved approval under ORS 348.609(1)(d) can be used without a disclaimer.

(b) Unaccredited degrees that have not achieved approval under ORS 348.609(1)(d) can only be used with a disclaimer.

(c) Degrees issued by degree mills are invalid for use, with or without a disclaimer.

(2) Process for approval under ORS 348.609(1)(d). A claimant of an unaccredited U.S. degree may submit to the Commission information indicating that the school conferring the degree has the legal authority to issue degrees in another state and could reasonably be considered for approval in Oregon under OAR chapter 583, division 30.

(a) A reasonable possibility of approval can be demonstrated by submitting to the Commission the appropriate review fee and sufficient evidence that the unaccredited institution could meet the academic standards established in OAR chapter 583, division 30 for authorization to operate in Oregon if it chose to make such an application.

(b) The Commission may, upon its own motion, evaluate an unaccredited institution and determine whether it has a reasonable chance to meet Oregon authorization standards without a degree user making such a request.

(c) If a request for evaluation under this section is not made to the Commission's executive director within 30 days of notification that an unaccredited degree is being used contrary to Oregon law, the degree user's right to such a review is waived and the Commission may pursue appropriate enforcement action. Degree users may, within the first 30 days, request up to 30 additional days for the purpose of gathering material necessary to apply for an evaluation.

(3) A claimant of a non-U.S. degree issued by a degree supplier not accredited by a U.S. accreditor may submit to the Commission information proving that the supplier issuing the degree has the following characteristics.

(a) The supplier is operating legally as a degree-granting institution in its host country.

(b) The host country has a postsecondary approval system equivalent to U.S. accreditation in that it applies qualitative measures by a neutral external party recognized in that role by the government.

(c) The supplier has been approved through the demonstrable application of appropriate standards by the host country's accreditor equivalent.

(d) All degrees issued by the supplier are legally valid for use and professional licensure within the host country.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.609

Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 4-2004, f. & cert. ef. 5-14-04; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; Renumbered from 583-050-0031, ODA 4-2005, f. & cert. ef. 10-18-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0016

### Validation of a Secular Degree

Effective January 13, 2015:

(1) Any person claiming in Oregon to possess an academic degree shall, upon request from the Commission's Executive Director, have an official transcript of the degree sent directly to the Commission from the registrar or other appropriate official of the conferring school.

(2) Where validation of a degree by telephone or electronic means seems readily obtainable from a school, the Commission at its discretion may postpone with option of waiver the requirement for a transcript upon receiving from the degree claimant the name, address, and telephone number of the conferring school. Requirement of one or more transcripts may be reinstated at any time if other methods of validation are not sufficient for a conclusive determination.

(3) Upon receipt of evidence of a valid degree, the executive director shall inform the degree claimant that a validation has been entered into the record, which shall specify any title and abbreviation that may be used to claim the degree.

(4) Honorary degrees must be distinguished from earned degrees.

(a) Any person claiming in Oregon to hold an honorary degree must label any written use of the degree using the word "honorary" or the abbreviation "hon." in order to make the public aware that the degree is not an earned credential. Any oral reference to the degree must be accompanied by a reasonable effort to ensure that listeners are made aware that it is honorary.

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(b) Any person using an honorary doctorate may not use the title “Doctor” or “Dr.” unless the word “honorary” or the abbreviation “hon.” accompanies the claim in a clear and visible form, or is stated orally when an honorary doctorate is used as the basis for an oral use of the title.

(c) An honorary degree may not be used as a credential for employment in Oregon.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603 & 348.609

Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 3-2010, f. & cert. ef. 11-16-10; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0026

### Invalidation of a Degree, Warning, Enforcement

Effective September 10, 2015:

(1) Once the Commission determines a claimed degree is invalid or nonstandard, a person is presumed to not have knowledge of the invalidity, so as to reflect consideration for the possibility that the person was misled by the purported school or unaware of Oregon degree requirements. This presumption may be overcome by clear and convincing evidence.

(2) Failure to provide when requested a transcript or other information needed for validation of a degree is prima facie evidence under statute that the claim to such degree is invalid.

(3) Upon the failure or inability to produce conclusive evidence of a valid degree, the Commission shall notify the claimant in writing that a warning is issued and that the claimant must immediately cease and desist from making the invalidated claim.

(4) Prior to the imposition of any penalty listed in subsection (5) of this rule, a person whose degree is found invalid, or the use of whose degree may be restricted, is entitled to a hearing in accordance with ORS chapter 183. Hearings will be provided in the following way:

(a) The Commission’s initial communication with a degree user will be an inquiry letter that will give the user 30 days from the date of the letter in which to address any issues regarding degree existence, validity and restriction. No hearing is provided at this stage;

(b) If a degree user contacted by the Commission under paragraph (a) of this subsection does not respond within 30 days, or provides information that is insufficient to allow unrestricted degree use while expressing intent to continue using the degree, the Commission will issue a cease and desist letter to the user, setting forth the requirements of law and how the user’s degree fails to meet those requirements. This letter will also be sent to the user’s attorney, if any. The user will be given 30 days to respond, agreeing to either comply with the law or request a hearing to contest the Commission’s findings:

(A) If the user agrees to comply with the law within 30 days of the date of the letter, the Commission will provide the user with a standard form upon which such agreement can be stated and signed. No penalty will be imposed provided that the user carries out the agreement;

(B) If the user does not respond within the 30 days, the Commission will proceed with a default hearing and may request the assessment of civil penalties;

(C) If the user requests a hearing within 21 days, the hearing will be conducted by an Administrative Law Judge as provided in ORS 183.335.

(c) If a hearing is held, the Administrative Law Judge will recommend a resolution to the Commission, which will decide whether the degree use meets Oregon standards, and if it does not, whether to impose a penalty and, if so, what the penalty should be.

(5) Subsequent to such warning and in violation thereof, any renewed claim of an invalid degree exposes the violator to penalties as set forth in statute and under subsection (6) of this rule.

(6) Any violation of ORS 348.603 or 348.609 may result in any or all of the following sanctions:

(a) Prosecution for a Class B misdemeanor under ORS 348.992;

(b) Injunction against further use of the claimed degree;

(c) Civil suit for violation of Oregon’s Unlawful Trade Practices Act (UTPA), ORS 646.605 to 646.652, if applicable; or

(d) A civil penalty not to exceed \$1,000 per violation.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603, 348.609 & 348.992

Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 2-2002, f. & cert. ef. 10-10-02; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; ODA 2-2006, f. & cert. ef. 11-1-06; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0027

### Disciplinary Action; Civil Penalty Considerations

Effective January 13, 2015:

(1) The Commission may assess a civil penalty for each violation of a provision of OAR chapter 583, division 50.

(2) In establishing the amount of the penalty for each violation, the Commission shall consider, but not be limited to the following factors:

(a) The gravity and magnitude of the violation;

(b) The person’s previous record of compliance with the provisions of ORS 348.594 to 348.615 or with the rules adopted thereunder;

(c) The person’s history in taking all feasible steps or in following all procedures necessary or appropriate to correct the violation; and

(d) Such other considerations as the Commission may consider appropriate.

(3) An “incident” for purposes of the penalty schedule means a single use of the invalid degree, or each use of an unaccredited degree without a disclaimer, in a specific venue in a specific time period.

(a) Examples of specific venues include but are not limited to publications, job applications, web sites, spoken presentations, mailings, emails, flyers, posters, advertisements, and handouts.

(b) Examples of specific time periods include one-time uses and serial uses, e.g., monthly advertisements, annual publications such as college catalogs and the like. In the case of continued usage during a period of employment, each regular pay period (e.g. one month) in which the degree is used is considered a specific time period and therefore a separate incident.

(4) The Commission may impose a civil penalty, provided that it first gives the person an opportunity for a hearing as outlined in ORS Chapter 183.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.609

Hist.: ODA 2-2002, f. & cert. ef. 10-10-02; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0028

### Schedule of Civil Penalties for Violations of Laws and Rules

Effective January 13, 2015. In assessing civil penalties, the Commission desires to be both consistent and equitable and to consider and evaluate each case on an individual basis. The actual civil penalty which the commission imposes shall be based on the Commission’s consideration of the factors in OAR 583-050-0027. The Commission shall impose a penalty per incident based on only one of the degree use activities listed below, i.e. a single incident cannot result in a penalty from more than one category. Civil penalties shall be imposed according to the following schedule for use after warning by the commission of a violation:

(1) When such use is related to a position in any employment sector, paid or unpaid, involving public health or safety for which a degree of the type found invalid is required for employment or licensure: \$1000 per incident.

(2) When such use is intended to induce or encourage payment of money by students, clients, customers or others for whom the degree may serve as an attractant or legitimizer related to a service provided in the business or not-for-profit sector: \$1000 per incident.

(3) When such use is in public employment not related to public health or safety for which a valid degree of the type claimed is required or is necessary based on the conditions of employment: \$500 per incident.

(4) By a teacher at any level, including K–12 and postsecondary education: \$500 per incident.

(5) When such use is likely to deceive the public as to the user’s qualifications but no money is sought or received by the user as a consequence in whole or in part of the use: \$300 per incident.

(6) When in violation of any other provision of OAR 583, division 50: \$300 per incident.

(7) Repeated violations of any kind may result in a penalty of \$1,000 for each repetition occurring after a penalty is imposed by the Commission or an injunction against the usage is issued by a court.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.609

Hist.: ODA 2-2002, f. & cert. ef. 10-10-02; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0036

### Inquiries and Complaints

Effective January 13, 2015:

# ADMINISTRATIVE RULES

(1) Monitoring and validating degree claims will be done by the Commission in the course of routine activities such as approving faculty members of schools seeking authorization to offer degrees in Oregon, advising employers or professional licensing boards on applicant credentials, examining backgrounds listed by candidates for public election, and reviewing telephone directories or other publications for advertisements that list degrees.

(2) Any citizen as a matter of general information may ask the Commission to discuss whether a degree encountered sounds questionable, and any citizen as a matter of public protection may ask the Commission to validate a degree claimed by an identified individual. It is entirely optional for an inquirer unsure about a degree to make a formal complaint, because an inquiry alone does not imply that the inquiring citizen has accused the degree claimant of any deception.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603 & 348.609

Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

## 583-050-0040

### Fees for Validation Services

Effective January 13, 2015

(1) ODA charges a fee for some services provided under OAR chapter 583, division 50. The fee schedule is as follows: [Table not included. See ED. NOTE.]

(a) Agencies or organizations that have contracted for basic degree validation services with the Commission do not pay a per-request fee. Contract rates are as follows: [Table not included. See ED. NOTE.]

(b) Fees for all inquiries, including contracted rates, must be paid in advance by bank check, money order or interagency fund transfer to: State of Oregon - Higher Education Coordinating Commission (use current address).

(2) The Commission may require reimbursement of costs for other requests at the discretion of the agency, depending on the nature of the request and available staff resources. Such fees may not exceed the actual cost to the Commission to provide the service, based on staff rates and related costs.

(3) The Commission's executive director may waive validation and evaluation fees:

(a) If the request for information is for purposes of criminal investigation; or

(b) If the consumer protection benefits of ODA action warrant a waiver, provided that sufficient staff time is available.

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

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603 & 348.609

Hist.: ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 1-2014(Temp), f. & cert. ef. 7-16-14 thru 1-12-15; Administrative correction, 1-27-15; ODA 1-2015, f. & cert. ef. 3-17-15; ODA 2-2015(Temp), f. & cert. ef. 9-10-15 thru 3-7-16; ODA 1-2016, f. & cert. ef. 2-19-16

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## Oregon Business Development Department Chapter 123

**Rule Caption:** These rules relate to the Special Public Works Fund.

**Adm. Order No.:** OBDD 4-2016

**Filed with Sec. of State:** 2-29-2016

**Certified to be Effective:** 2-29-16

**Notice Publication Date:** 1-1-2016

**Rules Adopted:** 123-042-0061

**Rules Amended:** 123-042-0020, 123-042-0026, 123-042-0038, 123-042-0045, 123-042-0055, 123-042-0076, 123-042-0122, 123-042-0132, 123-042-0155, 123-042-0165, 123-042-0175, 123-042-0180

**Rules Repealed:** 123-042-0020(T), 123-042-0026(T), 123-042-0036(T), 123-042-0038(T), 123-042-0045(T), 123-042-0055(T), 123-042-0065(T), 123-042-0076(T), 123-042-0122(T), 123-042-0132(T), 123-042-0155(T), 123-042-0165(T), 123-042-0175(T), 123-042-0180(T), 123-042-0190(T)

**Subject:** Resulting from SB 306 in the 2015 Legislative Session, the Special Public Works Fund rules are being amended to include definitions, criteria, project eligibility and funding related to levee projects.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-042-0020

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this OAR 123 division 42 the following terms have the meanings set forth below, unless the context clearly indicates otherwise.

(1) "Authority" means the Infrastructure Finance Authority within the Oregon Business Development Department.

(2) "Award" means the Authority's determination that the project is eligible for funding and that the Authority has identified the specified funding type and amount for the activities described in the staff recommendation.

(3) "Award date" means the date of the final Authority management signature approving the award.

(4) "Board" means the Oregon Infrastructure Finance Authority Board.

(5) "Commission" means the Oregon Business Development Commission

(6) "Development project" means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally owned utilities, buildings, land, transportation facilities or other facilities that assist the economic and community development of the municipality, including but not limited to the following type of projects:

(a) Transportation projects

(b) Utility system projects

(c) Buildings, lands or other facility projects including planning project activities that are necessary or useful as determined by the Authority.

(7) "Direct project management costs" means expenses directly related to a project that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. Direct project management costs does not include routine or ongoing expenses of the municipality.

(8) "Eligible commercial jobs" means jobs that are created or retained by businesses selling goods or services into markets for which national or international competition exists.

(9) "Emergency project" means a development project resulting from an emergency as defined in ORS 401.025

(10) "Essential Community Facilities" means municipally owned or operated facilities that provide or support services vital to public health and safety, including, but not limited to police and fire protection, medical treatment, public utilities, transportation, and auxiliary shelter facilities.

(11) "Executive Director" means the administrator of the Infrastructure Finance Authority.

(12) "Firm business commitment project" means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained. The project must support industrial development or eligible commercial jobs and be consistent with local comprehensive plans and implementing ordinances.

(13) "Fund" means the Special Public Works Fund created by ORS 285B.455.

(14) "Levee project" means a planning project, development project, or other project that is directly related to and necessary for required inspections, levee certification, accreditation or repairs.

(15) "Marine facility" has the meaning given that term in ORS 285B.410(7).

(16) "Municipality" means an Oregon city, or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS Chapter 451, a district as defined in 198.010, a tribal council of a federally recognized Indian tribe in this state, or an airport district organized under ORS 838, but does not include an ORS 190 entity.

(17) "Planning project" means:

(a) A project related to a potential development project for preliminary, final or construction engineering;

(b) A survey, site investigation or environmental action related to a potential development project;

(c) A financial, technical or other feasibility report, study or plan related to a potential development project; or

(d) An activity that the Authority determines to be necessary or useful in planning for a potential development project.

(18) "Project" means a development, planning or emergency project.

(19) "State revenue bond loan" means a loan funded in whole or part through the sale of state revenue bonds issued by the State of Oregon at the request of the department that are payable from specific revenue sources

# ADMINISTRATIVE RULES

pledged by a municipality and are not a pledge of the full faith and credit of the State of Oregon.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0026

### Loan and Grant Information

(1) The moneys in the fund will be used primarily to provide loans to municipalities for projects. Grants may be given only when loans are not feasible due to the financial need of the municipality or special circumstances of a project. The level of loan or grant funding, if any, may be determined by the Authority on a case-by case-basis. The Authority shall determine awards in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund according to the following criteria:

- (a) Amount requested;
- (b) Type;
- (c) Interest rate;

(d) Terms and conditions of an award. The Authority may offer an alternate mix or lower amount of assistance than requested, and it may investigate and recommend other sources of funds for all or part of a proposed project.

(2) Grants:

(a) If the Authority determines that a firm business commitment project meets the minimum criteria for a grant, the Authority may make a further determination on the amount of the grant. The maximum grant amount is \$500,000 per project or 85% of allowable project costs, whichever is less. In-kind materials and services cannot be included in allowable project costs.

(b) The amount of grant will be based primarily on the number of eligible commercial and industrial jobs proposed to be created or retained with a maximum of \$5,000 for each job created or retained.

(c) If a grant is for the acquisition and improvement of real property, the maximum grant amount cannot exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.

(d) The Authority must receive, in accordance with OAR 123 division 70, a copy of the appropriate First Source Hiring Agreement or assurance from the municipality that one has been entered into before the grant is dispersed.

(e) Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium can be used to provide assistance to distressed or rural areas.

(f) The Authority cannot expend more than \$900,000 for grants or direct assistance, if any, for planning projects to municipalities in a biennium.

(g) The Authority cannot commit more than \$2,000,000 for grants for Firm Business Commitment development projects in a biennium.

(h) A development project that qualifies as a firm business commitment project is eligible to apply for a grant. When making a determination to award a grant, the Authority will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the Authority will apply the following minimum criteria for grants:

(A) The Authority's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;

(B) Eligible commercial jobs will be created or retained as a result of the grant being awarded; and

(C) The Authority has received confirmation that the firm business commitment project will not occur, or that the eligible commercial jobs will be lost, if the municipality does not receive a grant.

(3) Loans:

(a) Maximum loan amount for a project will be based on the Authority's financial and credit analysis of the municipality's capacity to repay, the availability of moneys in the fund, and prudent fund management. Projects that the Authority determines are not financially feasible, or loans that cannot be adequately secured, will not be funded. The maximum loan amount per project cannot exceed \$10,000,000.

(b) A development project may receive loan funding as follows:

(A) The initial or renegotiated term is limited to the usable life of the contracted project, or a maximum of 30 years from the year of project completion, whichever is less.

(B) The interest rate on a loan will be based on market conditions for similar debt, and will be set at the time of the award.

(C) The repayment terms of a loan can include deferred repayment of principal and/or interest for a specified term of the loan to address special circumstances and financial feasibility of a project.

(D) The interest rate on a state revenue bond loan will be equal to the coupon rates on the bonds. Until the state revenue bonds are sold, the municipality will pay interest on the outstanding principal balance of the loan at the rate established by the Authority.

(c) A loan amount requiring Board approval will be established by the Board.

(d) The loan will be a full faith and credit obligation, which is payable from any taxes that the municipality may levy within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution and all legally available funds of the municipality. Additional pledges of revenue or other collateral may also be required and may include, but are not limited to:

(A) Specific revenues of the municipality may also be required to be pledged as security, including revenues of the project, special assessment revenues and other collateral.

(B) If repayment of a loan substantially depends on revenues the municipality will receive from a lessee or payments from a benefiting business, the Authority will assess the financial capacity of the payor, the adequacy of the security, the financial instrument(s) requiring such payments to the municipality, and any liens, pledge(s), or assignments of collateral from the payor to the municipality. The Authority may require an assignment of such revenue and collateral from the municipality.

(C) If repayment of the loan substantially depends on a pledge of tax increment revenues from an urban renewal agency to the borrowing municipality, the Authority's financial analysis will extend to the financial feasibility of the projected revenues and the financial and legal adequacy of the proposed pledge of tax increment revenue.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 10-2011, f. 12-30-11, cert. ef. 1-1-12; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0038

### Criteria for Special Project Funding

Special types of development projects must meet the following criteria. If the project consists:

(1) Solely of the acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use. A loan for such a project must be repaid if the land that is acquired through the proceeds of the loan is rezoned so as to be no longer zoned for industrial or commercial use.

(2) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(3) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(4) Of an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system project. This sub-section does not apply when the energy system project will be located within the recognized service territory of the municipality.

(5) Of a marine facility project authorized under ORS 777.267, assistance from the fund can only be a loan that may not exceed the amount of the required local match.

(6) Of a project for a utility system that is functionally connected to, or anticipates connecting to, another municipality's utility system, an intergovernmental cooperation agreement that describes the duties and obligations of each entity in regard to the project and utility system is required. A certified copy of the fully executed intergovernmental agreement must be provided before the Authority will disburse funds.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 285B.410 - 285B.460



# ADMINISTRATIVE RULES

Hist.: EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0045

### Planning Project Eligibility, Criteria and Funding

(1)(a) A planning project, as defined in ORS 285B.410(9), may be eligible for a loan. The Authority will make awards for loans based on availability of moneys in the fund and prudent fund management as well as its financial analysis of the municipality's ability to repay the loan;

(b) The interest rate for a planning project loan will be 50 percent of the rate set by the Authority for direct loans in effect at the time of the award. The loan term shall not exceed seven years.

(2) A planning project conducted for the purpose of developing industrial lands, including planning for industrial site certification, is eligible for a grant of up to \$60,000 per site, per biennium or 85% of the allowable planning project cost, whichever is less. This type of planning project must meet the following criteria:

(a) The land must be zoned "industrial"; and

(b) The land meets marketability standards as determined by the department using its adopted policy.

(3) A planning project conducted for the purpose of preliminary evaluation, planning, or engineering for levee certification is eligible for one grant of up to \$50,000 per levee certification project area or 85% of the allowable planning project cost, whichever is less.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 10-2011, f. 12-30-11, cert. ef. 1-1-12; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0055

### Emergency Project Eligibility, Criteria and Funding

(1) An emergency project, as defined in ORS 285B.410(5), which meets the following criteria is eligible for assistance from the fund:

(a) The project must result from an emergency as defined in ORS 401.025; and

(b) The project must have federal disaster relief assistance funds committed;

(2) The following apply to both grants and loans for emergency projects:

(a) The maximum award amount for an emergency project cannot exceed the required local match for the federal disaster relief assistance committed to the project;

(b) A grant for an emergency project cannot exceed \$500,000 per project, or the amount of the federally required local match, whichever is less; and

(c) A loan for an emergency project must meet the criteria set forth in OAR 123-042-0036.

(3) The Authority shall not commit more than \$2.5 million for emergency project grants, including grants for essential community facilities, in a biennium.

(4) For the purposes of awards made under this OAR 123-042-0055, allowable project costs are those eligible for federal assistance, unless those costs are precluded by a restriction in state law or the Code of Federal Regulations.

(5) In the event of an emergency, the Authority may adopt a policy, after consultation with stakeholders and others, to guide implementation decisions regarding such matters as grant amounts and priorities.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0061

### Levee Project Eligibility, Criteria and Funding

(1) The Authority may provide financial assistance in the form of loans and grants for a levee project to:

(a) A municipality, including drainage districts organized under ORS Chapter 547;

(b) Corporations or companies for drainage or flood control organized under ORS Chapter 554.

(2) A levee project as defined in 123-042-0020(14) must meet all of the following criteria to be eligible for assistance from the fund:

(a) The project is for the purpose of completing certification documents or obtaining accreditation by the Federal Emergency Management Agency (FEMA) as defined in Chapter 44 of the Code of Federal Regulations (44 CFR), Section 65.2 or Section 65.10;

(b) The project, as determined by the Authority, will substantially contribute to the improvement, expansion or repair of the state's or municipality's infrastructure system; and,

(c) The project is essential for the continued use or development of farm, industrial, or commercial land in Oregon.

(3) The following applies to loans for levee projects:

(a) The maximum loan amount cannot exceed \$2,500,000;

(b) A principal only, zero percent (0%) interest rate loan of up to \$1,000,000 may be awarded for each levee certification project area. The zero percent loan cannot exceed 50 percent (50%) of the total loan amount from the Special Public Works Fund;

(c) The Authority cannot commit more than \$4,000,000 for zero percent (0%) interest rate loans for levee projects in a biennium.

(4) A levee project is eligible for one grant of up to a maximum of \$50,000. Maximum grant amount will include any amount previously awarded as a planning project grant pursuant to OAR 123-042-0045(3).

(5) For awards made under this OAR 123-042-0061, allowable project costs are those set forth in OAR 123-042-0065.

Stat. Auth.: ORS 285B.410, 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0076

### Ineligible Projects and Project Costs

Expenses and costs expressly allowed under this division of rules are eligible for reimbursement from the fund. All other costs are ineligible for reimbursement including but not limited to:

(1) Assistance to facilities that are or will be privately owned;

(2) Purchase of general purpose motor vehicles and equipment not essential to the project;

(3) Assistance to projects that primarily focus on relocating business or economic activity from one part of the state to another, except in cases where the business or economic activity would otherwise locate outside of Oregon; and

(4) Project operating or maintenance costs, except as allowed by statute.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0122

### Application Requirements

(1) A municipality may submit an application to the Authority after consulting with the Authority on a preliminary determination of eligibility and following the Authority's procedures.

(2) The application must be in the form provided by the Authority and must contain or be accompanied by such information and documentation as the Authority may require. The Authority may assist municipalities in understanding program requirements and in completing applications. The Authority will process only completed applications.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0132

### Application Review and Approval

(1) For a construction project the Authority must make the following determinations:

(a) The municipality has certified that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues, collateral, or payments from any owners of specially benefited properties, and such pledge is sufficient, when considered with other collateral or assets, to assure repayment, and the municipality has certified to the Authority that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) The municipality is willing and able to enter into a contract with the Authority;

(d) The project is consistent with the requirements governing assistance from the fund. If the Authority determines that the municipality or the proposed project does not meet the requirements of OAR chapter 123, division 42, the Authority may reject an application or require further documentation from the municipality;

# ADMINISTRATIVE RULES

(e) Other funds that may be needed to complete the project are available or the municipality has a binding commitment for such funds. If a portion of the other funds needed to complete the project is not available or committed at the time an award is made, the award will be conditional on securing the other needed funds or a binding commitment for such funds; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance, it shall proceed immediately.

(2) For a planning project, the Authority must make the following determinations:

(a) The requirements set out in OAR 123-042-0132(1) are met, except for subsection (b) if no loan is being awarded;

(b) The planning activities must be for a project that is eligible under OAR chapter 123, division 42 and meets the criteria listed in OAR 123-042-0045; and

(c) The municipality has demonstrated the ability to secure, the administrative capacity to undertake and complete the planning project.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0155

### Contracts and Disbursements of Funds

(1) The Authority shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract will be in form and substance as provided by the Authority, and must include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the Authority under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) For a development project, a provision requiring the contracted project remain in municipal ownership for either the life of the loan, or for not less than 10 years following the Project Closeout Deadline if funding award is solely a grant. If this condition is not met, the grant and any interest earned is immediately payable to the Authority, unless the Authority in its sole discretion elects to convert the grant to a loan on terms and conditions satisfactory to the Authority;

(d) For a planning project, other than planning projects conducted for levee certification, a provision requiring that the land involved in the project must remain zoned as industrial and not be converted to another use for at least 5 years after completion of the project. If this condition is not met, the grant and any interest earned is immediately payable to the Authority, unless the Authority in its sole discretion elects to convert the grant to a loan on terms and conditions satisfactory to the Authority;

(e) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the Authority a lien on, or a security interest in, the collateral as determined by the Authority to be necessary to secure repayment of the loan or bond;

(f) A provision that for a period of up to six (6) years after project completion, the Authority may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to, information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project; and

(g) Other provisions that the Authority considers necessary or appropriate to implement the assistance.

(4) The contract for a loan or grant must be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0165

### Municipality Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the Authority, and its representatives, reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the Authority.

(3) The municipality shall certify that any service provider retained for their professional expertise is certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.

(4) The municipality shall certify that it will follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(5) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 requiring public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed on all plans, reports, bid documents and advertisements relating to the project: "This project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the Oregon Infrastructure Finance Authority"; and

(b) For a construction project, post a sign, provided by the Authority, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(6) For a construction project, the municipality shall have a financing plan for the ongoing operation, maintenance and repairs that will preserve the project benefits over its useful life.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482 & 280.518

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0175

### Eligibility Criteria for State Revenue Bond Loans

The Authority shall apply the following standards for determining the eligibility of development projects for revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the Authority;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments and the term of the loan will not exceed the usable life of the contracted project;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for revenue bond financing as established by Authority policies.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0180

### Remedies

The Authority may invoke remedies for an "event of default" as described in the contract with the municipality, including but not limited to the following:

(1) Withholding of amounts otherwise due to the municipality pursuant to ORS 285B.449;

(2) Barring Recipient from applying for future awards.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

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## Oregon Health Authority, Health Licensing Office, Board of Licensed Dietitians Chapter 834

**Rule Caption:** Senate Bill 230 changed the name of the recipient of the health care workforce survey.

**Adm. Order No.:** BELD 1-2016

**Filed with Sec. of State:** 2-17-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 12-1-2015

**Rules Amended:** 834-020-0000, 834-030-0000, 834-030-0010, 834-050-0010

**Subject:** Senate Bill 230 (2015) changed the name of the recipient of the health care workforce survey and also requires licensees to

# ADMINISTRATIVE RULES

take the survey on renewal. In addition to the demands of the bill, the Health Licensing Office's name has been changed from the Oregon Health Licensing Agency. The rules for the Board of Licensed Dietitians must be changed to align with the bill.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 834-020-0000

### Definitions

- (1) "Board" means the Board of Licensed Dietitians.
- (2) "CDR" means the Commission on Dietetic Registration.
- (3) "CEU" means a continuing education unit and the numerical value determined by the board to be earned by a renewal applicant by attending a specified training course. The terms "continuing education credit" and "continuing education unit" are synonymous and may be used interchangeably.
- (4) "Continuing Education (CE)" means post-licensure education in maintaining and improving knowledge and skills in dietetics practice as defined in ORS 691.405(1).
- (5) "Nutrition Care Process (NCP)" means a systematic problem-solving method that dietitians use to critically think and make decisions when providing medical nutrition therapy or to address nutrition related problems and provide safe, effective, high quality nutrition care.
- (6) "Medical Nutrition Therapy (MNT)" means an evidence-based application of the Nutrition Care Process focused on prevention, delay or management of diseases and conditions, and involves an in-depth assessment, periodic re-assessment and intervention.
- (7) "Office" means the Health Licensing Office.
- (8) "Official Transcript" means an original document that has been certified by an accredited college or university and indicates hours and types of course work, examinations and scores that the student has completed. It must be submitted by a college or university by mail or courier to the Office in a sealed envelope on behalf of the applicant.
- (9) "OHA" means the Oregon Health Authority.  
Stat. Auth.: ORS 691.475, 691.485  
Stats. Implemented: ORS 691.435, 691.445, 691.475, 691.477, 691.479  
Hist.: BELD 2-2012, f. 8-16-12, cert. ef. 8-17-12; BELD 1-2016, f. 2-17-16, cert. ef. 3-1-16

## 834-030-0000

### Licensed Dietitian Application Requirements

- An individual applying for licensure as a licensed dietitian must:
- (1) Meet the requirements of OAR 331 division 30.
  - (2) Submit a completed application form prescribed by the Office, which must contain the information listed in OAR 331-030-0000 and be accompanied by the application fees.
  - (3) In addition to requirements listed in subsections (1) and (2) of this rule, an applicant must provide documentation of one of the following pathways:
    - (A) Licensure Pathway 1 — Qualification through examination. An applicant must:
      - (A) Provide official transcripts demonstrating that the individual holds a baccalaureate or post-baccalaureate degree from a regionally accredited college or university in the U.S. in human nutrition, dietetics, foods and nutrition or food systems management, pursuant to ORS 691.435;
      - (B) Submit evidence of a passing score on the CDR examination, which may have been taken no more than three years preceding the date of the application;
      - (C) Submit evidence of having completed 900 hours of a board approved program of dietetic experience under the supervision of a licensed dietitian;
      - (D) Pay all license fees;
    - (B) Licensure Pathway 2 — Qualification through reciprocity pursuant to ORS 691.445(3)(b). Notwithstanding OAR 834-030-0000(3)(a)(A), (B) and (C), an applicant who is currently licensed under the laws of any other state or territory in the United States must:
      - (A) Fulfill all requirements of subsections (1), (2) and (3)(a)(D) of this rule; and
      - (B) Demonstrate to the Office's satisfaction that the requirements to obtain the applicant's license from another state or territory were not less than those of ORS 691.435.
    - (C) Licensure Pathway 3 — Qualification through equivalency pursuant to ORS 691.445(3)(a). Notwithstanding OAR 834-030-0000(3)(a)(A), (B) and (C), an applicant who is currently registered with CDR must:
      - (A) Fulfill all requirements of subsections (1), (2) and (3)(a)(D) of this rule; and

- (B) Submit proof of current, valid CDR registration.  
Stat. Auth.: ORS 691.475, 691.485  
Stats. Implemented: ORS 691.435, 691.445, 691.475, 691.477, 691.479  
Hist.: BELD 2-2012, f. 8-16-12, cert. ef. 8-17-12; BELD 1-2016, f. 2-17-16, cert. ef. 3-1-16

## 834-030-0010

### Licensed Dietitian Issuance and Renewal

- (1) A license is subject to the provisions of OAR chapter 331, division 30 regarding the issuance and renewal of a license, provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.
- (2) To avoid delinquency penalties, a license must be renewed before the license becomes inactive as described in section (3) of this rule. The licensee must:
  - (a) Submit a renewal application form;
  - (b) Pay the renewal fee pursuant to 834-040-0000;
  - (c) Attest to having obtained the required annual CE pursuant to OAR 834-050-0000;
  - (d) Attest to having provided the required information to OHA pursuant to ORS 676.410; and
  - (e) Pay fee established by OHA pursuant to ORS 676.410.
- (3) A license becomes inactive if it is not renewed before its "active through" date. A license may be inactive for up to three years, but an inactive license does not authorize its holder to practice dietetics under the title, "Licensed Dietitian" or the letters "L.D." To renew an inactive license, the licensee must:
  - (a) Submit a renewal application form;
  - (b) Pay the delinquency and renewal fees pursuant to OAR 834-040-0000;
  - (c) Submit documentation of having obtained the required annual CE pursuant to OAR 834-050-0000 on a form prescribed by the Office, whether the license was current or inactive;
  - (d) Attest to having provided the required information to OHA pursuant to ORS 676.410; and
  - (e) Pay fee established by OHA pursuant to ORS 676.410.
- (4) A licensee holding an expired license must reapply and meet the requirements of OAR 834-030-0000. An expired license does not authorize its holder to practice dietetics under the title, "Licensed Dietitian" or the letters "L.D." A license is expired if:
  - (a) The license has been inactive for more than three years; or
  - (b) The licensee has failed to meet CE requirements pursuant to OAR 834-050-0000 and the license is revoked.  
Stat. Auth.: ORS 691.475, 691.485  
Stats. Implemented: ORS 691.435, 691.445, 691.475, 691.477, 691.479  
Hist.: BELD 2-2012, f. 8-16-12, cert. ef. 8-17-12; BELD 1-2016, f. 2-17-16, cert. ef. 3-1-16

## 834-050-0010

### Continuing Education: Audit, Required Documentation and Sanctions

- (1) The Office will audit a percentage of licensees, as determined by the board, to verify compliance with CE requirements of OAR 834-050-0000.
- (2) Licensees notified of selection for audit of CE attestation must submit to the Office, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required CE in accordance with OAR 834-050-0000.
- (3) If selected for audit, the licensee must provide documentation of the required CE:
  - (a) For Office preapproved programs or courses — A certificate of completion or other Office-approved documentation that includes the Office pre-approval number;
  - (b) For courses provided by an accredited college or university — An official transcript from the accredited college or university; or
  - (c) For CDR-approved programs or courses — A completed CDR portfolio or state licensure verification worksheet, which is available from CDR or the Office.
- (4) If documentation of CE is incomplete, the registrant has 30 calendar days from the date of notice to submit further documentation to substantiate having completed the required CE.
- (5) Failure to meet CE requirements will constitute grounds for disciplinary action, which may include, but is not limited to, assessment of a civil penalty, suspension or revocation of license.  
Stat. Auth.: ORS 691.475, 691.485  
Stats. Implemented: ORS 691.435, 691.445, 691.475, 691.477, 691.479  
Hist.: BELD 2-2012, f. 8-16-12, cert. ef. 8-17-12; BELD 1-2016, f. 2-17-16, cert. ef. 3-1-16  
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**Rule Caption:** Senate Bill 230 changed the name of the recipient of the health care workforce survey.

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**Adm. Order No.:** BELD 2-2016  
**Filed with Sec. of State:** 2-18-2016  
**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 12-1-2015

**Rules Amended:** 834-040-0000, 834-050-0000

**Subject:** Senate Bill 230 (2015) changed the name of the recipient of the health care workforce survey and also requires licensees to take the survey on renewal. In addition to the demands of the bill, the Health Licensing Office's name has been changed from the Oregon Health Licensing Agency. The rules for the Board of Licensed Dietitians must be changed to align with the bill.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 834-040-0000

### Fees

(1) Applicants and registrants are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Office are as follows:

(a) Application: \$50;

(b) Original license: \$60 for one year;

(c) Renewal of license: \$60 for one year;

(d) Other administrative fees:

(A) Delinquency fee: \$25 for each year in inactive status up to three years;

(B) Replacement of license, including name change: \$25;

(C) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

Stat. Auth.: ORS 676.605, 676.606, 676.607, 676.608, 676.615, 691.435, 691.445, 691.465

Stat. Implemented: ORS 691.435, 691.445, 691.465, 676.605, 676.606, 676.607, 676.608, 676.615, OL 2011 Ch. 630

Hist.: BELD 1-2012, f. & cert. ef. 3-28-12; BELD 1-2015, f. & cert. ef. 6-29-15; BELD 2-2016, f. 2-18-16, cert. ef. 3-1-16

## 834-050-0000

### Continuing Education Requirements

(1) To maintain licensure, dietitians must complete a minimum of 15 CE credits every year.

(2) CE credits obtained in excess of those required for the current one-year reporting period may be carried forward for up to four years. However, no more than 60 annual excess CE credits may be carried forward.

(3) Excess CE credits may not be used to reinstate an expired license.

(4) Each licensee shall document compliance with the CE requirement through attestation on the license renewal application. Licensees are subject to provisions of OAR 834-050-0010 pertaining to periodic audit of CE.

(5) Upon CE credit audit, the licensee must provide documentation supporting all credits claimed and all excess credits carried forward.

(6) CE must address subject matter related to dietetics practice in accordance with ORS 691.405(1) and OAR 834-020-0000(4).

(7) CE credits will be awarded based on the following criteria:

(a) Completion and passing of academic courses taken from an accredited college or university are awarded 15 CE credits for each semester-based credit earned, 14 CE credits for each trimester-based credit earned or 10 CE credits for each quarter-based credit earned;

(b) Completion of professional courses which meet academic course requirements in content, instruction and evaluation will be assigned 15 CE credits for each semester-based credit earned, 14 CE credits for each trimester-based credit earned or 10 CE credits for each quarter-based credit earned;

(c) Courses that do not meet standards as set forth in paragraphs (a) and (b) of this subsection, such as workshops, symposiums, seminars, laboratory exercises, or any applied experience with or without formal classroom work may be assigned credit at the rate of 1.0 CE credit for each hour of attendance.

(8) Documentation supporting compliance with CE requirements must be maintained for a period of two years following renewal and be available to the Office upon request.

Stat. Auth.: ORS 691.475, 691.485

Stat. Implemented: ORS 691.435, 691.445, 691.475, 691.477, 691.479

Hist.: BELD 2-2012, f. 8-16-12, cert. ef. 8-17-12; BELD 2-2016, f. 2-18-16, cert. ef. 3-1-16

## Oregon Health Authority, Health Services Division: Medical Assistance Programs Chapter 410

**Rule Caption:** Removing Prior Authorization (PA) Requirement on Deluxe Frames (V2025) and Removing Outdated Language

**Adm. Order No.:** DMAP 7-2016

**Filed with Sec. of State:** 2-23-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 1-1-2016

**Rules Amended:** 410-140-0020, 410-140-0040, 410-140-0050, 410-140-0080, 410-140-0120, 410-140-0140, 410-140-0160, 410-140-0200, 410-140-0260, 410-140-0280, 410-140-0300

**Subject:** The Division needs to amend these rules to remove the prior authorization requirement on deluxe frames and remove outdated language.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-140-0020

### Service Delivery

(1) The Division enrolls the following as providers of vision services:  
(a) An individual licensed by the relevant state licensing authority to practice optometry; and

(b) A licensed ophthalmologist; and

(c) An optician as defined in ORS 683.510-683.530;

(2) Division clients are enrolled for covered health services to be delivered through one of the following means:

(a) Prepaid Health Plan (PHP) or Coordinated Care Organization (CCO):

(A) Payment for all vision services provided to PHP and CCO members by ophthalmologists, optometrists, and opticians is a matter between the provider and the PHP or CCO;

(B) Providers shall comply with PHP and CCO policies, including PA requirements, for reimbursement. Providers shall inform PHPs and CCOs of the last date of service when inquiring on service limitations. Failure to follow PHP and CCO rules may result in the denial of payment; and

(C) If the provider has been denied payment for failure to follow the rules established by the PHP or CCO, neither the Division, the PHP or CCO, nor the PHP or CCO member are responsible for payment; and

(D) If the PHP or CCO uses the Division's visual materials contractor or another visual materials contractor for visual materials and supplies, all issues shall be resolved between the PHP or CCO and the contractor;

(b) Fee-for-service (FFS):

(A) FFS clients are not enrolled in a PHP or CCO and may receive vision services from any Division-enrolled provider that accepts FFS clients subject to limitations and restrictions in the visual services program rules; and

(B) All claims shall be billed directly to the Division.

(3) The provider shall verify whether a PHP, CCO, or the Division is responsible for reimbursement.

(4) If a client receives services under section (2)(b) of this rule:

(a) The Division may require a PA for certain covered services or items before the service may be provided and before payment is made; and

(b) Providers needing materials and supplies shall order those directly from SWEEP Optical, except when the OHP client has primary Medicare coverage.

(5) Most OHP clients must pay a co-payment for some services. (See OAR 410-120-1230, Client Co-payment, and Table 120-1230-1 outlining details including client and service exemptions).

Stat. Auth.: ORS 413.042

Stat. Implemented: ORS 414.025, 414.065, 414.631 & 414.651

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0160; HR 37-1992, f. & cert. ef. 12-18-92; HR 15-1994, f. & cert. ef. 3-1-94; HR 38-1994, f. 12-30-94, cert. ef. 1-1-95; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0040

### Prior Authorization

(1) Prior Authorization (PA) is defined in OAR 410-120-0000. Providers must obtain a PA from the:

(a) Enrolled member's Prepaid Health Plan (PHP) or Coordinated Care Organization (CCO); and

(b) The Division for clients who receive services on a fee-for-service basis and are not enrolled with a PHP or CCO.

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(2) A PA does not guarantee eligibility or reimbursement. Providers shall verify the client's eligibility on the date of service and whether a PHP, CCO, or the Division is responsible for reimbursement.

(3) A PA is not required for clients with both Medicare and Division coverage when the service or item is covered by Medicare.

(4) Provider's shall determine if a PA is required and comply with all PA requirements outlined in these rules.

(5) Provider's shall ensure:

(a) That all PA requests are completed and submitted correctly. The Division does not accept PA requests via the phone. See Visual Services Supplemental Information Guide found at [www.oregon.gov/OHA/health-plan/pages/vision.aspx](http://www.oregon.gov/OHA/health-plan/pages/vision.aspx);

(b) PA requests shall include:

(A) A statement of medical appropriateness showing the need for the item or service and why other options are inappropriate;

(B) Diopter information and appropriate International Classification of Diseases, 10th revision, Clinical Modification (ICD-10-CM) diagnosis codes;

(C) All relevant documentation that is needed for Division staff to make a determination for authorization of payment, including clinical data or evidence, medical history, any plan of treatment, or progress notes;

(c) The service is adequately documented. (See OAR 410-120-1360 Requirements for Financial, Clinical and Other Records.) Providers must maintain documentation to adequately determine the type, medical appropriateness, or quantity of services provided;

(d) The services or items provided are consistent with the information submitted when authorization was requested;

(e) The services billed are consistent with the services provided; and

(f) The services are provided within the timeframe specified on the PA document.

(6) Providers shall comply with the Division's PA requirements or other policies necessary for reimbursement before providing services to any OHP client who is not enrolled in a PHP. Services or items denied due to provider error (e.g., required documentation not submitted, PA not obtained, etc.) may not be billed to the client.

(7) The following vision services require PA:

(a) Contact lenses for adults (age 21 and older) and excludes a primary keratoconus diagnosis, which is exempt from the PA requirement. (See OAR 410-140-0160 Contact Lens Services for service and supply coverage and limitations);

(b) Vision therapy greater than six sessions. Six sessions are allowed per calendar year without PA. (See OAR 410-140-0280 Vision Therapy Services); and

(c) Specific vision materials (See OAR 410-140-0260 Purchase of Ophthalmic Materials for more information.):

(A) Frames not included in the Division's contract with contractor, SWEEP Optical; and

(B) Specialty lenses or lenses considered as "not otherwise classified" by Health Care Common Procedure Coding System (HCPCS);

(d) An unlisted ophthalmological service or procedure, or "By Report" (BR) procedures.

(8) The Division shall send notice of all approved PA requests for vision materials to the Division's contractor, SWEEP Optical; who forwards a copy of the PA approval and confirmation number to the requesting provider. (See OAR 410-140-0260 Purchase of Ophthalmic Materials.)

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 343.146, 414.065, 683.010 & 743A.250

Hist.: AFS 9-1978, f. & ef. 2-1-78; AFS 2-1979, f. 2-6-79, ef. 3-1-79; AFS 2-1982(Temp), f. 1-20-82, ef. 2-1-82; AFS 45-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 55-1983, f. 11-15-83, ef. 12-1-83; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 24-1984(Temp), f. & ef. 5-29-84; AFS 31-1984(Temp), f. 7-26-84, ef. 8-1-84; AFS 5-1985, f. & ef. 1-25-85; AFS 22-1987, f. 5-29-87, ef. 7-1-87; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0010; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0170; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 51-2015, f. 9-22-15, cert. ef. 10-1-15; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0050

### Eligibility and Benefit Coverage

(1) Providers shall verify that an individual is an OHP client and eligible for benefits prior to providing services to ensure reimbursement for services provided. If the provider fails to confirm eligibility on the date of service, the provider may not be reimbursed. Providers must verify the client's eligibility including:

(a) That the individual receiving vision services is eligible on the date of service for the service provided;

(b) Whether an OHP client receives services on a fee-for-service basis or is enrolled with a PHP or CCO;

(c) That the service is covered under the client's OHP Benefit Package; and

(d) Whether the service is covered by a third party resource (TPR).

(2) The Division OHP vision benefit packages:

(a) For non-pregnant adults (age 21 and older):

(A) Visual services and materials to diagnose and correct disorders of refraction and accommodation are covered only when the client has a covered medical diagnosis or following cataract surgery or a corneal lens transplant as described in OAR 410-140-0140;

(B) Orthoptic and pleoptic training (vision therapy) is not covered; and

(C) Other visual services are covered with limitations as described in this rule.

(b) For pregnant adult women (age 21 and older):

(A) Orthoptic and pleoptic training (vision therapy) is not covered; and

(B) Other visual services are covered with limitations as described in these rules;

(c) For children (birth through age 20): Visual services are covered as described in this rule and without limitation when documentation in the clinical record justifies the medical need.

(3) Providers shall maintain accurate and complete client records, which includes documenting the quantity of services provided, as outlined in OAR 410-120-1360 (Requirements for Financial, Clinical and Other Records).

(4) The provider shall inform an OHP client when:

(a) Vision service or materials are not covered under the clients benefit package;

(b) Service limitation has been met and the benefit is no longer covered.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 11-2002, f. & cert. ef. 4-1-02; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0080

### Medicare/Medicaid Assistance Program Claims

(1) When a client has both Medicare and coverage through the Division, optometrists and ophthalmologists shall bill Medicare first for Medicare covered services.

(2) When an OHP client receives services on a fee-for-service basis under the Division's rules and has Medicare coverage:

(a) A provider may use any visual materials supplier to order visual materials; and

(b) The Division does not require PA for Medicare-covered services.

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 414.025, 414.065, 414.075

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0190; HR 37-1992, f. & cert. ef. 12-18-92; HR 15-1994, f. & cert. ef. 3-1-94; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 65-2004, f. 9-13-04, cert. ef. 10-1-04; OMAP 22-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 33-2011, f. 12-5-11, cert. ef. 12-6-11; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0120

### ICD-10-CM Diagnosis, CPT/HCPCS Procedure Codes, and Modifiers

(1) Providers shall use an International Classification of Diseases, 10th revision, Clinical Modification (ICD-10-CM) diagnosis code on all claims.

(2) Providers shall provide the client's diagnosis to ancillary service providers (e.g., SWEEP Optical Laboratories) when prescribing services, equipment, and supplies.

(3) Providers shall use the standardized code sets required by the Health Insurance Portability and Accountability Act (HIPAA) and adopted by the Centers for Medicare and Medicaid Services (CMS). Providers shall accurately code claims using the combination of Health Care Common Procedure Coding System (HCPCS) and Current Procedural Terminology (CPT) codes in effect for the date the service was provided:

(a) Providers may not bill CPT or HCPCS procedure codes for separate procedures when a single CPT or HCPCS code includes all services provided. Providers shall comply with published coding guidelines;

(b) Intermediate and comprehensive ophthalmological services as described under the ophthalmology section of the CPT codebook shall be billed using codes included under this section and not those included under the Evaluation and Management section;

# ADMINISTRATIVE RULES

(c) When there is no appropriate descriptive procedure code to bill the Division, the provider shall use the code for “unlisted services.”

(4) The Division recognizes HIPAA compliant modifiers in coding.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0210; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 44-2001, f. 9-24-01 cert. ef. 10-1-01; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 11-2002, f. & cert. ef. 4-1-02; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 51-2015, f. 9-22-15, cert. ef. 10-1-15; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0140

### Vision Services Coverage and Limitations

(1) Providers shall comply with the following rules in addition to the Visual Services program rules to determine service coverage and limitations for OHP clients according to their benefit packages:

(a) General Rules (OAR chapter 410, division 120);

(b) OHP administrative rules (410-141-0480, 410-141-0500, and 410-141-0520);

(c) Health Evidence Review Commission’s (HERC) Prioritized List of Health Services (List) (OAR 410-141-0520); and

(d) Referenced guideline notes (The date of service determines the correct version of the administrative rules and HERC List to determine coverage.); and

(e) The Authority’s general rules related to provider enrollment and claiming (OAR 943-120-0300 through 1505).

(2) The Division covers ocular prosthesis (e.g., artificial eye) and related services. See OAR 410-122-0640 Eye Prostheses for service coverage and limitations.

(3) The Division covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the HERC List. Once a diagnosis is established for a service, treatment, or item that falls below the funding line, the Division may not cover any other service related to the diagnosis.

(4) Coverage for eligible adults (age 21 and older):

(a) Diagnostic evaluations and medical examinations are not limited if documentation in the physician’s or optometrist’s clinical record justifies the medical need;

(b) Ophthalmological intermediate and comprehensive exam services are not limited for medical diagnosis;

(c) Vision therapy is not covered; and

(d) Visual services for the purpose of prescribing glasses or contact lenses, fitting fees, or glasses or contact lenses:

(A) One complete examination and determination of refractive state is limited to once every 24 months for pregnant adult women;

(B) Non-pregnant adults are not covered, except when the client:

(i) Has a medical diagnoses of aphakia, pseudoaphakia, congenital aphakia, keratoconus; or

(ii) Lacks the natural lenses of the eye due to surgical removal (e.g., cataract extraction) or congenital absence; or

(iii) Has had a keratoplasty surgical procedure (e.g., corneal transplant) with limitations described in OAR 410-140-0160 (Contact Lens Services and Supplies); and

(iv) Is limited to one complete examination and determination of refractive state once every 24 months.

(5) OHP Plus Children (birth through age 20):

(a) All ophthalmological examinations and vision services, including routine vision exams, fittings, repairs, and materials are covered when documentation in the clinical record justifies the medical need;

(b) Orthoptic and pleoptic training or “vision therapy” is:

(A) Covered when therapy treatment pairs with a covered diagnosis on the HERC List;

(B) Limited to six sessions per calendar year without PA:

(i) The initial evaluation is included in the six therapy sessions;

(ii) Additional therapy sessions require PA (OAR 410-140-0040);

(C) Shall be provided pursuant to OAR 410-140-0280 (Vision Therapy).

(6) Refraction determination is not limited following a diagnosed medical condition (e.g., multiple sclerosis).

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 24-1984(Temp), f. & ef. 5-29-84; AFS 31-1984(Temp), f. 7-26-84, ef. 8-1-84; AFS 5-1985, f. & ef. 1-25-85; AFS 22-1987, f. 5-29-87, ef. 7-1-87; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0012; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0220; HR 37-1992, f. & cert. ef.

12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; DMAP 20-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0160

### Contact Lens Services and Supplies

(1) The following is general information regarding the Division’s contact lens services and supplies coverage for clients who receive services on a fee-for-services basis:

(a) The prescription of optical and physical characteristics of and fitting of contact lens, with medical supervision of adaptation, is only covered when provided by an optometrist or other qualified physician. Contact lens fitting by an independent technician in an optometry office is not a covered service; and

(b) Contact lenses shall be billed to the Division at the provider’s acquisition cost. Acquisition cost is defined as the actual dollar amount paid by the provider to purchase the item directly from the manufacturer or supplier plus any shipping and postage for the item. Payment for contact lenses is the lesser of the Division fee schedule or acquisition cost.

(2) Coverage for eligible adults (age 21 or older) as defined in OAR 410-140-0050:

(a) PA is required for contact lenses for adults, except for a primary keratoconus diagnosis;

(b) Contact lenses for adults are covered only when one of the following conditions exists:

(A) Refractive error which is 9 diopters or greater in any meridian;

(B) Keratoconus;

(C) Anisometropia when the difference in power between two eyes is 3 diopters or greater;

(D) Irregular astigmatism;

(E) Aphakia; or

(F) Post keratoplasty (e.g., corneal transplant), when medically necessary and within one year of procedure.

(c) Prescription and fitting of contact lenses is limited to once every 24 months. Replacement of contact lenses is limited to a total of two contacts every 12 months (or the equivalent in disposable lenses) and does not require PA;

(d) Corneoscleral lenses are not covered.

(3) Coverage for Children (birth through age 20):

(a) Contact lenses for children are covered and are not limited when it is documented in the clinical record that glasses may not be worn for medical reasons, including, but not limited to:

(A) Refractive error which is 9 diopters or greater in any meridian;

(B) Keratoconus;

(C) Anisometropia when the difference in power between two eyes is 3 diopters or greater;

(D) Irregular astigmatism; or

(E) Aphakia;

(b) Replacement of contact lenses is covered when documented as medically appropriate in the clinical record and does not require PA;

(c) Corneoscleral lenses are not covered.

(4) Contact lenses for treatment of disease or trauma (e.g., corneal bandage lens) are inclusive of the fitting. Follow up visits to determine eye health status may be separately reimbursed when the trauma or disease is clearly documented in the client record.

(5) An extra or spare pair of contacts is not covered.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0230; HR 37-1992, f. & cert. ef. 12-18-92; HR 5-1995, f. & cert. ef. 3-1-95; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 65-2004, f. 9-13-04, cert. ef. 10-1-04; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 20-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0200

### Dispensing, Fitting and Repair of Glasses

(1) The Division covers the fitting of glasses and the refitting and repair of glasses only when glasses and replacement parts are purchased from:

(a) The Division’s contractor;

(b) Any visual materials supplier when the client has primary Medicare coverage and the glasses were a Medicare-covered benefit.

(2) Fitting of glasses for:

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(a) Eligible adults (age 21 years and older) is limited to once every 24 months, except when dispensing glasses within 120 days of cataract surgery;

(b) Eligible children (birth through age 20) only when documented in the patient's record as medically necessary.

(3) Periodic adjustment of frames and tightening of screws is included in the dispensing fee and is not separately reimbursed.

(4) The Division accepts either the date of order or date of dispensing as the date of service on claims. Glasses must be dispensed prior to billing the Division, except under the following conditions:

(a) Death of the client prior to dispensing; or

(b) Client failure to pick up ordered glasses. Documentation in the client's record must show that the provider made serious efforts to contact the client.

(5) Providers must keep a copy of the delivery invoice included with all parts orders in the client's records or document the delivery invoice number in the client's records for all repair and refitting claims.

(6) Fitting of spectacle mounted low vision aids, single element systems, telescopic or other compound lens systems are not covered.

(7) All frames have a limited warranty. Check specific frame styles for time limits. All defective frames must be returned to the contractor.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0250; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 56-2002, f. & cert. ef. 10-1-02; OMAP 60-2003, f. 9-5-03, cert. ef. 10-1-03; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0260

### Contractor Services for Provider Ordering Vision Materials and Supplies

(1) The Division contracts with SWEEP Optical Laboratories (also referred to herein as contractor) to buy vision materials and supplies, excluding contact lenses. All frames, lenses, and miscellaneous items must be provided:

(a) Only by the contractor, unless the client has primary Medicare coverage; or

(b) By any visual materials supplier when the client has primary Medicare coverage for a Medicare covered item.

(2) Provider's shall:

(a) Verify the client's eligibility prior to submitting vision materials order to contractor;

(b) Obtain PA from the Division for items requiring PA prior to placing a vision materials order;

(c) Comply with the contractor's order submission requirements, as outlined in the Visual Services Supplemental Information Guide found at Division website:

<http://www.oregon.gov/OHA/healthplan/pages/vision.aspx>;

(d) Submit prescription or order to the contractor upon notification of PA approval from the contractor; and

(e) Pay SWEEP Optical for any services provided by SWEEP Optical to a client who is not eligible for items. SWEEP Optical may not sell materials and supplies for non-eligible clients at the State Contracted Price.

(3) The Division covers glasses for:

(a) Eligible adults (age 21 and older) once every 24 months;

(b) Clients once within 120 days following cataract surgery. When ordering glasses from contractor, the date of surgery must be listed on the order form;

(c) Eligible children (birth through age 20) without limitation when it is documented in the physician's or optometrist's clinical record as medically appropriate.

(4) The contractor shall:

(a) Forward Division PA approval to the provider;

(b) Order specifications:

(A) The contractor shall provide the order as specified by the ordering provider;

(B) The contractor shall pay for all shipping and handling charges for shipments to the provider via United States mail or United Parcel Service for all returned orders that do not meet the order specifications or that are damaged in shipping;

(C) The contractor may not accept initial orders via telephone. The contractor shall accept telephone calls or faxed messages regarding orders that do not meet specifications;

(D) When the contractor is notified of an item to be returned because the item was not made to specifications in the original order, the contractor

shall begin remaking the product as soon as they are notified, whether or not they have received the item being returned. The ordering provider shall return the original product to the contractor with a written explanation of the problem and indicate the date they notified the contractor to remake the order;

(c) Original order delivery:

(A) The contractor shall deliver the original order of materials and supplies to the provider within ten business days of the date the order is received;

(B) In the event of a delay in manufacturing or delivery, the contractor shall:

(i) Notify the ordering provider within two business days of receipt of the order;

(ii) Include a description of the order, the reason for delay, and the revised time of completion and delivery.

(C) Delivery of special order frames and lenses may exceed the required delivery time. In this event, the contractor shall provide the ordering provider with notice of the anticipated delay, provide a projected delivery date, and document the actual delivery time.

(5) The contractor:

(a) May use the date of order as the date of service (DOS) but may not bill the Division until the order has been completed and shipped;

(b) Shall bill the Division using Health Care Common Procedure Coding System (HCPC) Codes listed in the contract agreement. Payment will be at contracted rates;

(c) Shall include eyeglass cases with every frame. Cases may not be included in orders for only lenses, temples, or frame fronts;

(d) Shall have unisex frame styles available and shall allow clients to choose any frame regardless of category listed;

(e) Is not responsible if the Division determines the documentation in the client's record does not allow for the service pursuant to limitations indicated set forth in the administrative rules.

(6) The contractor and the Division may not pay for costs, expenses, or any required rework due to errors by the provider.

(7) Frames for display purposes may be purchased from the contractor for the same price as frames for glasses negotiated by the Oregon Department of Administrative Services:

(a) A case may not be provided with display frames; and

(b) Quantity, style, size, and color of frames should be specified in the order for display frames.

(8) Buying-up, as defined in OAR 410-120-0000 is prohibited.

(9) The following ophthalmic materials are not covered and include, but are not limited to:

(a) Glasses with a prescription that is equal to or less than +/-25 diopters in both eyes;

(b) Two pair of glasses instead of bifocals or trifocals in a single frame;

(c) Hand-held, low vision aids;

(d) Non-spectacle mounted aids;

(e) Single lens spectacle mounted low vision aids;

(f) Telescopic and other compound lens systems, including distance vision telescopic, near vision telescopes, and compound microscopic lens systems;

(g) Extra or spare pairs of glasses;

(h) Anti-reflective lens coating;

(i) U-V lens;

(j) Progressive and blended lenses;

(k) Bifocals and trifocals segments over 28mm including executive;

(L) Aniseikonic lenses;

(m) Sunglasses; and

(n) Frame styles outside of the contract between the Division and contractor based on client preference and are not medically necessary.

(10) Costs for the following are included in reimbursement for the lens and are not separately reimbursed by the Division:

(a) Scratch coating;

(b) Prism;

(c) Special base curve; and

(d) Tracings.

(11) Materials that require PA are set forth in OAR 410-140-0040.

(12) If a frame cannot be located in the contractor's catalog at [www.sweepoptical.com](http://www.sweepoptical.com) that meets the medical needs of the client:

(a) Providers shall contact contractor for assistance with locating a frame to meet the client's need; and

(b) Frames not included in the contract between the Division and contractor may be purchased through contractor with PA.

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(13) The following services do not require PA, are subject to strict limitations, and require the physician or optometrist to submit appropriate documentation to contractor:

(a) Replacement parts for non-contracted frame styles are limited to frames purchased with PA approval;

(b) Tints and photochromic lenses are limited to clients with documented albinism and pupillary defects. Documentation provided to contractor shall include the most appropriate International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) code selected by a physician or optometrist;

(c) Other medically necessary items for a contract frame, when a client has a medical condition that requires the use of a specialty temple, nose pieces, head strap frame;

(d) Nonprescription glasses are limited to clients that do not require any correction in one eye and where there is blindness in one eye. The purpose of this exception is to offer maximum protection for the remaining functional eye;

(e) High Index Lenses:

(A) Power is +/- 10 or greater in any meridian in either eye; or

(B) Prism diopters are 10 or more diopters in either lens;

(f) Polycarbonate lenses are limited to the following populations:

(A) Eligible children (birth through age 20);

(B) Clients with developmental disabilities; and

(C) Clients who are blind in one eye and need protection for the other eye, regardless of whether a vision correction is required.

(14) Regardless of verification received via phone or electronic sources, the contractor may not fill orders for clients who do not have coverage or have met their vision benefit. When glasses are ordered and the client has met their vision benefit for the time period:

(a) The Division shall reimburse the provider for the exam only if the client is not an established client of the provider and the client is currently a fee-for-service (FFS) client with vision benefits;

(b) The provider shall contact the client's PHP or CCO if the client is enrolled with a PHP or CCO that contracts with SWEEP Optical. The contractor shall apply vision limitations pursuant to Division rules, regardless of changes to a client's enrollment status. The provider shall contact the client's PHP or CCO with the last date of service. The PHP or CCO shall determine if they will allow for an additional supply of glasses. If the client is an established client, regardless of incomplete information through phone or electronic verification systems or SWEEP Optical, the provider shall inform the PHP or CCO of the last date of service

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 279A.140, 414.025 & 414.065

Hist.: AFS 55-1983, f. 11-15-83, ef. 12-1-83; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0011; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0280; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 56-2002, f. & cert. ef. 10-1-02; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 33-2011, f. 12-5-11, cert. ef. 12-6-11; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 51-2015, f. 9-22-15, cert. ef. 10-1-15; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0280

### Vision Therapy Services

(1) The Division covers orthoptic and pleoptic training or "vision therapy" as outlined in OAR 410-140-0140 Vision Services Coverage and Limitations.

(2) Providers shall develop a therapy treatment plan and regimen that shall be taught to the client, family, foster parents, and caregiver during the therapy treatments. No extra treatments shall be authorized for teaching.

(3) Therapy that can be provided by the client, family, foster parents, and caregiver is not a reimbursable service.

(4) All vision therapy services including the initial evaluation shall be billed to the Division with the Current Procedural Terminology (CPT) code for orthoptic and pleoptic training.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0290; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 56-2002, f. & cert. ef. 10-1-02; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

## 410-140-0300

### Post-operative Care

(1) The Division reimburses all covered surgical procedures as global packages, except when the surgeon codes the surgical procedure with a modifier indicating surgical procedure only, excluding post-operative care.

(2) Post-operative care provided outside the global package is:

(a) Reimbursable to optometrists when furnished within their scope of practice;

(b) Billed with:

(A) The surgical CPT code billed by the surgeon;

(B) The appropriate modifier noting post-operative care only; and

(C) The first post-operative date of service; and

(c) Reimbursed a percentage of the global reimbursement.

(3) Post-operative care includes all related follow-up visits and examinations provided within:

(a) Ninety days following the date of major surgery; or

(b) Ten days following the date of minor surgery; and

(c) Claims for evaluation and management services and ophthalmological examinations billed within the follow-up period shall be denied.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: HR 15-1992, f. & cert. ef. 6-1-92; DMAP 26-2014, f. 4-29-14, cert. ef. 5-8-14; DMAP 7-2016, f. 2-23-16, cert. ef. 3-1-16

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**Rule Caption:** Updating Behavioral Rehabilitation Services Rate Table Incorporated by Reference and Web Address

**Adm. Order No.:** DMAP 8-2016

**Filed with Sec. of State:** 2-23-2016

**Certified to be Effective:** 2-23-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 410-170-0110

**Rules Repealed:** 410-170-0110(T)

**Subject:** The Authority needs to amend the date of the Behavioral Rehabilitation Services rate table referenced in 410-170-0110 to reflect new rate changes. Also, the web address that links to the updated rate table needs to be updated in the rule.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-170-0110

### Billing and Payment for Services and Placement Related Activities

(1) The BRS contractor is compensated for a billable care day (service and placement related activities rates) on a fee-for-service basis, except as otherwise provided for in these rules. The Authority does not make payments for any calendar day that does not meet the definition of a billable care day under this rule.

(2) Billable care day rates are provided in the "BRS Rates Table," dated July 1, 2015, which is adopted as Exhibit 1 and incorporated by reference into this rule. The BRS Rates Table is available at <http://www.oregon.gov/OHA/healthplan/pages/brs.aspx>. A printed copy may be obtained from the agency.

(3) Billable Care Day:

(a) For purposes of computing a billable care day, the BRS client must be in the direct care of the BRS provider at 11:59 p.m. of that day or be on an authorized home visit in accordance with section (4) of this rule;

(b) A billable care day does not include any day where the BRS client is on runaway status, in detention, an inpatient in a hospital, or has not yet entered or has been discharged from the BRS contractor's or BRS provider's program.

(4) Home Visits:

(a) The BRS contractor shall only include a maximum of eight calendar days of home visits in a month as billable care days;

(b) In order to qualify as an authorized home visit day, the BRS contractor must:

(A) Ensure that the home visit is tied to the BRS client's ISP or MSP;

(B) Work with the BRS client and the BRS client's family or substitute family on goals for the home visit and receive regular reports from the family on the BRS client's progress while on the home visit;

(C) Have staff available to answer calls from the BRS client and BRS client's family or substitute family and to provide services to the BRS client during the time planned for the home visit if the need arises;

(D) Document communications with the BRS client's family or substitute family; and

(E) Document the BRS client's progress on goals set for the home visits.

(5) Invoice form:

(a) The BRS contractor must submit a monthly billing form to the agency in a format acceptable to the agency on or after the first day of the month following the month in which it provided services and placement related activities to the BRS client. The billing form must specify the number of billable care days provided to each BRS client in that month;



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(b) The BRS contractor must provide, upon request in a format that meets the agency's approval, written documentation of each BRS client's location for each day claimed as a billable care day;

(c) The BRS contractor may only submit a claim for a billable care day consistent with the agency's prior authorization.

(6) Payment for a Billable Care Day:

(a) The agency shall pay the service and placement related activities rates to the BRS contractor for each billable care day in accordance with the BRS Rates Table described in section (2) of this rule;

(b) Notwithstanding section (6)(a) of this rule, the Authority shall only pay the service rate for each billable care day to a public child-caring agency, who by rule or contract provides the local match share for Medicaid claims under OAR 410-120-0035 and 42 CFR 433 Subpart B. The Authority may not pay the placement related activities rate for each billable care day to these types of public child-caring agencies;

(c) To the extent the payment for services is funded by Medicaid and CHIP funds, the BRS contractor and the BRS provider are subject to Medicaid billing and payment requirements in these rules and the Authority's general rules (OAR 410-120-0000 to 410-120-1980).

(7) Third Party Resources:

(a) The Authority's BRS contractors must make reasonable efforts to obtain payment first from other resources consistent with OAR 410-120-1280(16);

(b) The Department's and OYA's BRS contractors are not required to review or pursue third party resources. The Department and OYA must make reasonable efforts to obtain payment first from other resources consistent with OAR 410-120-1280(16) for Medicaid-eligible BRS clients.

(8) Public child-caring agencies who are responsible by rule or contract for the local match share portion of eligible Medicaid claims must comply with OAR 410-120-0035 and 42 CFR 433 Subpart B.

(9) In cases where the BRS contractor is not also the BRS provider, the BRS contractor is responsible for compensating the BRS provider for billable care days pursuant to the agency-approved subcontract between the BRS contractor and the BRS provider.

(10) The Authority may not be financially responsible for the payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid or CHIP program. If the Authority has previously paid the agency or BRS contractor for any claim that CMS disallows, the payment shall be recouped pursuant to OAR 410-120-1397. The Authority shall recoup or recover any other overpayments as described in OAR 410-120-1397 and OAR 943-120-0350 and 943-120-0360.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 63-2013, f. 11-14-13, cert. ef. 1-1-14; DMAP 42-2015(Temp), f. & cert. ef. 8-11-15 thru 2-6-16; DMAP 4-2016(Temp), f. 2-5-16, cert. ef. 2-7-16 thru 8-4-16; DMAP 8-2016, f. & cert. ef. 2-23-16

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**Rule Caption:** Annual Updates; Relative Value Unit (RVU) Weight; Clinical Lab, ASC

**Adm. Order No.:** DMAP 9-2016

**Filed with Sec. of State:** 2-24-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 410-120-1340

**Rules Repealed:** 410-120-1340(T)

**Subject:** The Division of Medical Assistance Programs (Division) General Rules, administrative rules govern payments for services provided to certain eligible clients. The Division amends OAR 410-120-1340 to implement the annual updates by the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services, Clinical Lab, and Ambulatory Surgical Centers.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-120-1340

### Payment

(1) The Division of Medical Assistance Programs (Division) shall make payment only to the enrolled provider (see OAR 410-120-1260) who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients.

(2) Division reimbursement for services may be subject to review prior to reimbursement.

(3) The Division that is administering the program under which the billed services or items are provided sets fee-for-service (FFS) payment rates.

(4) The Division uses FFS payment rates in effect on the date of service that are the lesser of:

(a) The amount billed;

(b) The Division maximum allowable amount or;

(c) Reimbursement specified in the individual program provider rules.

(5) Amount billed may not exceed the provider's "usual charge" (see definitions).

(6) The Division's maximum allowable rate setting process uses the following methodology for:

(a) Relative Value Unit (RVU) weight-based rates: For all CPT/HCPCS codes assigned an RVU weight, the 2016 Total RVU weights published in the Federal Register, Vol. 80, November 16, 2015 to be effective for dates of services on or after January 1, 2016:

(A) For professional services not typically performed in a facility, the Non-Facility Total RVU weight;

(B) For professional services typically performed in a facility, the Facility Total RVU weight;

(C) The Division applies the following conversion factors:

(i) \$40.79 for labor and delivery codes (59400-59622);

(ii) \$36.0666 for Federally Qualified primary care codes billed by providers meeting the criteria in OAR 410-130-0005 for dates of service between January 1, 2013 and December 31, 2014;

(iii) \$27.82 for Oregon primary care providers and services not specified in sub-paragraph (ii). A current list of primary care CPT, HCPCS, and provider specialty codes is available at <http://www.oregon.gov/oha/healthplan/Pages/providers.aspx>

(iv) \$25.48 for all remaining RVU weight based CPT/HCPCS codes.

(D) Rate calculation: Effective January 1, 2016, the Division shall calculate rates for each RVU weight-based code using statewide Geographic Practice Cost Indices (GPCIs) as follows:

(i) Work RVU) X (Work GPCI of 1) + (Practice Expense RVU) X (Practice GPCI of 0.974) + (Malpractice RVU) X (Malpractice GPCI of 0.708);

(ii) Sum in paragraph (D)(i) multiplied by the applicable conversion factor in paragraph (C) .

(b) Non RVU based rates:

(A) \$20.78 is the base rate for anesthesia service codes 00100-01996. The rate is based on per unit of service;

(B) Clinical lab codes are priced at 70 percent of the 2016 Medicare clinical lab fee schedule;

(C) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80 percent of the 2016 Medicare fee schedule;

(D) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed, the rate shall be based upon the Wholesale Acquisition Price (WAC) plus 6.25 percent. If no WAC is available, then the rate shall be reimbursed at Acquisition Cost. Pricing information for WAC is provided by First Data Bank. These rates may change periodically based on drug costs;

(E) All procedures used for vision materials and supplies are based on contracted rates that include acquisition cost plus shipping and handling;

(F) Individual provider rules may specify reimbursement rates for particular services or items.

(7) The rates in section (6) are updated periodically and posted on the Authority web site at

<http://www.oregon.gov/oha/healthplan/pages/feeschedule.aspx>.

(8) The Division reimburses inpatient hospital service under the DRG methodology, unless specified otherwise in the Hospital Services program administrative rules (chapter 410, division 125). Reimbursement for services, including claims paid at DRG rates, may not exceed any upper limits established by federal regulation.

(9) The Division reimburses all out-of-state hospital services at Oregon DRG or FFS rates as published in the Hospital Services Program rules (OAR chapter 410, division 125) unless the hospital has a contract or service agreement with the Division to provide highly specialized services.

(10) Payment rates for in-home services provided through Department of Human Services (Department) Aging and People with Disabilities (APD) may not exceed the costs of nursing facility services unless the criteria in OAR 411-027-0020 have been met.

(11) The Division sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities and psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

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(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by APD for out-of-state nursing facilities.

(12) The Division may not make payment on claims that have been assigned, sold, or otherwise transferred or when the billing provider, billing agent, or billing service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

(13) The Division may not make a separate payment or copayment to a nursing facility or other provider for services included in the nursing facility's all-inclusive rate. The following services are not included in the all-inclusive rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services Program administrative rules (chapter 410, division 121) and Home Enteral/Parenteral Nutrition and IV Services Program administrative rules (chapter 410, division 148);

(b) Physical therapy, speech therapy, and occupational therapy provided by a non-employee of the nursing facility within the appropriate program administrative rules (chapter 410, division 129 and 131);

(c) Continuous oxygen that exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program administrative rules (chapter 410, division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services program administrative rules (chapter 410, division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services program administrative rules (chapter 410, division 130);

(f) Medical services provided by a physician or other provider of medical services, such as radiology and laboratory, as outlined in the Medical-Surgical Services program rules (chapter 410, division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program administrative rules (chapter 410, division 122).

(14) The Division reimburses hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment may not be made for services included in the core package of services as outlined in OAR chapter 410, division 142.

(15) Payment for Division clients with Medicare and full Medicaid:

(a) The Division limits payment to the Medicaid allowed amount, less the Medicare payment, up to the Medicare co-insurance and deductible, whichever is less. The Division's payment may not exceed the co-insurance and deductible amounts due;

(b) The Division pays the allowable rate for covered services that are not covered by Medicare.

(16) For clients with third-party resources (TPR), the Division pays the allowed rate less the TPR payment but not to exceed the billed amount.

(17) The Division payments, including contracted PHP or CCO payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division, payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual provider rules.

(18) Payment by the Division does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit a claim before or after the payment. Claim payment may be denied or subject to recovery if medical review, audit, or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.727, 414.728, 414.742 & 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered

from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 41-2012(Temp), f. 8-22-12, cert. ef. 9-1-12 thru 2-28-13; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 14-2013(Temp), f. & cert. ef. 3-29-13 thru 9-25-13; DMAP 49-2013, f. & cert. ef. 9-25-13; DMAP 71-2013, f. & cert. ef. 12-27-13; DMAP 24-2014, f. & cert. ef. 4-4-14; DMAP 83-2014(Temp), f. 12-23-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 11-2015, f. & cert. ef. 3-4-15; DMAP 86-2015(Temp), f. 12-24-15, cert. ef. 1-1-16 thru 6-28-16; DMAP 9-2016, f. 2-24-16, cert. ef. 3-1-16

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**Rule Caption:** Prioritized List, Effective 1/1/16, including Modifications Effective 10/1/15 and Biennial Changes January 1, 2016–December 31, 2017

**Adm. Order No.:** DMAP 10-2016

**Filed with Sec. of State:** 2-24-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 410-141-0520

**Rules Repealed:** 410-141-0520(T)

**Subject:** The OHP program administrative rules govern the Division's payments for services provided to clients. The Authority is amending 410-141-0520. This change will reference the approved Health Evidence Review Committee (HERC) Prioritized List of Health Services, effective January 1, 2016 - December 31, 2017 and incorporate interim modifications made October 1, 2015. The changes will be effective January 1, 2016.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-141-0520

### Prioritized List of Health Services

(1) The Health Evidenced Review Commission (HERC) Prioritized List of Health Services (Prioritized List) is the listing of physical and mental health services with "expanded definitions" of practice guidelines and statements of intent as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HERC. The HERC maintains the most current list on their website: <http://www.oregon.gov/oha/herc/Pages/index.aspx>. For a hard copy, contact the Division within the Oregon Health Authority (Authority).

(2) This rule incorporates by reference the Centers for Medicare and Medicaid Services' (CMS) approved biennial January 1, 2016–December 31, 2017 Prioritized List of condition treatment pairs funded through line 475, including interim modifications approved at the October 1, 2015 and November 12, 2015 HERC meetings.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065 & 414.727

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f. & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09, f. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11; DMAP 24-2011(Temp), f. 9-15-11, cert. ef. 10-1-11 thru 3-26-12; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11; DMAP 47-2011(Temp), f. 12-13-11, cert. ef.

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1-1-12 thru 6-25-12; DMAP 22-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 9-21-12; DMAP 43-2012(Temp), f. 9-21-12, cert. ef. 9-23-12 thru 3-21-13; DMAP 11-2013, f. & cert. ef. 3-21-13; DMAP 50-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 57-2013(Temp), f. & cert. ef. 10-29-13 thru 3-30-14; DMAP 7-2014, f. & cert. ef. 1-31-14; DMAP 13-2014(Temp), f. 3-20-14, cert. ef. 4-1-14 thru 9-28-14; DMAP 31-2014, f. 5-30-14, cert. ef. 7-1-14; DMAP 63-2014(Temp), f. & cert. ef. 10-17-14 thru 12-31-14; DMAP 79-2014, f. 12-18-14, cert. ef. 12-31-14; DMAP 80-2014(Temp), f. 12-23-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 18-2015, f. & cert. ef. 4-1-15; DMAP 50-2015(Temp), f. 9-10-15, cert. ef. 10-1-15 thru 3-28-16; DMAP 75-2015(Temp), f. 12-22-15, cert. ef. 1-1-16 thru 6-13-16; DMAP 10-2016, f. 2-24-16, cert. ef. 3-1-16

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**Rule Caption:** Adding PDF Links to Durable Medical Equipment (DMEPOS) Tables and Updating Rule Language

**Adm. Order No.:** DMAP 11-2016

**Filed with Sec. of State:** 2-24-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 410-122-0204, 410-122-0240, 410-122-0300, 410-122-0360, 410-122-0365, 410-122-0380, 410-122-0475, 410-122-0480, 410-122-0510, 410-122-0525, 410-122-0640, 410-122-0678

**Subject:** Amending this rule to add pdf links to Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) tables on the Secretary of State website and update rule language.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-122-0204

### Nebulizer

(1) Indications and limitations of coverage and medical appropriateness:

(a) Equipment:

(A) Small volume nebulizer:

(i) A small volume nebulizer and related compressor may be covered to administer inhalation drugs based on evidence-based clinical practice guidelines;

(ii) The physician shall have considered use of a metered dose inhaler (MDI) with and without a reservoir or spacer device and decided that, for medical reasons, the MDI was not sufficient for the administration of needed inhalation drugs.

(B) Large volume nebulizer:

(i) A large volume nebulizer (A7017), related compressor (E0565 or E0572), and water or saline (A4217 or A7018) may be covered when it is medically appropriate to deliver humidity to a client with thick, tenacious secretions, who has cystic fibrosis, bronchiectasis, a tracheostomy, or a tracheobronchial stent;

(ii) Combination code E0585 will be covered for the same indications as in (1)(a)(B)(i);

(C) The Division of Medical Assistance Programs (Division) will consider other uses of compressors/generators individually on a case-by-case basis to determine their medical appropriateness, such as a battery powered compressor (E0571);

(b) Accessories:

(A) A large volume pneumatic nebulizer (E0580) and water or saline (A4217 or A7018) are not separately payable and may not be separately billed when used for clients with rented home oxygen equipment;

(B) The Division does not cover use of a large volume nebulizer, related compressor/generator, and water or saline when used predominate to provide room humidification;

(C) A non-disposable unfilled nebulizer (A7017 or E0585) filled with water or saline (A4217 or A7018) by the client or caregiver is an acceptable alternative to the large volume nebulizer when used as indicated in (1)(a)(B)(i) of this rule;

(D) Kits and concentrates for use in cleaning respiratory equipment are not covered;

(E) Accessories are separately payable if the related aerosol compressor and the individual accessories are medically appropriate. The following table lists each covered compressor/generator and its covered accessories. Other compressor/generator/accessory combinations are not covered;

(F) Compressor/Generator (Related Accessories): E0565 (A4619, A7006, A7010, A7011, A7012, A7013, A7014, A7015, A7017, A7525, E1372); E0570 (A7003, A7004, A7005, A7006, A7013, A7015, A7525); E0571 (A7003, A7004, A7005, A7006, A7013, A7015, A7525); E0572 (A7006, A7014); E0585 (A4619, A7006, A7010, A7011, A7012, A7013, A7014, A7015, A7525);

(G) This array of accessories represents all possible combinations, but it may not be appropriate to bill any or all of them for one device;

(H) Table 122-0204-1 lists the usual maximum frequency of replacement for accessories. The Division will not cover claims for more than the usual maximum replacement amount unless the request has been prior approved by the Division before dispensing. The provider shall submit requests for more than the usual maximum replacement amount to the Division for review.

(2) Coding guidelines:

(a) Accessories:

(A) Code A7003, A7005, and A7006 include the lid, jar, baffles, tubing, T-piece, and mouthpiece. In addition, code A7006 includes a filter;

(B) Code A7004 includes only the lid, jar, and baffles;

(C) Code A7012 describes a device to collect water condensation, which is placed in line with the corrugated tubing, used with a large volume nebulizer;

(D) Code E0585 is used when a heavy-duty aerosol compressor (E0565), durable bottle type large volume nebulizer (A7017), and immersion heater (E1372) are provided at the same time. If all three items are not provided initially, the separate codes for the components would be used for billing;

(E) Code A7017 is billed for a durable, bottle type nebulizer when it is used with an E0572 compressor or a separately billed E0565 compressor;

(F) Code A7017 may not be separately billed when an E0585 system is also being billed. Code E0580 (Nebulizer, durable, glass or autoclavable plastic, bottle type, for use with regulator or flow meter) describes the same piece of equipment as A7017 but shall only be billed when this type of nebulizer is used with a client-owned oxygen system.

(b) Equipment:

(A) In this policy, the actual equipment (i.e., electrical device) will generally be referred to as a compressor (when nebulization of liquid is achieved by means of air flow). The term nebulizer is generally used for the actual chamber in which the nebulization of liquid occurs and is an accessory to the equipment. The nebulizer is attached to an aerosol compressor in order to achieve a functioning delivery system for aerosol therapy;

(B) Code E0565 describes an aerosol compressor, which can be set for pressures above 30 psi at a flow of 6-8 L/m and is capable of continuous operation;

(C) A nebulizer with compressor (E0570) is an aerosol compressor, which delivers a fixed, low pressure and is used with a small volume nebulizer. It is only AC powered;

(D) A portable compressor (E0571) is an aerosol compressor, which delivers a fixed, low pressure and is used with a small volume nebulizer. It shall have battery or DC power capability and may have an AC power option;

(E) A light duty adjustable pressure compressor (E0572) is a pneumatic aerosol compressor that can be set for pressures above 30 psi at a flow of 6-8 L/m but is capable only of intermittent operation.

(3) Documentation requirements:

(a) When billing for an item in Table 122-0204, medical records shall corroborate that all criteria in this rule are met;

(b) When billing for quantities of supplies greater than those described in Table 122-0204-1 as the usual maximum amounts, there shall be clear documentation in the client's medical records corroborating the medical appropriateness of the current use;

(c) When a battery powered compressor (E0571) is dispensed, supporting documentation that justifies the medical appropriateness shall be on file with the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) provider;

(d) The DMEPOS provider shall maintain these medical records and make them available to the Division upon request.

(4) **Table 122-0204-1.**

(5) **Table 122-0204-2.**

[ED. NOTE: Table referenced is available from the agency.]

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 37-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0240

### Apnea Monitors for Infants

(1) Indications and limitations of coverage and medical appropriateness:

(a) For infants less than 12 months of age with documented apnea, or who have known risk factors for life-threatening apnea, the Division may

# ADMINISTRATIVE RULES

cover home apnea monitors and related supplies for any of the following indications:

(A) Up to three months for:

(i) Apnea of prematurity: Sudden cessation of breathing that lasts for at least 20 seconds, is accompanied by bradycardia (heart rate less than 80 beats per minute), or is accompanied by oxygen desaturation (O2 saturation less than 90 percent or cyanosis) in an infant younger than 37 weeks gestational age;

(ii) Apparent life-threatening event (ALTE): An episode that is characterized by some combination of apnea (central or occasionally obstructive), color change (usually cyanotic or pallid but occasionally erythematous or plethoric), marked change in muscle tone (usually marked limpness), choking, or gagging;

(iii) Documented gastroesophageal reflux disease (GERD) that results in apnea, bradycardia, or oxygen desaturation;

(iv) Documented prolonged apnea of greater than 20 seconds in duration;

(v) Documented apnea accompanied by bradycardia to less than 80 beats per minute;

(vi) Documented apnea accompanied by oxygen desaturation (below 90 percent), cyanosis, or pallor;

(vii) Documented apnea accompanied by marked hypotonia;

(viii) When off medication for bradycardia previously treated with caffeine, theophylline, or similar agents;

(B) Upon discharge from an acute care facility for up to one month post-diagnosis for diagnosis of pertussis with positive cultures;

(C) As the later sibling of an infant who died of Sudden Infant Death Syndrome (SIDS), until the later sibling is one month older than the age at which the earlier sibling died and remains event-free;

(D) On a case-by-case basis for:

(i) Infants with tracheostomies or anatomic abnormalities that make them vulnerable to airway compromise;

(ii) Infants with neurologic or metabolic disorders affecting respiratory control;

(iii) Infants with chronic lung disease (bronchopulmonary dysplasia), especially those requiring supplemental oxygen, continuous positive airway pressure, or mechanical ventilation;

(b) Infant apnea monitors are usually considered medically appropriate for no longer than approximately three months except for specific conditions listed above;

(c) The rental fee includes all training, instruction, assistance, 24-hour on-call support, and any other needed services for effective use of the apnea monitor, including cardiopulmonary resuscitation training. The durable medical equipment prosthetics orthotics and supplies (DMEPOS) provider is responsible for ensuring delivery of these services;

(d) The Division may cover related supplies necessary for the effective functioning of the apnea monitor for a three-month period based on the following limitations:

(A) Electrodes, per pair (A4556) — 3 units;

(B) Lead wires, per pair (A4557) — 2 units;

(C) Conductive paste or gel (A4558) — 1 unit;

(D) Belts (A4649) — 2 units;

(e) The cost of apnea monitor rental includes the cost of cables;

(f) The Division does not cover apnea monitors with memory recording (E0619) when the attending physician is monitoring the infant with ongoing sleep studies and pneumograms.

(2) Coding guidelines: For billing purposes, use diagnosis code 798.0, Sudden Infant Death Syndrome (SIDS), for later siblings of infants who died of SIDS.

(3) Documentation requirements: Submit the following information with the prior authorization (PA) request:

(a) Documentation (medical records including hospital records, sleep studies, physician's progress notes, physician-interpreted report from an apnea monitor with memory recording, etc.) of the episode or episodes that led to the diagnosis;

(b) An order from the physician who diagnosed the infant as having clinically significant apnea or known risk factors for life-threatening apnea. The physician's order shall indicate the specific type of apnea monitor (with or without recording feature) and detailed information about the type and quantity of related supplies needed;

(c) For an apnea monitor with recording feature (E0619), submit documentation that supports why an apnea monitor without recording feature (E0618) is not adequate to meet the medical need;

(d) When dispensing and billing for an item in Table 122-0240, the provider shall ensure that documentation corroborates that all criteria in this rule are met;

(e) The DMEPOS provider shall maintain documentation and make it available to the Division upon request.

(4) Table 122-0240.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0300

### Light Therapy

(1) Phototherapy (bilirubin light therapy):

(a) The Division may cover home phototherapy for a term or near-term infant whose elevated bilirubin is not due to a primary hepatic disorder or other hemolytic disorder that requires inpatient care;

(b) E0202 includes equipment rental, supplies, delivery, set-up, pick-up, training, instruction, and 24-hour on-call service necessary for the effective use of the equipment;

(c) Documentation by the treating physician shall indicate home phototherapy is the appropriate treatment modality;

(d) Home phototherapy may be covered for any of the following conditions:

(A) Jaundice in healthy term (>37 weeks) infant ready to be discharged or recently discharged from the hospital; feeding well/appears well with serum bilirubin values as follows:

(i) 25–48 hours old  $\geq 12$  mg/dl total serum bilirubin; or

(ii) 49–72 hours old  $\geq 15$  mg/dl total serum bilirubin; or

(iii) >72 hours old  $\geq 17$  mg/dl total serum bilirubin; or

(B) Jaundice in preterm infant <37 weeks when total serum bilirubin level is  $\geq 10$ mg/dl;

(e) Treatment days will be determined based on lab values.

(2) Documentation Requirements:

(a) For services that require PA: Submit documentation for review that supports conditions of coverage as specified in this rule are met;

(b) For services that do not require PA: Medical records that support conditions of coverage as specified in this rule are met shall be on file with the DMEPOS provider and made available to the Division upon request.

(3) Table 122-0300 Light Therapy.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0360

### Canes and Crutches

(1) Indications and Coverage: When prescribed by a practitioner for a client with a condition causing impaired ambulation and there is a potential for ambulation.

(2) A white cane for a visually impaired client is considered to be a self-help item and is not covered by the Division.

(3) Table 122-0360.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0365

### Standing and Positioning Aids

(1) Indications and coverage: If a client has one aid that meets medical needs, regardless of who obtained it, the Division may not provide another aid of same or similar function.

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(2) Documentation to be submitted for PA and kept on file by the Durable Medical Equipment (DME) provider:

(a) Documentation of medical appropriateness, which has been reviewed and signed by the prescribing practitioner;

(b) The care plan outlining positioning and treatment regime and all DME currently available for use by the client;

(c) The physician's order;

(d) The documentation for a customized positioner shall include objective evidence that commercially available positioners are not appropriate;

(e) Each item requested shall be itemized with description of product, make, model number, and manufacturers' suggested retail price (MSRP);

(f) Submit Positioner Justification form (DMAP 3155) or reasonable facsimile with recommendation for most appropriate equipment. This shall be submitted by a physical therapist, occupational therapist, or prescribing practitioner when requesting a PA;

(3) Gait Belts:

(a) Covered when:

(A) The client weighs 60 lbs. or more; and

(B) The care provider is trained in the proper use; and

(C) The client can walk independently but needs:

(i) A minor correction of ambulation; or

(ii) Minimal or standby assistance to walk alone; or

(iii) Requires assistance with transfer;

(b) Use code E0700.

(4) Standing frame systems, prone standers, supine standers or boards, and accessories for standing frames are covered when:

(a) The client has been sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit; and,

(b) The client is following a therapy program initially established by a physical or occupational therapist; and

(c) The home is able to accommodate the equipment; and

(d) The weight of the client does not exceed manufacturer's weight capacity; and

(e) The client has demonstrated an ability to utilize the standing aid independently or with caregiver; and

(f) The client has demonstrated compliance with other programs; and

(g) The client has demonstrated a successful trial period in a monitored setting; and

(h) The client does not have access to equipment from another source.

(5) Sidelyers and custom positioners shall meet the following criteria in addition to the criteria in Table 122-0365:

(a) The client shall be sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit; and

(b) The client shall be following a therapy program initially established by a physical or occupational therapist; and,

(c) The home shall be able to accommodate the equipment; and

(d) The caregiver or family are capable of using the equipment appropriately.

(6) Criteria for Specific Accessories:

(a) A back support may be covered when a client:

(A) Needs balance, stability, or positioning assistance; or

(B) Has extensor tone of the trunk muscles; or

(C) Needs support while being raised or while completely standing;

(b) A tall back may be covered when:

(A) The client is over 5'11" tall; and

(B) The client has no trunk control and needs additional support; or

(C) The client has more involved need for assistance with balance, stability, or positioning;

(c) Hip guides may be covered when a client:

(A) Lacks motor control or strength to center hips; or

(B) Has asymmetrical tone that causes hips to pull to one side; or

(C) Has spasticity; or

(D) Has low tone or high tone; or

(E) Needs balance, stability, or positioning assistance;

(d) A shoulder retractor or harness may be covered when:

(A) Erect posture cannot be maintained without support due to lack of motor control or strength; or

(B) Has kyphosis; or

(C) Presents strong flexor tone;

(e) Lateral supports may be covered when a client:

(A) Lacks trunk control to maintain lateral stability; or

(B) Has scoliosis that requires support; or

(C) Needs a guide to find midline;

(f) A headrest may be covered when a client:

(A) Lacks head control and cannot hold head up without support; or

(B) Has strong extensor thrust pattern that requires inhibition;

(g) Independent adjustable knee pads may be covered when a client:

(A) Has severe leg length discrepancy; or

(B) Has contractures in one leg greater than the other;

(h) An actuator handle extension may be covered when a client:

(A) Has no caregiver; and

(B) Is able to transfer independently into standing frame; and

(C) Has limited range of motion in arm or shoulder and cannot reach actuator in some positions;

(i) Arm troughs may be covered when a client:

(A) Has increased tone that pulls arms backward so hands cannot come to midline; or

(B) Has poor tone, strength, or control that causes arms to hang out to side and backward causing pain and risking injury; or

(C) Has needs for posture;

(j) A tray may be covered when proper positioning cannot be accomplished by other accessories;

(k) Abductors may be covered to reduce tone for proper alignment and weight bearing;

(L) Sandals (shoe holders) may be covered when a client:

(A) Has dorsiflexion of the foot or feet; or

(B) Has planar flexion of the foot or feet; or

(C) Has eversion of the foot or feet; or

(D) Has need for safety.

(7) **Table 122-0365.**

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 37-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0380

### Hospital Beds

(1) Indications and limitations of coverage and medical appropriateness: The Division may cover some hospital beds for a covered condition including:

(a) A fixed height hospital bed (E0250, E0251, E0290 and E0291) when the client meets at least one of the following criteria:

(A) Has a medical condition that requires positioning of the body in ways not feasible with an ordinary bed. Elevation of the head/upper body less than 30 degrees does not usually require the use of a hospital bed;

(B) Requires positioning of the body in ways not feasible with an ordinary bed in order to alleviate pain;

(C) Requires the head of the bed to be elevated more than 30 degrees most of the time due to congestive heart failure, chronic pulmonary disease, or problems with aspiration. Pillows or wedges shall have been considered and ruled out;

(D) Requires traction equipment that can only be attached to a hospital bed;

(b) A variable height hospital bed (E0255, E0256, E0292 and E0293) when all of the following criteria are met:

(A) Criteria for a fixed height hospital bed are met;

(B) A bed height different than a fixed height hospital bed to permit transfers to chair, wheelchair, or standing position is required;

(c) A semi-electric hospital bed (E0260, E0261, E0294 and E0295) when all of the following criteria are met:

(A) Criteria for a fixed height hospital bed are met;

(B) Frequent changes or an immediate need for a change in body position are required;

(C) The client is capable of safely and effectively operating the bed controls;

(d) A heavy duty extra wide hospital bed (E0301, E0303) when all of the following criteria are met:

(A) Criteria for a fixed height hospital bed are met;

(B) The client weighs more than 350 pounds but less than 600 pounds;

(C) The client is capable of safely and effectively operating the bed controls;

(e) An extra heavy duty hospital bed (E0302, E0304) when all of the following are met:

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(A) Criteria for one of the hospital beds described in (1)(a)-(d) are met;

(B) The client weighs more than 600 pounds;

(C) The client is capable of safely and effectively operating the bed controls;

(D) When provided for a nursing facility client, the bed shall be rated for institutional use;

(f) Total electric hospital beds (E0265, E0266, E0296 and E0297) are not covered since the height adjustment feature is considered a convenience feature;

(g) Payment Authorization: Subject to service limitations of Division rules, a hospital bed rental may be dispensed without PA only from the initial date of service through the second date of service. The durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting any claims to the Division regardless of the date of service, including the initial and second dates of service, and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. Required documentation shall be received by the authorizing authority prior to the third date of service.

(2) Documentation requirements: Submit documentation that has been reviewed, signed, and dated by the prescribing practitioner and that supports conditions of coverage as specified in this rule are met including:

(a) For all hospital beds:

(A) Primary diagnosis code for the condition necessitating the need for a hospital bed;

(B) The type of bed currently used by the client and why it doesn't meet the medical needs of the client;

(b) For semi-electric beds: Why a variable height bed cannot meet the medical needs of the client;

(c) For heavy duty and extra heavy duty beds: The client's height and weight.

(3) **Table 122-0380 — Hospital Beds.**

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0475

### Therapeutic Shoes for Diabetics

(1) Indications and Coverage:

(a) For each client, coverage of the footwear and inserts is limited to one of the following within one calendar year:

(A) One pair of custom-molded shoes (including inserts provided with such shoes) and two additional pair of inserts; or

(B) One pair of extra-depth shoes (not including inserts provided with such shoes) and three pairs of inserts.

(b) An individual may substitute modification of custom molded or extra-depth shoes instead of obtaining one pair of inserts, other than the initial pair of inserts. The most common shoe modifications are:

(A) Rigid rocker bottoms;

(B) Roller bottoms;

(C) Metatarsal bars;

(D) Wedges;

(E) Offset heels.

(c) Payment for any expenses for the fitting of such footwear is included in the fee;

(d) Payment for the certification of the need for therapeutic shoes and for the prescription of the shoes (by a different practitioner from the one who certifies the need for the shoes) is considered to be included in the visit or consultation in which these services are provided;

(e) Following certification by the physician managing the client's systemic diabetic condition, a podiatrist or other qualified practitioner knowledgeable in the fitting of the therapeutic shoes and inserts may prescribe the particular type of footwear necessary.

(2) Documentation:

(a) The practitioner who is managing the individual's systemic diabetic condition documents that the client has diabetes and one or more of the following conditions:

(A) Previous amputation of the other foot or part of either foot;

(B) History of previous foot ulceration of either foot;

(C) History of pre-ulcerative calluses of either foot;

(D) Peripheral neuropathy with evidence of callus formation of either foot;

(E) Foot deformity of either foot; or

(F) Poor circulation in either foot; and

(G) Certifies that the client is being treated under a comprehensive plan of care for his or her diabetes and that he or she needs therapeutic shoes;

(b) Documentation of the above criteria may be completed by the prescribing practitioner or supplier but shall be reviewed for accuracy and signed and dated by the certifying physician to indicate agreement and shall be kept on file by the DME supplier.

(3) **Table 122-0475.**

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0480

### Pneumatic Compression Devices (Used for Lymphedema)

(1) A pneumatic compression device (lymphedema pump) is medically appropriate only for the treatment of refractory lymphedema involving one or more limbs.

(2) Causes of lymphedema include, but are not limited to, the following conditions with a diagnosis on the currently funded lines of the Prioritized List of Health Services:

(a) Spread of malignant tumors to regional lymph nodes with lymphatic obstruction;

(b) Radical surgical procedures with removal of regional groups of lymph nodes;

(c) Post-radiation fibrosis;

(d) Scarring of lymphatic channels (e.g., those with generalized refractory edema from venous insufficiency that is complicated by recurrent cellulitis) when all of the following criteria have been met:

(A) There is significant ulceration of the lower extremity;

(B) The client has received repeated, standard treatment from a practitioner using such methods as a compression bandage system or its equivalent;

(C) The ulcer has failed to heal after six months of continuous treatment;

(e) Congenital anomalies.

(3) Pneumatic compression devices may be covered only when prescribed by a practitioner and when they are used with appropriate practitioner oversight, i.e., practitioner evaluation for the client's condition to determine medical appropriateness of the device, suitable instruction in the operation of the machine, a treatment plan defining the pressure to be used and the frequency and duration of use, and ongoing monitoring of use and response to treatment. Used as treatment of last resort.

(4) All pressure devices require a one-month trial period prior to purchase. The rental period is applied toward purchase.

(5) All necessary training to utilize a pressure device is included in the rental or purchase fee.

(6) Documentation:

(a) The practitioner shall document the client's condition, medical appropriateness and instruction as to the pressure to be used, the frequency and duration of use, and that the device is achieving the purpose of reduction and control of lymphedema;

(b) The determination by the practitioner of the medical appropriateness of pneumatic compression device shall include:

(A) The client's diagnosis and prognosis;

(B) Symptoms and objective findings, including measurements that establish the severity of the condition;

(C) The reason the device is required, including the treatments that have been tried and failed; and

(D) The clinical response to an initial treatment with the device. The clinical response includes the change in pre-treatment measurements, ability to tolerate the treatment session and parameters, and ability of the client (or caregiver) to apply the device for continued use in the home;

(c) Documentation of medical appropriateness that has been reviewed and signed by the prescribing practitioner (for example, CMN) shall be kept on file by the DME provider;

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(d) If the client has venous stasis ulcers, documentation supporting the medical appropriateness for the device shall include a signed and dated statement from the prescribing practitioner indicating:

- (A) The location and size of venous stasis ulcer;
- (B) How long each ulcer has been continuously present;
- (C) Whether the client has been treated with regular compression bandaging for the past six months;

(D) Whether the client has been treated with custom fabricated gradient pressure stockings/sleeves, approximately when, and the results of the treatment;

(E) Other treatment for the venous stasis ulcer during the past six months;

(F) Whether the client has been seen regularly by a practitioner for treatment of venous stasis ulcers during the past six months.

(7) **Procedure Codes — Table 122-0480.**

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0510

### Osteogenesis Stimulator

(1) Definitions:

(a) An electrical osteogenesis stimulator is a device that provides electrical stimulation to augment bone repair;

(b) A noninvasive electrical stimulator is characterized by an external power source that is attached to a coil or electrodes placed on the skin or on a cast or brace over a fracture or fusion site;

(c) An ultrasonic osteogenesis stimulator is a noninvasive device that emits low intensity, pulsed ultrasound signals to stimulate fracture healing. The device is applied to the surface of the skin at the fracture site and ultrasound waves are emitted via conductive coupling gel to stimulate fracture healing;

(2) Indications of coverage and medical appropriateness:

(a) Non-spinal Electrical Osteogenesis Stimulator:

(A) The Division may cover a non-spinal electrical osteogenesis stimulator (E0747) when any of the following criteria are met:

(i) Non-union of a long bone fracture (defined as radiographic evidence that fracture healing has ceased for three or more months prior to starting treatment with the osteogenesis stimulator);

(ii) Failed fusion of a joint other than in the spine, where a minimum of nine months has elapsed since the last surgery;

(iii) Congenital pseudarthrosis;

(B) Non-union of a long bone fracture shall be documented by a minimum of two sets of radiographs obtained prior to starting treatment with the osteogenesis stimulator, separated by a minimum of 90 days, each including multiple views of the fracture site and with a written interpretation by the treating physician stating that there has been no clinically significant evidence of fracture healing between the two sets of radiographs;

(C) A long bone is limited to a clavicle, humerus, radius, ulna, femur, tibia, fibula, metacarpal or metatarsal.

(b) Spinal Electrical Osteogenesis Stimulator:

(A) The Division may cover a spinal electrical osteogenesis stimulator (E0748) when any of the following criteria are met:

(i) Failed spinal fusion where a minimum of nine months has elapsed since the last surgery;

(ii) Following a multilevel spinal fusion surgery;

(iii) Following spinal fusion surgery where there is a history of a previously failed spinal fusion at the same site;

(B) A multilevel spinal fusion involves three or more vertebrae (e.g., L3-L5, L4-S1, etc.);

(c) Ultrasonic Osteogenesis Stimulator:

(A) The Division may cover an ultrasonic osteogenesis stimulator (E0760) only when all of the following criteria are met:

(i) Non-union of a fracture documented by a minimum of two sets of radiographs obtained prior to starting treatment with the osteogenic stimulator, each separated by a minimum of 90 days. Each radiograph shall include multiple views of the fracture site accompanied by a written interpretation by the treating physician stating that there has been no clinically significant evidence of fracture healing between the two sets of radiographs; and

(ii) The stimulator is intended for use prior to surgical intervention and with cast immobilization;

(B) Use of an ultrasonic osteogenic stimulator is not covered:

(i) For non-union fractures of the skull or vertebrae;

(ii) For tumor-related fractures;

(iii) For the treatment of a fresh fracture or delayed union; or

(iv) When used concurrently with other noninvasive osteogenic devices;

(C) The Division may cover ultrasonic conductive coupling gel as a separate service when an ultrasonic osteogenesis stimulator is covered.

(3) Coding guidelines: Use E1399 for ultrasonic conductive coupling gel.

(4) Documentation requirements:

(a) Submit the following with the PA request:

(A) Documentation that supports the coverage criteria specified in this rule for the stimulator requested are met;

(B) Copies of x-ray and operative reports;

(b) For an electrical osteogenic stimulator, a Certificate of Medical Necessity (CMN) that has been completed, signed, and dated by the treating physician may substitute for a written order if it contains all the required elements of an order;

(c) Additional medical records may be requested by the Division;

(d) The client's medical records shall reflect the need for the stimulator requested. The client's medical records include, but are not limited to, the physician's office records, hospital records, nursing home records, home health agency records, records from other healthcare professionals, and test/diagnostic reports.

(5) **Table 122-0510.**

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0525

### External Insulin Infusion Pump

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division may cover an external insulin infusion pump for the administration of continuous subcutaneous insulin for the treatment of diabetes mellitus when criterion (A) or (B) is met and criterion (C) or (D) is met:

(A) C-peptide testing requirement:

(i) The C-peptide level is less than or equal to 110 percent of the lower limit of normal of the laboratory's measurement method; or

(ii) For a client with renal insufficiency and a creatinine clearance (actual or calculated from age, weight, and serum creatinine) less than or equal to 50 ml/minute, a fasting C-peptide level is less than or equal to 200 per cent of the lower limit of normal of the laboratory's measurement method; and

(iii) A fasting blood sugar obtained at the same time as the C-peptide level is less than or equal to 225 mg/dl.

(B) Beta cell autoantibody test is positive;

(C) The client has:

(i) Completed a comprehensive diabetes education program; and

(ii) Been on a program of multiple daily injections of insulin (i.e., at least three injections per day) with frequent self-adjustments of insulin dose for at least six months prior to initiation of the insulin pump; and

(iii) Documented frequency of glucose self-testing an average of at least four times per day during the two months prior to initiation of the insulin pump and meets one or more of the following criteria while on the multiple injection regimen:

(I) Glycosylated hemoglobin level (HbA1C) greater than 7 percent;

(II) History of recurring hypoglycemia;

(III) Wide fluctuations in blood glucose before mealtime;

(IV) Dawn phenomenon with fasting blood sugars frequently exceeding 200 mg/dL;

(V) History of severe glycemic excursions;

(D) The client has:

(i) Been on an external insulin infusion pump prior to enrollment in the medical assistance program, and;

(ii) Documented frequency of glucose self-testing an average of at least four times per day during the month prior to medical assistance program enrollment;

# ADMINISTRATIVE RULES

(b) For continued coverage of an external insulin pump and supplies, the client shall be seen and evaluated by the treating physician at least every three months;

(c) The external insulin infusion pump shall be ordered and follow-up care rendered by a physician who manages multiple clients on continuous subcutaneous insulin infusion therapy and who works closely with a team including nurses, diabetic educators, and dieticians who are knowledgeable in the use of continuous subcutaneous insulin infusion therapy;

(d) The Division may cover supplies (including dressings) used with an external insulin infusion pump during the period of covered use of an infusion pump. These supplies are billed with codes A4221 and K0552;

(e) Code A4221 includes catheter insertion devices for use with external insulin infusion pump infusion cannulas and are not separately payable; (f) A4221 is limited to one unit of service per week.

(2) Coding guidelines:

(a) Code A4221 includes all cannulas, needles, dressings, and infusion supplies (excluding the insulin reservoir) related to continuous subcutaneous insulin infusion via external insulin infusion pump (E0784);

(b) Code K0552 describes a syringe-type reservoir that is used with the external insulin infusion pump (E0784).

(3) Documentation requirements:

(a) With the request for PA, the DMEPOS provider shall submit medical justification that supports the criteria in this rule are met;

(b) When billing and dispensing for an item in Table 122-0525, the DMEPOS provider shall ensure that medical records corroborate all criteria in this rule are met;

(c) The DMEPOS provider shall keep medical records on file and make them available to the Division upon request.

(4) Table 122-0525.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0640

### Eye Prostheses

(1) Indications and coverage:

(a) An eye prosthesis is indicated for a client (adult or child) with absence or shrinkage of an eye due to birth defect, trauma, or surgical removal;

(b) For clients under age 21, the prescribing practitioner shall determine and document medical appropriateness of the eye prosthesis and related services;

(c) For clients age 21 and older, coverage is limited as follows:

(A) Polishing and resurfacing will be allowed on a twice per year basis;

(B) Replacement is covered every five years if documentation supports medical appropriateness. An exception to this limitation is allowed when clinical documentation supports medical appropriateness for more frequent replacement;

(C) One enlargement (V2625) or reduction (V2626) of the prosthesis is covered. Additional enlargements or reductions are rarely medically indicated and are therefore covered only when clinical documentation supports medical appropriateness.

(2) Documentation requirements:

(a) An order for each item shall be signed and dated by the treating physician, kept on file by the supplier, and made available upon request;

(b) Documentation of medical appropriateness that has been reviewed and signed by the prescribing practitioner (for example, CMN) shall be kept on file by the supplier and made available upon request;

(c) When billing for an item or service at a greater frequency than allowed, there shall be documentation in the patient's medical records that corroborates the order and supports the medical appropriateness of the items. This documentation shall be kept on file by the supplier and available upon request.

(3) Procedure Codes – Table 122-0640.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2004, f. & cert. ef. 7-1-04; DMAP 60-2014, f. 10-3-14, cert. ef. 10-7-14; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

## 410-122-0678

### Dynamic Adjustable Extension/Flexion Device

(1) Indications and limitations of coverage and medical appropriateness: The Division may cover some dynamic adjustable extension/flexion devices for a covered condition when all of the following conditions are met:

(a) As an adjunct to physical therapy for clients with signs and symptoms of persistent joint stiffness in the sub-acute injury or post-operative period (> 3 weeks but < 4 months after injury or surgical procedure) when the device is applied and managed under the direct supervision of a physical therapist;

(b) As an adjunct to physical therapy in the acute post-operative period for clients who are undergoing additional surgery to improve the range of motion of a previously affected joint when the device is managed under the direct supervision of a physical therapist;

(c) For this episode, the device has not been billed to the Division with a current procedure terminology (CPT) code, healthcare common procedure coding system (HCPCS) code, or diagnosis code by any other healthcare provider;

(d) Reimbursement is limited to a maximum of four months per episode;

(e) Reimbursement is on a month-to-month rental basis only.

(2) Documentation requirements:

(a) Submit medical records that support the conditions of coverage, as specified in this rule, have been met, including the treatment plan from the physical therapist;

(b) The treatment plan shall include:

(A) Baseline measurements (pre-intervention measurements) of range of motion (ROM) limitations;

(B) Weekly ROM measurements with documented 10 degree improvement.

(3) Table 0678 — Dynamic Adjustable Extension/Flexion Devices.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 11-2016, f. 2-24-16, cert. ef. 3-1-16

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**Rule Caption:** Income Eligibility Guidelines for OCCS Medical Programs

**Adm. Order No.:** DMAP 12-2016(Temp)

**Filed with Sec. of State:** 2-25-2016

**Certified to be Effective:** 3-1-16 thru 8-27-16

**Notice Publication Date:**

**Rules Amended:** 410-200-0315

**Subject:** Every year the Federal Poverty Levels (FPL) are adjusted and published to the Federal Register. A number of OCCS medical programs eligibility and income disregards are based on percentages of the FPL and must be updated now that the FPLs have been published and align with the Oregon Eligibility (ONE) system implementation timeline.

**Rules Coordinator:** Sandy Cafourek — (503) 945-6430

## 410-200-0315

### Standards and Determining Income Eligibility

(1) MAGI-based income not specifically excluded is countable, and its value is used in determining the eligibility and benefit level of an applicant or beneficiary.

(2) MAGI-based income is considered available on the date it is received or the date a member of the household group has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend;

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion;

(c) An advance or draw of earned income is considered available on the date it is received.

(3) In determining financial eligibility for each applicant, the sum of the budget month MAGI-based income of all household group members is combined and compared to the applicable income standard for the family



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size. If the income is at or below the MAGI income standard, the individual meets the financial eligibility requirements. Except as provided in section (4)(a), if income exceeds the MAGI income standard, the individual is ineligible.

(4) This section applies to MAGI Medicaid/CHIP programs:

(a) If an individual is ineligible for MAGI Medicaid based solely on income and would otherwise be eligible for MAGI CHIP or be referred to the Exchange for APTC, a disregard equivalent to five percentage points of the federal poverty level for the applicable family size shall be applied to the household group's income. If the resulting amount is below the income standard for the applicable program and family size, the individual meets the financial eligibility requirements in the following programs:

- (A) The MAGI Parent or Other Caretaker Relative Program;
- (B) The MAGI Child Program;
- (C) The MAGI Adult Program; and
- (D) The MAGI Pregnant Woman Program;

(b) If an individual is ineligible for MAGI CHIP based solely on income and would otherwise be referred to the Exchange for APTC, a disregard equivalent to five percentage points of the federal poverty level for the applicable family size shall be applied to the household group's income. If the resulting amount is below the income standard for the applicable program and family size, the individual meets the financial eligibility requirements in the MAGI CHIP;

(c) The MAGI income standard for the MAGI Parent or Other Caretaker-Relative program is set as follows: [Table not included. See ED. NOTE.]

(d) Effective March 1, 2016, the MAGI income standard for the MAGI Child Program and the MAGI Adult Program is set at 133 percent of the FPL as follows. If an individual's household group income exceeds the income standard for their family size, the appropriate disregard for their family size described in section (4)(a) shall be applied: [Table not included. See ED. NOTE.]

(e) Effective March 1, 2016, the MAGI income standard for the MAGI Pregnant Woman Program and for MAGI Child Program recipients under age one is set at 185 percent FPL. If an individual's household group income exceeds the income standard for their family size, the appropriate disregard for their family size described in section (4)(a) shall be applied: [Table not included. See ED. NOTE.]

(f) Effective March 1, 2016, the MAGI income standard for the MAGI CHIP program is set through 300 percent of FPL as follows. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for MAGI CHIP, the appropriate disregard for their family size described in section (5)(a)(B) shall be applied: [Table not included. See ED. NOTE.]

(g) When the Department makes an ELE determination and the child meets all MAGI CHIP or MAGI Child Program nonfinancial eligibility requirements, the household size determined by the Department is used to determine eligibility regardless of the family size. The countable income of the household is determined by the ELA. A child is deemed eligible for MAGI CHIP or MAGI Child Program as follows:

(A) Effective March 1, 2016, if the MAGI-based income of the household group is below 163 percent of the 2016 federal poverty level as listed below, the Department deems the child eligible for the MAGI Child Program; [Table not included. See ED. NOTE.]

(B) If the MAGI-based income of the household group is at or above 163 percent of the FPL through 300 percent of the FPL as listed in section (4)(f) of this rule, the Agency deems the child eligible for MAGI CHIP.

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

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 411.447 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 25-2014(Temp), f. & cert. ef. 4-14-14 thru 10-11-14; DMAP 53-2014, f. & cert. ef. 9-23-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 6-2015(Temp), f. 2-13-15, cert. ef. 3-1-15 thru 8-27-15; DMAP 27-2015, f. 4-21-15, cert. ef. 4-22-15; DMAP 12-2016(Temp), f. 2-25-16, cert. ef. 3-1-16 thru 8-27-16

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**Rule Caption:** Incorporate Code Set and HERC Changes into List of Billing Codes Not Covered by OHP

**Adm. Order No.:** DMAP 13-2016(Temp)

**Filed with Sec. of State:** 3-4-2016

**Certified to be Effective:** 3-4-16 thru 8-30-16

**Notice Publication Date:**

**Rules Amended:** 410-130-0220

**Subject:** This rule lists billing codes for which the OHP FFS will not make payment. Codes are included in this rule for three reasons: (1) They are for services that are not covered under any OHP benefit plan; (2) They are codes for which payment is bundled under another billing code; and (3) They are services for which OHP requires a different but equivalent code for payment. For example, the billing codes for cosmetic procedures are included in this rule because they are not covered services. The billing code for surgical trays are also included because payment for trays is bundled under the surgery code.

The changes to this rule are to incorporate changes in the national code sets and changes from HERC. Codes that have been terminated from the national code set are being removed. Codes that HERC newly recommended for non-coverage are being added. Codes that will newly be bundled for payment under our adopted payment methodology are being added. Added codes will not be eligible for payment under the FFS program.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-130-0220

### Not Covered/Bundled Services/Not Valid

(1) Refer to the Oregon Health Plan administrative rules (chapter 410, division 141) and General Rules (chapter 410, division 120) for coverage of services. Refer to **Table 130-0220-1** in this rule for additional information regarding not covered services, for services that the Division considers to be bundled in other services, and for codes the Division considers not valid for claims processing.

(2) For additional information, see General Rules OAR 410-120-1200, Medical Assistance Benefits: Excluded Services and Limitations.

(3) Table 130-0220-1.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0640; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 21-1991, f. 4-16-91, cert. ef. 5-1-91; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 16-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 30-1998, f. & cert. ef. 9-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 37-1999, f. & cert. ef. 10-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 69-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 55-2014(Temp), f. 9-26-14, cert. ef. 10-1-14 thru 3-30-15; DMAP 84-2014(Temp), f. & cert. ef. 12-24-14 thru 3-30-15; DMAP 13-2015, f. & cert. ef. 3-10-15; DMAP 30-2015(Temp), f. & cert. ef. 5-29-15 thru 11-24-15; DMAP 63-2015, f. 10-29-15, cert. ef. 11-1-15; DMAP 13-2016(Temp), f. & cert. ef. 3-4-16 thru 8-30-16

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## Oregon Health Authority, Public Health Division Chapter 333

**Rule Caption:** Adding cadmium-positive urine results to the list of reportable diseases

**Adm. Order No.:** PH 6-2016(Temp)

**Filed with Sec. of State:** 2-18-2016

**Certified to be Effective:** 2-18-16 thru 8-15-16

**Notice Publication Date:**

**Rules Amended:** 333-018-0015

**Subject:** The Oregon Health Authority, Public Health Division is temporarily amending OAR 333-018-0015 pertaining to disease reporting. The amendment adds to the list of reportable diseases "cadmium demonstrated by laboratory testing of urine."

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-018-0015

### What Is to Be Reported and When

(1) Health care providers shall report all human cases or suspected human cases of the diseases, infections, microorganisms, and conditions specified below. The timing of health care provider reports is specified to reflect the severity of the illness or condition and the potential value of rapid intervention by public health agencies.

(2) When local public health administrators cannot be reached within the specified time limits, reports shall be made directly to the Authority,

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which shall maintain an around-the-clock public health consultation service.

(3) Licensed laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, and conditions specified below for humans. Such tests include but are not limited to: microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences.

(4) Human reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:

(a) Immediately, day or night: *Bacillus anthracis* (anthrax); *Clostridium botulinum* (botulism); *Corynebacterium diphtheriae* (diphtheria); novel influenza; *Yersinia pestis* (plague); poliomyelitis; rabies (human); measles (rubeola); Severe Acute Respiratory Syndrome (SARS) and infection by SARS coronavirus; rubella; *variola major* (smallpox); *Francisella tularensis* (tularemia); *Vibrio cholerae* O1, O139, or toxigenic; hemorrhagic fever caused by viruses of the filovirus (e.g., Ebola, Marburg) or arenavirus (e.g., Lassa, Machupo) families; yellow fever; intoxication caused by marine microorganisms or their byproducts (for example, paralytic shellfish poisoning, domoic acid intoxication, ciguatera, scombroid); any known or suspected common-source outbreaks; any uncommon illness of potential public health significance.

(b) Within 24 hours (including weekends and holidays): *Haemophilus influenzae* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); *Neisseria meningitidis* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); pesticide poisoning.

(c) Within one local public health authority working day: amebic infection of the central nervous system (for example, by *Naegleria* or *Balamuthia* spp.), *Bordetella pertussis* (pertussis); *Borrelia* (relapsing fever, Lyme disease); *Brucella* (brucellosis); cadmium demonstrated by laboratory testing of urine; *Campylobacter* (campylobacteriosis); *Chlamydia* (*Chlamydia*) *psittaci* (psittacosis); *Chlamydia trachomatis* (chlamydia); lymphogranuloma venereum; *Clostridium tetani* (tetanus); *Coccidioides* (*coccidioidomycosis*), *Coxiella burnetii* (Q fever); Creutzfeldt-Jakob disease and other transmissible spongiform encephalopathies; *Cryptococcus* (*cryptococcosis*), *Cryptosporidium* (*cryptosporidiosis*); *Cyclospora cayentanensis* (*cyclosporiasis*); bacteria of the Enterobacteriaceae family found to be resistant to carbapenem antibiotics; *Escherichia coli* (Shiga-toxigenic, including *E. coli* O157 and other serogroups); *Giardia* (*giardiasis*); *Grimontia* spp.; *Haemophilus ducreyi* (chancroid); hantavirus; hepatitis A; hepatitis B (acute or chronic infection); hepatitis C; hepatitis D (delta); hepatitis E; HIV infection (does not apply to anonymous testing) and AIDS; death of a person <18 years of age with laboratory-confirmed influenza; lead poisoning; *Legionella* (*legionellosis*); *Leptospira* (*leptospirosis*); *Listeria monocytogenes* (*listeriosis*); mumps; *Mycobacterium tuberculosis* and *M. bovis* (*tuberculosis*); nonrespiratory infection with nontuberculous mycobacteria; *Neisseria gonorrhoeae* (*gonococcal infections*); pelvic inflammatory disease (acute, non-gonococcal); *Plasmodium* (*malaria*); *Rickettsia* (all species: Rocky Mountain spotted fever, typhus, others); *Salmonella* (*salmonellosis*, including typhoid); *Shigella* (*shigellosis*); *Taenia solium* (including *cysticercosis* and undifferentiated *Taenia* infections); *Treponema pallidum* (*syphilis*); *Trichinella* (*trichinosis*); *Vibrio* spp.; *Yersinia* (other than *pestis*); any infection that is typically arthropod vector-borne (for example: babesiosis, California encephalitis, Colorado tick fever, dengue, Eastern equine encephalitis, ehrlichiosis, Heartland virus infection, Kyasanur Forest disease, St. Louis encephalitis, West Nile fever, Western equine encephalitis, etc.); a human bitten by any other mammal; and hemolytic uremic syndrome.

(d) Within seven days: Any blood lead level tests including the result.

(5) Licensed laboratories shall report, within seven days, the results of all tests of CD4+ T-lymphocyte absolute counts and the percent of total lymphocytes that are CD4 positive, and HIV nucleic acid (viral load) tests.

Stat. Auth.: ORS 413.042, 433.004 & 433.006

Stats. Implemented: ORS 433.004 & 437.010

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 7-2006, f. & cert. ef. 4-17-06; PH 13-2006(Temp), f. 6-27-06, cert. ef. 7-1-06 thru 12-27-06; PH 19-2006, f. & cert. ef. 9-13-06; PH 11-2007(Temp), f. & cert. ef. 8-22-07 thru 2-18-08; PH 13-2007, f. & cert. ef. 11-7-07; PH 8-2009(Temp), f. & cert. ef. 9-1-09 thru 2-26-10; PH 5-2010, f. & cert. ef. 3-11-10; PH 7-2011, f. & cert. ef. 8-19-11; PH 16-2013, f. 12-26-13, cert. ef. 1-1-14; PH 10-2015, f. 7-2-15, cert. ef. 7-3-15; PH 6-2016(Temp), f. & cert. ef. 2-18-16 thru 8-15-16

**Rule Caption:** Hospital and Ambulatory Surgery Center Legislative Action Rule Changes

**Adm. Order No.:** PH 7-2016

**Filed with Sec. of State:** 2-24-2016

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**Rules Adopted:** 333-076-0137

**Rules Amended:** 333-076-0101, 333-076-0135, 333-500-0045, 333-505-0005, 333-505-0007, 333-505-0030, 333-505-0050, 333-510-0030, 333-515-0030, 333-520-0020, 333-520-0050, 333-525-0000, 333-535-0061, 333-535-0080, 333-535-0110

**Rules Repealed:** 333-515-0050, 333-515-0060

**Subject:** The Oregon Health Authority, Public Health Division is permanently adopting, amending and repealing Oregon Administrative Rules relating to hospitals and ambulatory surgery centers in response to legislation that was passed in the 2015 legislative session, in addition to making minor housekeeping changes.

The rule amendments address the following:

- Credentialing and privileges for nurse midwife nurse practitioners (HB 2930 (Oregon Laws 2015, chapter 63));

- Telemedicine provider credentialing (SB 569 (Oregon Laws 2013, chapter 414));

- Discharge planning requirements with lay caregivers and for persons hospitalized for mental health treatment (HB 2023 (Oregon Laws 2015, chapter 466) and HB 3378 (Oregon Laws 2015, chapter 263));

- Identification and necessary actions for persons in need of palliative care (SB 608 (Oregon Laws 2015, chapter 789));

- Record retention requirements;

- Practice of surgical technology and education requirements (HB 2876 (Oregon Laws 2015, chapter 373)); and

- Minor housekeeping corrections, alignment with other state agency rules and removal of duplicative rules.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-076-0101

### Definitions

As used in OAR chapter 333, division 76 unless the context requires otherwise, the following definitions apply:

(1) “Ambulatory Surgical Center” (ASC) means:

(a) A facility or portion of a facility that operates exclusively for the purpose of providing surgical services to patients who do not require hospitalization and for whom the expected duration of services does not exceed 24 hours following admission.

(b) Ambulatory surgical center does not mean:

(A) Individual or group practice offices of private physicians or dentists that do not contain a distinct area used for outpatient surgical treatment on a regular and organized basis, or that only provide surgery routinely provided in a physician’s or dentist’s office using local anesthesia or conscious sedation; or

(B) A portion of a licensed hospital designated for outpatient surgical treatment.

(2) “Authentication” means verification that an entry in the patient medical record is genuine.

(3) “CMS” means Centers for Medicare and Medicaid Services.

(4) “Certified ambulatory surgical center” means a facility that is licensed by the Division and is deemed as meeting the Medicare Conditions of Participation for ambulatory surgical services, 42 CFR 416, Subpart C.

(5) “Certified Nurse Anesthetist” (CRNA) means a registered nurse certified by the Council on Certification of Nurse Anesthetists and licensed by the Oregon State Board of Nursing (OSBN).

(6) “Certified Nursing Assistant” (CNA) means a person who is certified by the Oregon State Board of Nursing (OSBN) to assist licensed nursing staff in the provision of nursing care.

(7) “Conditions of Participation” mean the applicable federal regulations that ASCs are required to comply with in order to participate in the federal Medicare and Medicaid programs.

(8) “Conscious sedation” means an induced controlled state of minimally depressed consciousness in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

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(9) "Deemed" means a health care facility that has been inspected by an approved accrediting organization and has been approved by the CMS as meeting CMS Conditions of Participation.

(10) "Deep sedation" means an induced controlled state of depressed consciousness in which the patient experiences a partial loss of protective reflexes, as evidenced by the inability to respond purposefully either to physical stimulation or to verbal command but the patient retains the ability to independently and continuously maintain an airway.

(11) "Direct ownership" has the meaning given the term 'ownership interest' in 42 CFR 420.201.

(12) "Division" means the Public Health Division of the Oregon Health Authority.

(13) "Financial interest" means a five percent or greater direct or indirect ownership interest.

(14) "General anesthesia" means an induced controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation, or the inability to respond purposefully to verbal command.

(15) "Governing body" means the body or person legally responsible for the direction and control of the operation of the facility.

(16) "Health Care Facility" (HCF) has the meaning given the term in ORS 442.015.

(17) "Health Care Facility Licensing Law" means ORS 441.015-441.990 and rules thereunder.

(18) "High complexity non-certified" means a facility that is licensed by the Division, is not deemed as meeting the Medicare Conditions of Participation for ambulatory surgical services, 42 CFR 416, Subpart C, and performs surgical procedures involving deep sedation or general anesthesia.

(19) "Hospital" has the meaning given that term in ORS 442.015.

(20) "Indirect ownership" has the meaning given the term 'indirect ownership interest' in 42 CFR 420.201.

(21) "Licensed" means that the person or facility to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a health care facility means that the facility is currently and has been duly and regularly licensed by the Division.

(22) "Licensed Nurse" means a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

(23) "Licensed Practical Nurse" (LPN) means a person licensed under ORS chapter 678 to practice practical nursing.

(24) "Local anesthesia" means the administration of an agent that produces a transient and reversible loss of sensation in a circumscribed portion of the body.

(25) "Moderate complexity non-certified" means a facility licensed by the Division, is not deemed as meeting the Medicare Conditions of Participation for ambulatory surgical services, 42 CFR 416, Subpart C, and performs procedures requiring not more than conscious sedation.

(26) "New construction" means a new building or an addition to an existing building.

(27) "NFPA" means National Fire Protection Association.

(28) "Nursing staff" means a person certified by the OSBN as a licensed nurse (RN), licensed practical nurse (LPN) or nursing assistant (CNA).

(29) "Patient audit" means review of the medical record or physical inspection of a patient.

(30) "Person" means an individual, a trust or estate, or a partnership or corporation (including associations, joint stock companies and insurance companies, a state or a political subdivision or instrumentality including a municipal corporation).

(31) "Physician" means a person licensed under ORS chapter 677 to practice medicine by the Oregon Medical Board.

(32) "Podiatrist" means a person licensed under ORS chapter 677 to practice podiatry.

(33) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital certified in the manner described in subsection (2) of ORS 441.055 and is under the supervision of or in collaboration with a physician licensed to practice medicine by the Oregon Medical Board. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the foot.

(34) "Registered Nurse" (RN) means a person licensed as a Registered Nurse under ORS chapter 678.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.015-ORS 441.065, 441.098, & 442.015

Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 7-2016, f. & cert. ef. 2-24-16

## 333-076-0135

### Nursing Services

(1) An RN shall be responsible for the nursing care provided to the patients.

(2) The number and types of nursing staff and surgical technologists shall be based on the needs of the patients and the types of services performed.

(3) At least one RN and one other nursing staff or medical assistant shall be on duty at all times patients are present.

(4) Nurses who supervise the recovery area shall have current training in resuscitation techniques and other emergency procedures.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(4)(a) - (c); PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 7-2016, f. & cert. ef. 2-24-16

## 333-076-0137

### Surgery Services

(1) For purposes of this rule:

(a) "Circulating nurse" means a registered nurse who is responsible for coordinating the nursing care and safety needs of the patient in the operating room and who also meets the needs of the operating room team members during surgery.

(b) "Rural or medically underserved community" means a geographic area of Oregon that is 10 or more miles from the geographic center of a population center of 40,000 or more individuals.

(c) "Surgical technology" means intraoperative surgical patient care that involves:

(A) Preparing an operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely;

(B) Preparing an operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments and equipment using sterile techniques;

(C) Anticipating the needs of a surgical team based on knowledge of human anatomy and pathophysiology and how those fields relate to the surgical patient and the patient's surgical procedure; and

(D) Performing tasks as directed in an operating room, including:

(i) Passing instruments, equipment or supplies;

(ii) Sponging or suctioning of an operative site;

(iii) Preparing and cutting suture material;

(iv) Transferring fluids or drugs;

(v) Handling specimens;

(vi) Holding retractors and other equipment;

(vii) Applying electrocautery to clamps on bleeders;

(viii) Connecting drains to suction apparatus;

(ix) Applying dressings to closed wounds; and

(x) Assisting in counting supplies and instruments, including sponges and needles.

(2) An ASC, regardless of classification, shall comply with this rule.

(3) An ASC shall have operating rooms that conform to the applicable requirements in OAR 333-076-0185.

(4) An ASC's operating rooms must be supervised by an experienced registered nurse or doctor of medicine or osteopathy.

(5) The duties of a circulating nurse performed in an operating room of a certified or high complexity non-certified ASC shall be performed by a registered nurse licensed under ORS 678.010 through 678.410. In all cases requiring anesthesia or conscious sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure.

(6) Nothing in section (5) precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the surgical procedure.

(7) In order for a person to practice surgical technology at an ASC, the ASC governing body shall ensure that the following provisions are met by the individual:

(a) Documentation showing that the person has completed a training program for surgical technologists in a branch of the armed forces of the

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United States or in the United States Public Health Service Commissioned Corp and completes 16 hours of continuing education as described in section (11) of this rule every two years; or

(b) Completion of a surgical technology education program accredited by the Commission on Accreditation of Allied Health Education Program (CAAHEP) or the Accrediting Bureau of Health Education Schools (ABHES) and certification as a surgical technologist issued by the National Board of Surgical Technology and Surgical Assisting (NBSTSA); or

(c) Documentation that a person has practiced surgical technology at least two years between January 1, 2014 and January 1, 2017 in a hospital, ambulatory surgical center or as an employee of a federal government agency or institution and completes 16 hours of continuing education as described in section (11) of this rule every two years.

(8) Notwithstanding subsection (7)(b), an ASC may allow a person who is not certified by the NBSTSA to practice surgical technology at the hospital for 12 months after the person completes an educational program accredited by the CAAHEP or ABHES.

(9) An ASC located in a rural or medically underserved community may allow a person to practice surgical technology at the ASC who does not meet the requirements specified in section (7) of this rule until July 1, 2017. After July 1, 2017, a person not meeting the requirements specified in section (7) of this rule, may work at an ASC in a rural or medically underserved community while the person is attending an educational program accredited by the CAAHEP or ABHES. Such persons are exempt from the educational requirements for three years from the date on which the person began practicing at the ASC.

(10) These rules do not prohibit a licensed practitioner from performing surgical technology if the practitioner is acting within the scope of the practitioner's license and an ASC allows the practitioner to perform such duties.

(11)(a) The continuing education requirements described in subsections (7)(a) and (7)(c) shall:

(A) Consist of 16 hours every two years;

(B) Be tracked by the surgical technologist and is subject to audit by the ASC in which the person is practicing; and

(C) Be relevant to the medical-surgical practice of surgical technology.

(b) Continuing education may include but is not limited to:

(A) Continuing education credits approved by the Association for Surgical Technologist;

(B) Healthcare sponsored conferences, forums, seminars, symposiums or workshops;

(C) Online distance learning courses;

(D) Live lectures at national conferences; or

(E) College courses.

(12) An ASC shall conduct a random audit of a representative sample of the surgical technologists employed by the ASC every two years to verify compliance with educational requirements.

(13) The requirements identified in sections (7), (8), and (10) through (12) of this rule become effective on July 1, 2016.

Stat. Auth.: ORS 441.025 & ORS 676.890

Stats. Implemented: ORS 441.025, 676.870 – 676.890 & 678.362

Hist.: PH 7-2016, f. & cert. ef. 2-24-16

## 333-500-0045

### Submission of Plans

(1) A hospital proposing to make alterations or additions to an existing facility or to construct a new facility shall, before commencing such alteration, addition or new construction, submit plans and specifications to the Division for preliminary inspection and approval or recommendations with respect to compliance with Division rules and compliance with National Fire Protection Association standards when the facility is also to be Medicare or Medicaid certified.

(2) Submissions shall comply with OAR chapter 333, division 675. Plans should also be submitted to the local building division having authority for review and approval in accordance with state building codes.

Stat. Auth.: ORS 441.025, ORS 441.060

Stats. Implemented: ORS 441.025, ORS 441.060

Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 7-2016, f. & cert. ef. 2-24-16

## 333-505-0005

### Governing Body Responsibility

(1) In a multi-hospital system, one governing body may oversee multiple hospitals.

(2) The governing body of a hospital shall be responsible for the operation of the hospital, the selection of the medical staff and the quality of care rendered in the hospital. The governing body shall ensure that:

(a) All health care personnel for whom a state license or registration is required are currently licensed or registered;

(b) Qualified individuals allowed to practice in the hospital are credentialed and granted privileges consistent with their individual training, experience and other qualifications;

(c) Procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to assure their conformity to applicable law;

(d) It has an organized medical staff responsible for reviewing the professional practices of the hospital for the purpose of reducing morbidity and mortality and for the improvement of patient care;

(e) A physician is not denied medical staff privileges at the facility solely on the basis that the physician holds medical staff membership or privileges at another health care facility;

(f) Licensed podiatric physicians and surgeons are permitted to use the hospital in accordance with ORS 441.063;

(g) All hospital employees and health care practitioners granted hospital privileges have been tested for tuberculosis in compliance with OAR 333-505-0080; and

(h) A notice, in a form specified by the Division, summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, 441.192 is posted in a place where notices to employees and applicants are customarily displayed.

(3) A hospital may grant privileges to nurse practitioners in accordance with ORS 441.064 and subject to hospital rules governing credentialing and staff privileges.

(a) Privileges granted to nurse midwife nurse practitioners, if any, must be consistent with privileges granted to other medical staff and include:

(A) Admitting privileges that do not require a nurse midwife nurse practitioner to co-admit a patient with a physician who is a member of the medical staff; and

(B) Voting rights.

(b) A hospital may refuse to grant privileges to nurse practitioners only upon the same basis that privileges are refused to other licensed health care practitioners.

(4) A hospital shall require that every patient admitted shall be and remain under the care of a member of the medical staff as specified under the medical staff by-laws.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.055, 441.064

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0125; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0050; HD 21-1993, f. & cert. ef. 10-28-93, Renumbered from 333-505-0000; HD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13; PH 7-2016, f. & cert. ef. 2-24-16

## 333-505-0007

### Health Care Practitioner Credentialing

Each hospital shall comply with the health care practitioner and telemedicine provider credentialing requirements in accordance with OAR chapter 409, division 045.

Stat. Auth.: ORS 441.056

Stats. Implemented: ORS 441.056 & ORS 441.222

Hist.: OHD 5-2002, f. & cert. ef. 3-4-02; PH 4-2004, f. & cert. ef. 2-6-04; PH 3-2005, f. & cert. ef. 2-4-05; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13; PH 7-2016, f. & cert. ef. 2-24-16

## 333-505-0030

### Organization, Hospital Policies

(1) As used in this rule, "lay caregiver" means:

(a) In paragraph (4)(b)(A), an individual who, at the request of a patient, agrees to provide aftercare to the patient in the patient's residence.

(b) In paragraph (4)(b)(B), which applies to patients that are hospitalized for mental health treatment:

(A) For a patient who is younger than 14 years of age, a parent or legal guardian of the patient;

(B) For a patient who is 14 years of age or older, an individual designated by the patient or a parent or legal guardian of the patient to the extent permitted under ORS 109.640 and 109.675.

(2) A hospital's internal organization shall be structured to include appropriate departments and services consistent with the needs of its defined community.

(3) A hospital shall adopt and maintain clearly written definitions of its organization, authority, responsibility and relationships.

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(4) A hospital shall adopt, maintain and follow written patient care policies that include but are not limited to:

(a) Admission and transfer policies that address:

(A) Types of clinical conditions not acceptable for admission;

(B) Constraints imposed by limitations of services, physical facilities or staff coverage;

(C) Emergency admissions;

(D) Requirements for informed consent signed by the patient or legal representative of the patient for diagnostic and treatment procedures; such policies and procedures shall address informed consent of minors in accordance with provisions in ORS 109.610, 109.640, 109.670, and 109.675;

(E) Requirements for identifying persons responsible for obtaining informed consent and other appropriate disclosures and ensuring that the information provided is accurate and documented appropriately in accordance with these rules and ORS 441.098; and

(F) A process for the internal transfer of patients from one level or type of care to another.

(b) Discharge and termination of services policies that address:

(A) For patients who identify a lay caregiver to provide aftercare, development of a discharge plan for continuity of patient care including but not limited to:

(i) Assessment of the patient's ability for self-care;

(ii) Opportunity for both the patient and lay caregiver to participate in discharge planning;

(iii) Instructions or training provided to the patient and lay caregiver, prior to discharge, for the lay caregiver to provide assistance with activities of daily living, medical or nursing tasks such as wound care, administering medications, or the operation of medical equipment, or other assistance relating to the patient's condition; and

(iv) Notification of the lay caregiver that patient is being discharged or transferred.

(B) On and after July 1, 2016 for patients hospitalized for mental health treatment, requirements that the hospital:

(i) Encourage the patient to sign an authorization form allowing for the disclosure of information that is necessary for a lay caregiver to participate in the patient's discharge planning and to provide appropriate support measures to the patient;

(ii) Assess the patient's risk of suicide with input from the patient's lay caregiver, if applicable;

(iii) Assess the long-term needs of the patient which include but are not limited to:

(I) Community-based services;

(II) Capacity for self-care; and

(III) Appropriate patient care where patient resided at time of admission;

(iv) Develop a process to coordinate the patient's care and transition the patient to outpatient treatment that may include community-based providers, peer support, lay caregivers or other individuals who can implement the patient's care plan; and

(v) Schedule a follow-up appointment for no later than seven days after discharge. If a follow-up appointment cannot be scheduled within seven days, the hospital must document why.

(c) Patient rights;

(d) Housekeeping;

(e) All patient care services provided by the hospital;

(f) Maintenance of the hospital's physical plant, equipment used in patient care and patient environment;

(g) Treatment or referral of acute sexual assault patients in accordance with ORS 147.403; and

(h) Identification of patients who could benefit from palliative care in order to provide information and facilitate access to appropriate palliative care in accordance with ORS 413.273.

(5) Discharge policies developed in accordance with paragraph (4)(b)(A) of this rule must be publically available and:

(a) Must specify requirements for documenting who is designated by the patient as the lay caregiver and details of the discharge plan;

(b) May incorporate established evidence based practices;

(c) Must ensure that discharge planning is appropriate to the needs and acuity of the patient and the abilities of the lay caregiver;

(d) Must not delay a patient's discharge or transfer to another facility; and

(e) Must not require the disclosure of protected health information without obtaining a patient's consent as required by state and federal laws.

(6) In addition to the policies described in section (3) of this rule, a hospital shall, in accordance with the Patient Self-Determination Act, 42

CFR 489.102, adopt policies and procedures that require (applicable to all capable individuals 18 years of age or older who are receiving health care in the hospital):

(a) Providing to each adult patient, including emancipated minors, not later than five days after an individual is admitted as an inpatient, but in any event before discharge, the following in written form, without recommendation:

(A) Information on the rights of the individual under Oregon law to make health care decisions, including the right to accept or refuse medical or surgical treatment and the right to execute directives and powers of attorney for health care;

(B) Information on the policies of the hospital with respect to the implementation of the rights of the individual under Oregon law to make health care decisions;

(C) A copy of the directive form set forth in ORS 127.531, along with a disclaimer attached to each form in at least 16-point bold type stating "You do not have to fill out and sign this form."; and

(D) The name of a person who can provide additional information concerning the forms for directives.

(b) Documenting in a prominent place in the individual's medical record whether the individual has executed a directive.

(c) Compliance with Oregon law relating to directives for health care.

(d) Educating the staff and the community on issues relating to directives.

(7) A hospital's transfer agreements or contracts shall clearly delineate the responsibilities of parties involved.

(8) Patient care policies shall be evaluated triennially and rewritten as needed, and presented to the governing body or a designated administrative body for approval triennially. Documentation of the evaluation is required.

(9) A hospital shall have a system, described in writing, for the periodic evaluation of programs and services, including contracted services.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 147.025, 413.273, 441.025, 441.196 & 441.198

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13; PH 7-2016, f. & cert. ef. 2-24-16

## 333-505-0050

### Medical Records

(1) A medical record shall be maintained for every patient admitted for care in a hospital.

(2) A legible reproducible medical record shall include, but is not limited to (as applicable):

(a) Admitting identification data including date of admission.

(b) Chief complaint.

(c) Pertinent family and personal history.

(d) Medical history, physical examination report and provisional diagnosis as required by OAR 333-510-0010.

(e) Admission notes outlining information crucial to patient care.

(f) All patient admission, treatment, and discharge orders.

(A) All patient orders shall be initiated, dated, timed and authenticated by a licensed health care practitioner in accordance with section (7) of this rule.

(B) Documentation of verbal orders shall include:

(i) The date and time the order was received;

(ii) The name and title of the health care practitioner who gave the order; and

(iii) Authentication by the authorized individual who accepted the order, including the individual's title.

(C) Verbal orders shall be dated, timed, and authenticated promptly by the ordering health care practitioner or another health care practitioner who is responsible for the care of the patient.

(D) For purposes of this rule, a verbal order includes but is not limited to an order given over the telephone.

(g) Clinical laboratory reports as well as reports on any special examinations. (The original report shall be recorded in the patient's medical record.)

(h) X-ray reports bearing the identification of the originator of the interpretation.

(i) Consultation reports when such services have been obtained.

(j) Records of assessment and intervention, including graphic charts and medication records and appropriate personnel notes.

(k) Discharge planning documentation in accordance with OAR 333-505-0030(5)(a).

(l) Discharge summary including final diagnosis.

(m) Autopsy report if applicable.

(n) Such signed documents as may be required by law.

# ADMINISTRATIVE RULES

- (o) Informed consent forms that document:
  - (A) The name of the hospital where the procedure or treatment was undertaken;
  - (B) The specific procedure or treatment for which consent was given;
  - (C) The name of the health care practitioner performing the procedure or administering the treatment;
  - (D) That the procedure or treatment, including the anticipated benefits, material risks, and alternatives was explained to the patient or the patient's representative or why it would have been materially detrimental to the patient to do so, giving due consideration to the appropriate standards of practice of reasonable health care practitioners in the same or a similar community under the same or similar circumstances;
  - (E) The manner in which care will be provided in the event that complications occur that require health services beyond what the hospital has the capability to provide;
  - (F) The signature of the patient or the patient's legal representative; and
  - (G) The date and time the informed consent was signed by the patient or the patient's legal representative.
- (p) Documentation of the disclosures required in ORS 441.098.
- (3) A medical record of a surgical patient shall include, in addition to other record requirements, but is not limited to:
  - (a) Preoperative history, physical examination and diagnosis documented prior to operation.
  - (b) Anesthesia record including preanesthesia assessment and plan for anesthesia, records of anesthesia, analgesia and medications given in the course of the operation and postanesthetic condition.
  - (c) A record of operation dictated or written immediately following surgery and including a complete description of the operation procedures and findings, postoperative diagnostic impression, and a description of the tissues and appliances, if any, removed. When the dictated operative report is not placed in the medical record immediately after surgery, an operative progress note shall be entered in the medical record after surgery to provide pertinent information for any individual required to provide care to the patient.
    - (d) Postanesthesia recovery progress notes.
    - (e) Pathology report on tissues and appliances, if any, removed at the operation.
  - (4) An obstetrical record for a patient, in addition to the requirements for medical records, shall include but is not limited to:
    - (a) The prenatal care record containing at least a serologic test result for syphilis, Rh factor determination, and past obstetrical history and physical examination.
    - (b) The labor and delivery record, including reasons for induction and operative procedures, if any.
    - (c) Records of anesthesia, analgesia, and medications given in the course of delivery.
    - (5) A medical record of a newborn or stillborn infant, in addition to the requirement for medical records, shall include but is not limited to:
      - (a) Date and hour of birth; birth weight and length; period of gestation; sex; and condition of infant on delivery (Apgar rating is recommended).
      - (b) Mother's name and hospital number.
      - (c) Record of ophthalmic prophylaxis or refusal of same.
      - (d) Physical examination at birth and at discharge.
      - (e) Progress and nurse's notes including temperature; weight and feeding data; number, consistency and color of stools; urinary output; condition of eyes and umbilical cord; condition and color of skin; and motor behavior.
      - (f) Type of identification placed on infant in delivery room;
      - (g) Newborn hearing screening tests in accordance with OAR 333-020-0130.
    - (6) A patient's emergency room, outpatient and clinic records, in addition to the requirements for medical records, shall be maintained and available to the other professional services of the hospital and shall include but are not limited to:
      - (a) Patient identification.
      - (b) Admitting diagnosis, chief complaint and brief history of the disease or injury.
      - (c) Physical findings.
      - (d) Laboratory and X-ray reports (if performed), as well as reports on any special examinations. The original report shall be authenticated and recorded in the patient's medical record.
      - (e) Diagnosis.
      - (f) Record of treatment, including medications.
      - (g) Disposition of case with instructions to the patient.
      - (h) Signature or authentication of attending physician.
      - (i) A record of the pre-hospital report form (when patient is brought in by ambulance) shall be attached to the emergency room record.
      - (7) All entries in a patient's medical record shall be dated, timed and authenticated.
        - (a) Authentication of an entry requires the use of a unique identifier, including but not limited to a written signature or initials, code, password, or by other computer or electronic means that allows identification of the individual responsible for the entry.
        - (b) Systems for authentication of dictated, computer, or electronically generated documents must ensure that the author of the entry has verified the accuracy of the document after it has been transcribed or generated.
      - (8) The following records shall be maintained in written or computerized form for the time period specified:
        - (a) Permanent:
          - (A) Patient's register, containing admissions and discharges;
          - (B) Patient's master index;
          - (C) Register of all deliveries, including live births and stillbirths;
          - (D) Register of all deaths; and
          - (E) Register of operations.
        - (b) Seven years:
          - (A) Register of outpatients; and
          - (B) Emergency room register.
        - (c) Blood banking register shall be retained for 20 years.
      - (9) The completion of the medical record shall be the responsibility of the attending qualified member of the medical staff. Any licensed health care practitioner responsible for providing or evaluating the service provided shall complete and authenticate those portions of the record that pertain to their portion of the patient's care. The appropriate individual shall authenticate the history and physical examination, operative report, progress notes, orders and the summary. In a hospital using interns, such orders must be according to policies and protocols established and approved by the medical staff. An authentication of a licensed health care practitioner on the face sheet of the medical record does not suffice to cover the entire content of the record:
        - (a) Medical records shall be completed by a licensed health care practitioner and closed within four weeks following the patient's discharge.
        - (b) If a patient is transferred to another health care facility, transfer information shall accompany the patient. Transfer information shall include but is not limited to:
          - (A) The name of the hospital from which they were transferred;
          - (B) The name of physician or other health care practitioner to assume care at the receiving facility;
          - (C) The date and time of discharge;
          - (D) The current medical findings;
          - (E) The current nursing assessment;
          - (F) Current medical history and physical information;
          - (G) Current diagnosis;
          - (H) Orders from a physician or other licensed health care practitioner for immediate care of the patient;
          - (I) Operative report, if applicable;
          - (J) TB test, if applicable; and
          - (K) Other information germane to patient's condition.
        - (c) If the discharge summary is not available at time of transfer, it shall be transmitted to the new facility as soon as it is available.
      - (10) Diagnoses and operations shall be expressed in standard terminology. Only abbreviations approved by the medical staff may be used in the medical records.
      - (11) Medical records shall be filed and indexed. Filing shall consist of an alphabetical master file with a number cross-file. Indexing is to be done according to diagnosis, operation, and qualified member of the medical staff, using a system such as the International or Standard nomenclature systems.
      - (12) Medical records are the property of the hospital. The medical record, either in original, electronic or microfilm form, shall not be removed from the hospital except where necessary for a judicial or administrative proceeding. Treating and attending physicians shall have access to medical records. When a hospital uses off-site storage for medical records, arrangements must be made for delivery of these records to the hospital when needed for patient care or other hospital activities. Precautions must be taken to protect patient confidentiality.

# ADMINISTRATIVE RULES

(13) Authorized personnel of the Division shall be permitted to review medical records and patient registers as necessary to determine compliance with health care facility licensing laws.

(14) Medical records shall be kept for a period of at least 10 years after the date of last discharge. Original medical records may be retained on paper, microfilm, electronic or other media.

(15) Medical records shall be protected against unauthorized access, fire, water and theft.

(16) If a hospital changes ownership, all medical records in original, electronic or microfilm form shall remain in the hospital and it shall be the responsibility of the new owner to protect and maintain these records.

(17) If a hospital closes, its medical records and the registers required under section (8) of this rule may be delivered and turned over to any other hospital in the vicinity willing to accept and retain the same as provided in section (12) of this rule. A hospital which closes permanently shall follow the procedure for Division and public notice regarding disposal of medical records under OAR 333-500-0060.

(18) All original clinical records or photographic or electronic facsimile thereof, not otherwise incorporated in the medical record, such as X-rays, electrocardiograms, electroencephalograms, and radiological isotope scans shall be retained for seven years after a patient's last exam date if professional interpretations of such graphics are included in the medical records. Mammography images shall be retained for 10 years after a patient's last exam date.

(19) If a qualified medical record practitioner, RHIT (Registered Health Information Technician) or RHIA (Registered Health Information Administrator) is not the Director of the Medical Records Department, periodic and at least annual consultation must be provided by a qualified medical records consultant, RHIT/RHIA. The visits of the medical records consultant shall be of sufficient duration and frequency to review medical record systems and assure quality records of the patients. The contract for such services shall be made available to the Division.

(20) A current written policy on the release of medical record information including a patient's access to his or her medical record shall be maintained in the medical records department.

(21) A hospital is not required to keep a medical record in accordance with this rule for a person referred to a hospital ancillary department for a diagnostic procedure or health screening by a private physician, dentist, or other licensed health care practitioner acting within his or her scope of practice.

(22) Pursuant to ORS 441.059, the rules of a hospital that govern patient access to previously performed X-rays or diagnostic laboratory reports shall not discriminate between patients of chiropractic physicians and patients of other licensed health care practitioners permitted access to such X-rays and diagnostic laboratory reports.

(23) Nothing in this rule is meant to prohibit or discourage a hospital from maintaining its records in electronic form.

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: HB 183, f. & ef. 5-26-66; HB 235, f. 2-5-70, ef. 2-25-70; HB 253, f. 7-22-70, ef. 8-25-70; HB 255, f. 9-15-70, ef. 10-11-70; HD 11-1980, f. & ef. 9-10-80; HD 8-1984, f. & ef. 5-7-84; Renumbered from 333-023-0190; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0055; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13; PH 7-2016, f. & cert. ef. 2-24-16

## 333-510-0030

### Nursing Services

(1) The hospital shall provide a nursing service department, which provides 24-hour onsite registered nursing care, 7 days per week.

(2) The nursing services department shall be under the direction of a nurse executive who is a registered nurse, licensed to practice in Oregon.

(3) All nursing personnel shall maintain current certification in cardiopulmonary resuscitation.

Stat. Auth.: ORS 413.042, 441.055

Stats. Implemented: ORS 441.160 - 441.192

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; HD 5-1981, f. & ef. 3-30-81; Renumbered from 333-023-0172; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0015(2); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 21-2006, f. & cert. ef. 10-6-06; PH 11-2009, f. & cert. ef. 10-1-09; PH 7-2016, f. & cert. ef. 2-24-16

## 333-515-0030

### Safety and Emergency Precautions

(1) A hospital shall:

(a) Have a physical plant and overall hospital environment that is developed and maintained in such a manner that the safety and well-being of patients are provided for.

(b) Have telephone or another communication method to summon help in case of fire or other emergency.

(c) Comply with ORS chapter 479, its implementing rules, and all other requirements of the State Fire Marshal.

(d) Have emergency power facilities that are tested monthly and are in readiness at all times for use in the delivery, operating and emergency rooms, nurseries and other areas as required in NFPA 99 and the National Electrical Code.

(2) In collaboration with local emergency medical services, a hospital shall develop, maintain, update, train, and exercise an emergency plan for the protection of all individuals in the event of an emergency, in accordance with OAR chapter 837, division 040.

(a) A hospital shall conduct at least two drills every year to demonstrate that employees have practiced their specific duties and assignments, as outlined in the emergency preparedness plan. A hospital shall document the drills.

(b) An emergency plan shall:

(A) Include the contact information for the hospital's local emergency management.

(B) Address all applicable hazards that may include, but are not limited to, the following:

(i) Chemical emergencies;

(ii) Dam failure;

(iii) Earthquakes;

(iv) Fire;

(v) Flood;

(vi) Hazardous material;

(vii) Heat;

(viii) Hurricane;

(ix) Landslide;

(x) Nuclear power plant emergency;

(xi) Pandemic;

(xii) Terrorism; or

(xiii) Thunderstorms.

(C) Address the provision of sufficient supplies for patients and staff to shelter in place for a minimum of four days under the following conditions:

(i) Extended power outage;

(ii) No running water;

(iii) Replacement of food or supplies is unavailable; and

(iv) Staff members do not report to work as scheduled.

(D) Address evacuation, including:

(i) Identification of individual positions' duties while vacating the building, transporting, and housing residents;

(ii) Method and source of transportation;

(iii) Planned relocation sites;

(iv) Method by which each patient will be identified by name and facility of origin by people unknown to them;

(v) Method for tracking and reporting the physical location of specific patients until a different entity resumes responsibility for the resident; and

(vi) Notification to the Division about the status of the evacuation.

(E) Address the clinical and medical needs of the patients, including provisions to provide:

(i) Storage of and continued access to medical records necessary to obtain care and treatment of patients, and the use of paper forms to be used for the transfer of care or to maintain care on-site when electronic systems are not available;

(ii) Continued access to pharmaceuticals, medical supplies and equipment, even during and after an evacuation; and

(iii) Alternative staffing plans to meet the needs of the patients when scheduled staff members are unavailable. Alternative staffing plans may include, but are not limited to, on-call staff, the use of travelers, the use of management staff, or the use of other emergency personnel.

(c) A hospital shall ensure that its emergency plan is available to Division staff during licensing and certification surveys.

(d) A hospital shall re-evaluate and revise its emergency plan as necessary or when there is a significant change in the facility or population of the hospital.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 441.025

Stats. Implemented: ORS 441.025

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0186; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0045; HD 21-1993, f. & cert. ef. 10-28-93; PH 13-2008, f. & cert. ef. 8-15-08; PH 11-2009, f. & cert. ef. 10-1-09; PH 7-2016, f. & cert. ef. 2-24-16

# ADMINISTRATIVE RULES

## 333-520-0020

### Dietary Services

(1) All hospitals, regardless of classification, shall comply with this rule.

(2) A hospital shall:

(a) Have an organized dietary department, directed by qualified personnel, that conforms to the requirements in OAR 333-150-0000, the Food Sanitation Rules.

(b) Employ supportive personnel competent to carry out the functions of the dietary service, including a full-time director with overall supervisory responsibility for the dietary service and who is:

(A) A qualified dietitian who is registered by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics;

(B) A person who has received a baccalaureate or higher degree with major studies in food, nutrition, diet therapy or food service management and has at least one year of supervisory experience in a health care dietetic service, and participates in continuing education related to the dietetic profession;

(C) A graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the Academy of Nutrition and Dietetics;

(D) A graduate of a state approved course that provides 90 or more hours of classroom instruction in food service supervision and has one year's experience as a supervisor in a health care institution; or

(E) Has training and experience in food service supervision and management in a military service equivalent in content to one of the above criteria for qualifying.

(c) Contract with a dietitian with the qualifications listed in paragraph (2)(b)(A) of this rule, if the Director is not a qualified dietitian under paragraph (2)(b)(A) of this rule, and:

(A) Consult at least quarterly with the contractor;

(B) Have on file a contract signed by the consultant and the hospital administrator stating the relationship of the consultant to the hospital, services to be provided, length of contract, terms and hours; and

(C) Require the contractor to submit quarterly reports to the hospital administrator and the committee, council or other reviewing body designated by the hospital as having responsibility for dietary services that include:

- (i) The date(s) of visit(s) and length of time spent on premises;
- (ii) Staff members seen;
- (iii) Services performed;
- (iv) Action taken on previous reports;
- (v) Problems identified; and
- (vi) Recommended action and distribution of the report.

(d) Require the on-site visits of the Consulting Dietitian to be of sufficient duration and frequency to review dietetic systems and assure quality food to the patient.

(e) Provide dietetic services to patients in accordance with a written order by the responsible physician, or other health care practitioner authorized within the scope of his or her professional license, and record appropriate dietetic information in the patient's medical record including the following:

(A) Timely and periodic assessments of the patient's nutrient intake and tolerance to the prescribed diet modification, including the effect of the patient's appetite and food habits on food intake;

(B) A description of the diet instructions given to the patient or family and assessment of their diet knowledge;

(C) A description or copy of the diet information forwarded to another institution upon patient discharge; and

(D) Nutritional care follow-up with the patient's health care practitioner or a health care agency.

(f) Regularly review and evaluate the quality and appropriateness of nutritional care provided by the dietetic service including the nutritional adequacy of all menus.

(g) Ensure that the Dietetic Service is represented on hospital committees concerned with nutritional care.

(h) Serve food that has an appetizing appearance, is palatable, is served at proper temperature and is cooked and served in such a way as to retain the nutrient value of food.

(i) Restrict admittance to the kitchen area to those who must enter to perform assigned duties.

(j) Develop written procedures for cleaning equipment and work areas and enforce those procedures.

Stat. Auth.: ORS 441.02

Stats. Implemented: ORS 441.025

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(7); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09; PH 7-2016, f. & cert. ef. 2-24-16

## 333-520-0050

### Surgery Services

(1) For purposes of this rule:

(a) "Circulating nurse" means a registered nurse who is responsible for coordinating the nursing care and safety needs of the patient in the operating room and who also meets the needs of the operating room team members during surgery.

(b) "Rural or medically underserved community" means a geographic area of Oregon that is 10 or more miles from the geographic center of a population center of 40,000 or more individuals.

(c) "Surgical technology" means intraoperative surgical patient care that involves:

(A) Preparing an operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely;

(B) Preparing an operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments and equipment using sterile techniques;

(C) Anticipating the needs of a surgical team based on knowledge of human anatomy and pathophysiology and how those fields relate to the surgical patient and the patient's surgical procedure; and

(D) Performing tasks as directed in an operating room, including:

- (i) Passing instruments, equipment or supplies;
- (ii) Sponging or suctioning of an operative site;
- (iii) Preparing and cutting suture material;
- (iv) Transferring fluids or drugs;
- (v) Handling specimens;
- (vi) Holding retractors and other equipment;
- (vii) Applying electrocautery to clamps on bleeders;
- (viii) Connecting drains to suction apparatus;
- (ix) Applying dressings to closed wounds; and
- (x) Assisting in counting supplies and instruments, including sponges and needles.

(2) General hospitals are required to comply with this rule. A low occupancy acute care or mental or psychiatric hospital shall comply with this rule if it offers surgery services.

(3) A hospital that provides surgical services shall have operating rooms that conform to the applicable requirements in OAR chapter 333, division 535.

(4) A hospital's operating rooms must be supervised by an experienced registered nurse or doctor of medicine or osteopathy.

(5) The duties of a circulating nurse performed in an operating room of a hospital shall be performed by a registered nurse licensed under ORS 678.010 through 678.410. In all cases requiring anesthesia or conscious sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure.

(6) Nothing in section (5) precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the surgical procedure.

(7) In order for a person to practice surgical technology at a hospital, the hospital's governing body shall ensure that the following provisions are met by the individual:

(a) Documentation showing that the person has completed a training program for surgical technologists in a branch of the armed forces of the United States or in the United States Public Health Service Commissioned Corp and completes 16 hours of continuing education as described in section (11) of this rule every two years; or

(b) Completion of a surgical technology education program accredited by the Commission on Accreditation of Allied Health Education Program (CAAHEP) or the Accrediting Bureau of Health Education Schools (ABHES) and certification as a surgical technologist issued by the National Board of Surgical Technology and Surgical Assisting (NBSTSA); or

(c) Documentation that a person has practiced surgical technology at least two years between January 1, 2014 and January 1, 2017 in a hospital, ambulatory surgical center or as an employee of a federal government agency or institution and completes 16 hours of continuing education as described in section (11) of this rule every two years.



# ADMINISTRATIVE RULES

(8) Notwithstanding subsection (7)(b), a hospital may allow a person who is not certified by the NBSTSA to practice surgical technology at the hospital for 12 months after the person completes an educational program accredited by the CAAHEP or ABHES.

(9) A hospital located in a rural or medically underserved community may allow a person to practice surgical technology at the hospital who does not meet the requirements specified in section (7) of this rule until July 1, 2017. After July 1, 2017 a person not meeting the requirements specified in section (7) of this rule may work at a hospital in a rural or medically underserved community while the person is attending an educational program accredited by the CAAHEP or ABHES. Such persons are exempt from these educational requirements for three years from the date on which the person began practicing at the hospital.

(10) These rules do not prohibit a licensed practitioner from performing surgical technology if the practitioner is acting within the scope of the practitioner's license and a hospital allows the practitioner to perform such duties.

(11)(a) The continuing education requirements described in subsections (7)(a) and (7)(c) shall:

(A) Consist of 16 hours every two years;

(B) Be tracked by the surgical technologist and is subject to audit by the hospital in which the person is practicing; and

(C) Be relevant to the medical-surgical practice of surgical technology.

(b) Continuing education may include but is not limited to:

(A) Continuing education credits approved by the Association for Surgical Technologist;

(B) Healthcare sponsored conferences, forums, seminars, symposiums or workshops;

(C) Online distance learning courses;

(D) Live lectures at national conferences; or

(E) College courses.

(12) A hospital shall conduct a random audit of a representative sample of the surgical technologists employed by the hospital every two years to verify compliance with educational requirements.

(13) The requirements identified in section (7), (8) and (10) through (12) of this rule become effective on July 1, 2016.

Stat. Auth.: ORS 441.025 & ORS 676.890

Stats. Implemented: ORS 441.025, 676.870 – 676.890 & 678.362

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(10) & (11); HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13; PH 7-2016, f. & cert. ef. 2-24-16

## 333-525-0000

### Mental or Psychiatric Hospital

A hospital classified as mental or psychiatric shall:

(1) Be devoted primarily to the diagnosis and treatment of mentally ill persons.

(2) Have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning, including:

(a) A clinical director, service chief, or equivalent who:

(A) Is qualified to provide the leadership required for an intensive treatment program;

(B) Meets the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry;

(C) Monitors and evaluates the quality and appropriateness of services and treatment provided by the medical staff; and

(D) Supervises inpatient psychiatric services.

(b) Doctors of medicine or osteopathy and other appropriate professional personnel available to provide necessary medical and surgical diagnostic and treatment services. If medical and surgical diagnostic and treatment services are not available within the hospital, the hospital must have an agreement with an outside source of these services to ensure that they are immediately available or a satisfactory agreement must be established for transferring patients to a licensed hospital.

(c) A director of psychiatric nursing services who:

(A) Is a registered nurse with a master's degree in psychiatric or mental health nursing, or its equivalent from a school of nursing accredited by the National League for Nursing Accrediting Commission, or the Commission on Collegiate Nursing Education, or is qualified by education and experience in the care of the mentally ill; and

(B) Demonstrates competence to participate in interdisciplinary formulation of individual treatment plans; to give skilled nursing care and therapy; and to direct, monitor, and evaluate the nursing care furnished.

(d) Registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under each patient's active treatment program and to maintain progress notes on each patient.

(e) The availability of a registered professional nurse 24 hours each day.

(f) The availability of staff to provide other psychological services to meet the needs of the patients.

(g) A director of social services who:

(A) Has a master's degree from an accredited school of social work or is qualified by education and experience in the social services needs of the mentally ill; and

(B) Monitors and evaluates the quality and appropriateness of social services furnished.

(h) At least one staff member with a master's degree in social work if the director of social services does not have such a degree.

(i) Social service staff with responsibilities that include, but are not limited to, participating in discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate information with sources outside the hospital.

(j) Qualified therapists, support personnel, and consultants adequate to provide comprehensive therapeutic activities consistent with each patient's active treatment program.

(k) In a satellite as defined in OAR 333-500-0010(46)(b), the prompt availability of at least one psychiatrist to provide emergency psychiatric services or other psychiatric services to meet the needs of the patients 24 hours each day in person or using telemedicine technology.

(3) Have a therapeutic activities program that is appropriate to the needs and interests of patients and directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(4) Maintain medical records in a manner that permits determination of the degree and intensity of the treatment provided to individuals who are furnished services in the institution. Medical records shall stress the psychiatric components of the record, including history of findings and treatment provided for the psychiatric condition for which the patient is hospitalized. A patient's medical record shall include:

(a) The patient's legal status;

(b) The provisional or admitting diagnosis, including the diagnoses of intercurrent diseases as well as the psychiatric diagnoses;

(c) The reasons for admission as stated by the patient or others significantly involved;

(d) The social service records, including reports of interviews with patients, family members, and others, including an assessment of home plans and family attitudes, and community resource contacts as well as a social history;

(e) When indicated, a complete neurological examination recorded at the time of the admission physical examination;

(f) Documentation of all active therapeutic efforts; and

(g) A discharge summary that includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or aftercare, as well as a brief summary of the patient's condition on discharge.

(5) Have a psychiatrist perform a psychiatric evaluation of each patient that:

(a) Is completed within 60 hours of admission;

(b) Includes a medical history;

(c) Contains a record of mental status;

(d) Notes the onset of illness and the circumstances leading to admission;

(e) Describes attitudes and behavior;

(f) Estimates intellectual functioning, memory functioning, and orientation; and

(g) Includes an inventory of the patient's assets in descriptive, not interpretative, fashion.

(6) Develop a written individual comprehensive treatment plan that is based on an inventory of the patient's strengths and disabilities that includes:

(a) A substantiated diagnosis;

(b) Short-term and long-range goals;

(c) The specific treatment modalities utilized;

(d) The responsibilities of each member of the treatment team; and

(e) Adequate documentation to justify the diagnosis and the treatment and rehabilitation activities carried out.

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- (7) Ensure that progress notes are recorded by:
  - (a) The doctor of medicine or osteopathy responsible for the care of the patient; and
  - (b) Nurses, social workers and, when appropriate, others significantly involved in active treatment modalities.
- (8) The frequency of progress notes is determined by the condition of the patient but must be recorded at least weekly for the first two months and at least once a month thereafter and must contain recommendations for revisions in the treatment plan as indicated as well as precise assessment of the patient's progress in accordance with the original or revised treatment plan.
- (9) Provide discharge planning in accordance with OAR 333-505-0030.
- (10) Comply with the applicable rules of the Authority, Addictions and Mental Health Division, including OAR chapter 309, divisions 31 and 33.

Stat. Auth.: ORS 441.025  
Stats. Implemented: ORS 441.025  
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 17(Temp), f. & ef. 6-19-72; HD 18, f. 7-31-72, ef. 8-15-72; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0138; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-073-0000; HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09; PH 5-2015, f. & cert. ef. 2-6-15; PH 7-2016, f. & cert. ef. 2-24-16

## 333-535-0061

### Psychiatric Patient Care Units and Rooms

(1) The design of inpatient psychiatric patient care units shall be supportive of the types of psychiatric therapies provided for patients and their psychiatric care needs. Interior finishes, lighting and furnishings shall, to the extent practicable, reflect a residential rather than an institutional setting with an emphasis on natural light and exterior views while not compromising patient privacy and safety design. Inpatient psychiatric patient care units shall include patient rooms meeting the requirements of section (4) of this rule and service areas meeting the requirements of section (5) of this rule.

(2) Patient and Staff Safety Assessment. The hospital psychiatric care staff and the hospital administration, in consultation with the project architects, shall develop a Patient and Staff Safety Assessment that addresses security and safety design features and devices. A copy of this Assessment shall accompany construction documents submitted to the Licensing Plans Review Program. The Patient and Staff Safety Assessment shall include at least the following elements:

- (a) A statement explaining the psychiatric population groups served;
- (b) A discussion of the capability for staff visual supervision of patient ancillary areas and corridors;
- (c) A discussion of the risks to patients, including self-injury, and the project solutions employed to minimize such risks;
- (d) A discussion of building features and equipment, including items which may be used as weapons, that is intended to minimize risks to patients, staff and visitors;
- (e) A statement explaining how potentially infectious patients will be managed; and
- (f) A discussion of outdoor areas used by patients. Discussion must include, but is not limited to, the number of patients each outdoor area will serve at one time, staffing, security and shifts.

(3) Except as permitted under OAR 333-500-0065, every hospital classified as mental or psychiatric and other hospitals, regardless of classification, that provide psychiatric services, shall have at least one psychiatric seclusion room which meets the requirements of section (7) of this rule and OAR 309-033-0727.

(4) Psychiatric patient care rooms shall comply with the requirements of OAR 333-535-0025, except as follows:

- (a) A nurse call system is not required. If included, provisions shall be made for easy removal or covering of call buttons;
- (b) Patient toilets shall not have bed pan flushing devices;
- (c) Hand-washing stations are not required in patient rooms;
- (d) Visual privacy in multi-bed rooms (for example, cubicle curtains) is not required;
- (e) Each patient room shall be provided a private toilet room and hand-washing station. Grab bars are only required in rooms required to be accessible to the disabled;
- (f) All hardware shall have tamper-resistant fasteners; and
- (g) Patient rooms shall comply with the requirements of section (6) of this rule.

(5) Psychiatric patient care unit service areas shall comply with the requirements of OAR 333-535-0025, except as follows:

(a) A secured storage area shall be provided for patients' belongings that are determined to be potentially harmful;

(b) A secured storage station will be provided for storing law enforcement weapons prior to officers entering the patient care unit;

(c) The medication station shall include provision against unauthorized access;

(d) Between meal nourishment(s) facilities within the unit shall be one, or a combination of the following:

(A) A nourishment station;

(B) A kitchenette, designed for patient use, with a sink and a keyed switch or other acceptable method for staff control of any heating and cooking devices; or

(C) A kitchen service within the unit that includes a hand washing station, storage space, refrigerator and facilities for full meal preparation. A keyed switch or other acceptable method for staff control of any heating and cooking devices is required.

(e) All storage spaces within the psychiatric patient care unit shall be secured from patient access;

(f) A bathtub or shower shall be provided for every six beds not otherwise served by bathing facilities within the patient rooms. Bathing facilities shall be designed and located for patient safety, convenience, privacy and shall comply with section (6) of this rule;

(g) A separate charting area shall be provided with provisions for visual and acoustical privacy. Viewing windows to permit observation of patient areas by the charting nurse or physician may be used if the arrangement is such that patient files cannot be read from outside the charting area. Viewing windows shall meet the requirements of subsection (6)(g) of this rule;

(h) At least two separate social spaces, one appropriate for noisy activities and one for quiet activities shall be provided. The combined area shall be at least 40 square feet per patient with each space being at least 120 square feet in size. These spaces may be shared by dining activities;

(i) Space for group therapy shall be provided. This space may be combined with the quiet space required by subsection (5)(h) of this rule when the unit accommodates 12 or fewer patients and when at least 225 square feet of closed private space is available for group therapy activities;

(j) Securable patient laundry facilities with an automatic washer and dryer and secured space for chemicals shall be provided;

(k) Each psychiatric patient care unit shall include, or have close access to, a soiled utility room that meets the requirements of OAR 333-535-0260(5) or a soiled holding room. A soiled holding room shall meet all the requirements of a soiled utility room except that a clinical sink may be omitted;

(l) The following elements shall also be provided, but shall be permitted to serve several nursing units and may be on a different floor if conveniently located to the unit for routine use:

(A) Space requirements. Examination rooms shall have a minimum floor area of 120 square feet, excluding space for vestibule, toilets, and closets. The room shall contain a hand-washing station, storage facilities and a surface for charting. In existing psychiatric facilities exam rooms may continue to be 80 square feet excluding space for vestibules, toilets and closets;

(B) Separate consultation room(s), lockable from the outside. Each consultation room shall have a minimum floor space of 100 square feet and shall be provided at a room-to-bed ratio of one consultation room for every 12 psychiatric beds. The room(s) shall be designed for acoustical and visual privacy and be constructed to achieve a level of voice privacy of 50 STC;

(C) Separate space for patient therapy/multipurpose use. The greater of at least 300 square feet or at least 15 square feet per patient shall be provided. The space shall include a hand-washing station, work counter(s), storage and space for displays and may serve more than one psychiatric patient care unit. However, when a psychiatric patient care unit contains less than 12 beds, the therapy and other functions may be performed within the noisy activities area required by subsection (5)(h) of this rule if at least an additional 10 square feet per patient is provided; and

(D) A conference and treatment planning room, for use by psychiatric patient care unit staff, constructed to achieve a level of voice privacy of 50 STC.

(m) Outside area shall be provided for all patients. The area shall be discussed as part of the Functional Program per subsection (2)(f) of this rule.

(6) Patient and staff safety features, security and safety devices shall not, to the extent practicable, be presented in a manner to attract or invite tampering by patients. Design, finishes and furnishings shall be designed and installed to minimize the opportunity for patients to cause injury to

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themselves or others. Special design considerations for prevention of self injury and injury to staff and others shall include:

(a) Visual control of nursing unit corridors, passive activity areas and outdoor areas shall be provided;

(b) Hidden alcoves are prohibited;

(c) Non-patient areas, including staff support rooms, mechanical and electrical spaces shall be secured from patients;

(d) Door closers and door and cabinet hardware, including hinges in patient areas, shall be designed to prevent attachment of other articles and to limit possible patient or staff injury;

(e) Doors to patient toilet and shower rooms shall not swing into the room. These doors shall either not be lockable from within the room or shall be provided with privacy locks that can be opened by staff with a key or tool. Hardware shall be designed to preclude patients from tying the door closed;

(f) Furnishings, movable equipment and accessories shall be addressed by the Patient and Staff Safety Assessment required by section (2) of this rule;

(g) Windows, including interior and exterior glazing, shall be non-operable and shall be of break-resistant material and will not shatter. Window sills, curtains and blinds shall be constructed to prevent attachment of other articles;

(h) Curtains and blinds shall be constructed to break-away with a vertical load of greater than 40 pounds;

(i) Ceilings in patient bedrooms, toilet and shower rooms shall be of continuous bonded construction. T-bar ceilings with lay-in tiles are not allowed;

(j) The ceiling and air distribution devices, lighting fixtures, sprinkler heads, smoke detectors, and other appurtenances shall be designed and installed to be tamper resistant, non-breakable, prevent the attachment of other articles and to limit possible patient or staff injury in patient rooms, toilet and shower rooms;

(k) Flooring base in patient rooms, toilet and shower rooms shall be installed to preclude removal by patients;

(l) Shower, bath, toilet and sink plumbing fixture hardware and accessories, including grab bars and toilet paper holders, shall prevent attachment of other articles and removal by patients. Shut-offs under patient sinks shall be covered and secured to prevent patient access;

(m) Grab bars, if provided, shall be contiguous to the wall so that nothing can pass between the edge of the rail and the wall;

(n) Toilet flush valves shall be recessed or of the push button type;

(o) Hand-washing station faucet hardware shall be recessed or of the push button type to preclude patient or staff injury;

(p) Shower curtains, if provided, shall have a breakaway maximum of 40 pounds and be supported on curtain tracks attached or flush to the ceiling. Shower curtains shall not be permitted where facilities accommodate children whose weight is close to, or within the breakaway weight limits;

(q) Shower heads shall be sloped or otherwise designed to prevent attachment of other articles;

(r) Fire extinguisher cabinets and fire alarm pull stations shall be located or installed to prevent inappropriate use;

(s) Electrical outlets in patient areas shall be of a ground fault interrupter type ("GFI") or shall be protected by GFI breakers at electrical panels;

(t) Patient mirrors shall be non-breakable and shatterproof;

(u) Medical gas outlets, if provided, shall be located or installed to prevent patient access;

(v) All devices attached to walls, ceilings and floors and all door and window hardware shall be tamper resistant and be securely fastened with tamper proof screws;

(w) All exit door hardware shall have concealed rods, if any are used, and they shall not be removable by patients. Door closure and panic bars, if provided, shall not allow attachment of other articles;

(x) Time delay closers shall not be used on locked doors; and

(y) Outdoor areas shall be secured in accordance with the Patient and Staff Safety Assessment required by section (2) of this rule.

(7) Psychiatric Seclusion Rooms. Psychiatric seclusion rooms shall comply with the following requirements:

(a) As required by section (3) of this rule, and except as permitted by OAR 333-500-0065, each hospital classified as general or psychiatric shall have at least one psychiatric seclusion room. A minimum of one psychiatric seclusion room is required for every 24 psychiatric beds or fraction thereof. The rooms shall be proximate to a nurses' station. Each room shall be for only one patient and shall be at least 80 square feet in size. The design

of the room shall prevent patient hiding and minimize the potential for escape and self injury;

(b) Psychiatric seclusion rooms shall meet the requirements of section (6) of this rule;

(c) Outside room corners, door hardware protrusions and other projections shall be avoided to minimize points for possible patient injury;

(d) No items shall be attached to the walls and there shall be no exposed curtains, drapes, rods or furniture, except a portable bed which can be removed if necessary. Beds that are securely fastened to the floor are allowable but must have no sharp protrusions, such as bed posts or corners;

(e) Wall and other room finish materials shall be securely constructed to resist attempts at intentional damage;

(f) Exposed pipes or electrical wiring is prohibited. Electrical outlets, if provided, shall be permanently capped or covered with a metal shield that opens with a key and shall be circuited and controllable from outside the room. Ceiling lights shall be unbreakable and shall be either recessed or surface mounted;

(g) Room construction shall contain no readily combustible materials (for example, wood or vinyl wall covering surfaces). If the room interior is padded with combustible materials, such materials shall meet the requirements of the National Fire Protection Association (NFPA) 101 Code as enforced by the State Fire Marshal;

(h) Sprinkler heads shall be of a recessed pop-down type and shall have a breakaway strength of under 80 pounds;

(i) A toilet and hand-washing station that meets the requirements of section (6) of this rule shall be available for patient use but shall not be located within the room;

(j) The door to the room shall open outward and shall include a viewing window of shatterproof glass or plastic through which the entire room may be viewed from the outside before entering; and

(k) The door to the room shall be lockable from the outside and shall include tamper-proof hardware. The lock must release with initiation of the fire alarm, sprinkler flow or power failure as required for controlled egress in accordance with the Oregon Structural Specialty Code and NFPA 101 Code as enforced by the appropriate building codes agency and fire marshal.

(8) Child and Adolescent Psychiatric Units. The requirements of sections (1) through (6) of this rule, and of section (7) of this rule if a psychiatric seclusion room is provided, shall apply to child and adolescent psychiatric units, except as follows:

(a) The environment of the unit shall reflect the age, social and developmental needs of children and adolescents, including space to accommodate family and other caregivers;

(b) At least one single occupancy timeout room shall be provided;

(c) An outdoor activity area shall be provided with a minimum of 50 square feet per patient but not less than 400 total square feet;

(d) Child and adolescent care units shall be physically and visually separate from one another and from adult care units; and

(e) Showers. Shower curtains shall not be permitted in child adolescent care units.

(9) Geriatric, Alzheimer and Other Dementia Units. The requirements of sections (1) through (6) of this rule, and of section (7) of this rule if a psychiatric seclusion room is provided, shall apply to geriatric, Alzheimer and other dementia units, except as follows:

(a) Single patient rooms shall be at least 120 square feet in size. Multiple patient rooms shall provide at least 80 square feet per patient exclusive of closets, vestibules and bathroom facilities and allow for a minimum of 3 feet between beds;

(b) A nurse call system meeting the requirements of section (6) of this rule shall be provided. Provisions shall be made for the removal or covering of call button outlets as required by the Patient Safety Assessment. Call cords or strings in excess of six inches shall not be permitted;

(c) Handrails shall be provided on both sides of corridors used by patients. These handrails shall be contiguous with the wall so that nothing may pass between the rail and wall;

(d) Doors to patient rooms and patient ancillary use areas shall be a minimum of 3 feet 8 inches in clear width;

(e) Slip resistant flooring surfaces shall be provided in all bathing rooms; and

(f) Secure storage for wheelchairs shall be provided in a location readily accessible to the unit.

(10) Forensic Psychiatric Units. The requirements of sections (1) through (6) of this rule shall apply to forensic psychiatric units, except as follows:

(a) Security vestibules or sally ports are required at the unit entrance;

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(b) Additional treatment areas, police and courtroom space, and special security considerations shall be provided in accordance with the Patient and Staff Safety Assessment; and

(c) Children and adolescents shall be separated from one another as defined by the Functional Program. Children and adolescents shall also be physically and visually separate from adult care units.

Stat. Auth.: ORS 441.025 & 441.060

Stats. Implemented: ORS 441.025 & 441.06

Hist.: OHD 13-2002, f. & cert. ef. 9-27-02; PH 18-2003(Temp), f. & cert. ef. 10-31-03 thru 4-26-04; PH 7-2004, f. & cert. ef. 3-17-04; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09; PH 7-2016, f. & cert. ef. 2-24-16

## 333-535-0080

### Emergency Department

(1) Hospitals offering emergency patient care services shall include facilities required under section (2) of this rule. If outpatient clinical services are to be included as a part of the Emergency Department, elements under OAR 333-535-0085 shall also be provided.

(a) Except as permitted under OAR 333-500-0065, every hospital classified as mental or psychiatric and any other hospital, regardless of classification, that provides psychiatric services shall have at least one psychiatric seclusion room that meets the requirements of section (7) of OAR 333-535-0061 and 309-033-0727.

(2) Hospitals providing emergency services shall include the following:

(a) Entrance located on the same level and proximate to the emergency department, sheltered from the weather, and with provision for ambulance and disabled pedestrian access. Emergency entrance location shall be marked by a lighted sign. The emergency access shall be paved to permit discharge of patients from automobiles and ambulances. Temporary parking convenient to the entrance shall be provided;

(b) A reception, triage and control area conveniently located near the entrance, waiting area(s), and treatment room(s). The control station(s) shall be located to permit staff observation and control of access to treatment areas, pedestrian and ambulance entrances and public waiting area;

(c) Public waiting space with toilet facilities, public telephone, and drinking fountain;

(d) Examination and Treatment room(s):

(A) Space requirements. Each examination room shall have a minimum clear floor area of 120 square feet exclusive of toilets, waiting area and casework.

(B) Each examination room shall contain an examination light, medication storage, work counter, a hand-washing station, medical gas outlets per Table 5 (OAR 333-535-0300), electrical outlets above floor level to accommodate required equipment, suction, and space for storage of emergency equipment such as emergency treatment trays, defibrillator, cardiac monitor, and resuscitator.

(C) Treatment cubicles:

(i) Where treatment cubicles are in open multiple-bed areas, each cubicle shall have a minimum of 80 square feet of clear floor space with a minimum of 5 feet between beds and shall be separated from adjoining cubicles by curtains.

(ii) Hand-washing stations shall be provided at a rate of one per four treatment cubicles.

(e) Trauma/cardiac rooms for emergency procedures, including emergency surgery shall have:

(A) At least 250 square feet of clear floor space.

(B) Additional square footage and cubicle curtains for privacy shall be provided to accommodate more than one patient at a time in the trauma room.

(C) Cabinets and emergency supply shelves, image readers, examination lights, and counter space for writing in each room.

(D) Provisions in each room for monitoring equipment.

(E) Storage provided for immediate access to protective attire for infection control.

(F) Doorways leading from the ambulance entrance to the cardiac trauma room shall be a minimum of 5 feet wide to simultaneously accommodate stretchers, equipment, and personnel.

(G) Medical gas outlets shall equal that required of an operating room in Table 5, OAR 333-535-0300;

(f) Provisions for orthopedic and cast work. There shall be storage for orthopedic supplies including but not limited to: splints, traction hooks, portable image readers or exam lights. These provisions may be in a separate room(s) or in a treatment room. If a sink is used for the disposal of plaster of paris, a plaster trap shall be provided. The amount of clear floor space for this area shall be dependent on the Functional Program, procedures planned and the equipment needed;

(g) Scrub stations or hand-washing stations located in or adjacent to each trauma or orthopedic room;

(h) Provisions for infection control and for the handling of a patient requiring isolation in accordance with the hospital's ICRA. If so determined by the hospital's ICRA, the emergency department waiting area and triage areas shall require special measures to reduce the risk of airborne infection transmission. These measures may include enhanced general ventilation and air disinfection similar to inpatient requirements for airborne infection isolation rooms;

(i) Communication center with related equipment shall be convenient to the control station(s), nursing station and have radio, telephone, and intercommunication systems;

(j) Access to radiology and laboratory services;

(k) Storage area out of line of traffic for stretchers and wheelchairs with access from emergency entrances;

(l) Staff work and charting area(s). This may be combined with reception and control area or located within the treatment room;

(m) Storage out of traffic and under staff control for general medical/surgical emergency supplies, medications and equipment such as a ventilator, defibrillator, pumps, patient monitoring, portable image readers and splints;

(n) Soiled utility room or area per OAR 333-535-0260(5) containing clinical sink, work counter, a hand-washing station, waste receptacle, and linen receptacle;

(o) Patients' toilet room convenient to treatment room(s) that shall include a nurse call device or other approved alternative to summon staff; and

(p) Security station. Where dictated by the Functional Program, a security station system shall be located near the emergency entrances and triage/reception area.

(A) Accommodation for hospital security staff, police officers and monitoring equipment, for example, silent alarms, panic buttons, intercom systems or visual monitoring devices.

(B) Located near emergency entrance and triage/reception area.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 213, f. 3-25-69; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(8); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0240; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09; PH 7-2016, f. & cert. ef. 2-24-16

## 333-535-0110

### Surgical Facilities

A surgical unit shall consist of but not be limited to facilities as follows for exclusive use of the surgery department, unless otherwise noted:

(1) The number of operating rooms and recovery beds and the sizes of the service areas shall be based on the expected surgical workload. The surgical suite shall be located and arranged to prevent non-related traffic through the suite. Also see OAR 333-535-0300 for mechanical rules and 333-535-0310 for electrical rules which apply;

(2) Certain rules of this section differ dependent upon the type of surgical procedures performed. These are classified as one of the following three categories:

(a) Unrestricted areas for Minor Surgical and Diagnostic Procedures: Unrestricted areas include a central control point established to monitor the entrance of patients, personnel, and materials. Street clothes are permitted in this area and traffic is not limited. Minor procedures are those that conform to the criteria listed in paragraphs (2)(a)(A) through (D) of this rule based on an assessment of the patient. These procedures are non-invasive and require no general anesthetic.

(A) Anesthesia is limited to local anesthesia or conscious sedation;

(B) Procedure time (duration) is less than two hours;

(C) Procedure is non-invasive with low risk for infection; and

(D) Patient assessment indicates no special risks for cardiorespiratory complications.

(b) Semi-restricted areas include the following:

(A) The peripheral support areas of the surgical suite, and storage areas for clean and sterile supplies, work areas for storage and processing of instruments, and corridors leading to the restricted areas of the surgical suites; and

(B) Traffic in this area is limited to authorized personnel and patients. Personnel are required to wear surgical attire and cover all head and facial hair.

(c) Restricted areas for Major Surgical and Diagnostic Procedures are those which exceed the criteria described for Minor Surgical and

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Diagnostic Procedures in OAR 333-535-0110(2)(a). Restricted areas include the following:

(A) The operating and procedure rooms, the clean core, and scrub sink areas.

(B) Where surgical attire, hair coverings, and masks are required due to the presence of open sterile supplies, scrubbed people or similar circumstances.

(3) Operating Rooms:

(a) One or more operating rooms shall be provided. Each operating room shall provide a system for emergency communication with the surgical control station which can be operated without use of the hands, but which is not foot operated. No plumbing fixtures or open drains shall be provided in operating rooms except as stipulated in subsection (3)(d). Each operating room shall have a minimum clear area as follows:

(A) Existing operating rooms shall have not less than 360 square feet exclusive of fixed cabinets and built-in shelves. The minimum dimension shall be 18 feet between fixed cabinets and built-in shelves. At least one image reader shall also be provided.

(B) In new construction, operating rooms shall have a minimum clear area of 400 square feet exclusive of fixed or wall-mounted cabinets and built-in shelves, with a minimum of 20 feet clear dimension between fixed cabinets and built-in shelves. At least one image reader shall also be provided.

(b) Operating room(s) for orthopedic surgery, when provided, shall in addition to meeting subsection (a) of this section, have enclosed storage space for splints and traction equipment. Storage may be outside the operating room but must be located for convenient access. If plaster of paris is used for cast work, also provide a plaster sink outside the operating room, but within the operating suite.

(c) Operating rooms for cardiovascular surgery, when provided, shall provide appropriate plumbing connections in both the cardiovascular operating room and pump room and shall in addition to meeting subsection (a) of this section, provide a minimum clear area as follows:

(A) Existing facilities shall have not less than 400 square feet exclusive of fixed cabinets and built-in shelves with a minimum of 20 feet clear dimension between fixed cabinets and built-in shelves; and

(B) In new construction, rooms for cardiovascular, orthopedic, neurological, and other special procedures or combination of procedures such as cardiac catheterization lab and surgery that require additional personnel or large equipment shall have, in addition to the above requirements for general operating rooms, a minimum clear area of 600 square feet with a minimum room dimension of 20 feet clear dimension exclusive of fixed or wall-mounted cabinets and built-in shelves.

(d) Operating rooms for surgical cystoscopic and surgical endoscopic procedures and operating rooms dedicated to eye surgery, when provided, shall meet requirements of subsection (a) of this section, but clear area of the room shall be as follows:

(A) Existing facilities shall have not less than a minimum of 250 square feet exclusive of fixed cabinets and built-in shelves.

(B) In new construction, rooms for surgical cystoscopic and other endourologic procedures shall have a minimum clear area of 350 square feet exclusive of fixed or wall-mounted cabinets and built-in shelves, with a minimum of 15 feet clear dimension between fixed cabinets and built-in shelves. If cystoscopy rooms are used for procedures other than cystoscopy, provisions must be made to allow cleaning and sealing of any floor drains, and such procedures must be included in the hospital's written infection control policy.

(e) Operating rooms for minor surgical procedures, as defined in section (2) of this rule, shall meet requirements of subsection (a) of this section, except that clear area of the room shall be a minimum of 200 square feet exclusive of fixed cabinets and built-in shelves and minimum dimensions do not apply. Film illuminators are required only if procedures involve the use of X-rays.

(f) Despite requirements under subsections (a) through (e) of this section, needs for some procedures may require additional clear operating room space, and special plumbing and mechanical features. Such specialized operating rooms are not addressed by subsections (a) through (e) of this section, and are the responsibility of the hospital and their design consultants.

(4) Service areas: Services, except the enclosed soiled utility room mentioned in subsection (f) of this section and the housekeeping closet in subsection (g) of this section, may be shared with obstetrical facilities if the Functional Program and project design reflect this concept. Service areas, when shared with delivery rooms, shall be arranged to avoid the need for patients or staff to pass between the operating room and the delivery room

areas. (See also obstetrical rules under OAR 333-535-0120.) The following services shall be provided:

(a) Control station located to permit visual observation of all traffic into and within the suite;

(b) Administrative and administrative support space in accord with the hospital's program needs;

(c) Sterilizing facility(ies) with high speed autoclave(s) for emergency use. Other facilities for processing and sterilizing reusable instruments may be located in another hospital department such as Central Services. Immediate access to sterilizing facilities is not required where only disposable supplies, instruments and equipment are used. Sterilization equipment shall conform to the Oregon Boiler and Pressure Vessel Specialty Code, ORS 480.525(1)(e);

(d) Medication storage and distribution facilities. Provisions shall be made for storage and preparation of medications administered to patients. A refrigerator and storage system meeting the requirements of Oregon Board of Pharmacy rules, OAR chapter 855, division 41 shall be provided. A hand-washing station shall be provided in or accessible to each area or room;

(e) Scrub facilities. For major surgical procedures, two scrub facilities shall be provided near the entrance to each operating room. Two scrub positions may serve two operating rooms if both are located adjacent to the entrance of each operating room. For minor surgical procedures, a scrub sink or a hand-washing station shall be provided in or accessible to each room. This sink shall be equipped with fittings usable without the use of hands;

(f) Soiled utility room. An enclosed soiled utility room for the exclusive use of the surgical suite staff or soiled holding room that is part of a system within the building for the collection and disposal of soiled material shall be provided. The soiled utility room shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand-washing, waste receptacle, and linen receptacle. When a soiled holding room is used, the clinical sink and work counter may be omitted from that room. (Also see subsection (g) of this section for fluid waste disposal facilities.) Soiled utility or holding areas shall not have direct connection with operating rooms or other sterile activities. The maximum travel distance to soiled utility or holding rooms shall be not more than six rooms or 180 feet;

(g) Fluid waste disposal facilities. These shall be located convenient to, but not connected with, the operating rooms. A clinical sink or equivalent equipment in a soiled utility room or in a soiled holding room would meet this standard if convenient for use. When the surgical program does not include procedures with substantial liquid or solid wastes (for example, minor eye surgery), a clinical sink is not required;

(h) Clean utility room or a clean supply room. A clean utility room is required when clean materials are assembled within the surgical suite prior to use. A clean utility room shall contain work counter, a hand-washing station, and space for clean and sterile supplies. If the Functional Program defines a system for the storage and distribution of clean and sterile supplies in a clean supply room, the counter and sink may be omitted. The clean workroom or supply room may be shared with the delivery suite when provisions for joint use are included in the hospital's infection control policy and arrangement allows for direct access from both surgery and delivery suites. (See also obstetrical rules under OAR 333-535-0120.);

(i) Medical gas storage facilities. Storage of bulk medical gases shall be provided outside or inside the facility. Provisions shall be made for additional separate storage of reserve gas cylinders to complete at least one day's procedures. Storage facilities shall be in compliance with National Fire Protection Association (NFPA) 99;

(j) Anesthesia workroom. Inhalation anesthesia workroom for cleaning, testing, and storing anesthesia equipment shall contain a work counter and sink. Provisions shall be made for separated storage of clean and holding of soiled items. When facilities for cleaning and testing are available elsewhere in the building or the surgical program does not involve substantial anesthesia, a separate utility room is not required;

(k) Anesthesia storage. Anesthesia storage facilities shall be provided for anesthesia-related materials stored within the surgery suite;

(l) Equipment storage room(s) for equipment and supplies used in surgical suite. Ten percent of the surgical suite shall be devoted to equipment storage space. See OAR 333-535-0270 for storage requirements;

(m) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel including orderlies, technicians, nurses and doctors working within the surgical suite. Each area shall contain lockers, showers, toilets, hand-washing stations, and space for donning scrub attire. In surgical suites providing general anesthesia and invasive surgical procedures, these areas shall be arranged to encourage a traffic pattern so that

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personnel entering from outside the surgical suite can change and move directly into the surgical suite. Showers are not required in suites limited to minor procedures;

(n) Pre-surgical waiting area. In facilities with two or more operating rooms, a room or separate area shall be provided to accommodate stretcher patients waiting for surgery. This may be adjoining the post anesthesia recovery area and be serviced by the same staff nurse when feasible. The area shall be located to allow for nursing supervision and emergency communications;

(o) Storage areas for portable equipment used in surgery, such as portable X-ray unit, stretchers, fracture tables, warming devices or auxiliary lamps. These areas shall not infringe on the width of exit corridors;

(p) Lounge, toilet facilities, and dictation and report preparation space for surgical staff. These facilities shall be provided in hospitals having three or more operating rooms and shall be located to permit use without leaving the surgical suite. A toilet room shall be provided near the recovery room(s);

(q) Housekeeping closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the surgical suite;

(r) For major procedures, an area for preparation and examination of frozen sections. This may be part of the general laboratory if the system and procedures provide immediate results that will not unnecessarily delay the completion of surgery;

(s) Ice machine to supply ice for patient use and treatments;

(t) Provisions for refrigerated blood bank storage when major procedures are included; and

(u) Post anesthesia care unit for major surgical procedures. Each recovery unit shall be designed to provide:

(A) A medication distribution station, hand-washing stations (at a rate of one sink per four beds), nurses' station with charting facilities and clinical sink. Provisions for bedpan cleaning, storage space for stretchers, supplies and equipment shall be closely available.

(B) Clearance space of at least 5 feet between patient beds and 4 feet between sides of beds and adjacent walls.

(C) Patient privacy such as cubicle curtains.

(D) Provisions shall be made for isolation of infectious patients, although a separate isolation room is not mandated. At least one door to a recovery unit shall access directly from the surgical suite without crossing uncontrolled common hospital corridors. Separate and additional recovery space may be necessary to accommodate surgical outpatients, where applicable but is not required.

(5) Separate Hospital Licensed Outpatient Surgical Facilities. The following additional features shall be provided when an outpatient surgical facility is outside the inpatient hospital building or remote from the inpatient suite:

(a) Visual privacy shall be provided for registration, preparation, examination and recovery. Audible privacy shall be provided during registration;

(b) Provisions shall be made for patient examination, interview, testing and preparation prior to surgery;

(c) Outpatient surgical facilities not part of an inpatient hospital structure shall meet the requirements of the Oregon Structural Specialty Code and the NFPA 101 and 99; and

(d) Outpatient surgery change areas. If the Functional Program defines an outpatient surgery component as part of the inpatient surgical suite, facilities shall be provided where outpatients may change from street clothing into hospital gowns and be prepared for surgery. This would include facilities for waiting, storage of clothing, toilets, and space for gowning. Separate clothes changing areas are not required when sufficient pre-operative holding cubicles are available;

(e) Phase 1 recovery. If the facility provides outpatient surgery, rooms or cubicles for postanesthesia care and recovery shall be provided. At least 3 feet shall be provided at each side of each bed or recovery lounge chair and at the foot of each bed as needed for circulation of staff and gurneys and wheelchairs. Recovery spaces shall be observable from a nursing station. Provide hand wash stations at a rate of one sink per six recovery beds; and

(f) Phase 2 recovery spaces. Dedicated recovery spaces or a dedicated recovery lounge shall be provided in facilities where the surgical program includes patients who do not require postanesthesia recovery or who have completed postanesthesia recovery, but need additional time for observation by staff prior to leaving the facility. Access to toilet facilities shall be provided.

(g) Administrative and public areas. The following shall be provided:

(A) A patient and visitor waiting room or area and information and reception desk or counter;

(B) Public telephone or other phone(s) usable by patients and visitors;

(C) Space(s) for private interviews relating to social services, credit and admission;

(D) Office space(s) for business transactions, records, and administrative and professional staff, and space and equipment for medical records dictating, recording and retrieving. These shall be separate from public and patient areas with provisions for confidentiality of records;

(E) Secure storage for staff clothing and personal effects; and

(F) General storage for administrative supplies.

(6) Dental operations: Dental surgery facilities not part of a multi-specialty surgical unit shall meet the requirements of sections (1) through (4) of this rule. Operating rooms dedicated to dental surgery shall also conform to the following:

(a) Operating rooms used for invasive maxillofacial and reconstructive dental procedures with general anesthesia shall meet the rules of an operating room for major surgical procedures, except that room size shall be a minimum of 250 square feet; and

(b) Operating rooms for extractions and minor operative procedures within limited anesthesia or conscious sedation shall provide a minimum of 132 square feet of clear space and include the following features:

(A) Four feet or more of clear space at one side of the dental chair and a clear access route for a stretcher or gurney; and

(B) Mechanical and electrical features of a minor surgical procedure room according to OAR 333-535-0300 and 333-535-0310.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 441.025 & 441.060

Stats. Implemented: ORS 441.025 & 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(11); HD 21-1987, f. & ef. 11-13-87; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0255; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09; PH 7-2016, f. & cert. ef. 2-24-16

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**Rule Caption:** Limited marijuana retail sales

**Adm. Order No.:** PH 8-2016

**Filed with Sec. of State:** 2-26-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 1-1-2016

**Rules Adopted:** 333-008-1500, 333-008-1501, 333-008-1505

**Rules Repealed:** 333-008-1500(T), 333-008-1501(T)

**Subject:** The Oregon Health Authority, Public Health Division is permanently adopting administrative rules in chapter 333, division 8 pertaining to limited marijuana retail sales due to the passage of SB 460 (Oregon Laws 2015, chapter 784).

The Oregon Health Authority is adopting OAR 333-008-1500 to allow for the retail sales of limited marijuana products; require warning posters and the provision of accompanying materials informing individuals of the potential health risks associated with the use of marijuana; apply a tax of 25 percent with the retail sale of marijuana starting on or after January 4, 2016; outline required documentation of marijuana retail products sold; and to require a dispensary to verify that the individual purchasing retail marijuana products is 21 years of age. OAR 333-008-1501 is being adopted to require dispensaries to post certain signs. OAR 333-008-1505 is being adopted to require the reporting of data to the Authority.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-008-1500

### Limited Marijuana Retail Sales

(1) For purposes of OAR 333-008-1500 through 333-008-1505 the following definitions apply:

(a) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from marijuana by:

(A) A mechanical extraction process;

(B) A chemical extraction process using a nonhydrocarbon-based solvent, such as vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or

(C) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide,

provided that the process does not involve the use of high heat or pressure.

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(b)(A) “Cannabinoid product” means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

(B) “Cannabinoid product” does not include:

- (i) Usable marijuana by itself;
- (ii) A cannabinoid concentrate by itself;
- (iii) A cannabinoid extract by itself; or
- (iv) Industrial hemp, as defined in ORS 571.300.

(c) “Dried leaves and flowers of marijuana” means the cured and dried leaves and flowers from a mature marijuana plant that have not been chemically altered or had anything added to them.

(d) “Immature marijuana plant” means a marijuana plant that is not flowering.

(e) “Individual” means a person 21 years of age or older who is not a patient or designated primary caregiver.

(f) “Limited marijuana retail product” means:

- (A) The seeds of marijuana;
- (B) The dried leaves and flowers of marijuana; and
- (C) An immature marijuana plant.

(g) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(h) “Medical marijuana dispensary” or “dispensary” means an entity registered with the Oregon Health Authority under ORS 475.314.

(i) “Photographic identification” means valid government issued identification with a photograph of the individual that includes the individual’s last name, first name, and date of birth.

(2) Unless the city or county in which the dispensary operates has adopted an ordinance prohibiting the sale of limited marijuana retail product, and notwithstanding any provision of ORS 475.314 or rules adopted thereunder that are in conflict, on or after October 1, 2015, a medical marijuana dispensary may sell limited marijuana retail product to an individual if the dispensary:

(a) Five days prior to selling any limited marijuana retail product notifies the Authority, on a form prescribed by the Authority, that the dispensary intends to sell limited marijuana retail product;

(b) Examines the photo identification of all individuals before entering the dispensary to ensure the individual is 21 years of age or older;

(c) Verifies at the time of sale that the individual is 21 years of age or older by examining the individual’s photographic identification;

(d) Sells no more than:

(A) One-quarter ounce of dried leaves and flowers per day to the same individual; and

(B) Four immature marijuana plants to the same individual at any time between October 1, 2015 and December 31, 2016.

(3) A dispensary may not:

(a) Offer, sell or provide a cannabinoid product, extract or concentrate to an individual; or

(b) Give away a limited marijuana retail product to an individual. (4) For each limited marijuana retail product sale, a dispensary must document:

(A) The limited marijuana retail product that was sold and the amount of dried leaves or flowers in metric units, amount of seeds or number of plants, as applicable;

(B) The birth date of the individual who bought the product;

(C) The sale price; and

(D) The date of sale.

(5) A dispensary may sell non-marijuana items to an individual, such as but not limited to branded clothing.

(6) A dispensary is not required to maintain a record of the name of the individual to whom a limited marijuana retail product was sold but the dispensary must have a system in place that is outlined in their policies and procedures for ensuring that an individual is not sold more than one-quarter ounce of dried leaves and flowers in a day or more than four immature plants.

(7) Records of sale transactions and the documentation required in section (4) of this rule shall be maintained in accordance with the Authority’s record keeping requirements for dispensaries.

(8) A dispensary that chooses to sell limited marijuana retail product to individuals must:

(a) Post at the point the sale, the following posters prescribed by the Authority, measuring 22 inches high by 17 inches wide that can be downloaded at [www.healthoregon.org/marijuana](http://www.healthoregon.org/marijuana):

(A) A Pregnancy Warning Poster; and

(B) A Poisoning Prevention Poster.

(b) Post at the point of sale a color copy of the “Educate Before You Recreate” flyer measuring 22 inches high by 17 inches wide that can be downloaded at [WHATSLEGALOREGON.COM](http://WHATSLEGALOREGON.COM).

(c) Distribute to each individual at the time of sale, a Marijuana Information Card, prescribed by the Authority, measuring 3.5 inches high by 5 inches long that can be downloaded at [www.healthoregon.org/marijuana](http://www.healthoregon.org/marijuana).

(d) Comply with all rules in OAR chapter 333, division 8 that apply to dispensaries including but not limited to all security, testing, labeling, packaging and documentation rules except rules that:

(A) Prohibit individuals from entering or being present in a dispensary; and

(B) Prohibit a dispensary from transferring marijuana to an individual.

(e) On and after January 4, 2016:

(A) Collect a tax of 25 percent of the retail sales price of a limited marijuana retail product in the same manner that a marijuana retailer that holds a license under section 22, chapter 1, Oregon Laws 2015, collects the tax imposed under section 2, chapter 699, Oregon Laws 2015;

(B) Comply with all requirements in sections 1 through 13, chapter 699, Oregon Laws 2015, and any applicable administrative rules adopted by the Department of Revenue; and

(C) If requested by the Authority, sign an authorization to permit the sharing of information between the Authority and the Department of Revenue concerning tax collection required by section 21a, chapter 699, Oregon Laws 2015.

(9) The Authority may, if it determines that a dispensary has violated OAR 333-008-1500 through 333-008-1505:

(a) Prohibit a dispensary from selling limited marijuana retail product; and

(b) Take any action authorized under OAR 333-008-1275.

(10) A dispensary may not sell limited marijuana retail product to individuals if the dispensary is located in a city or county that has adopted an ordinance prohibiting such sales in accordance with section 3, chapter 784, Oregon Laws 2015.

(11) A dispensary that has had its registration suspended may not sell limited marijuana retail product while the registration is suspended.

Stat. Auth.: ORS 475.314 & 475.338, OL 2015, ch. 784 & sec. 21a, ch. 699, OL 2015

Stats. Implemented: ORS 475.314, OL 2015, ch. 784 & sec. 21a, ch. 699, OL 2015

Hist.: PH 16-2015(Temp), f. & cert. ef. 9-22-15 thru 3-19-16; PH 8-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1501

### Dispensary Signs

(1) Between October 1, 2015 and December 31, 2016, a registered dispensary must post signs at any point of public entry that read:

(a) “Medical Marijuana Patients Only”; or

(b) If a dispensary has properly notified the Authority that it intends to sell limited marijuana retail products:

(A) “Medical Marijuana Patients and Persons 21 and Older Permitted”; and

(B) “NO PERSON UNDER 21 PERMITTED ON THE PREMISES WITHOUT AN OMMP CARD”.

(2) The signs described in section (1) of this rule must be:

(a) In bold, 80 point Times New Roman, Helvetica or Arial font; and

(b) Affixed to the exterior of the dispensary in a conspicuous location that can be easily seen by the public from outside the dispensary.

Stat. Auth.: ORS 475.314 & 475.338, OL 2015, ch. 784

Stats. Implemented: ORS 475.314, OL 2015, ch. 784

Hist.: PH 16-2015(Temp), f. & cert. ef. 9-22-15 thru 3-19-16; PH 8-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1505

### Reporting Requirements

(1) A dispensary that is selling limited marijuana retail products to individuals must by April 10, 2016, July 10, 2016, October 10, 2016, and December 31, 2016, report to the Authority, in a manner prescribed by the Authority, the information required to be documented in OAR 333-008-1500(4) for the previous quarter.

(2) A dispensary must submit, by April 10, 2016, the information required to be documented in OAR 333-008-1500(4) for October 1, 2015 through December 31, 2015.

(3) A dispensary selling limited marijuana retail products to individuals must provide proof to the Authority, by April 10, 2016, and each quarter thereafter by the 10th of the month, in a manner prescribed by the Authority, that it has paid the tax required by the Department of Revenue for the previous quarter. Documentation may include but is not limited a

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copy of the marijuana tax returns, reports, payment vouchers, payment receipts or any related documents filed with the Department.

Stat. Auth.: ORS 475B.450 & 475B.525, OL 2015, ch. 784

Stats. Implemented: ORS 475B.450, OL 2015, ch. 784

Hist.: PH 8-2016, f. 2-26-16, cert. ef. 3-1-16

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**Rule Caption:** Medical Marijuana Growers, Processors, Dispensaries and Cards

**Adm. Order No.:** PH 9-2016

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**Rules Amended:** 333-008-0010, 333-008-0020, 333-008-0025, 333-008-0030, 333-008-0040, 333-008-0045, 333-008-0080, 333-008-0110, 333-008-1000, 333-008-1010, 333-008-1020, 333-008-1030, 333-008-1040, 333-008-1050, 333-008-1060, 333-008-1070, 333-008-1110, 333-008-1190, 333-008-1200, 333-008-1220, 333-008-1225, 333-008-1230, 333-008-1245

**Rules Repealed:** 333-008-0000, 333-008-0060, 333-008-0070, 333-008-0120, 333-008-0499(T), 333-008-0500(T), 333-008-0510(T), 333-008-0520(T), 333-008-0530(T), 333-008-1080, 333-008-1090, 333-008-1100, 333-008-1120, 333-008-1210, 333-008-1240, 333-008-1250, 333-008-1260, 333-008-1270, 333-008-1275, 333-008-1280, 333-008-1290, 333-008-9000(T), 333-008-0010(T), 333-008-0025(T), 333-008-1010(T), 333-008-1060(T), 333-008-1070(T), 333-008-1400

**Subject:** The Oregon Health Authority (OHA), Public Health Division is permanently adopting, amending and repealing administrative rules in chapter 333, division 8 pertaining to medical marijuana growers, processors, dispensaries and cards due to the passage of HB 3400 (Oregon Laws 2015, chapter 614).

House Bill 3400, passed by the 2015 Oregon Legislature, made many changes to the Oregon Medical Marijuana Act, ORS 475.300 to 475.346 and gave the Oregon Health Authority the regulatory authority to inspect and regulate medical marijuana growers and to register and regulate processors, which were previously unregulated in Oregon.

Other major components of the rules include:

- Plant limits for medical marijuana grow site addresses. Plant limits vary depending on whether or not growers were producing at an address before January 1, 2015, and the location of the grow site.
- Changes in fees for medical marijuana grow site registration and new fees for processors.
- Required background checks for individuals who have a financial interest in a business entity that is the owner of a processing site or dispensary.
- Health and safety requirements for medical marijuana producers and processors.
- More specific requirements for registered processing sites and dispensaries for inventory tracking systems.

- Inventory and transfer transaction reporting requirements for growers, processing sites and dispensaries.

- Limitations on the form of marijuana that can be used at work by an OMMP patient who is also an employee of a registered processing site or dispensary.

- Ability to assess civil penalties on patient, caregivers, growers, processing sites and dispensaries and against individuals not complying with the registration requirements in ORS 475.300 to 475.346 and HB 3400.

- Advertising limitations for growers, processing sites and dispensaries.

Additional amendments to existing administrative rules related to medical marijuana cards and medical marijuana dispensaries are also included as necessary to conform with the other changes to administrative rule.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-008-0010

### Definitions

For the purposes of OAR chapter 333, division 8 the following definitions apply unless otherwise indicated:

(1) "Advertising" means publicizing the trade name of a PRMG, registered processing site or dispensary together with words or symbols referring to marijuana or publicizing the brand name of marijuana or a medical cannabinoid product, concentrate or extract in any medium.

(2) "Applicant" means, as applicable to the registration being applied for:

(a) An individual applying for a registry identification card under ORS 475B.415.

(b) An individual applying for a grow site registration under ORS 475B.420.

(c) A person applying for a marijuana processing site registration under ORS 475B.435.

(d) A person applying for a medical marijuana dispensary registration under ORS 475B.450.

(3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(4) "Attending physician statement" or "APS" means the form, prescribed by the Authority and signed by an attending physician, that states the individual has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the individual's debilitating medical condition.

(5) "Authority" means the Oregon Health Authority.

(6) "Business day" means Monday through Friday excluding legal holidays.

(7) "CBD" means cannabidiol.

(8) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.

(9) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process;

(b) A chemical extraction process using a nonhydrocarbon-based solvent, such as vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;

(c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or

(d) Any other process authorized in these rules.

(10) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried leaves or flowers of marijuana have been incorporated.

(11) "Cannabinoid extract" means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane; or

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure.

(12) "Cartoon" means any drawing or other depiction of an object, person, animal, creature or any similar caricature that satisfies any of the following criteria:

(a) The use of comically exaggerated features;



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(b) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(c) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds or transformation.

(13) "Commission" means the Oregon Liquor Control Commission.

(14) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(15) "Database" means the electronic system established pursuant to ORS 475B.458, in which the Authority stores the information PRMGs, registered processing sites and dispensaries are required to submit under these rules.

(16) "Debilitating medical condition" means:

(a) Cancer, glaucoma, a degenerative or pervasive neurological condition, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of those medical conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

(c) Post-traumatic stress disorder; or

(d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the Authority by rule or approved by the Authority pursuant to a petition filed under OAR 333-008-0090.

(17) "Delivery" has the meaning given that term in ORS 475B.410.

(18)(a) "Designated primary caregiver" means an individual who:

(A) Is 18 years of age or older;

(B) Has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition; and

(C) Is designated as the person responsible for managing the well-being of a person who has been diagnosed with a debilitating medical condition on that person's application for a registry identification card or in other written notification submitted to the Authority.

(b) "Designated primary caregiver" does not include a person's attending physician.

(19) "Direct interest" means an interest that is held in the name of the individual.

(20) "Domicile" means the place an individual intends as his or her fixed place of abode or habitation where he or she intends to remain and to which, if absent, the individual intends to return.

(21) "Elementary school" means a learning institution containing any combination of grades Kindergarten through 8.

(22) "Employee":

(a) Means any individual, including an alien, employed for remuneration or under a contract of hire, written or oral, express or implied, by an employer.

(b) Does not mean an individual who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as adequate consideration for the services performed for a religious or charitable institution or a governmental entity.

(23) "Food stamps" means the Supplemental Nutrition Assistance Program as defined and governed by ORS 411.806 through 411.845.

(24) "Grandfathered grow site" means a grow site registered by the Authority that has been approved by the Authority under OAR 333-008-0520 that can have up to:

(a) 24 mature marijuana plants if the location is within city limits and zoned residential; or

(b) 96 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

(25) "Grow site" means a location registered under ORS 475B.420 where marijuana is produced for use by a patient or, with permission from a patient, for transfer to a registered processing site or dispensary.

(26) "Grow site registration card" means a card issued by the Authority that identifies the address of a marijuana grow site and the PRMG.

(27) "Immature marijuana plant" means a marijuana plant that is not flowering.

(28) "Indirect interest" means:

(a) An interest that is owned by a business entity that is owned, in whole or in part and either directly or indirectly, through one or more other intermediate business entities, by the individual; or

(b) An interest held in the name of another but the benefits of ownership of which, the individual is entitled to receive.

(29) "Individual who has a financial interest" in a business entity that owns a processing site or dispensary means:

(a) If the business entity is a corporation:

(A) Stockholders: Any individual who owns, directly or indirectly, 10 percent or more of the outstanding stock of such corporation.

(B) Directors: Any director of the corporation who receives compensation for acting in that capacity or who owns, directly or indirectly, 5 percent or more of the outstanding stock of such corporation.

(C) Officers: Any officer of the corporation who receives compensation for acting in that capacity or who owns, directly or indirectly, 5 percent or more of the outstanding stock of such corporation.

(b) If the business entity is a trust:

(A) Trustees: Any individual who is a trustee of the trust and who receives compensation for acting in that capacity and any individual who owns, directly or indirectly, 10 percent or more of the ownership interests of a business entity that is a trustee of the trust and that receives compensation for acting in that capacity.

(B) Beneficiaries: Any individual who is entitled to receive, directly or indirectly, income or benefit from the trust.

(c) If the business entity is a partnership:

(A) General Partners: Any individual who is a general partner of the partnership and who receives compensation for acting in that capacity or who owns 5 percent or more of the ownership interests of the partnership and any individual who owns, directly or indirectly, 10 percent or more of the ownership interests of a business entity that is a general partner of the partnership and that receives compensation for acting in that capacity or owns 5 percent or more of the ownership interests of the partnership.

(B) Limited Partners: Any individual who is a limited partner of the partnership and who owns 10 percent or more of the ownership interests of the partnership and any individual who owns, directly or indirectly, 10 percent or more of the ownership interests of a business entity that is a limited partner of the partnership and that owns 10 percent or more the ownership interests of the partnership.

(d) If the business entity is a joint venture: Any individual who is entitled to receive, directly or indirectly, income or benefit from the joint venture.

(e) If the business entity is a limited liability company:

(A) Managers: Any individual who is a manager of the limited liability company and who receives compensation for acting in that capacity or who owns 5 percent or more of the ownership interests of the limited liability company and any individual who owns, directly or indirectly, 10 percent or more of the ownership interests of a business entity that is a manager of the limited liability company and that receives compensation for acting in that capacity or owns 5 percent or more of the ownership interests of the limited liability company.

(B) Members: Any individual who is a member of the limited liability company and who owns 10 percent or more of the ownership interests of the limited liability company and any individual who owns, directly or indirectly, 10 percent or more of the ownership interests of a business entity that is a member of the limited liability company and that owns 10 percent or more of the ownership interests of the limited liability company.

(f) Immediate family members: Any person, 18 years of age or older, involved in a marijuana processing site or dispensary, in any capacity, who is a member of the immediate family of any individual who otherwise has a financial interest in the business entity that owns the marijuana processing site or dispensary. A person is a member of the immediate family of the individual if the person receives more than 50 percent of his or her financial support from that individual.

(g) Landlord: Any individual who is a landlord of a processing site or dispensary and who is entitled to receive 40 percent or more of the proceeds from the marijuana processing site or dispensary as a part of lease payments or rent, any individual who owns, directly or indirectly, 10 percent or more of the ownership interests of a business entity that is a landlord of a processing site or dispensary and that is entitled to receive 40 percent or more of the proceeds from the marijuana processing site or dispensary as part of lease payments or rent, and any individual who the Authority finds, based on reasonably reliable information, exerts influence over the operation of the marijuana processing site or dispensary through a landlord-tenant relationship and receives a portion of the proceeds from that marijuana processing site or dispensary.

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(h) Other forms of business organization: If the form of business entity is not expressly addressed in subsections (a) to (g) of this section, the Authority will, in determining individuals who have a financial interest in the business entity, apply the portions of this definition applicable to the business entity that are most similar to the subject business entity, interpreting the terminology and concepts of this definition in the context of the subject business entity as necessary or appropriate.

(30) "Limited access area" means:

(a) For a dispensary a building, room, or other contiguous area on a dispensary premises where a marijuana item is present but does not include the area where marijuana items are transferred to a patient or designated primary caregiver.

(b) For a processing site a building, room, or other contiguous area on a processing site premises where a marijuana item is present.

(31)(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(32) "Marijuana item" means marijuana, cannabinoid concentrates, cannabinoid extracts, medical cannabinoid products, and immature marijuana plants.

(33) "Marijuana processing site" means a marijuana processing site registered under ORS 475B.435 or a site for which an applicant has submitted an application for registration under ORS 475B.435.

(34) "Mature marijuana plant" means a marijuana plant that is not an immature marijuana plant.

(35)(a) "Medical cannabinoid product" means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to a person's skin or hair, that contains cannabinoids or dried leaves or flowers of marijuana.

(b) "Medical cannabinoid product" does not include:

- (A) Usable marijuana by itself;
- (B) A cannabinoid concentrate by itself;
- (C) A cannabinoid extract by itself; or
- (D) Industrial hemp, as defined in ORS 571.300.

(36) "Medical marijuana dispensary" means a medical marijuana dispensary registered under ORS 475B.450 or a site for which an applicant has submitted an application for registration under ORS 475B.450.

(37) "Medical use of marijuana" means the production, processing, possession, delivery, or administration of marijuana, or use of paraphernalia used to administer marijuana to mitigate the symptoms or effects of a debilitating medical condition.

(38) "Minor" means an individual under the age of 18.

(39) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Authority under ORS chapter 414.

(40) "OMMP" means the section within the Authority that administers the provisions of ORS 475B.400 to 475B.525, the applicable provisions of 475B.550 to 475B.590, 475B.600 to 475B.655, and the rules in OAR chapter 333, divisions 7 and 8.

(41) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(42) "Patient" has the same meaning as "registry identification cardholder."

(43) "Person designated to produce marijuana by a registry identification cardholder" or "person designated to produce marijuana by a patient" mean a person designated to produce marijuana by a patient under ORS 475B.420 who produces marijuana for that patient at an address:

- (a) Other than the address where the patient resides; or
- (b) Where more than 12 mature marijuana plants are produced.

(44) "Person responsible for a marijuana grow site," or "PRMG" mean any individual designated by a patient to produce marijuana for the patient, including a patient who identifies him or herself as a person responsible for the marijuana grow site.

(45) "Personal agreement" means a document, as described in ORS 475B.425 signed and dated by a patient, assigning a patient's right to possess seeds, immature marijuana plants and usable marijuana to a PRMG.

(46) "Premises" means a location registered by the Authority as a processing site or dispensary under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.

(47) "Primary responsibility" as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS chapter 677, the patient's physician assistant licensed under ORS chapter 677, or the patient's nurse practitioner licensed under ORS chapter 678; and

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(48) "Process" means the compounding or conversion of marijuana into medical cannabinoid products, cannabinoid concentrates or cannabinoid extracts.

(49) "Production" or "growing" means:

(a) Planting, cultivating, growing, trimming or harvesting marijuana; or

(b) Drying marijuana leaves or flowers.

(50) "Registry identification card" means a document issued by the Authority under ORS 475B.415 that identifies a person authorized to engage in the medical use of marijuana, and, if the person has a designated primary caregiver under ORS 475B.418, the person's designated primary caregiver.

(51) "Registry identification cardholder" means a person to whom a registry identification card has been issued under ORS 475B.415(5)(a) and has the same meaning as patient.

(52) "Remuneration" means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.

(53) "Replacement card" means a new card issued in the event that:

(a) A patient's registry identification card, a designated primary caregiver's or a PRMG's identification card, or grow site registration card is lost or stolen; or

(b) A patient's designation of primary caregiver, PRMG or grow site has changed.

(54) "Resident" means an individual who has primary domicile within this state.

(55) "Safe" means:

(a) A metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered premises that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(b) A vault; or

(c) A refrigerator or freezer capable of being locked for storing edibles or other finished products that require cold storage that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds; and

(C) If it has a glass that makes up part or all of the door or exterior walls, the glass is rated unbreakable.

(56) "Secondary school" means a learning institution containing any combination of grades 9 through 12 and includes those institutions that provide junior high schools which include 9th grade.

(57) "Secure area" means a room:

(a) With doors that are kept locked and closed at all times except when the doors are in use;

(b) Where access is only permitted as authorized in these rules; and

(c) Not visible from outside the room or within public view.

(58) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(59) "These rules" means OAR 333-008-0010 to 333-008-0750.

(60) "THC" means tetrahydrocannabinol.

(61)(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing marijuana.

(62) "Vault" means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

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(63) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

(64) "Zoned for residential use" means the only primary use allowed outright in the designated zone is residential.

Stat. Auth.: ORS 475B.525

Stats. Implemented: ORS 475B.400 – 475B.525

Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 16-2015(Temp), f. & cert. ef. 9-22-15 thru 3-19-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0020

### New Registry Identification Card Application Process

(1) To apply for a registry identification card an individual must submit the following:

(a) An application form, prescribed by the Authority, signed and dated by the applicant.

(b) A legible copy of the individual's valid government issued photographic identification that includes the applicant's last name, first name, and date of birth.

(c) An APS or written documentation that may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Authority, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition.

(d) Proof of residency in accordance with OAR 333-008-0022.

(e) If applicable, a completed and notarized "Declaration of Person Responsible for Minor" form for a person under 18 years of age, signed and dated by the minor's parent or legal guardian.

(f) An application fee as specified in OAR 333-008-0021.

(g) If applicable, documentation required in OAR 333-008-0021 to qualify for a reduced fee.

(2) If the applicant is designating a primary caregiver, the applicant must complete the caregiver portion of the application and submit a legible copy of the designated primary caregiver's valid government issued photographic identification that includes the caregiver's last name, first name, and date of birth. The applicant may also designate an organization that provides hospice, palliative or home health care services, or a residential facility as defined in ORS 443.400, under ORS 475B.419, as an additional caregiver.

(3) If an applicant intends to produce marijuana for him or herself or designate another person to produce marijuana for him or her, the applicant or the individual designated to be the PRMG must complete the grow site registration portion of the application and submit:

(a) A legible copy of the designated PRMG's valid government issued photographic identification that includes the last name, first name, and date of birth.

(b) Proof of residency as required by OAR 333-008-0022.

(c) The grow site address.

(d) If the grow site is within city limits, documentation that shows the zoning designation for the grow site address.

(e) Except for a patient producing marijuana for him or herself at his or her residence, the grow site registration fee as specified in OAR 333-008-0021(3), unless the Authority has established an online payment system for grow site registration in which case the fee must be paid online in accordance with instructions from the Authority.

(4) If the Authority establishes an online payment system for payment of a grow site registration fee the Authority must notify the person designated on the application as the PRMG with instructions for how to pay the fee online and the deadline by which the fee must be paid.

(5) Applications must be mailed to the address listed in section (6) of this rule or hand-delivered to the OMMP dropbox at 800 N.E. Oregon St., Portland, Oregon 97232, unless the Authority has established an electronic application process at which time applications and accompanying documentation must be submitted electronically.

(6) The application forms referenced in this rule may be downloaded at [www.healthoregon.org/ommp](http://www.healthoregon.org/ommp) or obtained by contacting OMMP at PO Box 14450, Portland, OR 97293-0450 or by calling 971-673-1234.

(7) Acceptable forms of current government issued photographic identification include but are not limited to:

(a) Driver's license;

(b) State identification card;

(c) Passport; or

(d) Military identification card.

Stat. Auth.: ORS 475B.415, 475B.419, 475B.525

Stats. Implemented: ORS 475B.415

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05; PH 17-2005, f. 11-25-05, cert. ef. 12-1-05; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 14-2010(Temp), f. & cert. ef. 7-6-10 thru 12-31-10; PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 9-2013(Temp), f. & cert. ef. 10-2-13 thru 3-30-14; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 16-2014, f. & cert. ef. 6-5-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0021

### Patient and PRMG New and Renewal Fees

(1) All fees referenced in this rule are non-refundable.

(2) New and Renewal Application Fee. A patient must pay a \$200 application fee unless the applicant qualifies for a reduced fee under section (3) of this rule.

(3) Reduced Fees.

(a) An applicant receiving SSI benefits: \$20. In order to qualify for the reduced fee the applicant must submit at the time of application a copy of a current monthly SSI benefit statement showing dates of coverage.

(b) An applicant enrolled in OHP: \$50. In order to qualify for the reduced fee the applicant must submit a copy of the applicant's current eligibility statement or card.

(c) An applicant receiving food stamp benefits through the Oregon SNAP: \$60. In order to qualify for the reduced fee the applicant must submit at the time of application current proof of his or her food stamp benefits.

(d) An applicant receiving service-connected compensation from the United States Department of Veteran's Affairs (VA) based on a finding by the VA of 100 percent service-connected disability: \$20. In order to qualify for the reduced fee the applicant must provide a copy of the applicable determination from the VA.

(e) An applicant receiving service-connected compensation from the VA based on a finding by the VA of total 100 percent disability on the basis of individual unemployability: \$20. In order to qualify for the reduced fee the applicant must provide a copy of the applicable determination from the VA.

(f) An applicant receiving a needs-based pension from the VA based on a finding by the VA of non-service connected disability: \$20. In order to qualify for the reduced fee the applicant must provide a copy of the applicable determination from the VA.

(g) An applicant who submits proof to the Authority of having served in the Armed Forces of the United States and of having been diagnosed with post-traumatic stress disorder: \$20.

(4) Grow Site Registration Fee:

(a) Until April 1, 2016: \$50;

(b) On and after April 1, 2016, \$200.

(5) Replacement Card Fees. If a patient, designated primary caregiver or PRMG needs to obtain a replacement card the fee is \$100. If the patient qualifies for a reduced application fee of \$20, the fee to receive any of the replacement cards is \$20.

(6) All fees must be paid at the time a new or renewal application is submitted, or when an application to add or change a PRMG is submitted under OAR 333-008-0047 and may be paid in the form of bank check, money order, or personal check, unless the Authority has established an online payment system in which case payments must be made online. The Authority does not accept responsibility for payments that are lost in the mail or stolen in transit.

(7) The Authority shall notify an applicant who submits a reduced application fee if the applicant is not eligible for the reduced fee and will allow the applicant 14 calendar days from the date of notice to pay the correct application fee or submit current valid proof of eligibility for a reduced fee.

Stat. Auth.: ORS 475B.415, 475B.420, 475B.525

Stats. Implemented: ORS 475B.415

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0022

### Proof of Residency

(1) Patient Applicants. If an applicant does not have a valid Oregon driver license or Oregon identification card, the applicant must submit documentation that shows the applicant is a resident of Oregon, such as but not

# ADMINISTRATIVE RULES

limited to a current lease agreement or current utility bill that has the applicant's name and address.

(2) Person Responsible for a Marijuana Grow Site. A residency form must be completed by the PRMG and submitted by the patient.

(a) If a PRMG was first registered with the Authority as a PRMG on or before January 1, 2015, the person must have been a resident of Oregon continuously for at least one year immediately prior to the application being submitted to the Authority.

(b) If a PRMG was not first registered with the Authority as a PRMG on or before January 1, 2015, the person must have been a resident of Oregon continuously for at least two years immediately prior to the application being submitted to the Authority.

(c) If a PRMG does not have an Oregon driver's license or Oregon identification card, or the person's Oregon driver's license or Oregon identification card was not issued one or two years prior to the date of application, as applicable, the Authority will attempt to verify whether the person has been a resident for the required length of time and may require the person to submit additional information to the Authority to prove residency.

(3) Residency must be maintained by patients and PRMGs while registered with the Authority.

Stat. Auth.: ORS 475B.415, 475B.420, 475B.525  
Stats. Implemented: ORS 475B.415  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0023

### Patient Application Review Process

(1) The Authority must review a patient application to determine if it is complete.

(a) If an applicant does not provide all the information required in OAR 333-008-0020 or pay the applicable fee the Authority must notify the applicant of the information that is missing or the fee that was not paid, and allow the applicant 14 calendar days to submit the missing information.

(b) If an applicant does not provide the information requested in subsection (1)(a) of this rule the application must be denied in accordance with OAR 333-008-0035.

(2) The Authority may verify the information on each application, verify any accompanying documentation submitted with an application, or request additional information from the applicant or other individuals named on the application.

(3) If the Authority is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010 the applicant will be allowed 30 days to submit a new APS or written documentation from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475B.415(8) and OAR 333-008-0035.

(4) If an applicant fails to submit information necessary for the Authority to verify information on the application, fails to submit information necessary to verify any accompanying documentation submitted with an application, or fails to cooperate with the Authority in obtaining information, such as but not limited to refusing to sign an authorization for disclosure of medical records within timeframes established by the Authority, the Authority will reject the application as incomplete.

(5) An applicant whose application is rejected as incomplete may reapply at any time. If the individual reapplies within a year the application fee may be applied toward a new application.

(6) The authority shall approve or deny an application within 30 days after receiving a complete application.

Stat. Auth.: ORS 475B.415, 475B.525  
Stats. Implemented: ORS 475B.415  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0025

### Person Responsible for a Marijuana Grow Site Criteria; Grow Site Registration Application Review Process

(1) In order to be a PRMG an individual must:

(a) Be 21 years of age or older.

(b) Meet the residency requirements as described in OAR 333-008-0022.

(c) Not have been convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II:

(A) Within the previous two years; or

(B) More than once.

(2) In addition to the application review required in OAR 333-008-0023 the Authority must:

(a) Conduct a criminal background check on any PRMG.

(b) Verify the PRMG's residency and age.

(c) Verify the zoning of the grow site address if the grow site is within city limits.

(d) Determine the number of plants that are permitted at the grow site address.

(3) Unless the Authority has received a request for a grandfathered grow site address under OAR 333-008-0500, the grow site plant limits, on and after March 1, 2016, are as follows:

(a) A maximum of 12 mature marijuana plants if the grow site location is within city limits and zoned residential; or

(b) A maximum of 48 mature marijuana plants if the grow site location is within city limits but not zoned residential or outside city limits.

(4) In order to determine plant limits at a grow site address the Authority must verify the number of PRMGs producing medical marijuana at a grow site address and the number of patients each PRMG is growing for. If the number of PRMGs and number of patients each PRMG is producing for exceeds the plant limits in section (3) of this rule, the applicant will be notified that the grow site address is not eligible for registration.

(5) For purposes of determining plant limits the Authority presumes that a PRMG produces six mature plants for each patient.

(6) The Authority must notify a patient if a PRMG or a grow site address is ineligible for registration and the patient will be allowed 14 calendar days to identify another PRMG or grow site address in accordance with OAR 333-008-0047.

Stat. Auth.: ORS 475B.420, 475B.525  
Stats. Implemented: ORS 475B.420

Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 16-2015(Temp), f. & cert. ef. 9-22-15 thru 3-19-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0030

### Approval of New and Renewal Patient Applications

(1) If the Authority approves a patient application, the Authority shall issue a serially numbered registry identification card to the patient within five business days.

(2) The registry identification card must include, but is not limited to:

(a) The patient's name, address, and date of birth;

(b) The effective date, date of issuance, and expiration date of the registry identification card; and

(c) The designated primary caregiver's name, address, and date of birth, if applicable.

(3) If a patient has specified a designated primary caregiver the Authority shall issue an OMMP identification card for the designated primary caregiver.

Stat. Auth.: ORS 475B.415, 475B.525  
Stats. Implemented: ORS 475B.415

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; OHD 21-2001(Temp), f. & cert. ef. 10-12-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 12-2004(Temp), f. & cert. ef. 4-1-04 thru 8-2-04; Administrative correction 8-19-04; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0033

### Approval of New or Renewal PRMG and Grow Site Application; Change of PRMG

(1) The Authority must register a PRMG and a grow site address listed on an application if:

(a) The PRMG:

(A) Meets the age and residency requirements;

(B) Passes the criminal background check;

(C) Has not violated a provision of ORS 475B.400 to 475B.525, ORS 475B.580, ORS 475B.650, OAR chapter 333, division 7, these rules, or an ordinance adopted pursuant to ORS 475B.500; and

(D) Pays the applicable fee.

(b) The grow site address does not exceed the plant limits in ORS 475B.428(3) or (4).

(2) If the Authority registers a marijuana grow site it will issue an identification card and a grow site registration card that contains at least the following information:

(a) The PRMG's name, address, date of birth, and identification card number.

(b) The effective date, date of issuance, and expiration date of the identification card.

(c) The grow site address.

(d) The patient's registry identification card number.

(3) A PRMG, except for a patient growing only for him or herself at his or her residence who is not transferring usable marijuana, seeds or

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immature plants to a registered processing site or dispensary, must create an online account with the Authority through which the individual must at a minimum submit the information required in OAR 333-008-0630.

(4) The Authority must notify a PRMG at the time the grow site is registered the current number of mature marijuana plants permitted at the grow site address.

(5) The Authority shall also notify a patient if the PRMG and grow site address has been approved.

(6) The Authority may only register one grow site per patient, and may only register grow sites in Oregon.

Stat. Auth.: ORS 475B.420, 475B.525

Stats. Implemented: ORS 475B.420

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0035

### Denial of Patient Application

(1) The Authority may deny a new or renewal patient application if:

(a) The applicant or patient did not provide the information required to be submitted in OAR 333-008-0020;

(b) The Authority determines that the information provided was falsified;

(c) The Authority determines that the applicant or patient violated a provision of ORS 475B.400 to 475B.525, ORS 475B.580, ORS 475B.650, OAR chapter 333, division 7, these rules, or an ordinance adopted pursuant to ORS 475B.500.

(2) An individual whose application is denied may not reapply for at least six months from the date of the denial unless otherwise authorized by the Authority.

Stat. Auth.: ORS 475B.415, 475B.525

Stats. Implemented: ORS 475B.415

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0037

### Denial of Designation of Caregiver or Person Responsible for a Marijuana Grow Site; Denial of Grow Site Registration

(1) The Authority may deny a designation of a primary caregiver made under ORS 475B.418 if the Authority determines that the designee or the patient violated a provision of ORS 475B.400 to 475B.525, ORS 475B.580, ORS 475B.650, OAR chapter 333, division 7, these rules, or an ordinance adopted pursuant to ORS 475B.500.

(2) A person whose designation has been denied may not be designated as a primary caregiver under ORS 475B.418 for six months from the date of the denial unless otherwise authorized by the Authority.

(3) The Authority may deny a designation of a PRMG if the Authority determines that the applicant or the PRMG violated a provision of ORS 475B.400 to 475B.525, ORS 475B.580, ORS 475B.650, OAR chapter 333, division 7, these rules, or an ordinance adopted pursuant to ORS 475B.500.

(4) The Authority may deny the registration of a PRMG and grow site address if the:

(a) Grow site registration fee has not been paid; or

(b) Registration would result in the grow site address exceeding the maximum plant limits permitted in ORS 475B.428(3) or (4).

Stat. Auth.: ORS 475B.415, 475B.420 and 475B.525

Stats. Implemented: ORS 475B.415, 475B.420

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0040

### Annual Renewal

(1) A patient shall register on an annual basis to maintain active registration status by submitting:

(a) A renewal application prescribed by the Authority;

(b) An APS signed by the patient's attending physician within 90 days prior to the expiration date of the patient's current card, reconfirming the patient's debilitating medical condition and that the medical use of marijuana mitigates the symptoms of the patient's debilitating medical condition; and

(c) The additional information and fees required in OAR 333-008-0020.

(2) A renewal application may be submitted by mail at PO Box 14450, Portland, OR 97293-0450 or in person at the OMMP drop box located at 800 N.E. Oregon St., Portland, OR 97232.

(3) Between 60 to 90 calendar days prior to expiration, the Authority shall notify the patient of the upcoming expiration date.

(4) If a renewal application and accompanying information is not received by the expiration date on the patient's card, the patient's card and all other associated OMMP identification cards, if any, are expired. The expiration date may be extended, due to personal hardship, at the discretion of the Authority.

(5) The Authority shall review and verify the renewal application information in the same manner as specified in OAR 333-008-0023 and 333-008-0025 and shall approve or deny the application in accordance with OAR 333-008-0030 to 333-008-0037, as applicable.

Stat. Auth.: ORS 475B.415, 475B.418, 475B.420 and 475B.525

Stats. Implemented: ORS 475B.415 and 475B.418, 475B.420

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0045

### Notification of Changes

(1) Patient notification responsibilities.

(a) A patient must notify the Authority within 10 calendar days of any change in the patient's name, mailing address, electronic mail address, telephone number, attending physician, designated primary caregiver, PRMG, grow site address or residency, on a form prescribed by the Authority.

(b) If the patient is designating a caregiver for the first time or designating a different caregiver, the patient must include all the information and documentation specified in the form and required under OAR 333-008-0020.

(c) If a patient is adding or changing a PRMG or grow site address the patient must comply with OAR 333-008-0047.

(2) Caregiver notification responsibilities. A designated primary caregiver must notify the Authority within 10 calendar days of any change in the caregiver name, mailing address, electronic mail address, or telephone number.

(3) Person responsible for a marijuana grow site notification responsibilities. A PRMG must notify the Authority within 10 calendar days of:

(a) Any change in the person's name, mailing address, electronic mail address, telephone number, or residency.

(b) A conviction of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(4) If the Authority is notified by the patient that the patient has terminated the designation of a primary caregiver or a PRMG the Authority must notify the individuals confirming the termination, informing the individual that his or her card is no longer valid, and requesting that the card be returned to the Authority within seven calendar days. In addition the Authority must notify the PRMG whether the termination affects the person's ability to produce marijuana for other patients at the grow site address, in accordance with ORS 475B.428(6).

(5) Change in Medical Condition.

(a) If an attending physician notifies the Authority that a patient no longer has a debilitating medical condition or that that the medical use of marijuana is contraindicated for the patient's debilitating medical condition, the Authority must notify the patient that the patient's registry identification card will be invalid 30 days from the date of the notification unless the patient submits within 30 calendar days an APS or written documentation that may consist of relevant portions of the individual's medical record, signed by the individual's attending physician within the previous 90 days, which states the individual has been diagnosed with a debilitating medical condition and that the use of marijuana may mitigate the symptoms or effects of the individual's debilitating medical condition.

(b) If, due to circumstances beyond the patient's control he or she is unable to submit the documentation in subsection (a) of this section, the Authority may, upon receiving a written request from the patient, grant the patient additional time to obtain a second opinion. The Authority must notify the patient how much additional time the patient has to submit the documentation.

(6) If a patient does not intend to submit the information or does not submit the information required in section (5) of this rule within the timeframes established by the Authority, the Authority must notify:

(a) The patient that the patient's card must be returned within seven calendar days; and

(b) If applicable, the patient's designated primary caregiver and PRMG that those identification cards must be returned within seven calendar days.

(7) The Authority will review and deny a caregiver designation or register a caregiver in accordance with OAR 333-008-0023 to 333-008-0037, as applicable.

(8) Change forms may only be submitted to the Authority via mail at PO Box 14450, Portland, OR 97293-0450 or in person at the OMMP drop box located at 800 N.E. Oregon St., Portland, OR 97232 and must be accompanied by any applicable fee as specified in OAR 333-008-0021.

Stat. Auth.: ORS 475.309 & 475.312

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Stats. Implemented: ORS 475.309 & 475.312  
Hist.: PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0047

### Interim Addition or Change of Person Responsible for a Marijuana Grow Site or Grow Site Address

(1) If a patient is adding a PRMG and grow site address at any time other than when applying for a new or renewal registry identification card, or if a patient is changing a PRMG or grow site address at any time other than when submitting a renewal application for a patient identification card, the patient must:

(a) Submit a PRMG and grow site registration change application, on a form prescribed by the Authority, that includes all the information and documentation specified in the form and required under OAR 333-008-0020(3); and

(b) Pay the fee required in OAR 333-008-0021 unless the PRMG is a patient growing only for him or herself.

(2) A PRMG and grow site registration change application shall be reviewed in accordance with OAR 333-008-0025 and approved or denied in accordance with OAR 333-008-0033 or 333-008-0037.

Stat. Auth.: ORS 475B.415, 475B.418, 475B.420 and 475B.525  
Stats. Implemented: ORS 475B.415, 475B.418, and 475B.420  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0049

### Timely Submission to the Oregon Health Authority

If an applicant, patient, designated primary caregiver, or PRMG is required to submit information or documentation to the Authority by a particular deadline it must be received by the Authority, regardless of the method used, by 5 p.m. Pacific Time.

Stat. Auth.: ORS 475B.525  
Stats. Implemented: ORS 475B.525  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0080

### Permissible Amounts of Medical Marijuana for Patients and Caregivers

(1) A patient or the patient's designated primary caregiver may jointly possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(2) A patient and designated primary caregiver must have, in his or her possession, his or her registry identification card or OMMP identification card when transporting marijuana.

(3) A patient must have, in his or her possession, his or her registry identification card when using marijuana in a location other than the residence of the cardholder.

Stat. Auth.: ORS 475B.430  
Stats. Implemented: ORS 475B.430  
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11.; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0110

### Advisory Committee on Medical Marijuana

(1) The Advisory Committee on Medical Marijuana (ACMM) shall advise the Director of the Authority on the administrative aspects of ORS 475B.400 to 475B.525, including rules and fees adopted and proposed for adoption under ORS 475B.400 to 475B.525..

(2) The Authority will provide staff support to the ACMM by assisting with the scheduling of meetings, recording of minutes, and dissemination of meeting-related materials.

(3) The ACMM will adopt a Charter and By-Laws that detail:

(a) How meetings will be conducted;

(b) The election of presiding officers; and

(c) The scheduling of at least four public meetings per year.

Stat. Auth.: ORS 475.338  
Stats. Implemented: ORS 475.300 - 475.346  
Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0500

### Request for Grandfathered Grow Site

(1) An individual or group of individuals may submit a petition, on a form prescribed by the Authority, requesting that a grow site address be approved as a grandfathered grow site.

(2) A petition submitted under section (1) of this rule must include:

(a) For all individuals currently growing at the grow site address:

(A) Names and contact information.

(B) Proof of residency in accordance with OAR 333-008-0022.

(C) Copies of legible and valid government issued photographic identification that includes last name, first name, and date of birth.

(D) Copies of all current grow site registration cards issued to the PRMG for the grow site address.

(E) An attestation that the PRMG was registered at the grow site address on December 31, 2014, and has continuously been registered at the grow site address since that date.

(b) The physical address of the grow site where marijuana is being produced or intending to be produced.

(c) Documentation from a local government that indicates whether the address is within city limits and if so, the zoning designation for the address.

(d) The names and registry identification card numbers for all patients for whom each PRMG is producing at the grow site address.

(e) How many patients each PRMG was growing for on December 31, 2014.

(3) A petition that does not contain all the required information or is not accompanied by all of the documentation required to be submitted in section (2) of this rule is incomplete and will be returned to the applicant.

(4) A petition that does not include all the PRMGs currently growing at the grow site address may be considered by the Authority to be incomplete and may be returned to the applicant.

(5) Acceptable forms of current government issued photographic identification include but are not limited to:

(a) Driver's license;

(b) State identification card;

(c) Passport; or

(d) Military identification card.

Stat. Auth.: ORS 475B.525  
Stats. Implemented: ORS 475B.428  
Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0510

### Review of Petition For Grandfathered Grow Site

(1) Once the Authority has determined that a petition is complete it must:

(a) Conduct a criminal background check on all PRMGs listed on the application;

(b) Verify that:

(A) Each person listed on the application is 21 years of age or older;

(B) Each person meets the residency requirements in OAR 333-008-0022;

(C) Each person has a current valid registration card and is currently registered at the grow site address;

(D) All the patients listed on the application have valid cards; and

(E) All persons were registered with the Authority on December 31, 2014, at the grow site address listed on the application and have been continuously registered at the grow site since the petition was submitted; and

(c) Verify the number of patients each PRMG was producing marijuana for, at that address on December 31, 2014.

(2) If a PRMG listed on a petition does not meet the age or residency requirements, or is disqualified to be a PRMG based on criminal convictions, the Authority must notify:

(a) The PRMG that his or her designation is revoked; and

(b) The patient that the patient's PRMG is ineligible and that the patient may submit a change form, in accordance with OAR 333-008-0047 designating a new PRMG and grow site address.

Stat. Auth.: ORS 475B.525

Stats. Implemented: ORS 475B.428

Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0520

### Approval of Petition for Grandfathered Grow Site

(1) The Authority will grant a petition for a grandfathered grow site if, based on the information in the petition and the Authority's review of the petition:

(a) The grow site address is currently registered with the Authority;

(b) The petition includes all PRMGs currently growing at the grow site address;

(c) With the exception of any PRMG whose designation was revoked under OAR 333-008-0510(2), the PRMGs listed in the petition are qualified to be a PRMG;

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(d) All qualified PRMGs listed in the petition were registered at the grow site address on December 31, 2014, and were all continuously registered there at the time the petition was submitted; and

(e) The number of patients registered at the grow site address would not result in the grow site address exceeding:

(A) 24 mature marijuana plants if the location is within city limits and zoned residential; or

(B) 96 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

(2) The actual grow site address plant limit is based on the number of patients registered at the grow site address on December 31, 2014, assuming six mature plants per patient.

(3) If a grow site address is approved under this rule the Authority may not register any additional PRMG at that address unless the grandfathered grow site approval has been terminated.

Stat. Auth.: ORS 475B.525

Stats. Implemented: ORS 475B.428

Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0530

### Denial of Petition for Grandfathered Grow Site

(1) The Authority must deny a petition for a grandfathered grow site if based on the information in the petition and the Authority's review of the petition:

(a) The grow site address is not currently registered with the Authority;

(b) The petition does not include all PRMGs currently producing marijuana at the grow site address;

(c) None of the PRMGs listed in the petition are qualified or the number of PRMGs eligible to produce marijuana at the grow site address would result in the grow site address exceeding the maximum plant limits, depending on the location of the grow site address;

(d) Not all of the qualified PRMGs listed in the petition were registered at the grow site address on December 31, 2014, or were not all continuously registered there at the time the petition was submitted; or

(e) The number of patients registered at the grow site address exceed the plant limits in ORS 475B.428(3)(b) or 475B.428(4)(b).

(2) An individual or group of individuals whose petition is denied may resubmit a petition at any time.

(3) If a petition is denied the maximum plant limits at the grow site address for which the petition was filed are:

(a) 12 mature marijuana plants if the location is within city limits and zoned residential; or

(b) 48 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

Stat. Auth.: ORS 475B.525

Stats. Implemented: ORS 475B.428

Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0540

### Requirements for Grandfathered Grow Sites; Termination of PRMG Designation; Suspension or Revocation of PRMG Registration

(1) A PRMG authorized to produce marijuana at a grandfathered grow site may only grow for the number of patients that PRMG was producing for on December 31, 2014, and may not add patients. A PRMG producing marijuana at a grandfathered grow site may replace an existing patient with a new patient unless the person's designation has been terminated under ORS 475B.428(6).

(2) If the Authority suspends or revokes the registration of a PRMG that is producing marijuana at a grandfathered grow site the PRMG may not continue to grow at that address or any other grow site address that has more than:

(a) 12 mature marijuana plants if the location is within city limits and zoned residential; or

(b) 48 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

(3) If a patient terminates the designation of a PRMG that person may not produce marijuana at any grow site address that is authorized to have more than 48 mature marijuana plants.

(4) Approval of a grandfathered grow site is terminated once the number of mature marijuana plants, based on number of PRMGs who have been authorized to produce medical marijuana at the grow site address and the number of patients each person is producing for is less than:

(a) 12 mature marijuana plants if the location is within city limits and zoned residential; or

(b) 48 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

Stat. Auth.: ORS 475B.525

Stats. Implemented: ORS 475B.428

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0550

### General Person Responsible for a Marijuana Grow Site Requirements

(1) A PRMG may not grow marijuana for more than four patients at any one time.

(2) A PRMG must display a marijuana grow site registration card at the marijuana grow site at all times for each patient for whom marijuana is being produced.

(3) All seeds, immature marijuana plants, mature marijuana plants and usable marijuana associated with the production of marijuana for a patient by a PRMG are the property of the patient and must be provided to the patient upon request, unless the patient has assigned a portion of the right to possess the seeds, immature plants and usable marijuana to the PRMG in accordance with ORS 475B.425.

(4) All marijuana produced for a patient must be provided to the patient or designated primary caregiver when the PRMG ceases producing marijuana for the patient, unless the patient has assigned a portion of the right to possess the seeds, immature plants and usable marijuana to the PRMG in accordance with ORS 475B.425.

(5) All usable marijuana associated with the production of marijuana for a patient must be transferred to a marijuana processing site upon the patient's request.

(6) All seeds, immature marijuana plants and usable marijuana associated with the production of marijuana for a patient must be transferred to a medical marijuana dispensary upon the patient's request.

(7) If a patient terminates the designation of a PRMG that person may not produce marijuana at any grow site address that is authorized to have more than 48 mature marijuana plants.

(8) A PRMG must return the grow site registration card to the Authority when the person's designation has been terminated by a patient or the person ceases producing marijuana for him or herself or another patient.

(9) Beginning June 1, 2016, a PRMG registered with the Authority, except for a patient growing only for him or herself at his or her own residence and not transferring usable marijuana, seeds or immature plants to a registered processing site or dispensary, must create an online account with the Authority through which the individual must at a minimum submit the information required in OAR 333-008-0630.

(10) A PRMG must comply with the advertising restrictions in OAR 333-008-2070 and must remove any sign, display or advertisement if the Authority determines the PRMG has violated OAR 333-008-2070.

Stat. Auth.: ORS 475B.420 to 475B.428, 475B.525

Stats. Implemented: ORS 475B.420 - 475B.428

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0560

### Grow Site Plant Limits

(1) A PRMG may not produce more than six mature marijuana plants per patient.

(2) On and after March 1, 2016, unless a petition has been granted under OAR 333-008-0520, a grow site address may not have more than:

(a) 12 mature marijuana plants if the location is within city limits and zoned residential; or

(b) 48 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

(3) For purposes of determining plant limits the Authority presumes that a PRMG grows six mature plants for each patient.

Stat. Auth.: ORS 475B.428, 475B.525

Stats. Implemented: ORS 475B.428

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0570

### Designation of Plants at Grow Site Address

(1) A PRMG producing marijuana at a grow site where multiple PRMGs are registered must physically identify the marijuana plants at a grow site address that are being grown by that PRMG by either:

(a) Tagging each marijuana plant with the PRMG's name, identification card number and patient identification number; or

(b) Fencing or cordoning off the PRMG's marijuana plants and posting all grow site registration cards at the location where the plants are located.

(2) If during an investigation the Authority determines that marijuana plants have not been designated by a PRMG in accordance with section (1)

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of this rule or there are marijuana plants at the grow site designated by an individual who is not authorized to produce marijuana at that grow site the Authority may suspend or revoke the registration of the grow site address for all PRMGs at that grow site and all the PRMG's identification cards.

Stat. Auth.: ORS 475B.428, 475B.525  
Stats. Implemented: ORS 475B.428  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0580

### Usable Marijuana Possession Limits for a Person Designated to Produce Marijuana by a Patient

(1) Subject to section (2) of this rule, a person designated to produce marijuana by a patient may possess the amount of usable marijuana that the person harvests from his or her mature marijuana plants, provided that the person may not possess usable marijuana in excess of the amount of usable marijuana in the person's possession as reported to the Authority under OAR 333-008-0630.

(2) A person designated to produce marijuana by a patient may not possess usable marijuana in excess of:

(a) For a marijuana grow site located outdoors, 12 pounds of usable marijuana per mature marijuana plant; or

(b) For a marijuana grow site located indoors, six pounds of usable marijuana per mature marijuana plant.

(3) Unless a PRMG falls within the definition of a person designated to produce marijuana by a patient the PRMG may only possess the amount of usable marijuana that is permitted under ORS 475B.245.

(4) A PRMG producing marijuana at a grow site where there are multiple PRMGs registered must physically segregate the usable marijuana at the grow site address that is the property of the PRMG or the PRMG's patients by placing the usable marijuana in a receptacle or multiple receptacles and attaching a label to the receptacle that includes the PRMG's name, identification card number and patient identification number.

(5) If during an investigation the Authority determines that usable marijuana has not been segregated in accordance with section (4) of this rule or that usable marijuana at the grow site is identified as belonging to an individual who is not registered at the grow site, the Authority may suspend or revoke the registration of the grow site address for all PRMGs producing at that grow site and the PRMG's cards.

Stat. Auth.: ORS 475B.525  
Stats. Implemented: ORS 475B.430  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0600

### PRMG Testing Requirements

On and after October 1, 2016, a PRMG who transfers usable marijuana to a registered processing site or dispensary must comply with the testing requirements in OAR 333-007-0300 to 333-007-0490.

Stat. Auth.: ORS 475B.525  
Stats. Implemented: ORS 475B.555  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0630

### PRMG Documentation Requirements

(1) The reporting requirements in this rule do not apply to a patient growing only for him or herself at his or her residence, unless the patient is transferring usable marijuana to a registered processing site or dispensary.

(2) Beginning in June 2016, and on a monthly basis thereafter, no later than the 10th day of each month, a PRMG, who is not a person designated to produce marijuana by a patient must submit the following information to the Authority:

(a) The number of immature and mature marijuana plants and amount of usable marijuana transferred to each patient for whom the PRMG is producing marijuana;

(b) The amount of usable marijuana transferred to each registered marijuana processing site through an agreement with the patient; and

(c) The number of seeds or immature plants and the amount of usable marijuana transferred to each registered dispensary through an agreement with the patient.

(3) Beginning in June 2016, and on a monthly basis thereafter, no later than the 10th day of each month, a person designated to produce marijuana by a patient must submit the following information to the Authority:

(a) The number of mature marijuana plants and immature marijuana plants, the amount of marijuana leaves and flowers being dried, and the amount of usable marijuana, in the person's possession;

(b) The number of mature marijuana plants and immature marijuana plants, and the amount of usable marijuana transferred to each patient for whom the person produces marijuana, or that patient's designated primary caregiver during the previous month;

(c) The amount of usable marijuana transferred to each marijuana processing site during the previous month; and

(d) The number of immature marijuana plants, and the amount of usable marijuana transferred to each medical marijuana dispensary during the previous month.(4) The information required to be submitted under this rule must be submitted electronically in a manner prescribed by the Authority.

(5) In addition to submitting the information as required in section (3) of this rule a person designated to produce marijuana by a patient must keep a record of the information described in section (3) of this rule for two years after the date on which the person submits the information to the Authority.

Stat. Auth.: ORS 475B.420, 475B.423, 475B.525  
Stats. Implemented: ORS 475B.420, 475B.423  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0640

### PRMG Security Requirements

A PRMG must effectively prevent public access and obscure from public view all areas where marijuana is being produced.

Stat. Auth.: ORS 475B.525  
Stats. Implemented: 475B.525  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0700

### Monitoring and Investigations

(1) The Authority may, at any time, contact a patient, designated primary caregiver, PRMG, or a patient's attending physician by telephone, mail or in person to verify the current accuracy of information included in the registration system.

(2) The Authority may, when it has reasonable basis for believing a violation of ORS 475B.400 through 475B.525, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7 or these rules has occurred, either conduct an investigation or arrange for this responsibility to be assumed by the proper state or local authorities.

(3) A patient, designated primary caregiver or PRMG must cooperate with the Authority during an investigation.

(4) If the Authority records show that any one physician is the attending physician of record for more than 450 patients at any point in time, the Authority shall request, in writing, that the physician do one of the following:

(a) Provide information for each new patient over the 450 threshold, including:

(A) Documentation that the patient's medical records have been reviewed;

(B) Patient chart notes documenting the patient was examined by the physician and the date of the examination; and

(C) Documentation showing provided or planned follow-up care;

(b) Provide a letter from a clinic at which the physician provides care requesting that the physician be exempted from this section and provide documentation from the clinic that it:

(A) Has clear systems for ensuring medical records are reviewed and that each patient is examined by a physician;

(B) Provides follow-up care for patients;

(C) Maintains a record system documenting the review of medical records, physician examination, and follow-up care; and

(D) Will allow on-site inspections by the Authority to confirm compliance; or

(c) Provide a written statement explaining why the physician should be released from the requirements in this section, for example, an explanation that the physician:

(A) Has a practice that includes a disproportionately high percentage of patients with qualifying conditions;

(B) Serves as a consultant for other health care providers who refer patients requesting medical marijuana; or

(C) Has multiple practice sites and at one of the practice sites the physician clearly meets the attending physician definition.

(5) If the Authority receives a request from a physician to be exempted from the requirement in section (4) of this rule, the Authority shall provide the physician a decision, in writing, explaining whether the physician is or is not exempted from the requirement in section (4) of this rule. The Authority's written decision shall explain the basis for the Authority's decision.

(6) The Authority shall refer criminal complaints against a patient, designated primary caregiver, or PRMG; or medical practice complaints against an attending physician to the appropriate state or local authorities.

Stat. Auth.: ORS 475B.525  
Stats. Implemented: ORS 475B.415 - 475B.420  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16



# ADMINISTRATIVE RULES

## 333-008-0710

### Grow Site Inspections

The Authority may inspect the following to ensure compliance with ORS 475B.420, 475B.423 and 475B.428, and any rule adopted under ORS 475B.420, 475B.423 and 475B.428:

- (1) The marijuana grow site of a person designated to produce marijuana by a patient; and
- (2) The records of a person designated to produce marijuana by a patient.

Stat. Auth.: ORS 475B.420 & 475B.490  
Stats. Implemented: ORS 475B.420 & 475B.490  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0720

### Violations

In addition to failure to comply with any applicable provision of ORS 475B.400 to 475B.525, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7 or these rules, it is a violation:

- (1) For a PRMG to transfer seeds, immature plants or usable marijuana to a registered processing site or dispensary without a valid patient authorization or personal agreement.
- (2) To fail to cooperate with the Authority during an inspection or investigation.

(3) To fail to pay a civil penalty.

Stat. Auth.: ORS 475B.525  
Stats. Implemented: ORS 475B.525  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0730

### Suspension and Revocation

(1) Patient Suspension or Revocation.

(a) The Authority may suspend or revoke a patient's card if the Authority determines that the patient:

(A) Provided false information; or

(B) Violated a provision of ORS 475B.400 to 475B.525, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7 or these rules.

(b) If a patient's card is revoked, any designated primary caregiver issued under ORS 475B.415(5)(b) or PRMG identification card or grow site registration card issued under ORS 475B.420 shall also be revoked.

(c) An individual whose registry identification card is revoked under this rule may not reapply for a registry identification card for six months from the date of the revocation unless otherwise authorized by the Authority.

(2) Designated Primary Caregiver Suspension or Revocation.

(a) The Authority may suspend or revoke a caregiver's identification card issued under ORS 475B.415(5)(b) if the Authority determines that the designated primary caregiver violated a provision of ORS 475B.400 to 475B.525, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7 or these rules.

(b) An individual whose designated primary caregiver identification card has been revoked under this rule may not be designated as a primary caregiver under ORS 475B.418 for six months from the date of the revocation unless otherwise authorized by the Authority.

(3) Person Responsible for a Marijuana Grow Site Suspension or Revocation.

(a) The Authority may suspend or revoke the registration of a PRMG if the Authority determines that a PRMG violated a provision of ORS 475B.400 to 475B.525, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7, these rules or an ordinance adopted pursuant to ORS 475B.500.

(b) If the Authority suspends or revokes the registration of a PRMG the person's registration is suspended or revoked for all patients the person is producing marijuana for and the person must:

(A) Return all marijuana that is the property of the person's patients, to the patients; or

(B) If the patient agrees, transfer usable marijuana to a marijuana registered processing site or transfer seeds, immature plants or usable marijuana to a registered dispensary.

(c) A PRMG must document the information, including how much was transferred, the date of transfer, and to whom the transfer was made, and provide that documentation to the Authority upon request.

(d) Failure to comply with the return, transfer, or documentation requirements is a violation and may result in further enforcement action.

Stat. Auth.: ORS 475B.415, 475B.420, 475B.525, 475B.580  
Stats. Implemented: ORS 475B.415, 475B.420, 475B.580  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0740

### Civil Penalties

In addition to any other liability or penalty provided by law, the Authority may impose for each violation of a provision of ORS 475B.400 to 475B.525, 475B.555, 475B.605, 475B.615, or for each violation of these rules, a civil penalty that does not exceed \$500 for each day that the violation occurs.

Stat. Auth.: ORS 475B.495, 475B.525, 475B.585, 475B.655  
Stats. Implemented: ORS 431A.010, 475B.495, 475B.585, 475B.655  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-0750

### General Powers

The Authority may possess, seize or dispose of marijuana or usable marijuana as is necessary for the Authority to ensure compliance with and enforce the provisions of ORS 475B.400 to 475B.525, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7, and these rules.

Stat. Auth.: ORS 431A.010, 475B.360, 475B.510  
Stats. Implemented: ORS 431A.010, 475B.360, 475B.510  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1000

### Applicability

(1) A person may not establish, conduct, maintain, manage or operate an establishment for the purpose of providing the services in ORS 475B.450(1)(a) unless the person is registered by the Authority under these rules.

(2) Nothing in these rules exempts a dispensary registrant or dispensary representative from complying with any other applicable state or local laws.

(3) Registration of a dispensary does not protect a dispensary registrant or dispensary representative from possible criminal prosecution under federal law.

(4) Registration by the Authority is not a guarantee that a dispensary is permitted to operate under applicable land use or other local government laws where the dispensary is located.

(5) These rules apply to any initial or renewal application filed on or after March 1, 2016, and to any application filed prior to March 1, 2016 that the Authority has not approved or denied.

Stat. Auth.: ORS 475B.450 & 475B.525  
Stats. Implemented: ORS 475B.450  
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1010

### Definitions

For the purposes of OAR 333-008-1000 through 333-008-2200 the following definitions apply:

(1) "Dispensary representative" means an owner, director, officer, PRD, manager, employee, agent or other representative of a registered medical marijuana dispensary, to the extent that the person acts in a representative capacity.

(2) "Dispensary registrant" means:

(a) An individual who owns a registered medical marijuana dispensary or, if a business entity owns the registered medical marijuana dispensary, each individual who has a financial interest in the registered medical marijuana dispensary; and

(b) Any PRD.

(3) "Person responsible for a medical marijuana dispensary" or "PRD" means an individual who is directly involved in the day-to-day operations of a dispensary and is identified as a PRD on an application.

(4) "Primary PRD" means a PRD designated by the owner of the dispensary as the primary point of contact for the Authority and who is authorized to receive any and all communications and legal notices from the Authority.

(5) "These rules" means OAR 333-008-1000 to 333-008-1248 and 333-008-2000 to 333-008-2200.

Stat. Auth.: ORS 475B.450 & 475B.525  
Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 16-2015(Temp), f. & cert. ef. 9-22-15 thru 3-19-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1020

### Application for Medical Marijuana Dispensary Registration

(1) To register a medical marijuana dispensary a person must submit an application on a form prescribed by the Authority that includes but is not limited to:

# ADMINISTRATIVE RULES

(a) The name of the individual who owns the dispensary or, if a business entity owns the dispensary, the name of each individual who has a financial interest in the dispensary;

(b) The name of the individual or individuals responsible for the dispensary, if different from the name of the individual who owns the dispensary, with one of the individuals responsible for the dispensary identified as the primary PRD;

(c) The address of the medical marijuana dispensary;

(d) For each individual responsible for the dispensary proof of residency in accordance with OAR 333-008-1073;

(e) For each individual named in the application:

(A) A legible copy of the individual's valid government issued photographic identification that includes last name, first name and date of birth;

(B) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-2020; and

(C) An Individual History Form and any information identified in the form that is required to be submitted;

(f) Proof, from the local government that the proposed location of the dispensary is not located in an area that is zoned for residential use;

(g) A land use compatibility statement from the local government that shows whether the operation of a dispensary at the proposed location would be an allowed use, or a similar document.

(h) Proof that the business is registered or has filed an application to register as a business with the Oregon Office of the Secretary of State;

(i) Documentation, in a format prescribed by the Authority that the proposed location of the dispensary is not within 1,000 feet of:

(A) The real property comprising a public or private elementary or secondary school; or

(B) A registered dispensary.

(j) A map or sketch of the parcel or premises on which the premises proposed for registration is located, including:

(A) Directional references;

(B) Bordering streets and the names of the streets;

(C) Identification of the building or buildings in which the proposed dispensary is to be located;

(D) The dimensions of the proposed premises of the dispensary;

(E) Identification of other buildings or property owned by or under the control of the applicant on the same parcel or tax lot as the premises proposed for registration that will be used in the business; and

(F) Identification of any residences on the parcel or tax lot.

(k) Disclosure of whether the proposed location is or will be leased or owned and by whom it will be leased or owned; and

(l) Application and registration fees, and criminal background check fees for each individual named in the application.

(2) An application for the registration of a dispensary must be submitted electronically via the Authority's website, [www.healthoregon.org/ommp](http://www.healthoregon.org/ommp). The documentation required in section (1) of this rule may be submitted electronically to the Authority or may be mailed to the Oregon Medical Marijuana Program, Oregon Health Authority, PO Box 14116, Portland, OR 97293.

(a) If documentation is mailed, it must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered incomplete.

(b) If documentation is submitted electronically it must be received by the Authority by 5 p.m. Pacific Time within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered incomplete.

(3) Applicable fees must be paid online at the time of application.

(4) Applications will be reviewed in the order they are received by the Authority. An application is considered received as of the date and time that payment of fees is authorized by the entity that issued the credit or debit card used to pay the fees.

(5) If the Authority does not receive a complete application, all documentation required in section (1) of this rule, and all required fees within the time frames established in this rule, the application will be considered incomplete. An application that is incomplete is treated by the Authority as if it was never received.

(6) A person who wishes to register more than one location must submit a separate application, registration fees, and all documentation described in section (1) of this rule for each location.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1030

### Dispensary Fees

(1) The initial fees for the registration of a dispensary are:

(a) A non-refundable application fee of \$500; and

(b) A \$3,500 registration fee.

(2) The annual renewal fees for the registration of a dispensary are:

(a) A \$500 non-refundable renewal fee; and

(b) A \$3,500 registration fee.

(3) The criminal background check fee is \$35 per individual.

(4) The Authority must return the registration fee if:

(a) An application is incomplete; or

(b) An applicant withdraws an application.

(5) The Authority may return the registration fee if an application is denied.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1040

### Dispensary Application Review

(1) Once the Authority has determined that an application is complete it will review an application to the extent necessary to determine compliance with ORS 475B.450 and these rules.

(2) The Authority may, in its discretion, prior to acting on an application:

(a) Contact any individual listed on the application and request additional documentation or information;

(b) Inspect the premises of the proposed dispensary; or

(c) Verify any information submitted by the applicant.

(3) Prior to making a decision whether to approve or deny an application the Authority must:

(a) Review the criminal background check results for each individual named on the application;

(b) Determine whether the proposed location of the dispensary is the same location as a registered grow site under OAR 333-008-0025;

(c) Review documentation submitted by the applicant to determine, based on the information provided by the applicant, whether the proposed location of the dispensary is located within 1,000 feet of:

(A) The real property comprising a public or private elementary or secondary school; or

(B) Another registered dispensary;

(d) Verify that the applicant is registered as a business with the Office of the Secretary of State; and

(e) Verify that the proposed location of the dispensary is not:

(A) Located in an area that is zoned for residential use; or

(B) In a city or county that has adopted an ordinance under ORS 475B.800 or section 133 chapter 614, Oregon Laws 2015, prohibiting dispensaries.

(4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority may return the application to the applicant as incomplete or issue a notice of denial under OAR 333-008-1060.

(5) The Authority will notify the applicant that the proposed dispensary meets the initial criteria for registration if there is no basis for denial under OAR 333-008-1060 and:

(a) The proposed dispensary is in compliance with ORS 475B.450(3)(a) through (e);

(b) Each individual named in the application passes the criminal background check; and

(c) Each individual named as a PRD in the application meets residency and age requirements.

(6) Within 30 days of the date the Authority notified the applicant under section (5) of this rule, the applicant must submit:

(a) Documentation that shows the applicant has lawful possession of the proposed location of the dispensary; and

(b) A floor or plot plan sketch of all enclosed areas at the proposed location that will be used in the business with clear identification of walls, partitions, counters, windows, all areas of ingress and egress, and all limited access areas.

(7) If the applicant does not comply with section (6) of this rule the application will be returned as incomplete.

(8) If the applicant provides the documentation required in section (6) of this rule, the Authority will review the information to determine if it is complete.

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(a) If the documentation is not complete or is insufficient, the Authority must notify the applicant in writing and the applicant will have 10 calendar days to provide the additional documentation.

(b) If the applicant does not provide the additional documentation within 10 calendar days the application will be returned as incomplete.

(9) If the Authority determines that the applicant has submitted the required documentation under section (6) of this rule, the Authority must notify the applicant in writing that the applicant has 60 days from the date of the notice to submit a Readiness Form, prescribed by the Authority, indicating that the applicant is prepared for an inspection and is in compliance with these rules.

(10) If the Authority does not receive the Readiness Form in accordance with section (9) of this rule the applicant's application will be returned as incomplete, unless an extension has been granted under section (11) of this rule.

(11) An applicant may request one extension of the 60-day deadline in section (9) of this rule if the applicant can demonstrate to the Authority that the deadline cannot be met for reasons outside of the applicant's control, such as but not limited to the applicant's inability to obtain local government building permits.

(a) A request for an extension must be in writing, must be received within 60 days of the notice described in section (9) of this rule and must explain and provide documentation that shows the applicant cannot, for reasons outside of the applicant's control, meet the 60-day deadline, and when the applicant believes it can submit the Readiness Form.

(b) A request for an extension tolls the 60-day deadline.

(c) The Authority will review the request and provide, in writing to the applicant, its decision and the reason for the decision.

(d) If an extension is granted the Authority must inform the applicant of the new deadline for submission of the Readiness Form, but in any case an extension may not exceed 60 days.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1050

### Dispensary Pre-Approval Inspection; Approval of Application

(1) The Authority must perform a site visit within 30 days of receiving a timely Readiness Form, as that is described in OAR 333-008-1040 to determine whether the applicant and dispensary are in compliance with these rules.

(2) If, after the site visit the Authority determines that the applicant and dispensary are in compliance with these rules the Authority must provide the primary PRD with proof of registration that includes a unique registration number, and notify the primary PRD in writing that the dispensary may operate.

(3) If, after the site visit the Authority determines that the dispensary is not in compliance with these rules the Authority may:

(a) Give the applicant 10 business days to come into compliance;

(b) Propose to deny the application in accordance with OAR 333-008-1060; or

(c) Consider the application to be incomplete.

(4) A registered dispensary must at all times display proof of registration in a prominent place inside the dispensary so that proof of registration is easily visible to individuals authorized to transfer marijuana items to the dispensary and individuals who are authorized to receive a transfer of marijuana items from the dispensary.

(5) A registered dispensary may not use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration on any signs at the dispensary, on its website, or in any advertising or social media.

(6) A dispensary's registration:

(a) Is only valid for the location indicated on the proof of registration.

(b) May not be transferred to another location.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1060

### Denial of Dispensary Application

(1) The Authority must deny an application if:

(a) An application, supporting documentation provided by the applicant, or other information obtained by the Authority shows that the qualifications for a dispensary in ORS 475B.450 or these rules have not been met; or

(b) An individual named in an application has been:

(A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within two years from the date the application was received by the Authority; or

(B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or

(c) The city or county in which the facility is located has prohibited dispensaries in accordance with sections 133 chapter 614, Oregon Laws 2015, or ORS 475B.800, unless the dispensary meets the criteria in sections 133(6), chapter 614, Oregon Laws 2015 or ORS 475B.800(6).

(2) The Authority may deny an applicant if it determines that the applicant, the owner of the dispensary, a PRD, or an employee of the medical marijuana dispensary:

(a) Submitted intentionally false or misleading information to the Authority; or

(b) Violated a provision of ORS 475B.400 to 475B.525, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7, these rules or an ordinance adopted pursuant to ORS 475B.500.

(3) If an individual named in an application is not qualified based on age, residency, or the criminal background check, the Authority will permit a change form to be submitted in accordance with OAR 333-008-1078 or 333-008-2030, along with the applicable criminal background check fee. If the individual named in the change form is not qualified the Authority must deny the application in accordance with section (1) of this rule.

(4) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 16-2015(Temp), f. & cert. ef. 9-22-15 thru 3-19-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1063

### Withdrawal of Dispensary Application

An applicant may withdraw an initial or renewal application at any time prior to the Authority acting on the application unless the Authority has determined that the applicant submitted false or misleading information or there is a pending investigation or enforcement action in which case the Authority may refuse to accept the withdrawal and may issue a notice of proposed denial in accordance with OAR 333-008-1060.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1070

### Expiration and Renewal of Dispensary Registration

(1) A dispensary's registration expires one year following the date of application approval.

(2) A dispensary registrant must submit not more than 90 but at least 60 calendar days before the registration expires:

(a) A renewal application on a form prescribed by the Authority;

(b) Renewal fees;

(c) Forms required for the Authority to do a criminal background check on all individuals named in the application;

(d) Any other information identified in the application;

(e) Any information required during an initial application; and

(f) Any information required to be submitted under OAR 333-008-1040.

(3) A registrant who files a completed renewal application with the Authority at least 60 calendar days before the registration expires may continue to operate, even after the registration expiration date, pending a decision on the renewal application by the Authority.

(4) A dispensary registrant that does not submit timely renewal documentation in accordance with section (2) of this rule may be subject to the imposition of civil penalties.

(5) If a dispensary registrant does not submit a renewal form and the application and registration fees prior to the registration's expiration, the registration is expired and is no longer valid.

(6) Renewals will be processed in accordance with OAR 333-008-1040 to 333-008-1060, as applicable.

(7) A renewal applicant may be required to submit a Readiness Form, as described in OAR 333-008-1040(9) and may be subject to inspection prior to the Authority acting on a renewal application.

Stat. Auth.: ORS 475.314 & 475.338, sec. 133 & 134, ch. 614, OL 2015.

Stats. Implemented: ORS 475.314, sec. 133 & 134, ch. 614, OL 2015.

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 16-2015(Temp), f. & cert. ef. 9-22-15 thru 3-19-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

# ADMINISTRATIVE RULES

## 333-008-1073

### PRD Residency

(1) Until January 1, 2020, an individual listed as a PRD on a new or renewal application must submit a residency form, prescribed by the Authority, along with a copy of the PRD's Oregon driver license or Oregon identification card.

(a) If an individual was first registered with the Authority as a PRD on or before January 1, 2015, and has continuously remained a PRD, the PRD must have been a resident of Oregon for at least one year immediately prior to the application being submitted to the Authority.

(b) If a PRD was not first registered with the Authority as a PRD on or before January 1, 2015, the PRD must have been a resident of Oregon for at least two years immediately prior to the application being submitted to the Authority.

(c) If a PRD was first registered with the Authority as a PRD on or before January 1, 2015, but has not continuously remained a PRD for a dispensary since first registered, the PRD must have been a resident of Oregon for at least two years immediately prior to the application being submitted to the Authority.

(2) If an individual listed as a PRD on a new or renewal application does not have an Oregon driver license or the PRD's Oregon driver license or Oregon identification card was not issued one or two years prior to the date of application, as applicable, the Authority will attempt to verify whether the PRD has been a resident for the required length of time and may require the PRD to submit additional information to the Authority to prove residency.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1075

### PRD Criteria and Responsibilities

(1) A PRD must:

(a) Be 21 years of age or older;

(b) Meet the residency requirements in OAR 333-008-1073;

(c) Have legal authority to act on behalf of the dispensary; and

(d) Be responsible for ensuring the registered dispensary complies with applicable laws.

(2) A PRD may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within two years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) A PRD is accountable for any intentional or unintentional action of registrant representatives, with or without the knowledge of the PRD, who violate ORS 475B.450, 475B.453 or these rules, and is responsible for any unlawful conduct that occurs on the premises of the dispensary or any property outside the registered dispensary that is owned by or under the control of the dispensary registrant.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1078

### Removal, Addition, Change, Designation or Assignment of PRD

(1) If an owner of a registered dispensary is adding or changing a PRD or primary PRD, an individual with legal authority to act on behalf of the registered dispensary must submit:

(a) A form, prescribed by the Authority;

(b) Proof of the proposed PRD or primary PRD's residency in accordance with OAR 333-008-1073;

(c) A legible copy of the individual's valid government issued photographic identification that includes last name, first name and date of birth;

(d) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-2020; and

(e) A criminal background check fee of \$35.

(2) A PRD who is designating or assigning the responsibilities of a PRD to another individual must submit the information and fees required in section (1) of this rule. The responsibilities of a primary PRD may not be designated or assigned.

(3) The Authority will review and approve the addition or change of a PRD or primary PRD if the individual meets the requirements in OAR 333-008-1075.

(4) The Authority will review and approve the designation or assignment of the responsibilities of a PRD to another individual if that individual meets the requirements in OAR 333-008-1075. An individual to whom

a designation or assignment is made, and who is approved by the Authority, has the same legal obligations as a PRD.

(5) An individual may not act in the capacity of a PRD without approval from the Authority.

(6) If the Authority denies the request to add or change a PRD or primary PRD, or denies the request to designate or assign the responsibilities of a PRD to another individual, the Authority must notify the individual that submitted the request of the denial and the current primary PRD, and describe the reason for the denial.

(7) A registered dispensary may not be open for business or receive or transfer any marijuana items without at least one Authority approved PRD and a primary PRD.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1110

### Locations of Medical Marijuana Dispensaries; Dispensary Premises Restrictions and Requirements

(1) A dispensary may not be located:

(a) In an area that is zoned for residential use.

(b) At the same address as a registered marijuana grow site;

(c) Within 1,000 feet of the real property comprising a public or private elementary or secondary school; or

(d) Within 1,000 feet of another medical marijuana dispensary.

(2) For purposes of implementing ORS 475B.450(3)(d), the Authority will consider a location to be a school if it has at least the following characteristics:

(a) Is a public or private elementary or secondary school as those terms are defined OAR 333-008-0010;

(b) There is a building or physical space where students gather together for education purposes on a regular basis;

(c) A curriculum is provided;

(d) Attendance is compulsory under ORS 339.020 or children are being taught as described in ORS 339.030(1)(a); and

(e) Individuals are present to teach or guide student education.

(3) For purposes of determining the distance between a dispensary and a school "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public or private elementary or secondary school to the closest point of the premises of a dispensary. If any portion of the premises of a proposed or registered dispensary is within 1,000 feet of a public or private elementary or secondary school it may not be registered.

(4) For purposes of determining the distance between a dispensary and another registered dispensary "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of a registered dispensary to the closest point anywhere on the premises of a proposed dispensary. If any portion of the premises of a proposed dispensary is within 1,000 feet of a registered dispensary it may not be registered.

(5) In order to be registered a dispensary must operate at a particular location as specified in the application and may not be mobile.

(6) Minors on Premises. A dispensary registrant may not permit a minor to be present in any limited access or point of sale area of a registered dispensary.

(7) On Premises Consumption.

(a) A dispensary registrant may not permit the ingestion, inhalation or topical application of a marijuana item anywhere on the premises of the registered dispensary, except as described in subsection (b) of this section.

(b) An employee of a registered dispensary who is a patient may consume a marijuana item during his or her work shift on the premises of the registered dispensary as necessary for his or her medical condition, if the employee is:

(A) Alone and in a closed room where no dispensary marijuana items are present;

(B) Not visible to patients or caregivers on the premises of the registered dispensary to receive a transfer of a marijuana item; and

(C) Not visible to the public outside the dispensary.

(c) For purposes of this section consume does not include smoking, combusting, inhaling, vaporizing, or aerosolizing a marijuana item.

(8) General Public and Visitor Access. The general public is not permitted on the premises of a registered dispensary, except as permitted by OAR 333-008-1500 and in accordance with this rule.

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(a) In addition to registrant representatives, the following visitors are permitted on the premises of a dispensary, including limited access areas, subject to the requirements in section (9) of this rule:

(A) Laboratory personnel, if the laboratory is accredited by the Authority;

(B) A contractor authorized by a registrant representative to be on the premises; or

(C) Individuals authorized to transfer marijuana items to a registered dispensary.

(b) A registered dispensary may permit up to seven invited guests 21 years of age and older, per week, on the premises of a registered dispensary, including limited access areas, subject to the requirements in section (9) of this rule.

(9) Visitor Escort, Log and Badges.

(a) Prior to entering the premises of a registered dispensary all visitors permitted by section (8) of this rule must be documented and issued a visitor identification badge from a registrant representative that must remain visible while on the premises. All visitors described in section (8) of this rule must be accompanied by a registrant representative at all times.

(b) A dispensary registrant must maintain a log of all visitor activity and the log must contain the first and last name and date of birth of every visitor, and the date they visited.

(10) Government Access. Nothing in this rule is intended to prevent or prohibit Authority employees or contractors, or other state or local government officials that have jurisdiction over some aspect of the premises or a dispensary registrant to be on the premises.

(a) A visitor badge is not required for government officials.

(b) A dispensary must log every government official that enters the premises but the dispensary may not request that the government official provide a date of birth for the log.

(11) Limited Access Areas.

(a) All limited access areas must be physically separated from any area where the general public is permitted, by a floor to ceiling wall. For purposes of this section "wall" means any architectural partition, permanent or temporary, with a height and length greater than its thickness, used to divide or enclose an area or to support another structure.

(b) An applicant or registered dispensary may request, in writing, an exception from the Authority from the requirement to have a floor to ceiling wall. The request must include the reason the exception is being sought, pictures of the area in question, and a description of an alternative barrier that accomplishes the goal of providing a significant physical barrier between the general public and any marijuana items on the premises of the dispensary.

(12) A dispensary must have:

(a) A designated limited access area or areas where transfers of marijuana items are received and such an area may not be accessible to patients or designated primary caregivers on the premises to receive the transfer of a marijuana item or the general public; and

(b) A designated area where patients and designated primary caregivers and other visitors enter the dispensary and are checked in.

(13) The areas described in section (12) of this rule must be clearly marked on the floor or plot plan sketch required in OAR 333-008-1040.

(14) Point of Sale Supervision. All areas where marijuana items are available for transfer to a patient or designated primary caregiver must be supervised by a dispensary representative at all times when a patient or designated primary caregiver is present.

(15) A dispensary may not sublet or share with any other business any portion of the dispensary premises.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1190

### Testing

(1) This rule is in effect from March 1, 2016 until October 1, 2016. Nothing in this rule prohibits a dispensary or an accredited laboratory from complying with the testing rules in OAR 333-007-0300 to 333-007-0490 and providing or accepting a test result that is in compliance with OAR 333-064-0100 and 333-064-0110 in lieu of a test result required in this rule.

(2) For purposes of this rule:

(a) "Batch" has the same meaning given that term in OAR 333-007-0310.

(b) "TNI" has the same meaning given that term in OAR 333-007-0310.

(c) "TNI standards" has the same meaning given that term in OAR 333-007-0310.

(3) Prior to being registered a PRD must have documentation that identifies at least one laboratory that will do the testing in accordance with this rule.

(4) A registered dispensary may only accept laboratory test results from a laboratory on the Authority's list posted on the Authority's website, [www.healthoregon.org/ommp](http://www.healthoregon.org/ommp).

(5) A PRD must have a test report that complies with section (11) of this rule that can be linked to the batch from which each sample was taken and to each marijuana item available for transfer, before the marijuana item is available for transfer to a patient or a designated primary caregiver.

(6) A registered dispensary may submit samples for testing in accordance with section (7) of this rule or a PRD may accept test results if:

(a) A copy of the test results is obtained at the time of transfer that clearly links the test results to the marijuana item being transferred;

(b) The PRD can demonstrate to the Authority that random samples from the batch were taken and submitted for testing; and

(c) The PRD can demonstrate to the Authority that the batch from where samples were taken was sealed and not tampered with from the time samples for testing were taken and when they were delivered to the dispensary.

(7) Prior to October 1, 2016, if a dispensary accepts the transfer of a marijuana item that has not been tested in accordance with this rule a dispensary representative must:

(a) Segregate each untested batch and place the batch in an individual container or bag with a label attached to the container or bag that includes at least the following information:

(A) A unique identifier;

(B) The name of the product;

(C) The name of the person who transferred the marijuana item;

(D) The date the marijuana item was received; and

(E) "PRODUCT NOT TESTED" in bold, capital letters, no smaller than 12 point font.

(b) Take random samples from each batch in an amount necessary to conduct the applicable test, label each sample with the batch's unique identifier, and submit the samples for testing.

(c) Once samples have been taken for the purpose of testing, store and secure the untested item in a manner that prevents the item from being tampered with or transferred prior to test results being reported.

(8) Pesticide Testing. A marijuana item must be tested for pesticides by testing for individual pesticides (analytes) in the following categories, using valid testing methodologies:

(a) Chlorinated Hydrocarbons;

(b) Organophosphates;

(c) Carbamates; and

(d) Pyrethroid.

(9) THC and CBD Testing. A marijuana item must be tested to determine the levels of THC and CBD using valid testing methodologies.

(10) Laboratory Requirements. A PRD must be able to show that the laboratory that conducted the testing required in this rule:

(a) Uses valid testing methodologies; and

(b) Has a Quality System for testing of pesticides that is compliant with the:

(A) 2005 International Organization for Standardization 17025 Standard; or

(B) 2009 National Environmental Laboratory Accreditation Conference Institute TNI Standards.

(11) Testing Results. A laboratory test result must:

(a) Comply with the standards in TNI 2009, Volume 1, Module 2, Section 5.10, incorporated by reference.

(b) Include the following information:

(A) The name of each specific analyte tested;

(B) The limit of quantitation (LOQ) as that is defined in TNI 2009, Volume 1, Module 2, Section 3.1 and TNI 2009, Volume 1, Module 4, Section 1.5, incorporated by reference;

(C) The pesticide results as a numerical value in units of either parts per million or parts per billion if the analyte was detected or a statement that the level detected was less than the LOQ;

(D) The levels of THC and CBD calculated in accordance with OAR 333-064-0100; and

(E) The quality control results from the blank and quality control samples associated with the sample testing.

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(c) Be signed by an official of the laboratory with an attestation that the results are accurate and that testing was done using valid testing methodologies and a quality system as required in this rule.

(12) A sample of a marijuana item shall be deemed to test positive for pesticides with a detection of more than 0.1 parts per million of any pesticide.

(13) If a marijuana item tests positive for pesticides based on the standards in this rule the PRD must ensure the entire batch from which the sample was taken is returned to the individual who transferred the marijuana item to the dispensary and must document how many or how much was returned, to whom, and the date it was returned.

(14) The PRD may permit laboratory personnel or other persons authorized to do testing access to secure or restricted access areas of the dispensary where marijuana items are stored. A dispensary representative must log the date and time in and out of all such persons.

(15) If the Authority determines that a laboratory is not using valid testing methodologies, does not have a quality system, or is not producing test result reports in accordance with this rule the Authority may remove the name of the laboratory from the list on the Authority's website.

(16) The Authority may do audit testing of a marijuana item in order to determine whether a dispensary is in compliance with this rule.

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

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 8-2014(Temp), f. 2-19-14, cert. ef. 2-21-13 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1200

### Operation of Registered Dispensaries

(1) Policies and Procedures. In order to obtain a registration and to retain registration a dispensary registrant must have written detailed policies and procedures and training for employees on the policies and procedures that, at a minimum, cover the following:

- (a) Security;
- (b) Transfers of marijuana items to and from the dispensary;
- (c) Operation of a registered dispensary;
- (d) Required record keeping;
- (e) Testing requirements;
- (f) Packaging and labeling requirements;
- (g) Employee training; and
- (h) Compliance with these rules, including but not limited to violations and enforcement.

(2) Employees. A registered dispensary may employ an individual between the ages of 18 and 20 if the individual is a patient. Otherwise, dispensary employees must be 21 years of age or older.

(3) Standardized Scales.

(a) In order to obtain a registration and to retain registration a dispensary registrant must own and use a weighing device that has:

- (A) A suitable capacity and division size for the item being weighed;
- (B) A valid National Type Evaluation Program Certificate of Conformance, as described in OAR 603-027-0655 and 603-027-0660;

(C) Been properly calibrated in accordance with the manufacturer's instructions;

(D) The appropriate security seal affixed securing the calibration functions of the device;

(E) Been licensed by the Oregon Department of Agriculture; and

(F) Been placed into service as that term is defined in OAR 602-027-0670, as required by the Oregon Department of Agriculture.

(b) The weighing device that meets the criteria in subsection (3)(a) of this rule must be used by a registered dispensary whenever marijuana items are:

(A) Transferred to or from the dispensary and the transfer is by weight;

(B) Packaged for transfer by weight; or

(C) Weighed for purposes of documenting information required in OAR 333-008-1230, 333-008-1245, 333-008-1247 and 333-008-1248.

(4) Inventory Tracking and Point of Sale System: In order to obtain a registration and to retain registration a registered dispensary must have an installed and fully operational integrated inventory tracking and point of sale system that can, at a minimum:

(a) Produce bar codes or similar unique identification numbers for each marijuana item lot transferred to a registered dispensary;

(b) Trace back or link each transfer of a marijuana item to a patient or caregiver to the marijuana item lot;

(c) Capture all information required to be documented in OAR 333-008-1230 and 333-008-1245;

(d) Generate inventory, transaction, and transfer reports viewable in PDF format; and

(e) Produce all the information required to be submitted to the Authority pursuant to OAR 333-0080-1248.

(5) Online Verification of Registration Status. A dispensary must verify an individual's registration status with the Authority when receiving or making the transfer of a marijuana item if the Authority has available an online system for such verification.

(6) Inventory On-Site. Marijuana items must be kept on-site at the dispensary. The Authority may take enforcement action against a dispensary registrant if during an inspection a dispensary registrant cannot account for its inventory or if the amount of usable marijuana at the registered dispensary is not within five percent of the documented inventory.

(7) Testing. On and after October 1, 2016, a dispensary registrant may not:

(a) Accept a transfer of a marijuana item that has not been tested in accordance with OAR 333-007-0300 to 333-007-0490.

(b) Transfer a marijuana item that has not been tested in accordance with OAR 333-007-0300 to 333-007-0490 unless it is labeled in accordance with OAR 333-007-0300.

(8) Packaging and Labeling. On and after October 1, 2016, a dispensary may not accept a transfer of a marijuana item or transfer a marijuana item that does not comply with the labeling requirements in OAR 333-007-0010 to 333-007-0100, or that does not comply with the packaging requirements in OAR 845-025-7000 to 845-025-7020 and 845-025-7060.

(9) Oregon Department of Agriculture Licensure. On and after October 1, 2016, a registered dispensary that sells or handles food, as that term is defined in ORS 616.695, or cannabinoid edibles, must be licensed by the Oregon Department of Agriculture under ORS 616.706.

(10) Industrial Hemp Products.

(a) A dispensary may only accept the transfer of and may only transfer a product that contains THC or CBD that is derived from marijuana.

(b) Nothing in this section prohibits a dispensary from buying or selling hemp products not intended for human application, consumption, inhalation, ingestion, or absorption, such as hemp clothing.

(11) Tobacco. A dispensary may not offer or sell tobacco products in any form including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010 and cigarillos as that is defined in OAR 333-015-0030.

(12) For purposes of this rule "marijuana item lot" means a quantity of seeds, immature plants, usable marijuana, medical cannabinoid products, concentrates or extracts transferred to a registered dispensary at one time and that is from the same harvest lot or process lot as those terms are defined in OAR 333-007-0020.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1205

### Registered Dispensary Signage

(1) In order to obtain a registration and to retain registration a dispensary registrant must post:

(a) At every entrance to the dispensary:

(A) If a dispensary does not participate in limited marijuana retail sales a sign that reads "Medical Marijuana Patients Only";

(B) If a dispensary is permitted to sell limited marijuana retail products in accordance with OAR 333-008-1500, signs that comply with OAR 333-008-1501(1)(b); and

(C) "No On-Site Consumption of Marijuana".

(b) At all areas of ingress or egress to a limited access area signs that reads:

(A) "Restricted Access Area — Authorized Personnel Only".

(B) "No Minors Allowed".

(c) At all areas of ingress to a point of sale area a sign that reads: "Restricted Access Area — No Minors Allowed".

(d) At the point of sale, the following posters prescribed by the Authority, measuring 22 inches high by 17 inches wide that can be downloaded at [www.healthoregon.org/ommp](http://www.healthoregon.org/ommp):

(A) A Pregnancy Warning Poster; and

(B) A Poisoning Prevention Poster.

(2) All signs required by this rule must be:

(a) Legible, not less than 8 1/2 inches by and 11 inches, composed of letters not less than one-half inch in height;

(b) In English and Spanish, if a Spanish version is available through the Authority; and

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(c) Posted in a conspicuous location where the signs can be easily read by individuals on the dispensary premises.

(3) All signs may be downloaded at [www.healthoregon.org/ommp](http://www.healthoregon.org/ommp).

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1220

### Labeling

(1) This rule is in effect from March 1, 2016, until October 1, 2016. Nothing in this rule prohibits a dispensary from complying with the labeling rules in OAR 333-007-0010 to 333-007-0100 prior to October 1, 2016.

(2) Prior to transferring a marijuana item a PRD must ensure that a label is affixed to the marijuana item that includes but is not limited to:

(a) Usable marijuana:

(A) Percentage of THC and CBD;

(B) Weight in grams;

(C) Testing batch number and date tested;

(D) Who performed the testing; and

(E) Description of the product (strain).

(b) Seeds:

(A) Weight in grams; and

(B) Description of the product (strain).

(c) Immature plants: Description of the product (strain).

(d) Marijuana items other than usable marijuana, seeds or immature plants:

(A) THC and CBD potency expressed as a percentage of weight or volume;

(B) The weight or volume of usable marijuana in the product in grams, milligrams, or milliliters, as applicable;

(C) Testing batch number and date tested;

(D) Who performed the testing; and

(E) Warning label in accordance with section (3) of this rule.

(3) If the registered facility transfers a cannabinoid product, concentrate or extract the PRD must ensure it has a warning label on the outside of the packaging that includes the following: "WARNING: MEDICINAL PRODUCT — KEEP OUT OF REACH OF CHILDREN" in bold capital letters, in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1225

### Packaging

(1) This rule is in effect from March 1, 2016 until October 1, 2016. Nothing in this rule prohibits a dispensary from complying with the packaging rules in OAR 845-025-7000 to 845-025-7060 prior to October 1, 2016.

(2) For purposes of this rule:

(a) "Child-resistant safety packaging" means:

(A) Containers designed and constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly;

(B) Closable for any product intended for more than a single use or containing multiple servings; and

(C) Labeled in accordance with OAR 333-008-1220.

(b) "Container" means a sealed, hard or soft-bodied receptacle in which a tetrahydrocannabinol-infused product is placed prior to being transferred to a patient or caregiver.

(c) "Packaged in a manner not attractive to minors" means the tetrahydrocannabinol-infused product is not in a container that is brightly colored, depicts cartoons or images other than the logo of the facility, unless the logo of the facility depicts cartoons, in which case only the name of the facility is permitted.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2014(Temp), f. & cert. ef. 4-1-14 thru 9-27-14; PH 25-2014, f. & cert. ef. 9-24-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1230

### Transfers to a Registered Dispensary

(1) Transfer of Usable Marijuana, Seeds and Immature Plants. A patient, caregiver, or PRMG may transfer usable marijuana, seeds and immature plants produced by a PRMG to a registered dispensary, subject to the requirements in this rule.

(a) A registered dispensary may only accept a transfer of usable marijuana, seeds or immature marijuana plants if the individual transferring the usable marijuana, seeds or immature plants provides the original or a copy of a valid:

(A) Authorization to Transfer form prescribed by the Authority; or

(B) Personal agreement as that is defined in OAR 333-008-0010.

(b) Authorization to Transfer Forms. In order to be valid an Authorization to Transfer form must include at least:

(A) The patient's name, OMMP card number and expiration date and contact information;

(B) The name and contact information of the individual who is authorized to transfer the usable marijuana, seeds or immature marijuana plants to the registered dispensary and that individual's OMMP card number and expiration date;

(C) The name and address of the registered dispensary that is authorized to receive the usable marijuana, seeds or immature marijuana plants; and

(D) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(c) Personal Agreements. In order to be valid a personal agreement must include at least:

(A) The patient's name, OMMP card number and expiration date and contact information;

(B) The name and contact information of the PRMG to whom the patient's property rights have been assigned and the producer's OMMP card number and expiration date, and the grow site address;

(C) The portion of the patient's rights to possess seeds, immature plants and usable marijuana that is being assigned to the producer.

(2) Transfer of medical cannabinoid products, concentrates, and extracts.

(a) On and after October 1, 2016, a registered dispensary may only accept a transfer of a medical cannabinoid product or concentrate from a registered medical marijuana processing site.

(b) A registered dispensary may only accept the transfer of a cannabinoid extract from a registered processing site.

(3) Prior to a registered dispensary accepting a transfer of a marijuana item the registered dispensary must, in addition to collecting the information described in section (1) of this rule:

(a) Verify that the individual transferring the usable marijuana or immature plants is the individual authorized to make the transfer.

(b) On and after October 1, 2016, verify that the individual transferring a medical cannabinoid product or concentrate is an authorized representative of a registered medical marijuana processing site.

(4) Transfer Records. At the time a marijuana item is transferred to a dispensary the dispensary registrant must:

(a) Document, as applicable:

(A) The weight in metric units of all usable marijuana received by the registered dispensary;

(B) The number of seeds and immature plants received by the registered dispensary;

(C) The amount of a medical cannabinoid product, concentrate, or extract received by the registered dispensary, including, as applicable, the weight in metric units, or the number of units;

(D) The name of the marijuana item;

(E) The date the marijuana item was received; and

(F) The amount of reimbursement paid by the registered dispensary.

(b) Obtain and maintain a copy of, as applicable:

(A) Documents required in section (1) of this rule including the date it was received;

(B) The photo identification of the individual transferring the marijuana item to the dispensary, if such a copy is not already on file;

(C) The OMMP card of the individual transferring usable marijuana, seeds or immature plants;

(D) The medical marijuana processing site registration; and

(E) Test results for marijuana items transferred to the dispensary unless the dispensary plans to arrange for the testing of the marijuana item.

(5) Prior to October 1, 2016, if a dispensary accepts the transfer of a marijuana item that has not been tested in accordance with OAR 333-007-0300 to 333-007-0490 the dispensary must segregate that marijuana item in a limited access area and place it in a container or receptacle with a label that contains the following information:

(a) The name and OMMP identification card number of the individual who transferred the item, if applicable;

(b) The name of the individual who transferred the item and the registration number of the processing site, if applicable

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- (c) The date the item was transferred;
- (d) The amount or weight of the item transferred as applicable;
- (e) The name of the marijuana item; and
- (f) In bold, capital letters, no smaller than 12 point font, "PRODUCT NOT TESTED".

(6) Once a marijuana item has been sampled in accordance with OAR 333-007-0360 the marijuana item must be labeled and stored in accordance with OAR 333-007-0380.

(7) Nothing in these rules requires a dispensary registrant to accept a transfer of a marijuana item.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1245

### Transfers From a Registered Dispensary to a Patient or Designated Primary Caregiver

(1) A dispensary registrant must, prior to permitting an individual to enter a point of sale area on the dispensary premises, except as permitted under OAR 333-008-1500, verify that the individual is a current patient or designated primary caregiver.

(2) A registered dispensary must, prior to transferring a marijuana item to a patient or a designated primary caregiver:

(a) Verify the individual is currently registered with the Authority by viewing the individual's government issued photo identification and Authority issued patient or caregiver card and making sure the identities match.

(b) Obtain and retain, if not already on file, a copy of the patient's or caregiver's:

- (A) OMMP identification card; and
  - (B) Government issued photo identification.
- (c) Document:

(A) The name, OMMP card number and expiration date of the card of each person to whom the registered facility transfers a marijuana item;

(B) The amount of usable marijuana transferred in metric units, if applicable;

(C) The number of seeds or immature plants transferred, if applicable;

(D) The amount of a medical cannabinoid product concentrate, or extract, if applicable;

(E) The brand name of the marijuana item and a description of what was transferred;

(F) The date of the transfer; and

(G) The amount of money paid by the patient or designated primary caregiver for the transfer.

(3) A dispensary registrant may not transfer at any one time to a patient or designated primary caregiver, within one day, more than:

- (a) 24 ounces of usable marijuana;
- (b) 16 ounces of a medical cannabinoid product in solid form;
- (c) 72 ounces of a medical cannabinoid product in liquid form;
- (d) 16 ounces of a cannabinoid concentrate whether sold alone or contained in an inhalant delivery system;
- (e) Five grams of a cannabinoid extract whether sold alone or contained in an inhalant delivery system;
- (f) Four immature marijuana plants; and
- (g) 50 seeds.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2014(Temp), f. & cert. ef. 4-1-14 thru 9-27-14; PH 25-2014, f. & cert. ef. 9-24-14; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1247

### Registered Dispensary Record Keeping

(1) In order to obtain a registration and to retain registration a PRD must have an installed and fully operational electronic data management system that is either the same as or different than the integrated inventory tracking and point of sale system required in OAR 333-008-1200 capable of maintaining:

(a) All copies of documents required to be obtained and retained in OAR 333-008-1230 and 333-008-1245;

(b) Any revocation of an Authorization to Transfer form or personal agreement; and

(c) All other information required to be documented and retained by these rules if such information is not contained in the inventory tracking and point of sale system required in OAR 333-008-1200.

(2) A dispensary registrant must maintain all information required to be documented in these rules in a safe and secure manner that protects the

information from unauthorized access, theft, fire, or other destructive forces, and is easily accessed and retrievable by the Authority upon request, either at the registered dispensary or online.

(3) The electronic data management system described in section (1) of this rule must:

(a) Provide for an off-site or secondary backup system; and

(b) Provide security measures to ensure patient records are kept confidential.

(4) Documents and information required to be maintained in these rules must be retained by a PRD for at least two years.

(5) A dispensary registrant must provide the Authority with any documentation required to be maintained in these rules upon request, in the format requested by the Authority, or permit the Authority access to such documentation on-site.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1248

### Registered Dispensary Reporting to the Authority

(1) On and after June 1, 2016, a PRD must submit to the Authority electronically in a manner specified by the Authority, by the 10th of each month, the following information:

(a) The amount of usable marijuana transferred to and by the medical marijuana dispensary during the previous month.

(b) The amount and type of medical cannabinoid products transferred to and by the medical marijuana dispensary during the previous month. For purposes of this section "type" means:

- (A) Cannabinoid edibles;
- (B) Cannabinoid topicals;
- (C) Cannabinoid tinctures;
- (D) Cannabinoid capsules;
- (E) Cannabinoid suppositories;
- (F) Cannabinoid transdermal patches and
- (G) Cannabinoid product other than products listed in paragraphs (A) to (F) of this subsection.

(c) The amount and type of cannabinoid concentrates transferred to and by the medical marijuana dispensary during the previous month. For purposes of this section "type" means:

- (A) Cannabinoid concentrate in solid form; and
- (B) Cannabinoid concentrate in liquid form.

(d) The amount and type of cannabinoid extracts transferred to and by the medical marijuana dispensary during the previous month. For purposes of this section "type" means:

- (A) Cannabinoid extract in solid form; and
- (B) Cannabinoid extract in liquid form.

(e) The quantity of immature marijuana plants transferred to and by the medical marijuana dispensary during the previous month.

(f) The quantity of seeds transferred to and by the medical marijuana dispensary during the previous month.

(2) Information submitted to the Authority under this rule must:

(a) List each type of marijuana item separately;

(b) Provide the total aggregate amount of a type of marijuana item transferred to a dispensary by each patient, designated primary caregiver, PRMG or processing site during the previous month; and

(c) Provide the total aggregate amount of a type of marijuana item transferred by a dispensary to each patient or designated primary caregiver during the previous month.

(3) In addition to submitting the information as required by section (1) of this rule, a person responsible for a dispensary must keep a record of the information described in section (1) of this rule for two years after the date on which the person submits the information to the Authority.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1600

### Applicability

(1) OAR 333-008-1600 to 333-008-2200 applies to any person processing marijuana for transfer to a registered dispensary.

(2) A person may not process marijuana unless the person is registered in accordance with these rules, except for a person:

(a) Processing marijuana under a license issued by the Commission under ORS 475B.090; or

(b) Who has been designated as a primary caregiver under ORS 475B.418 who processes a medical cannabinoid product or a cannabinoid



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concentrate for the caregiver's patient and who does not transfer medical cannabinoid product or cannabinoid concentrate to a dispensary.

Stat. Auth.: ORS 475B.435, 475B.445  
Stats. Implemented: ORS 475B.435, 475B.445  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1610

### Definitions

For purposes of OAR 333-008-1600 to 333-008-2200:

(1) "Cannabinoid capsule" means a small soluble container, usually made of gelatin, that encloses a dose of a cannabinoid product, concentrate or extract intended for human ingestion.

(2) "Cannabinoid edible" means a food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.

(3) "Cannabinoid suppository" means a small soluble container designed to melt at body temperature within a body cavity other than the mouth, especially the rectum or vagina, containing a cannabinoid product, concentrate or extract.

(4) "Cannabinoid topical" means a cannabinoid product intended to be applied to skin or hair.

(5) "Cannabinoid transdermal patch" means an adhesive substance applied to human skin that contains a cannabinoid product, concentrate or extract for absorption into the bloodstream.

(6) "Food" means a raw, cooked, or processed edible substance, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(7) "Person responsible for the marijuana processing site" or "PRP" means an individual who is directly involved in the day-to-day operation of a processing site and is identified as a PRP on an application.

(8) "Primary PRP" means a PRP designated by the owner of the processing site as the primary point of contact for the Authority and who is authorized to receive any and all communications and legal notices from the Authority.

(9) "Processing site representative" means an owner, director, officer, PRP, manager, employee, agent or other representative of a registered processing site, to the extent that the person acts in a representative capacity.

(10) "Processing site registrant" means:

(a) An individual who owns a registered processing site or if a business entity owns the registered processing site, each individual who has a financial interest in the registered processing site; and

(b) Any PRP.

(11) "These rules" means OAR 333-008-1600 to 333-008-2200.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1620

### Application for Medical Marijuana Processing Site Registration

(1) On and after April 1, 2016, to register a medical marijuana processing site a person must submit an application on a form prescribed by the Authority that includes but is not limited to:

(a) The name of the individual who owns the processing site or, if a business entity owns the processing site, the name of each individual who has a financial interest in the processing site;

(b) The name of the individual or individuals responsible for the processing site, if different from the name of the individual who owns the processing site, with one of the individuals responsible for the processing site identified as the primary PRP;

(c) The address of the marijuana processing site;

(d) For each individual responsible for the processing site proof of residency in accordance with OAR 333-008-1640;

(e) For each individual named in the application:

(A) A legible copy of the individual's valid government issued photographic identification that includes last name, first name and date of birth;

(B) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-2020; and

(C) An Individual History Form and any information identified in the form that is required to be submitted.

(f) If the applicant intends to process extracts, proof from the local government that the proposed location of the processing site is not located in an area that is zoned for residential use;

(g) A land use compatibility statement from the local government that shows whether the operation of a processing site at the proposed location would be an allowed use, or a similar document.

(h) Proof that the business is registered or has filed an application to register as a business with the Oregon Office of the Secretary of State;

(i) A map or sketch of the parcel or premises on which the premises proposed for registration, is located, including:

(A) Directional references;

(B) Bordering streets and the names of the streets;

(C) Identification of the building or buildings in which the proposed processing site is to be located;

(D) The dimensions of the proposed premises of the processing site;

(E) Identification of other buildings or property owned by or under the control of the applicant on the same parcel or tax lot as the premises proposed for registration that will be used in the business; and

(F) Identification of any residences on the parcel or tax lot.

(j) Disclosure of whether the proposed location is or will be leased or owned and by whom it will be leased or owned;

(k) A description of the type of products to be processed, a description of equipment to be used, including any solvents, gases, chemicals or other compounds used to create extracts or concentrates;

(l) The proposed endorsements as described in OAR 333-008-1700; and

(m) Application and registration fees, and criminal background check fees for each individual named in the application.

(2) An application for the registration of a processing site must be submitted electronically via the Authority's website, [www.healthoregon.org/ommp](http://www.healthoregon.org/ommp). The documentation required in section (1) of this rule may be submitted electronically to the Authority or may be mailed to the Oregon Medical Marijuana Program, Oregon Health Authority, PO Box 14116, Portland, OR 97293.

(a) If documentation is mailed, it must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered incomplete.

(b) If documentation is submitted electronically it must be received by the Authority by 5 p.m. Pacific Time within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered incomplete.

(3) Applicable fees must be paid online at the time of application.

(4) Applications will be reviewed in the order they are received by the Authority. An application is considered received as of the date and time that payment of fees is authorized by the entity that issued the credit or debit card used to pay the fees.

(5) If the Authority does not receive a complete application, all documentation required in section (2) of this rule, and all required fees within the time frames established in this rule, the application will be considered incomplete.

(6) A person who wishes to register more than one location must submit a separate application, registration fees, and all documentation described in section (1) of this rule for each location.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1630

### Processing Site Fees

(1) The initial fees for the registration of a processing site are:

(a) A non-refundable application fee of \$500; and

(b) A \$3,500 registration fee.

(2) The annual renewal fees for the registration of a processing site are:

(a) A \$500 non-refundable renewal fee; and

(b) A \$3,500 registration fee.

(3) The criminal background check fee is \$35 per individual.

(4) The Authority must return the registration fee if:

(a) An application is incomplete; or

(b) An applicant withdraws an application.

(5) The Authority may return the registration fee if an application is denied.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1640

### PRP Residency Requirements

(1) Until January 1, 2020, a PRP must have been a resident of Oregon for at least two years immediately prior to the application being submitted to the Authority.

(2) To prove residency an individual designated as a PRP must submit a residency form, prescribed by the Authority, along with a copy of the PRP's Oregon driver license or Oregon identification card.

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(3) If an individual designated as a PRP does not have an Oregon driver license or the PRP's Oregon driver license or Oregon identification card was not issued two years prior to the date of application, as applicable, the Authority will attempt to verify whether the PRP has been a resident for the required length of time and may require the PRP to submit additional information to the Authority to prove residency.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1650

### Processing Site Application Review

(1) Once the Authority has determined that an application is complete it will review an application to the extent necessary to determine compliance with ORS 475B.435 and these rules.

(2) The Authority may, in its discretion, prior to acting on an application:

(a) Contact any individual listed on the application and request additional documentation or information;

(b) Inspect the premises of the proposed processing site; or

(c) Verify any information submitted by the applicant.

(3) Prior to making a decision whether to approve or deny an application the Authority must:

(a) Review the criminal background check results for each individual named on the application;

(b) Verify that the applicant is registered as a business with the Office of the Secretary of State; and

(c) Verify that the proposed location of the processing site is not located:

(A) In an area that is zoned for residential use if the processor intends to make extracts; and

(B) Is not in a city or county that has adopted an ordinance under ORS 475B.800 or section 133, chapter 614, Oregon Laws 2015, prohibiting processing sites.

(4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority may return the application to the applicant as incomplete or deny the application in accordance with OAR 333-008-1670.

(5) The Authority will notify the applicant that the proposed processing meets the initial criteria for registration if:

(a) The proposed processing site is in compliance with ORS 475B.435 and these rules;

(b) Each individual named in the application passes the criminal background check; and

(c) Each individual named as a PRP in the application meets residency and age requirements.

(6) Within 30 days of the date the Authority notified the applicant under section (5) of this rule, the applicant must submit:

(a) Documentation that shows the applicant has lawful possession of the proposed location of the processing site; and

(b) A floor or plot plan sketch of all enclosed areas at the proposed location that will be used in the business with clear identification of walls, partitions, counters, windows, all areas of ingress and egress, and all limited access areas.

(7) If the applicant does not comply with section (6) of this rule the application will be returned as incomplete.

(8) If the applicant provides the documentation required in section (6) of this rule, the Authority will review the information to determine if it is complete.

(a) If the documentation is not complete or is insufficient, the Authority must notify the applicant in writing and the applicant will have 10 calendar days to provide the additional documentation.

(b) If the applicant does not provide the additional documentation within 10 calendar days the application will be returned as incomplete.

(9) If the Authority determines that the applicant has submitted the required documentation under section (6) of this rule, the Authority must notify the applicant in writing that the applicant has 60 days from the date of the notice to submit a Readiness Form, prescribed by the Authority, indicating that the applicant is prepared for an inspection and is in compliance with these rules.

(10) If the Authority does not receive the Readiness Form in accordance with section (9) of this rule the applicant's application will be returned as incomplete, unless an extension has been granted under section (11) of this rule.

(11) An applicant may request one extension of the 60-day deadline in section (9) of this rule if the applicant can demonstrate to the Authority that the deadline cannot be met for reasons outside of the applicant's control, such as but not limited to the applicant's inability to obtain local government building permits.

(a) A request for an extension must be in writing, must be received within 60 days of the notice described in section (9) of this rule, and must explain and provide documentation that shows the applicant cannot, for reasons outside of the applicant's control, meet the 60-day deadline.

(b) A request for an extension tolls the 60-day deadline.

(c) The Authority will review the request and provide, in writing to the applicant, its decision and the reason for the decision.

(d) If an extension is granted the Authority must inform the applicant of the new deadline for submission of the Readiness Form, but in any case an extension may not exceed 60 days.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1660

### Processing Site Pre-Approval Inspection; Approval of Application

(1) The Authority must perform a site visit within 30 days of receiving a timely Readiness Form, as that is described in OAR 333-008-1650 to determine whether the applicant and processing site are in compliance with these rules.

(2) If, after the site visit the Authority determines that the applicant and processing site are in compliance with these rules the Authority must provide the primary PRP with proof of registration that includes a unique registration number, and notify the primary PRP in writing that the processing site may operate, and issue any applicable endorsements.

(3) If, after the site visit the Authority determines that the processing site is not in compliance with these rules the Authority may:

(a) Give the applicant 10 business days to come into compliance;

(b) Propose to deny the application in accordance with OAR 333-008-1670; or

(c) Consider the application to be incomplete.

(4) A processing site must at all times display proof of registration in a prominent place inside the processing site so that proof of registration is easily visible to individuals authorized to be on the premises of the processing site.

(5) A registered processing site may not use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration on any signs at the processing site, on its website, or in any advertising or social media.

(6) A processing site's registration:

(a) Is only valid for the location indicated on the proof of registration.

(b) May not be transferred to another location.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1670

### Denial of Processing Site Application

(1) The Authority must deny an application for the registration of a processing site if:

(a) An application, supporting documentation provided by the applicant, or other information obtained by the Authority shows that the qualifications for a processing site in ORS 475B.435 or these rules have not been met; or

(b) An individual named in an application has been:

(A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within two years from the date the application was received by the Authority; or

(B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or

(c) The city or county in which the facility is located has prohibited processing sites in accordance with ORS 475B.800 or section 133, chapter 614, Oregon Laws 2015.

(2) The Authority may deny an applicant if it determines that the applicant, the owner of the processing site, a PRP, or an employee of the processing site:

(a) Submitted false or misleading information to the Authority; or

(b) Violated a provision of ORS 475B.400 to 475B.525, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7, these rules or an ordinance adopted pursuant to ORS 475B.500.

(3) If an individual named in an application is not qualified based on age, residency, or the criminal background check, the Authority will permit

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a change form to be submitted in accordance with OAR 333-008-1720 or 333-008-2030, along with the applicable criminal background check fee. If the individual named in the change form is not qualified the Authority must deny the application in accordance with section (1) of this rule.

(4) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1680

### Withdrawal of Processing Site Application

An applicant for a processing site registration may withdraw an initial or renewal application at any time prior to the Authority acting on the application unless the Authority has determined that the applicant submitted false or misleading information or there is a pending investigation or enforcement action in which case the Authority may refuse to accept the withdrawal and may issue a notice of proposed denial in accordance with OAR 333-008-1670.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1690

### Expiration and Renewal of Registration for Processing Site

(1) A processing site's registration expires one year following the date of application approval.

(2) A processing site registrant must submit not more than 90 but at least 60 days before the registration expires:

- (a) A renewal application on a form prescribed by the Authority;
- (b) Renewal fees;
- (c) Forms required for the Authority to do a criminal background check on all individuals named in the application;
- (d) Any information identified in the application;
- (e) Any information required during an initial application; and
- (f) Any information required to be submitted under OAR 333-008-1040.

(3) A registrant who files a completed renewal application with the Authority at least 60 calendar days before the registration expires may continue to operate, even after the registration expiration date, pending a decision on the renewal application by the Authority.

(4) A processing site registrant that does not submit timely renewal documentation in accordance with section (2) of this rule may be subject to the imposition of civil penalties.

(5) If a processing site registrant does not submit a renewal form, required documentation and required renewal and criminal background check fees prior to the registration's expiration, the registration is expired and is no longer valid.

(6) Renewals will be processed in accordance with OAR 333-008-1650 to 333-008-1670, as applicable.

(7) A renewal applicant may be required to submit a Readiness Form, as described in OAR 333-008-1650(9) and may be subject to inspection prior to the Authority acting on a renewal application.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1700

### Processing Site Endorsements

(1) A marijuana processor may only process and transfer medical cannabinoid products, concentrates or extracts if the processor has received an endorsement from the Authority for that type of processing activity. Endorsements types are:

- (a) Cannabinoid edible processor;
- (b) Cannabinoid topical processor;
- (c) Cannabinoid concentrate processor;
- (d) Cannabinoid extract processor; and
- (e) Cannabinoid tincture, capsule, suppository, or transdermal patch processor.

(2) An applicant must request an endorsement upon submission of an initial application but may also request an endorsement at any time following registration.

(3) In order to apply for an endorsement an applicant or processing site registrant must submit a form prescribed by the Authority that includes a description of the type of products to be processed, a description of equipment to be used, and any solvents, gases, chemicals or other compounds proposed to be used to create extracts or concentrates.

(4) Only one application and registration fee is required regardless of how many endorsements an applicant or registrant requests or at what time the request is made.

(5) A processing site registrant may hold multiple endorsements.

(6) For the purposes of endorsements any cannabinoid product that is intended to be consumed orally is considered a cannabinoid edible.

(7) If a processor is no longer going to process the product for which the processor is endorsed the processor must notify the Authority in writing and provide the date on which the processing of that product will cease.

Stat. Auth.: ORS 475B.435, 475B.440  
Stats. Implemented: ORS 475B.435, 475B.440  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1710

### PRP Criteria and Responsibilities

(1) A PRP must:

- (a) Be 21 years of age or older;
- (b) Meet the residency requirements in OAR 333-008-1640;
- (c) Have legal authority to act on behalf of the registered processing site; and

(d) Be responsible for ensuring the registered processing site complies with applicable laws.

(2) A PRP may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within two years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) A PRP is accountable for any intentional or unintentional action of a processing site representative, with or without the knowledge of the PRP, who violates ORS 475B.435 to 475B.440 or these rules, and is responsible for any unlawful conduct that occurs on the premises of the processing site or any property outside the registered processing site that is owned by or under the control of the processing site registrant.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1720

### Removal, Addition, Change, Designation or Assignment of PRP

(1) If an owner of a registered processing site is adding or changing a PRP or primary PRP, an individual with legal authority to act on behalf of the registered processing site must submit:

- (a) A form, prescribed by the Authority;
- (b) Proof of the proposed PRP or primary PRP's residency in accordance with OAR 333-008-1640;
- (c) A legible copy of the individual's valid government issued photographic identification that includes last name, first name and date of birth;
- (d) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-2020; and
- (e) A criminal background check fee of \$35.

(2) A PRP who is designating or assigning the responsibilities of a PRP to another individual must submit the information and fees required in section (1) of this rule. The duties of a primary PRP may not be designated or assigned.

(3) The Authority will review and approve the addition or change of a PRP or primary PRP if the individual meets the requirements in OAR 333-008-1710.

(4) The Authority will review and approve the designation or assignment of the responsibilities of a PRP to another individual if that individual meets the requirements in OAR 333-008-1710. An individual to whom a designation or assignment is made, and who is approved by the Authority, has the same legal obligations as a PRP.

(5) An individual may not act in the capacity of a PRP without approval from the Authority.

(6) If the Authority denies the request to add or change a PRP or primary PRP, or denies the request to designate or assign the responsibilities of a PRP to another individual, the Authority must notify the individual that submitted the request of the denial and the current primary PRP and describe the reason for the denial.

(7) A registered processing site may not process marijuana or receive or transfer any marijuana items without at least one Authority approved PRP and a primary PRP.

Stat. Auth.: ORS 475B.435  
Stats. Implemented: ORS 475B.435  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

# ADMINISTRATIVE RULES

## 333-008-1730

### Registered Processing Site Premises Restrictions and Requirements

(1) A registered processing site may not be located in an area that is zoned for residential use if the processing site is endorsed to make cannabinoid extracts.

(2) In order to be registered a processing site must operate at a particular location as specified in the application and may not be mobile.

(3) Minors on Premises. A registered processing site may not permit a minor to be present in any limited access area of a registered processing site.

(4) On Premises Consumption.

(a) A registered processing site may not permit the ingestion, inhalation or topical application of a marijuana item anywhere on the premises of the processing site, except as described in subsection (b) of this section.

(b) An employee of a registered processing site who is a patient may consume a marijuana item during his or her work shift on the premises of the registered processing site as necessary for his or her medical condition, if the employee is:

(A) Alone and in a closed room where no processing site marijuana items are present; and

(B) Not visible to the public outside the registered processing site.

(c) For purposes of this section consume does not include smoking, combusting, inhaling, vaporizing, or aerosolizing a marijuana item.

(5) General Public and Visitor Access. The general public is not permitted on the premises of registered processing site, except as permitted by this rule.

(a) In addition to registrant representatives, the following visitors are permitted on the premises of a processing site, including limited access areas, subject to the requirements in section (6) of this rule:

(A) Laboratory personnel, if the laboratory is accredited by the Authority;

(B) A contractor authorized by a registrant representative to be on the premises; or

(C) Individuals authorized to transfer marijuana items to a registered processing site.

(b) A registered processing site may permit up to seven invited guests 21 years of age and older, per week, on the premises of a registered processing site, including limited access areas, subject to the requirements in section (6) of this rule.

(6) Visitor Escort, Log and Badges.

(a) Prior to entering the premises of a registered processing site all visitors permitted by section (5) of this rule must be documented and issued a visitor identification badge from a registrant representative that must remain visible while on the premises. A visitor badge is not required for government officials. All visitors described in section (5) of this rule must be accompanied by a registrant representative at all times.

(b) A processing site registrant must maintain a log of all visitor activity and the log must contain the first and last name and date of birth of every visitor, and the date they visited.

(7) Government Access. Nothing in this rule is intended to prevent or prohibit Authority employees or contractors, or other state or local government officials that have jurisdiction over some aspect of the premises or a registered processing site to be on the premises.

(a) A visitor badge is not required for government officials.

(b) A processing site must log every government official that enters the premises but the processing site may not request that the government official provide a date of birth for the log.

(8) A registered processing site must have:

(a) A designated limited access area or areas where transfers of marijuana items are received; and

(b) A designated area where visitors enter the processing site premises and are checked in.

(9) The areas described in section (8) of this rule must be clearly marked on the floor or plot plan sketch required in OAR 333-008-1650.

(10) Signage. A registered processing site must post:

(a) At every entrance to the processing site a sign that reads: "No On-Site Consumption of Marijuana".

(b) At all areas of ingress or egress to a limited access area signs that reads:

(A) "Restricted Access Area — Authorized Personnel Only".

(B) "No Minors Allowed".

(11) A processing site may not sublet or share with any other business any portion of the processing site premises, except as permitted in OAR 333-008-1790.

Stat. Auth.: ORS 475B.435

Stats. Implemented: ORS 475B.435

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1740

### Operation of Registered Processing Site

(1) Policies and Procedures. In order to be registered and remain registered a processing site must create and maintain written, detailed standard policies and procedures that include but are not limited to:

(a) Instructions for making each medical cannabinoid product, concentrate or extract.

(b) The ingredients and the amount of each ingredient for each process lot.

(c) The process for making each product.

(d) The number of servings in a process lot.

(e) The intended amount of THC per serving of the product.

(f) The process for ensuring that the amount of THC is consistently distributed throughout each process lot.

(g) If processing a cannabinoid concentrate or extract:

(A) Conducting necessary safety checks prior to commencing processing; and

(B) Purging any solvent or other unwanted components from a cannabinoid concentrate or extract.

(h) Procedures for cleaning all equipment, counters and surfaces thoroughly.

(i) Proper handling and storage of any solvent, gas or other chemical used in processing or on the processing site premises in accordance with material safety data sheets and any other applicable laws.

(j) Proper disposal of any waste produced during processing in accordance with all applicable local, state and federal laws, rules and regulations.

(k) Quality control procedures designed to, at a minimum, ensure that the amount of THC is consistently distributed throughout each process lot and that potential product contamination is minimized.

(l) Appropriate use of any necessary safety or sanitary equipment.

(m) Emergency procedures to be followed in case of a fire, chemical spill or other emergency.

(n) Security.

(o) Transfers of marijuana items to and from the processing site.

(p) Testing.

(q) Packaging and labeling if the processor intends to or is packaging and labeling marijuana items after transfer to the processing site.

(r) Employee training.

(s) Compliance with these rules, including but not limited to violations and enforcement.

(2) Prohibitions. A registered processing site may not process or transfer a marijuana item:

(a) That by its shape and design is likely to appeal to minors, including but not limited to:

(A) Products that are modeled after non-cannabis products primarily consumed by and marketed to children; or

(B) Products in the shape of an animal, vehicle, person or character.

(b) That is made by applying cannabinoid concentrates or extracts to commercially available candy or snack food items.

(3) Employees. A registered processing site may employ an individual between the ages of 18 and 20 if the individual is a patient. Otherwise, processing site employees must be 21 years of age or older.

(4) Standardized Scales.

(a) In order to obtain a registration and to retain registration a processing site registrant must own and use a weighing device that has:

(A) A suitable capacity and division size for the item being weighed;

(B) A valid National Type Evaluation Program Certificate of Conformance, as described in OAR 603-027-0655 and 603-027-0660;

(C) Been properly calibrated in accordance with the manufacturer's instructions;

(D) The appropriate security seal affixed securing the calibration functions of the device;

(E) Been licensed by the Oregon Department of Agriculture; and

(F) Been placed into service as that term is defined in OAR 602-027-0670, as required by the Oregon Department of Agriculture.

(b) The weighing device that meets the criteria in subsection (3)(a) of this rule must be used by a processing site whenever marijuana items are:

(A) Transferred to or from the processing site and the transfer is by weight;

(B) Packaged for transfer by weight; or

(C) Weighed for purposes of documenting information required in OAR 333-008-1760, 333-008-1770, 333-008-1820, and 333-008-1830.

(5) Inventory Tracking and Point of Sale System: A registered processing site must have an integrated inventory tracking and point of sale system that can, at a minimum:

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(a) Produce bar codes or similar unique identification numbers for each lot of usable marijuana transferred to a registered processing site and for each lot of a medical cannabinoid product, concentrate or extract transferred to a registered dispensary;

(b) Capture all information required to be documented in OAR 333-008-1760 and 333-008-1770;

(c) Generate inventory, transaction, transport and transfer reports requested by the Authority viewable in PDF format; and

(d) Produce all the information required to be submitted to the Authority pursuant to OAR 333-0080-1830.

(6) Online Verification of Registration Status. A processing site must verify an individual's or processing site's registration status with the Authority when receiving a transfer of a marijuana item if the Authority has available an online system for such verification.

(7) Transport to Patients. A processing site representative may transport a medical cannabinoid product, concentrate or extract in an amount not exceeding the amounts in OAR 333-008-1245(3) to a patient if that representative is the designated primary caregiver for that patient and the processing site:

(a) Obtains and retains a copy of the patient's registry identification card and a copy of the patient's government issued photo identification; and

(b) Documents:

(A) The amount of the medical cannabinoid product, concentrate or extract transported to the patient;

(B) The name of the item and description of what was transported;

(C) The amount of money paid by the patient for the medical cannabinoid product, concentrate or extract;

(D) The date of the transport; and

(E) The name of the processing site representative who transported the item and that individual's OMMP identification card number.

(8) Inventory On-Site. Marijuana items must be kept on-site at the registered processing site except when being transported to a patient in accordance with section (7) of this rule or when being transported to a registered dispensary. The Authority may take enforcement action against a registered processing site if during an inspection a processing site cannot account for its inventory or if the amount of usable marijuana at the processing site is not within five percent of the documented inventory.

(9) Testing.

(a) Prior to October 1, 2016, a registered processing site must comply with the applicable sampling and testing requirements in OAR 333-008-1190 or if using an accredited laboratory, comply with OAR 333-007-0300 to 333-007-0490.

(b) On and after October 1, 2016, a registered processing site must comply with OAR 333-007-0300 to 333-007-0490 and may not:

(A) Accept a transfer of a marijuana item that has not been tested in accordance with OAR 333-007-0300 to 333-007-0490.

(B) Transfer a medical cannabinoid product, concentrate or extract that has not been tested in accordance with OAR 333-007-0300 to 333-007-0490.

(10) Packaging and Labeling.

(a) Prior to October 1, 2016, a registered processing site must comply with the labeling and packaging rules in OAR 333-008-1220 and 333-008-1225, OAR 333-007-0010 to 333-007-0100 or OAR 845-025-7000 to 845-025-7020 and 845-025-7060.

(b) On and after October 1, 2016, a registered processing site must comply with the labeling requirements in OAR 333-007-0010 to 333-007-0100, and the packaging requirements in OAR 845-025-7000 to 845-025-7020 and 845-025-7060.

(11) Industrial Hemp Products. A processing site may only accept the transfer of and may only transfer a product that contains THC or CBD that is derived from marijuana.

(12) Sampling. A processing site may provide a sample of a medical cannabinoid product, concentrate or extract to a dispensary for the purpose of the dispensary determining whether to purchase the product, concentrate or extract but the product, concentrate or extract may not be consumed on the processing site. Any sample provided to a dispensary must be recorded in the database.

(13) For purposes of this rule:

(a) "Lot of usable marijuana" means a quantity of usable marijuana transferred to a registered processing site from the same harvest lot as that term is defined in OAR 333-007-0020; and

(b) "Lot of medical cannabinoid products, concentrates or extracts" means a quantity of a medical cannabinoid product, concentrate or extract transferred to a registered dispensary at one time and that is from the same process lot as that term is defined in OAR 333-007-0020.

Stat. Auth.: ORS 475B.435, 475B.440

Stats. Implemented: ORS 475B.435, 475B.440  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1750

### Processor Training Requirements

(1) In order to be registered and remain registered a processing site must have a comprehensive training program that includes, at a minimum, the following topics:

(a) The standard operating policies and procedures.

(b) The hazards presented by all solvents or other chemicals used in processing and on the registered premises as described in the material safety data sheet for each solvent or chemical.

(c) Applicable Authority statutes and rules.

(2) At the time of hire and prior to engaging in any processing, and once yearly thereafter, each employee involved in the processing of a medical cannabinoid product, concentrate or extract must be trained in accordance with the processing site's training program.

Stat. Auth.: ORS 475B.435, 475B.440

Stats. Implemented: ORS 475B.435, 475B.440  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1760

### Transfers to a Registered Processing Site

(1) Transfer of Usable Marijuana. A patient, caregiver, or PRMG may transfer usable marijuana to a registered processing site, subject to the requirements in this rule.

(a) A registered processing site may only accept a transfer of usable marijuana if the individual transferring the usable marijuana provides the original or a copy of a valid:

(A) Authorization to Transfer form prescribed by the Authority; or

(B) Personal agreement as that is defined in OAR 333-008-0010.

(b) Authorization to Transfer Forms. In order to be valid an Authorization to Transfer form must include at least:

(A) The patient's name, OMMP card number and expiration date and contact information;

(B) The name and contact information of the individual who is authorized to transfer the usable marijuana to the registered processing site and that individual's OMMP card number and expiration date;

(C) The name and address of the registered processing site that is authorized to receive the usable marijuana; and

(D) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(c) Personal Agreements. In order to be valid a personal agreement must include at least:

(A) The patient's name, OMMP card number and expiration date and contact information;

(B) The name and contact information of the PRMG to whom the patient's property rights have been assigned and the producer's OMMP card number and expiration date;

(C) The portion of the patient's rights to possess usable marijuana that is being assigned to the producer.

(2) Transfer of medical cannabinoid products, concentrates or extracts. A registered processing site may only accept a transfer of a medical cannabinoid product, concentrate or extract from another registered medical marijuana processing site.

(3) Prior to a registered processing site accepting a transfer of usable marijuana or a medical cannabinoid product, concentrate or extract a registered processing site representative must, in addition to collecting the information described in section (1) of this rule:

(a) Verify that the individual transferring the usable marijuana is the individual authorized to make the transfer.

(b) Verify that the individual transferring a medical cannabinoid product, concentrate or extract is an authorized representative of a registered medical marijuana processing site.

(4) Transfer Records. At the time usable marijuana or a medical cannabinoid product, concentrate or extract is transferred to a registered processing site a processing site representative must:

(a) Document, as applicable:

(A) The weight in metric units of all usable marijuana received by the processing site;

(B) The amount of a medical cannabinoid product, concentrate or extract received by the processing site, including, as applicable, the weight in metric units, or the number of units;

(C) The name of the usable marijuana or medical cannabinoid product, concentrate or extract;

(D) The date the usable marijuana or medical cannabinoid product, concentrate or extract was received; and

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(E) The amount of reimbursement paid by the registered processing site.

(b) Obtain and maintain a copy of, as applicable:

(A) Documents required in section (1) of this rule including the date it was received;

(B) The photo identification of the individual transferring the usable marijuana or medical cannabinoid product, concentrate or extract to the registered processing site, if such a copy is not already on file;

(C) The OMMP card of the individual transferring usable marijuana;

(D) The medical marijuana processing site registration; and

(E) Test results for marijuana items transferred to the processing site unless the processing site plans to arrange for the testing of the marijuana item.

(5) Prior to October 1, 2016, if a registered processing site accepts the transfer of usable marijuana or a medical cannabinoid product, concentrate or extract that has not been tested in accordance with OAR 333-008-1190 or OAR 333-007-0300 to 333-007-0490 the processing site must segregate that item in a limited access area and place it in a container or receptacle with a label that contains the following information:

(a) The name, OMMP identification card number, or registered processing site number of the individual who transferred the item;

(b) The date it was transferred;

(c) The amount or weight of the item transferred as applicable;

(d) The name of the item; and

(e) In bold, capital letters, no smaller than 12 point font, "PRODUCT NOT TESTED".

(6) Once samples of the usable marijuana or a medical cannabinoid product, concentrate or extract have been taken for the purpose of testing the item must be stored and secured in a manner that prevents the product from being tampered with or transferred prior to test results being reported.

(7) Nothing in these rules requires a registered processing site to accept a transfer of a marijuana item.

Stat. Auth.: ORS 475B.435, 475B.440

Stats. Implemented: ORS 475B.435, 475B.440

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1770

### Transfers From a Registered Processing Site

(1) A registered processing site must document the following for transfers to a registered dispensary:

(a) The name, address, and registration number of the dispensary to which a medical cannabinoid product, concentrate or extract was transferred;

(b) The amount of medical cannabinoid product, concentrate, or extract transferred;

(c) The name of the medical cannabinoid product, concentrate, or extract transferred;

(d) The date of the transfer; and

(e) The amount of money paid by the registered dispensary for the transfer.

(2) A registered processing site must document the transport of a medical cannabinoid product, concentrate or extract to a patient by a processing site representative who is the designated primary caregiver of that patient in accordance with OAR 333-008-1740.

Stat. Auth.: ORS 475B.435

Stats. Implemented: ORS 475B.435

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1780

### General Processing Site Health and Safety Requirements

(1) A processing site must:

(a) Use equipment, counters and surfaces for processing that are food-grade and do not react adversely with any solvent being used.

(b) Have counters and surface areas that are constructed in a manner that reduce the potential for development of microbials, molds and fungi and that can be easily cleaned.

(c) Maintain the processing site in a manner that is free from conditions which may result in contamination and that is suitable to facilitate safe and sanitary operations for product preparation purposes.

(2) A processing site may not treat or otherwise adulterate a medical cannabinoid product, concentrate or extract with any additives that would increase potency, toxicity, addictiveness, or would be unsafe, including but not limited to nicotine.

Stat. Auth.: ORS 475B.435, 475B.440

Stats. Implemented: ORS 475B.435, 475B.440

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1790

### Cannabinoid Edible Processor Requirements

(1) A processing site endorsed to make cannabinoid edibles may only process in a food establishment licensed by the Oregon Department of Agriculture (ODA) and must comply with the applicable provisions of OAR chapter 603, division 25, with the exception of OAR 603-025-0020(17).

(2) A processing site endorsed to make cannabinoid edibles may not:

(a) Engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant or single-event temporary restaurant licensed under ORS chapter 624;

(b) Share a food establishment with a person not registered with the Authority as a cannabinoid edible processor; or

(c) Process cannabinoid edibles and food in the same food establishment.

(3) A processing site endorsed to make cannabinoid edibles may share a food establishment with another Authority registered cannabinoid edible processor if:

(a) The schedule, with specific hours and days that each processor will use the food establishment, is prominently posted at the entrance to the food service establishment.

(b) Each registrant designates a separate area to secure, in accordance with OAR 333-008-2080 any marijuana, medical cannabinoid products, concentrates or extracts that a registrant stores at the food establishment. If a cannabinoid edible processor does not store marijuana, medical cannabinoid products, concentrates or extracts at the food establishment those items must be stored on a registered processing site under the processor's control.

(4) A food establishment used by a processing site endorsed to make cannabinoid edibles is considered a registered processing site and must meet the security and other premises requirements in these rules.

(5) A processing site endorsed to make cannabinoid edibles is strictly liable for any violation found at a shared food establishment during that processor's scheduled time, as reflected on the posted schedule or within that processor's designated area in the food establishment.

(6) If the Authority cannot determine by viewing the schedule or video surveillance footage who was responsible for the violation, each processor at the shared food establishment is individually and jointly liable for any documented violations.

(7) A processing site must make cannabinoid edibles in a manner that results in the THC being distributed consistently throughout the edible.

Stat. Auth.: ORS 475B.435 and 475B.440

Stats. Implemented: ORS 475B.435 and 475B.440

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1800

### Cannabinoid Concentrate and Extract Processor Requirements

(1) Cannabinoid Concentrates or Extracts. A processing site endorsed to make cannabinoid concentrates or extracts:

(a) May not use Class I solvents as those are classified in the Federal Drug Administration Guidance, Table I, published in the Federal Register on December 24, 1997 (62 FR 67377).

(b) Must:

(A) Only use a hydrocarbon-based solvent that is at least 99 percent purity.

(B) Only use a non-hydrocarbon-based solvent that is food-grade.

(C) Work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(D) Use only potable water and ice made from potable water in processing.

(2) Cannabinoid Extracts. A processing site endorsed to make cannabinoid extracts:

(a) May not use pressurized canned butane.

(b) Must:

(A) Process in a:

(i) Fully enclosed room clearly designated on the current diagram of the registered processing site.

(ii) Spark proof room equipped with evacuation fans and lower explosive limit (LEL) detectors.

(B) Use a commercially manufactured professional grade closed loop extraction system designed to recover the solvents and built to recognized and generally accepted good engineering standards, such as those of:

(i) American National Standards Institute (ANSI);

(ii) Underwriters Laboratories (UL); or

(iii) The American Society for Testing and Materials (ASTM).

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(C) If using carbon dioxide in processing, use a professional grade closed loop carbon dioxide gas extraction system where every vessel is rated to a minimum of 900 pounds per square inch.

(D) Have equipment and facilities used in processing approved for use by the local fire code official.

(E) For extraction system engineering services, including but not limited to consultation on and design of extraction systems or components of extraction systems, use the services of a professional engineer registered with the Oregon State Board of Examiners for Engineering and Land Surveying, unless an exemption under ORS 672.060 applies;

(F) Meet any fire, safety, and building code requirements specified in:

(i) Applicable Oregon state laws, rules and provisions of the State Building Code;

(ii) National Fire Protection Association (NFPA) standards;

(iii) International Building Code (IBC), if not covered by the State Building Code;

(iv) International Fire Code (IFC), if not covered by the State Building Code.

(G) Have an emergency eye-wash station in any room in which cannabinoid extract is being processed.

(H) Have all applicable material safety data sheets readily available to personnel working for the processor.

(3) Cannabinoid Concentrates. A processing site endorsed to make cannabinoid concentrates:

(a) May not:

(A) Use denatured alcohol.

(B) If using carbon dioxide, apply high heat or pressure.

(b) Must only use or store dry ice in a well ventilated room to prevent against the accumulation of dangerous levels of carbon dioxide.

(c) May use:

(A) A mechanical extraction process;

(B) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or

(C) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use heat over 180 degrees or pressure.

Stat. Auth.: ORS 475B.435, 475B.440

Stats. Implemented: ORS 475B.435, 475B.440

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1810

### Cannabinoid Topical Processor

A processing site endorsed to make cannabinoid topicals may not engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant or single-event temporary restaurant licensed under ORS chapter 624.

Stat. Auth.: ORS 475B.435, 475B.440

Stats. Implemented: ORS 475B.435, 475B.440

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1820

### Registered Processing Site Recordkeeping

(1) In addition to other record keeping required in these rules a registered processing site must keep records documenting the following:

(a) How much marijuana is in each process lot, as that term is defined in OAR 333-007-0020.

(b) If a product is returned by a registered dispensary, how much product is returned and why.

(c) If a defective product was reprocessed, how the defective product was reprocessed.

(d) Each training provided in accordance with OAR 333-008-1750, the names of employees who participated in the training, and a summary of the information provided in the training.

(e) All testing results.

(2) A processor must obtain a material safety data sheet for each solvent used or stored on the licensed premises and maintain a current copy of the material safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process on the licensed premises.

(3) If the Authority requires a processor to submit or produce documents to the Authority that the processor believes falls within the definition of a trade secret as defined in ORS 192.501, the processor must mark each document "confidential" or "trade secret".

Stat. Auth.: ORS 475B.435, 475B.440

Stats. Implemented: ORS 475B.435, 475B.440

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-1830

### Registered Marijuana Processing Site Required Reporting to the Authority

(1) The individual or individuals responsible for a marijuana processing site shall maintain documentation of each transfer of usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts and on and after June 1, 2016, must submit to the Authority electronically, by the 10th of each month, the following information:

(a) The amount of usable marijuana transferred to the marijuana processing site during the previous month.

(b) The amount and type of a medical cannabinoid concentrate or extract transferred by another registered processing site during the previous month. For purposes of this section "type" means:

(A) Cannabinoid concentrate in solid form; and

(B) Cannabinoid concentrate in liquid form.

(c) The amount and type of medical cannabinoid products transferred by the marijuana processing site to a dispensary. For purposes of this section "type" means:

(A) Cannabinoid edibles;

(B) Cannabinoid topicals;

(C) Cannabinoid tinctures;

(D) Cannabinoid capsules;

(E) Cannabinoid suppositories;

(F) Cannabinoid transdermal patches; and

(G) Cannabinoid product other than products listed in paragraphs (A) to (F) of this subsection.

(d) The amount and type of cannabinoid concentrates transferred by the marijuana processing site during the previous month. For purposes of this section "type" means:

(A) Cannabinoid concentrate in solid form; and

(B) Cannabinoid concentrate in liquid form.

(e) The amount and type of cannabinoid extracts transferred by the marijuana processing site during the previous month. For purposes of this section "type" means:

(A) Cannabinoid extract in solid form; and

(B) Cannabinoid extract in liquid form.

(f) The amount and type of medical cannabinoid products transported by the marijuana processing site to a patient during the previous month. For purposes of this section "type" means:

(A) Cannabinoid edibles;

(B) Cannabinoid topicals;

(C) Cannabinoid tinctures;

(D) Cannabinoid capsules;

(E) Cannabinoid suppositories;

(F) Cannabinoid transdermal patches; and

(G) Cannabinoid product other than products listed in paragraphs (A) to (F) of this subsection.

(g) The amount and type of cannabinoid concentrates or extracts transported by the marijuana processing site to a patient during the previous month. For purposes of this section "type" means;

(A) Cannabinoid concentrate or extract in liquid form; and

(B) Cannabinoid concentrate or extract in solid form.

(2) Information submitted to the Authority under this rule must:

(a) List each type of marijuana item separately;

(b) Provide the total aggregate amount of a type of marijuana item transferred to a processing site by a patient, designated primary caregiver, PRMG or other registered processing site during the previous month; and

(c) Provide the total aggregate amount of a type of marijuana item transferred from a processing site to a registered dispensary, patient, designated primary caregiver, or other registered processing site during the previous month.

(3) In addition to submitting the information as required by section (1) of this rule, a person responsible for a processing site must keep a record of the information described in section (1) of this rule for two years after the date on which the person submits the information to the Authority.

Stat. Auth.: ORS 475B.438

Stats. Implemented: ORS 475B.438

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2000

### Definitions

For purposes of OAR 333-008-2000 to 333-008-2200:

(1) "Applicant" means a person applying for a new or renewal registration for a dispensary or processing site.

(2) "Registrant" means a registered dispensary or registered processing site.

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(3) "Registrant representative" means an owner, director, officer, PRD, PRP manager, employee, agent or other representative of a registrant to the extent that the person acts in a representative capacity.

(4) "These rules" means OAR 333-008-2000 to 333-008-2200.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525

Stats. Implemented: ORS 475B.435, 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2010

### Communication with the Oregon Health Authority

If an applicant or registrant is required to or elects to submit information or documentation to the Authority by a particular deadline it must be received, regardless of the method used to submit the writing, by 5 p.m. Pacific Time.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525

Stats. Implemented: ORS 475B.435, 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2020

### Criminal Background Checks

(1) An individual named in a new or renewal application as required by OAR 333-008-1020 or 333-008-1620, or if otherwise required by these rules, must provide to the Authority:

(a) A criminal background check request form, prescribed by the Authority that includes but is not limited to:

(A) First, middle and last name;

(B) Any aliases;

(C) Date of birth; and

(D) Address and recent residency information.

(b) Fingerprints in accordance with the instructions on the Authority's webpage: [www.healthoregon.org/ommp](http://www.healthoregon.org/ommp).

(c) A copy of the individual's driver license.

(2) The Authority may request that an individual disclose his or her Social Security Number if notice is provided that:

(a) Indicates the disclosure of the Social Security Number is voluntary; and

(b) That the Authority requests the Social Security Number solely for the purpose of positively identifying the individual during the criminal records check process.

(3) The Authority shall conduct a criminal records check in order to determine whether the individual has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II in any state.

(4) If an individual wishes to challenge the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the Department of State Police or Federal Bureau of Investigation, those challenges must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through a contested case process.

(5) Any criminal background information received by the Authority during the criminal background check process is confidential and is not subject to disclosure without a court order.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525

Stats. Implemented: ORS 475B.435, 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2030

### Notification of Changes

(1) A registrant must notify the Authority within 10 calendar days of any of the following:

(a) The conviction for the manufacture or delivery of a controlled substance in Schedule I or Schedule II of any individual named in the application;

(b) A change in any contact information for anyone listed in an application or subsequently identified as an owner, an individual with a financial interest, a PRD or a PRP;

(c) A decision to remove a PRD, PRP, primary PRD or primary PRP;

(d) A decision to permanently close the dispensary or processing site at that location;

(e) A change in residency of any PRD or PRP;

(f) For a dispensary, the location of a public or private elementary or secondary school within 1,000 feet of the dispensary; and

(g) The suspected theft of marijuana items.

(2) The notification required in section (1) of this rule must include a description of what has changed or the event and any documentation necessary for the Authority to determine whether the dispensary or processing site or dispensary or processing site registrant is still in compliance with

ORS 475B.435, 475B.450 and these rules including but not limited to, as applicable:

(a) A copy of the criminal judgment or order;

(b) The location of the school that has been identified as being within 1,000 feet of the dispensary; or

(c) A copy of the police report documenting that the suspected theft of marijuana items was reported to law enforcement, if it was reported.

(3) Changes in Ownership, Financial Interest or Business Structure. A registrant that proposes to change its corporate structure, ownership structure or change who has a financial interest in the business must submit a form prescribed by the Authority, any information identified in the form to be submitted, and criminal background check fees, if applicable, to the Authority, prior to making such a change.

(a) The Authority must review the form and other information submitted and will approve the change if the change would not result in an initial or renewal application denial under OAR 333-008-1060 or 333-008-1670, or serve as the basis of a registration suspension or revocation.

(b) If the Authority denies the change but the registrant proceeds with the change the registrant must surrender the registration or the Authority will propose to suspend or revoke the registration.

(c) The Authority will not accept a form for a change in corporate structure, ownership structure or financial interest if the registration is expiring in less than 90 days or if the registrant or dispensary or processing site representative is under investigation by the Authority or has been issued a Notice by the Authority following an alleged violation and the alleged violation has not been resolved.

(4) Failure of a registrant to notify the Authority in accordance with this rule may result in the imposition of civil penalties or the suspension or revocation of a dispensary or processing site's registration.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525

Stats. Implemented: ORS 475B.435, 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2040

### Changing, Altering, or Modifying Licensed Premises

(1) A registrant may not make any physical changes to the premises that materially or substantially alters the premises or the usage of the premises from the plans originally reviewed by the Authority, without the Authority's prior written approval.

(2) A registrant intending to make any material or substantial changes to the premises must submit a form prescribed by the Authority, and submit any information identified in the form to be submitted, to the Authority, prior to making any such changes.

(3) The Authority must review the form and other information submitted under section (2) of this rule, and will approve the changes if the changes would not result in an initial or renewal application denial under OAR 333-008-1060 or OAR 333-008-1670.

(4) If the Authority denies the change but the registrant proceeds with the change the registrant must surrender the registration or the Authority will propose to suspend or revoke the registration.

(5) For purposes of this rule a material or substantial change requiring approval includes, but is not limited to:

(a) Any increase or decrease in the total physical size or capacity of the premises;

(b) The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress or egress, when such common entryway, doorway or passage alters or changes limited access areas, such as the areas in which the transfer of marijuana items occurs within the premises; or

(c) Any physical change that would require the installation of additional video surveillance cameras or a change in the security system.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525

Stats. Implemented: ORS 475B.435, 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2050

### Change in Location

(1) A registrant that wishes to change its location must submit a new application that complies with OAR 333-008-1020 or 333-008-1620.

(2) A registrant may not operate at a new location unless it is registered by the Authority.

(3) If a registrant is applying for a registration at a new location because the registrant wishes to change the location of the currently registered dispensary, and the new location is within 1,000 feet of the currently registered dispensary, the Authority will not deny the application based on the new location being within 1,000 feet of a registered dispensary. The



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Authority shall condition approval of the registration at the new location on the surrender of the registration at the current location.

(4) A dispensary or processing site that is approved to operate at a new location must comply with any instructions provided by the Authority for transferring marijuana items from the previous location to the new location.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2060

### Secretary of State Registration Required

A registrant must maintain a current registration as a business with the Office of the Secretary of State in order to receive or maintain registration.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2070

### Advertising Restrictions

(1) A registrant may not have advertising that:

(a) Contains statements that are deceptive, false, or misleading;

(b) Contains any content that can reasonably be considered to target minors including but not limited to cartoon characters, toys, or similar images and items typically marketed towards minors;

(c) Specifically encourages the transportation of marijuana items across state lines;

(d) Asserts that marijuana items are safe or safer for reasons including but not limited to because they are regulated by the Authority or have been tested by a certified laboratory;

(e) Make claims that a marijuana item has curative or therapeutic effects unless the claim is supported by the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner consistent with generally recognized scientific procedures and principles) and for which there is significant scientific agreement among experts qualified by scientific training and experience to evaluate such claims; or

(f) Display consumption of marijuana items.

(2) A registrant may not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a patient, caregiver, or to an individual as that term is defined in OAR 333-008-1500.

(3) A registrant must include the following statement on all advertising:

(a) "Do not operate a vehicle or machinery under the influence of marijuana".

(b) "Keep marijuana out of the reach of children".

(4) A registrant must remove any sign, display, or advertisement if the Authority finds it violates this rule.

(5) The Authority will notify the registrant and specify a reasonable time period for the registrant to remove any sign, display or advertisement that the Authority finds objectionable.

Stat. Auth.: ORS 475B.435, 475B.450 and 475B.525  
Stats. Implemented: ORS 475B.435 and 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2080

### Security Requirements

In order to be registered and remain registered a registrant must:

(1) Have an installed and fully operational security alarm system, installed by an alarm installation company, activated at all times when the premises is closed for business on all:

(a) Entry or exit points to and from the premises; and

(b) Perimeter windows, if applicable.

(2) Have a security alarm system that:

(a) Detects movement inside the premises;

(b) Is programmed to notify a security company that will notify a registrant representative or his or her designee in the event of a breach; and

(c) Has at least two operational "panic buttons" located inside the premises that are linked with the alarm system that notifies a security company.

(3) Have commercial grade, non-residential door locks installed on every external door of a registered premises where marijuana items are present.

(4) During all hours when the registrant is not operating:

(a) Securely lock all entrances to and exits from the registered premises and ensure any keys or key codes to the enclosed area remain in the possession of the registrant or registrant representative;

(b) Keep all marijuana items in a safe or vault as those terms are defined in OAR 333-008-0010.

(5) Have an encrypted network infrastructure.

(6) Have an electronic back-up system for all electronic records.

(7) Keep all video recordings and archived required records not stored electronically in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the registered business is open.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2090

### Video Surveillance Equipment

In order to be registered and remain registered a registrant must:

(1) Have an installed and fully operational video surveillance recording system with video surveillance equipment that at a minimum:

(a) Consists of:

(A) Digital or network video recorders;

(B) Cameras capable of meeting the requirements of OAR 333-008-2110 and this rule;

(C) Video monitors;

(D) Digital archiving devices;

(E) A minimum of one monitor on premises capable of viewing video; and

(F) A color printer capable of producing still photos.

(b) Is equipped with a failure notification system that immediately notifies a registrant representative of any surveillance interruption or failure that is longer than five minutes; and

(c) Has sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.

(2) Have a video surveillance system capable of recording all pre-determined surveillance areas in any lighting conditions.

(3) Have, in limited access areas, cameras that have minimum resolution of 1280 x 720 pixels (px) and record at 10 fps (frames per second).

(4) Have, in exterior perimeter and non-limited access areas cameras that have a minimum resolution of 1280 x 720 px and record at least 5 fps, except where coverage overlaps any limited access areas such as entrances or exits and in those overlap areas cameras must record at 10 fps.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2100

### Required Camera Coverage and Camera Placement

In order to be registered and remain registered a registrant must:

(1) Have security camera coverage for:

(a) All secure and limited access areas;

(b) All areas where marijuana items will be and are transferred to or from a registered premises;

(c) All points of entry to and exit from limited access areas; and

(d) All points of entry to and exit from the premises.

(2) Have cameras that are positioned so that they capture clear and certain images of any individual and activity occurring:

(a) Within 15 feet both inside and outside of all points of entry to and exit from the premises;

(b) Anywhere within a limited access area on the premises; and

(c) Anywhere within a secured area on the premises.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2110

### Video Recording Requirements

(1) In order to be registered and remain registered a registrant must:

(a) Have cameras that are installed, operational, and continuously record 24 hours a day in all areas where marijuana items will be or are on the premises.

(b) Use cameras that record at a minimum resolution of 1280 x 720 px;

(c) Have an installed and operational surveillance system that:

(A) Can produce a color still photograph from any camera image; and  
(B) Embeds the date and time on all surveillance recordings without significantly obscuring the picture;

(2) A registrant must:

(a) Keep all surveillance recordings a minimum of 45 calendar days and in a format that can be easily accessed for viewing;

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(b) Archive video recordings in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place;

(c) Provide video surveillance records and recordings immediately upon request to the Authority for the purpose of ensuring compliance with ORS 475.314 and these rules;

(d) Keep surveillance recordings for periods exceeding 45 days upon request of the Authority; and

(e) Immediately notify the Authority of any equipment failure or system outage lasting 30 minutes or more.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2120

### Location and Maintenance of Surveillance Equipment

(1) A registrant must:

(a) Have the surveillance room or surveillance area in a limited access area.

(b) Have the surveillance recording equipment housed in a designated, locked, and secured room or other enclosure with access limited to:

(A) The registrant and authorized personnel of the registrant;

(B) Employees of the Authority;

(C) State or local law enforcement agencies for any other state or local law enforcement purpose; and

(D) Service personnel or contractors.

(c) Keep a current list of all authorized personnel and service personnel who have access to the surveillance system and room on the registered premises.

(d) Keep a surveillance equipment maintenance activity log on the registered premises to record all service activity including the identity of any individual performing the service, the service date and time and the reason for service to the surveillance system.

(2) A registrant may store video recordings offsite as long as a PRD or PRP can demonstrate that the recordings are secure and protected, that the recordings are kept for a minimum of 45 calendar days as required in OAR 333-008-2110 and that the Authority can access the video recordings upon request.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2130

### Waiver of Security Requirements

(1) A registrant may request that the Authority waive one or more of the security requirements described in OAR 333-008-2080 to 333-008-2120 by submitting a request, in writing to the Authority. The request must include:

(a) The specific rules and subsections of a rule that is requested to be waived;

(b) The reason for the waiver;

(c) A description of an alternative safeguard the registrant can put in place in lieu of the requirement that is the subject of the waiver; and

(d) An explanation of how and why the alternative safeguard accomplishes the goals of the security rules, specifically public safety, prevention of diversion, accountability, and prohibiting access to unauthorized individuals.

(2) The Authority may, in its discretion and on a case by case basis, approve the waiver if it finds:

(a) The reason the registrant is requesting the waiver is because another state or local law prohibits the particular security measure that is required; or

(b) The registrant cannot, for reasons beyond the registrant's control or because the security measure is cost prohibitive, comply with the particular security measure that is required; and

(c) The alternative safeguard that is proposed meets the goals of the security rules.

(3) The Authority must notify the registrant in writing, whether the waiver has been approved. If the waiver is approved the notice must specifically describe the alternate safeguards that are required and, if the waiver is time limited, must state the time period the waiver is in effect.

(4) The Authority may withdraw approval of the waiver at any time upon a finding that the previously-approved alternative measures are not sufficient to accomplish the goals of the security rules. If the Authority withdraws its approval of the waiver, the registrant will be given a reasonable period of time to come into compliance with the security requirement that was waived.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2140

### State and Local Safety Inspections

(1) A registered premises may be subject to inspection by state or local government officials to determine compliance with state or local health and safety laws.

(2) A person responsible for a registered marijuana processing site must contact any utility provider to ensure that the registrant complies with any local ordinance or utility requirements such as water use, discharge into the sewer system, or electrical use.

(3) The Authority may require a registered processing site or dispensary to obtain a certificate of occupancy issued by a local building official or the Department of Consumer and Business Services Building Codes Division, if the Authority has concerns about the public health and safety of the registered premises.

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2150

### General Sanitary Requirements

(1) A registrant must:

(a) Prohibit any individual working on the registered premises who has or appears to have a communicable disease, open or draining skin lesion infected with *Staphylococcus aureus* or *Streptococcus pyogenes* or any illness accompanied by diarrhea or vomiting for whom there is a reasonable possibility of contact with marijuana items from having contact with a marijuana item until the condition is corrected;

(b) Require all persons who work in direct contact with marijuana items to conform to hygienic practices while on duty, including but not limited to:

(A) Maintaining adequate personal cleanliness; and

(B) Washing hands thoroughly in an adequate hand-washing area before starting work, prior to having contact with a marijuana item and at any other time when the hands may have become soiled or contaminated;

(c) Provide hand-washing facilities adequate and convenient, furnished with running water at a suitable temperature and provided with effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying device;

(d) Properly remove all litter and waste from the registered premises and maintain the operating systems for waste disposal in an adequate manner so that they do not constitute a source of contamination in areas where marijuana items are exposed;

(e) Provide employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

(f) Hold marijuana items that can support the rapid growth of undesirable microorganisms in a manner that prevents the growth of these microorganisms.

(2) For purposes of this rule "communicable disease" includes but is not limited to: diphtheria, measles, *Salmonella enterica* serotype Typhi infection, shigellosis, Shiga-toxigenic *Escherichia coli* (STEC) infection, hepatitis A, and tuberculosis.

Stat. Auth.: ORS 475B.435, 475B.450 and 475B.525  
Stats. Implemented: ORS 475B.435 and 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2160

### Foreclosure; Cessation of Operations

In the event that a registrant is foreclosed or otherwise ceases operations as described in ORS chapter 79, a secured party, as defined in ORS 79.0102, may continue operations at the marijuana processing site or dispensary upon submitting to the Authority proof, on a form prescribed by the Authority, that the secured party or, if the secured party is a business entity, any individual who has a financial interest in the secured party, meets the requirements and restrictions set forth in:

(1) For marijuana processing sites, ORS 475B.435 (2)(d) and (4); or

(2) For dispensaries, ORS 475B.450 (2)(d) and (4).

Stat. Auth.: ORS 475B.435, 475B.450, 475B.525  
Stats. Implemented: ORS 475B.435, 475B.450  
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2170

### Inspections

(1) The Authority must conduct a routine inspection of every registrant at least every year.

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(2) The Authority may conduct a complaint inspection at any time following the receipt of a complaint that alleges a registrant or registrant representative is in violation of ORS 475B.435, ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7 or these rules.

(3) The Authority may conduct an inspection at any time if it believes, for any reason, that a registrant or registrant representative is in violation of ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7 or these rules.

(4) The Authority may inspect the following to ensure compliance with ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7 or these rules:

(a) The premises of a proposed marijuana processing site or dispensary, or registered marijuana processing site or dispensary; and

(b) The records of a registered marijuana processing site or dispensary.

(5) Registrant representatives must cooperate with the Authority during an inspection.

(6) If an individual at a registered dispensary or processing site fails to permit the Authority to conduct an inspection or if the Authority requires access to a dispensary or processing site and cannot obtain permission the Authority may seek an administrative warrant authorizing the inspection pursuant to ORS 431A.010.

(7) The Authority may purchase, possess or seize a marijuana item as necessary for the Authority to determine compliance with ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, OAR chapter 333, division 7 or these rules.

Stat. Auth.: ORS 431A.010, 475B.435, 475B.450 and 475B.525

Stats. Implemented: ORS 475B.435 and 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2180

### Violations

(1) It is a violation for a registrant representative to:

(a) Fail to cooperate with an inspection;

(b) Submit false or misleading information to the Authority;

(c) If the registrant is a dispensary, transfer a marijuana item to an individual who is not a patient or a designated primary caregiver;

(d) If the registrant is a processing site, transfer a medical cannabinoid product, concentrate or extract to anyone who is not a dispensary representative or a patient;

(e) Accept the transfer of a marijuana item from an individual who is not registered with the Authority;

(f) Accept the transfer of a marijuana item that was produced or processed in another state;

(g) Possess a mature marijuana plant;

(h) Fail to submit a plan of correction in accordance with OAR 333-008-2190;

(i) Fail to comply with an emergency suspension order or final order of the Authority, including failing to pay a civil penalty; or

(j) Fail to comply with ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, these rules, or OAR chapter 333, division 7.

(2) It is a violation of ORS 475B.450 and these rules to operate a dispensary without being registered by the Authority.

(3) It is a violation of ORS 475B.435 and these rules to operate a processing site without being registered by the Authority unless an exemption applies.

Stat. Auth.: ORS 475B.435, 475B.450 and 475B.525

Stats. Implemented: ORS 475B.435 and 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2190

### Enforcement

(1)(a) Informal Enforcement. If, during an inspection the Authority documents violations of ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, any of these rules or OAR chapter 333, division 7, the Authority may issue a written Notice of Violation to a registrant that cites the laws alleged to have been violated and the facts supporting the allegations.

(b) A registrant must submit to the Authority a signed plan of correction within 10 business days from the date the Notice of Violation was mailed by the Authority. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the Notice.

(c) A registrant must correct all deficiencies within 10 business days from the date of the Notice, unless an extension of time is requested from

the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(d) The Authority must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority it must notify the registrant in writing and request that the plan of correction be modified and resubmitted no later than 10 business days from the date the letter of non-acceptance was mailed.

(e) If the registrant does not come into compliance by the date of correction reflected on the plan of correction, the Authority may propose to suspend or revoke the registrant's registration or impose civil penalties.

(f) The Authority may conduct an inspection at any time to determine whether a registrant has corrected the deficiencies in a Notice of Violation.

(2) Formal Enforcement. If, during an inspection or based on other information the Authority determines that a registrant is in violation of ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, any of these rules or OAR chapter 333, division 7 the Authority may issue:

(a) A Notice of Proposed Suspension or Revocation in accordance with ORS 183.411 through 183.470.

(b) A Notice of Imposition of Civil Penalties in accordance with OAR 333-008-2200.

(c) An Order of Emergency Suspension pursuant to ORS 183.430.

(3) The Authority must determine whether to use the informal or formal enforcement process based on the nature of the alleged violations, whether there are mitigating or aggravating factors, and whether the registrant has a history of violations.

(4) The Authority must issue a Notice of Proposed Revocation if the registrant no longer meets the criteria in ORS 475B.450(3)(a) to (d) or ORS 475B.435(3)(a) or (b).

(5) The Authority may issue civil penalties or maintain a civil action against an establishment providing the services of a processing site or dispensary but is not registered in accordance with ORS 475B.450, ORS 475B.435 and these rules.

(6) The Authority may revoke the registration of a registrant for failure to comply with an ordinance adopted by a city or county pursuant to ORS 475B.500, if the city or county:

(a) Has provided the registrant with due process substantially similar to the due process provided to a registration holder under the Administrative Procedures Act, ORS 183.413 to 183.470; and

(b) Provides the Authority with a final order that is substantially similar to the requirements for a final order under ORS 183.470 that establishes the registrant is in violation of the local ordinance.

(7) The Authority must post a final order revoking the registration of a registrant on the Authority's website.

(8) To the extent permitted by law, if the Authority discovers violations that may constitute criminal conduct or conduct that is in violation of laws within the jurisdiction of other state or local governmental entities, the Authority may refer the matter to the applicable agency.

(9) If the registration of a registrant is revoked the owner or an authorized representative of the owner must make arrangements to return the marijuana items still possessed at the location to the person who transferred the marijuana item, document the return, and provide this information in writing within one business day, to the Authority.

(10) The Authority is not required to accept the surrender of a registration and may proceed with an enforcement action even if a registrant has surrendered the registration.

(11) Notwithstanding OAR 333-008-3000 if the Authority suspends or revokes a registration or otherwise takes disciplinary action against the registrant the Authority must provide that information to a law enforcement agency.

(12) The Authority may possess, seize or dispose of marijuana, usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts as is necessary for the Authority to ensure compliance with and enforce the provisions of ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, any of these rules or OAR chapter 333, division 7.

Stat. Auth.: ORS 431A.010, 475B.435, 475B.450 and 475B.525

Stats. Implemented: ORS 475B.435 and 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-2200

### Civil Penalties

(1) In addition to any other liability or penalty provided by law, the Authority may impose, against any person, a civil penalty that does not exceed \$500 per day, for each violation of a provision of:

(a) ORS 475B.450, 475B.453, or any rules adopted thereunder;

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(b) ORS 475B.435, 475B.440, 475B.443 or any rules adopted thereunder; or

(c) OAR 333-008-1000 to 333-008-2180 or OAR chapter 333, division 7.

(2) The Authority shall impose civil penalties under this section in the manner provided by ORS 183.745.

Stat. Auth.: ORS 431A.010, 475B.435, 475B.450, 475B.495 and 475B.525

Stats. Implemented: ORS 475B.435, 475B.450, 475B.495

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-3000

### Medical Marijuana Confidentiality

(1) Patient, Designated Primary Caregiver and Grow Site List.

(a) The Authority shall create and maintain a list of patients, designated primary caregivers, and grow site addresses.

(b) Except as provided in subsection (c) of this section, the list is confidential and not subject to public disclosure under ORS 192.410 to 192.505.

(c) Names, addresses and other identifying information made confidential under subsection (1)(b) of this rule may be released to:

(A) Authorized employees of the Authority as necessary to perform official duties of the Authority, including the production of any reports of aggregate (non-identifying) data or statistics;

(B) Authorized employees of state or local law enforcement agencies who provide to the Authority adequate identification but only as necessary to verify:

(i) That a person is or was a lawful possessor of a registry identification card;

(ii) That a person is or was a designated primary caregiver; or

(iii) That the address is or was a registered grow site; or

(C) Other persons (such as, but not limited to, employers, lawyers, family members) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or PRMG. The release of information must specify what information the Authority is authorized to release and to whom.

(d) In addition to releasing information to authorized employees of state or local law enforcement agencies for purposes of verifying information under paragraph (1)(c)(B) of this rule, the Authority may release to authorized employees of state or local law enforcement agencies the minimum amount of information necessary to enable an employee to determine whether an individual or location is in compliance with a provision of ORS 475B.400 to 475B.525 or these rules.

(2) Database.

(a) Subject to subsection (2)(b) of this rule the Authority may provide information that is stored in the database to:

(A) A law enforcement agency.

(B) The regulatory agencies of a city or county.

(b) The Authority may not disclose the following information that may be stored in the database:

(A) Any personally identifiable information, as defined in ORS 432.005, related to a patient or a designated primary caregiver.

(B) Any personally identifiable information, as defined in ORS 432.005, submitted to the Authority under ORS 475B.423, 475B.438 or 475B.453 or pursuant to ORS 475B.458.

(C) Any information related to the amount and type of usable marijuana, medical cannabinoid products, or cannabinoid concentrates and extracts transferred to or by a PRMG, medical marijuana processing site or medical marijuana dispensary.

(3) Personally identifiable information in grow site, medical marijuana processor or medical marijuana dispensary applications. Any personally identifiable information, as defined in ORS 432.005, other than a name of an individual or an address submitted with an application under ORS 475B.435 or ORS 475B.450 that the Authority requires to be submitted and maintains for purposes of registering a marijuana grow site, a marijuana processing site or a medical marijuana dispensary is confidential and not subject to public disclosure under ORS 192.410 to 192.505.

(4) Disclosure to designees. The Authority may provide personally identifiable information to a person registered under ORS 475B.400 to 475B.525 if the registrant requests the information and the information is related to a designation made under ORS 475B.400 to 475B.525.

(5) Medical marijuana dispensary security information. Any record that the Authority keeps or maintains for purposes related to the installation or maintenance of a security system by a medical marijuana processing site or dispensary pursuant to OAR 333-008-2080 to 333-008-2120 is confidential and not subject to public disclosure under ORS 192.410 to 192.505.

(6) Disclosure following investigation. Notwithstanding any of the confidentiality provisions of this rule if the Authority determines, after conducting an investigation or receiving a complaint of an alleged violation of a provision of ORS 475B.400 to 475B.525 or any rule adopted thereunder, that a violation of a provision of ORS 475B.400 to 475B.525 or any rule adopted thereunder has occurred, the Authority may provide any information obtained by the Authority, except for information related to a patient's debilitating condition, to:

(a) Authorized employees of state or local law enforcement agencies; or

(b) Another state or local government agency with jurisdiction over the matter.

(7) Subpoenas. Notwithstanding any of the confidentiality provisions of this rule, the Authority may disclose information requested pursuant to a lawfully issued subpoena from a law enforcement agency.

(8) Disclosure following disciplinary action. Notwithstanding section (3) of this rule, if the Authority suspends or revokes the registration of the marijuana grow site, a PRMG, a marijuana processing site or a medical marijuana dispensary, or otherwise takes disciplinary action concerning a medical marijuana grow site, medical marijuana processing site, or a medical marijuana dispensary, the Authority must provide that information to a law enforcement agency.

Stat. Auth.: ORS 475B.458 - 475B.464, 475B.525

Stats. Implemented: ORS 475B.458 - 475B.464, 475B.525

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

## 333-008-3010

### System to Allow Verification of Data at All Times

(1) The Authority shall establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, or grow site location is listed or registered with the Authority.

(2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.

(3) The Authority may allow the release of reports related to verification if it is without identifying data.

(4) The Authority shall have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two business days, the Authority shall ensure program staff are available by phone for verification purposes.

Stat. Auth.: ORS 475B.460 and 475B.525

Stats. Implemented: ORS 475B.460

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16

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**Rule Caption:** Medical Marijuana Growers, Processors, Dispensaries and Cards

**Adm. Order No.:** PH 10-2016

**Filed with Sec. of State:** 3-2-2016

**Certified to be Effective:** 3-2-16

**Notice Publication Date:** 1-1-2016

**Rules Repealed:** 333-008-0050, 333-008-1130, 333-008-1140, 333-008-1150, 333-008-1160, 333-008-1170, 333-008-1180

**Subject:** The Oregon Health Authority (OHA), Public Health Division is permanently repealing administrative rules in chapter 333, division 8 pertaining to medical marijuana patients and dispensaries.

House Bill 3400, passed by the 2015 Oregon Legislature, made many changes to the Oregon Medical Marijuana Act, ORS 475.300 to 475.346.

The permanent repeal of OAR 333-008-0050, 333-008-1130, 333-008-1140, 333-008-1150, 333-008-1160, 333-008-1170 and 333-008-1180 is necessary because the language in these rules has been reorganized to other newly adopted rules in the package that was filed on February 26, 2016 and effective March 1, 2016. The rules listed above were inadvertently left off of the permanent rule filing from February 26, 2016, but need to be repealed so that they are not in conflict with newly adopted rules.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

# ADMINISTRATIVE RULES

## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amends lay representation rules to include certain recreational marijuana-related contested cases.

**Adm. Order No.:** OLCC 1-2016(Temp)

**Filed with Sec. of State:** 2-23-2016

**Certified to be Effective:** 2-23-16 thru 8-18-16

**Notice Publication Date:**

**Rules Amended:** 845-003-0210, 845-003-0220, 845-003-0270, 845-003-0331, 845-004-0015

**Subject:** ORS 183.452 allows an agency to use lay representatives during contested case hearings instead of the Department of Justice where the Attorney General has consented to the representation in a particular hearing or class of hearings. In order to use lay representatives in contested cases, an agency must adopt a rule authorizing a representative to appear on the agency's behalf in those hearings. This package amends five rules to include those classes of recreational marijuana-related hearings for which the Department of Justice has authorized the Commission to use lay representatives, as is currently done with most alcohol-related contested case hearings.

**Rules Coordinator:** Bryant Haley—(503) 872-5136

### 845-003-0210

#### Model Rules of Procedure

(1) The following Attorney General's "Model Rules of Procedure for Contested Cases Office of Administrative Hearings," effective May 1, 2014, are hereby adopted by reference as permanent rules of procedure for contested case hearings conducted on behalf of the Liquor Control Commission: OAR 137-001-0005, and 137-003-0501 to 137-003-0700.

(2) The following Attorney General's Model Rules for "Miscellaneous, Orders in Other Than Contested Cases," effective May 1, 2014, are hereby adopted by reference as permanent rules of procedure for miscellaneous proceedings and orders in other than contested cases: OAR 137-004-0010 to 137-004-0092.

[ED. NOTE: The full text of the Attorney General's "Model Rules of Procedure for Contested Cases Office of Administrative Hearings" and "Miscellaneous, Orders in Other Than Contested Cases" is available from the Office of the Attorney General or the Oregon Liquor Control Commission.]

Stat. Auth.: ORS 183.341 (1) & (2) & 471.730(5) & (6)

Stats. Implemented: ORS 183.341(1) & (2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC 9-2014, f. 9-10-14, cert. ef. 10-1-14; OLCC 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-18-16

### 845-003-0220

#### Definitions

As used in OAR Chapter 845, division 003, the following definitions apply:

(1) "Administrator" means the Executive Director of the Oregon Liquor Control Commission or the Executive Director's authorized delegates.

(2) "Charging Document" means a written notice that the Commission:

(a) Intends to grant or deny a new or renewed permit, license, certification, authorization, endorsement or approval;

(b) Will seek a sanction, civil penalty or withdraw an approval for a violation or failure to comply with ORS Chapter 471, ORS Chapter 473, ORS Chapter 475B, ORS 471.115, ORS 459A.700 to ORS 459A.740, and OAR Chapter 845; and

(c) Intends to modify, suspend or terminate a retail sales agent agreement, or modify, terminate or suspend a retail sales agent appointment.

(3) "Commission" means the Oregon Liquor Control Commission and any employee thereof, but for purposes of these rules does not refer to the Commissioners.

(4) "Commissioners" means a quorum of duly appointed Commissioners at a meeting called for the transaction of any business, the performance of any duty, or the exercise of any power of the Commission.

(5) "Good cause" means, the factors set forth under OAR 137-003-0501(7). Good cause does not include failure to perform a required act due to the press of business or ignorance of the law, including ignorance of these rules.

(6) "Participant" means the person(s) named in the notice of a right to a contested case hearing and who requested a hearing, a person granted either party or limited party status in a contested case under OAR 137-003-

0535, an agency participating in the contested case under OAR 137-003-0540, the party's attorney, the expert witnesses, the agency representative, one agency officer or agency employee, and any persons authorized by statute or administrative rule to attend the contested case hearing.

(7) "Party" means any person or entity named in the charging document or granted party status by statute or administrative rule.

Stat. Auth.: ORS 183.341(2), 471.730(5) & (6), 475B.025(2)(d)

Stats. Implemented: ORS 183.310 & 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 8-1999, f. 6-9-99, cert. ef. 7-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 18-2007, f. 9-27-07, cert. ef. 10-1-07; OLCC 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC 9-2014, f. 9-10-14, cert. ef. 10-1-14; OLCC 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-18-16

### 845-003-0270

#### Request for a Contested Case Hearing and Response to Charging Document

(1) A party may contest a charging document or a tax imposed under ORS Chapter 473 by requesting a contested case hearing. The request for hearing must be in writing and timely filed. The time limit for filing a request is:

(a) 60 days after service of a charging document defined in OAR 845-003-0220(2) (a), with the following exceptions:

(i) 20 days after service of a charging document denying a renewal of a license under ORS 471.313(5);

(ii) 30 days after service of a charging document denying an application for a service permit; except that the time limit shall be 15 days for a denial that is based on failure to complete the alcohol server education course and examination; and

(iii) 30 days after service of a charging document denying an application for a marijuana handler permit; except that the time limit shall be 15 days for a denial that is based on a failure to complete the marijuana handler permit education course and examination.

(b) 30 days after service of a charging document defined in OAR 845-003-0220(2)(b), except that the time limit shall be 20 days if the violation is based on ORS 471.315(1)(c);

(c) 30 days after service of an audit issued by Financial Services Division of the Commission;

(d) Within the time period provided in the retail sales agent agreement between the Commission and the agent, if the agreement provides for a hearing;

(e) Within the time period provided in the charging document for all other matters not listed above.

(2) A written Answer to a charging document may be required. The Answer must be filed in writing and submitted to the Commission with the request for hearing. A party must file an Answer in response to:

(a) A charging document as defined in 845-003-0220(2)(a);

(b) A charging document as defined in 845-003-0220(2)(b), if the violation is a Category I or II violation; and

(c) A charging document as defined in 845-003-0220(2)(c).

(3) The Answer must specify:

(a) An admission or denial of each factual matter alleged in the charging document; and

(b) What defense or defenses the party will rely upon;

(c) A general denial is not sufficient to constitute an Answer.

(4) When an answer is required under section (2):

(a) Factual matters alleged in the charging document and not denied in the answer shall be presumed admitted;

(b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and

(d) Evidence shall not be taken at the contested case hearing on any issue not raised in the charging document or answer.

(5) When an answer is required under section (2), the party may amend the answer, except when doing so would be unduly prejudicial.

Stat. Auth.: ORS 183.341(2), 183.745 & 471.730(5) & (6), & 475B.025(2)(d)

Stats. Implemented: ORS 183.341(2), 183.430(2), 183.435, 183.745, 471.331(1) & 471.380(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 8-1999, f. 6-9-99, cert. ef. 7-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 18-2007, f. 9-27-07, cert. ef. 10-1-07; OLCC 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC 9-2014, f. 9-10-14, cert. ef. 10-1-14; OLCC 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-18-16

# ADMINISTRATIVE RULES

## 845-003-0331

### Employee Representation at Contested Case Hearings

(1) As authorized by the Attorney General pursuant to ORS 183.452, Commission employees may appear and participate on behalf of the Commission in the following types of contested case hearings:

(a) The grant or denial of a new or renewed license, permit, certification, endorsement, approval or other authorization applied for or requested under ORS Chapters 459A, 471, 473, 475B and OAR Chapter 845;

(b) A withdrawal, suspension, revocation, cancellation, civil penalty or other sanction pursuant to ORS Chapter 471, ORS Chapter 473, ORS Chapter 475B, 459A.700 to 459A.740, or OAR Chapter 845;

(c) A violation or dispute based on a retail sales agent agreement; but not a matter where the Commission has proposed to terminate or suspend performance on the agreement; and,

(d) Privilege Tax disputes under ORS 473.060(4).

(2) The employee representative's responsibilities include, but are not limited to:

(a) Presenting evidence;

(b) Asking questions of all witnesses;

(c) Presenting information about the facts, and advocating for the Commission's position surrounding the facts;

(d) Presenting information on how the facts apply to the statutes or rules directly related to the issues in the contested case;

(e) Presenting information comparing Commission actions in similar situations;

(f) Presenting information about the literal meaning of the statutes or rules that apply to the issues in the contested case; and

(g) Presenting information about the admissibility of evidence or the correctness of procedures being followed.

(3) The employee representative may not make legal arguments. "Legal arguments" include, but are not limited to, arguments on:

(a) The jurisdiction of the Commission to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Commission; and

(c) The application of court precedent to the facts of the particular contested case proceeding.

(4) When the Commission determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument

Stat. Auth.: ORS 183.341(2), 183.452 & 471.730(5) & (6), & 475B.025(2)(d)

Stats. Implemented: ORS 183.341(2) & 183.452

Hist.: OLCC 6-2002(Temp), f. 5-6-02, cert. ef. 5-7-02 thru 11-2-02; OLCC 13-2002, f. 10-25-02 cert. ef. 11-3-02; OLCC 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC 9-2014, f. 9-10-14, cert. ef. 10-1-14; OLCC 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-18-16

## 845-004-0015

### Signing of Orders

Unless the Commissioners specifically give other directions, the Administrator may sign the following:

(1) The written expression of any official action the Commissioners take at any public meeting. The Administrator's signature has the same force and effect as the signature of all the Commissioners; and

(2) A "charging document" as defined in OAR 845-003-0220(2).

Stat. Auth.: ORS 471.030, 471.040(2), 471.730(1) & 471.730(5)

Stats. Implemented: ORS 471.720

Hist.: LCC 12-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 845-010-0375; OLCC 14-1991, f. 9-30-91, cert. ef. 1-1-92; OLCC 1-2016(Temp), f. & cert. ef. 2-23-16 thru 8-18-16

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**Rule Caption:** To align 845-025-7020 with the changes the Oregon Health Authority made to packaging pre-approval deadlines.

**Adm. Order No.:** OLCC 2-2016(Temp)

**Filed with Sec. of State:** 2-23-2016

**Certified to be Effective:** 2-23-16 thru 6-28-16

**Notice Publication Date:**

**Rules Amended:** 845-025-7020

**Subject:** The Oregon Health Authority has adopted OAR 333-007-0010 and OAR 333-007-0200, which extend the deadline by which registrants must receive preapproval from the Commission for packaging and/or labeling of marijuana products intended for ultimate sale to a consumer to June 1, 2016. OAR 845-025-7020 states the original deadline of April 1, 2016, and therefore the Commission is amending this rule to reflect the extended deadline.

**Rules Coordinator:** Bryant Haley—(503) 872-5136

## 845-025-7020

### Packaging for Sale to Consumer

(1) The purpose of this rule is to set the minimum standards for the packaging of marijuana items that are sold to the consumer, applicable to:

(a) A licensee; or

(b) On and after June 1, 2016, a registrant who is not exempt from the labeling requirements.

(2) Containers or packaging for marijuana items must protect a marijuana item from contamination and must not impart any toxic or deleterious substance to the marijuana item.

(3) Marijuana items for ultimate sale to a consumer must:

(a) Be packaged in a container that is child-resistant;

(b) Not be packaged or labeled in a manner that is attractive to minors; and

(c) Be labeled in accordance with OAR 333-007-0010 to 333-007-0100.

(4) Packaging may not contain any text that makes an untruthful or misleading statement.

(5) Nothing in this rule:

(a) Prevents the re-use of packaging that is capable of continuing to be child-resistant, as permitted by rules established by the Commission or the Authority; or

(b) Prohibits the Commission or the Authority from imposing additional packaging requirements in their respective rules governing licensees and registrants.

Stat. Auth.: ORS 475B.615

Stats. Implemented: ORS 475B.070, 475B.090, 475B.100, 475B.110, 475B.615 & 475B.620

Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16; OLCC 2-2016(Temp), f. & cert. ef. 2-23-16 thru 8-18-16

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**Rule Caption:** Amends one rule to clarify liquor liability insurance or bond requirements for certain licensees.

**Adm. Order No.:** OLCC 3-2016

**Filed with Sec. of State:** 2-29-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 9-1-2015

**Rules Amended:** 845-005-0400

**Subject:** Under ORS 471.168, certain licensees must maintain liquor liability insurance or a bond that provides coverage for personal injuries caused by intoxicated persons served alcoholic beverages on the licensed premises while visibly intoxicated. Failure to comply with the liquor liability insurance or bond requirement constitutes a serious threat to public health and safety, and allows the Commission to immediately suspend license privileges or refuse to renew the license in addition to sanctioning the licensee or refusing to license the applicant.

OAR 845-005-0400 implements this statute. However, the previous rule failed to adequately define proof of compliance during licensure or clearly distinguish between the Commission's authority to immediately suspend license privileges and its authority to sanction a licensee for past failure to comply. Further, the previous rule classified all coverage gaps, regardless of their duration, as Category I violations.

The amendments enact the following changes: (1) Restructure the rule; (2) Clarify "proof of compliance" requirements; (3) Clearly distinguish between the Commission's authority to immediately suspend license privileges and its authority to sanction licensees; (4) Establish a graduated sanction schedule; and (5) Address seasonal and temporary closures.

**Rules Coordinator:** Bryant Haley—(503) 872-5136

## 845-005-0400

### Liquor Liability Insurance or Bond Requirement

Certain licensees are required to maintain liquor liability insurance or a bond. Failure to maintain the required liquor liability insurance or bond constitutes a serious threat to public health and safety. This rule explains the liquor liability insurance or bond requirement and sanctions.

(1) Requirement. The Commission will refuse to license any applicant, may cancel or suspend the license of any licensee, and may sanction any licensee that is subject to the requirements of this rule and fails to:

(a) Maintain liquor liability insurance of not less than \$300,000; or

(b) Maintain a liquor liability bond with a corporate surety authorized to transact business in this state in the amount of not less than \$300,000.

# ADMINISTRATIVE RULES

- (c) Designate and maintain the Commission as a certificate holder.
- (2) Applicability. This rule applies to the following license types:
  - (a) Full on-premises sales license;
  - (b) Limited on-premises sales license;
  - (c) Brewery-public house license;
  - (d) Temporary sales license, special events winery license, special events grower sales privilege license, special events brewery-public house license, and special events distillery licenses if the licensed event is open to the public and attendance at the event is anticipated to exceed 300 individuals per day; and

(e) Winery license, brewery license and grower sales privilege license unless the applicant or licensee submits an affidavit stating consumption of alcoholic beverages will not occur on the licensed premises.

(3) Providing Proof of Insurance or Bond at Licensing. An applicant for a license listed in subsection (2) must provide to the Commission proof of insurance or bond prior to licensing.

(a) Proof of Insurance. The applicant must provide to the Commission a certificate of insurance that shows applicant as the named insured, the premises address, liquor liability insurance coverage in the amount of at least \$300,000, that coverage is current, and lists the Commission as a certificate holder.

(b) Proof of Bond. The applicant must provide to the Commission the corporate surety with a valid bond identification number.

(4) Providing Proof of Insurance or Bond at License Renewal. An applicant for the renewal of a license listed in subsection (2) must provide to the Commission proof of insurance or bond prior to the Commission renewing the license.

(a) Proof of Insurance. The applicant must provide to the Commission the name of the insurance company and the insurance policy number. Notwithstanding this requirement, the Commission may require the applicant to provide proof of insurance as per subsection (3)(a) of this rule.

(b) Proof of Bond. The applicant must provide to the Commission the corporate surety and a valid bond identification number.

(5) Providing Proof of Insurance or Bond Other Than at Licensing or License Renewal.

(a) The licensee must maintain valid and current proof of insurance or bond at the licensed premises and:

- (A) Post the proof of insurance or bond in full public view; or
- (B) Make the proof of insurance or bond available at any time for immediate inspection by any Commission employee.

(b) Proof of insurance. The applicant must provide to the Commission a certificate of insurance that shows licensee as the named insured, the premises address, liquor liability insurance coverage in the amount of at least \$300,000, that coverage is current, and lists the Commission as a certificate holder.

(c) Proof of bond. The applicant must provide to the Commission the corporate surety and a valid bond identification number.

(d) Failure to post or provide proof of insurance or bond as required in this section is a Category V violation, and if the licensee also has a lapse in insurance or bond coverage, the Commission may assess a separate sanction as per subsection (7) of this rule.

(6) Immediate Suspension. If a licensee fails to provide to the Commission proof of insurance or bond the Commission may immediately suspend the license pursuant to ORS 471.168. The Commission may rescind the Order of Immediate Suspension once the Commission determines that the licensee has provided proof of valid and current insurance or bond as per subsection (5)(b)(c) and (7)(c) of this rule.

(7) Failure to maintain insurance or bond as required is a violation. The sanction for the first lapse in coverage within a two year period is as follows:

- (a) If the lapse in coverage is no more than 30 days the sanction is \$1,650 or a 10 day license suspension.
- (b) If the lapse of coverage is 31 days to no more than 60 days the sanction is \$4,950 or a 30 day license suspension.
- (c) If the lapse of coverage is 61 days to no more than 90 days the sanction is \$4,950 and a 90 day license suspension. In addition, the licensee must provide to the Commission proof of premium payment for at least a 12-month period for the statutory minimum insurance and/or bond limits set forth in ORS 471.168.

(8) The sanction for any lapse in coverage not described in section (7) is cancellation of the license.

(9) Aggravating or mitigating circumstances. In addition to the Commission's other aggravating and mitigating circumstances, when the Commission discovers a lapse in coverage, the Commission may mitigate the sanction if the Commission determines that the cause for failure to

maintain liquor liability insurance or bond as per subsection (1) of this rule was beyond the reasonable control of the licensee. One method for showing the cause for failure to maintain liquor liability insurance or bond was beyond the reasonable control of the licensee is for the Commission to determine that the licensee has provided sufficient proof to the Commission that the licensee has continued to pay for coverage during the period of the lapse.

(10) Cessation of Coverage. A licensee may elect not to maintain liquor liability insurance or bond coverage, but only if the licensee will cease the sale and service of alcohol and prohibit the consumption of alcoholic beverages on the licensed premises for at least 90 contiguous days and the licensee provides the Commission with prior written notice of the start and end date of the cessation of the sale and service of alcohol. Failure to notify the Commission is a Category IV violation and is in addition to separate violations that may be charged for operating without coverage.

Stat. Auth.: ORS 183.430, 471, 471.030, 471.040, 471.168, 471.313, 471.315, 471.730(1) & (5)

Stats. Implemented: ORS 471.168(5), 471.313(2), 471.315(1)(a)(C)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 3-2016, f. 2-29-16, cert. ef. 3-1-16

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## Oregon State Lottery Chapter 177

**Rule Caption:** Clarifies use and completion of play slips

**Adm. Order No.:** LOTT 1-2016(Temp)

**Filed with Sec. of State:** 2-22-2016

**Certified to be Effective:** 2-22-16 thru 8-18-16

**Notice Publication Date:**

**Rules Amended:** 177-070-0080

**Subject:** The proposed temporary rule clarifies the use and completion of Lottery game play slips by deleting the requirement that play slips be hand marked only.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

### 177-070-0080

#### Unauthorized Use of Play Slips

General: A person shall not insert into a Draw game terminal's play slip reader any material that is not a play slip printed and approved for use by the Oregon Lottery, including but not limited to facsimiles or copies of play slips. No device shall be connected to a Lottery terminal to enter plays, except as may be approved by the Lottery.

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

Stats. Implemented: ORS 461.210

Hist.: LC 6-1992, f. & cert. ef. 6-23-92; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 1-2016(Temp), f. & cert. ef. 2-22-16 thru 8-18-16

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## Oregon Youth Authority Chapter 416

**Rule Caption:** Rule amendments control marijuana and vapors, and comply with youth offender foster care statutory change.

**Adm. Order No.:** OYA 1-2016

**Filed with Sec. of State:** 3-2-2016

**Certified to be Effective:** 3-2-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 416-530-0010, 416-530-0020, 416-530-0030, 416-530-0035, 416-530-0040, 416-530-0060, 416-530-0070, 416-530-0090, 416-530-0200

**Subject:** As a result of 2015 HB 2314, proposed rule amendments allow a youth offender's relative to maintain a youth offender foster home under certain circumstances. Rule amendments also include: controlling marijuana and inhalant delivery systems in youth offender foster homes; add definitions for clarity; add a process for sex trafficking victim notification; control youth offender confidentiality on social media outlets; update food and nutrition requirements; update allowable youth offender discipline; require carbon monoxide detectors in youth offender foster homes; add requirements for safe and accessible transportation; and add a requirement for provision of culturally-specific personal care and grooming items.

**Rules Coordinator:** Winifred Skinner—(503) 373-7570

# ADMINISTRATIVE RULES

## 416-530-0010

### Definitions

The following definitions apply to terms used in OAR chapter 416, division 530.

(1) Applicant: A person who applies for youth offender foster home certification to operate and maintain a foster home for youth offenders.

(2) Case plan: A formal plan with prescribed interventions and documentation requirements and a tool to assist staff in managing cases, setting goals and reviewing youth offenders' interventions and progress.

(3) Certification process: The process of initial application or recertification to operate and maintain a youth offender foster home.

(4) Computerized criminal records check: The access and use of automated or manual files, or associated systems available to OYA as a criminal justice agency through the Law Enforcement Data Systems (LEDS) including online information from the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC), the Department of Human Services Child Welfare Information System (OR-Kids), and the National Law Enforcement Telecommunications System (NLETS).

(5) Contraband: Any article or thing which a youth offender is prohibited by statute, rule, policy, Juvenile Parole/Probation Agreement, or order, from obtaining, possessing, or which the youth offender is not specifically authorized to obtain or possess, or which the youth offender alters without authorization.

(6) Criminal records check: The process used by OYA to conduct criminal records background checks on persons pursuant to these rules and OAR chapter 416, division 800, including computerized and fingerprint-based processes.

(7) Deadly weapon: Any instrument, article or substance specifically designed for, and presently capable of, causing death or serious physical injury.

(8) Denial: An action by OYA to deny youth offender foster home certification or re-certification.

(9) Discipline: A process by which foster parents and OYA sanction youth offenders for non-compliance with established rules of the foster home and conditions of probation or parole. Such sanctions assist youth offenders in developing the self-control and self-direction necessary to assume responsibilities, make appropriate daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(10) Domestic animals: Any of various animals domesticated so as to live and breed in a tame condition as household pets. Examples of domestic animals include but are not limited to dogs, cats, and horses.

(11) Foster care maintenance payment: A monthly payment to the foster parent to defray expenses such as the youth offender's room, board, clothing, allowance, personal incidentals, transportation, respite services, educational supplies, and other costs approved by OYA.

(12) Foster Home Certifier: The OYA staff member responsible for the recruitment, training, certification, support and supervision of OYA foster homes.

(13) Foster parent: A person certified by OYA who demonstrates special competence to supervise youth offenders with serious social or behavioral maladaptive characteristics in a youth offender foster home setting.

(14) Frequent visitor: A person who regularly visits a foster home more than five hours a week when youth offenders placed in the foster home are present.

(15) Home study: An assessment, conducted prior to issuance of a Youth Offender Foster Home Certificate, to determine an applicant's ability and suitability to provide foster care services to youth offenders

(16) Inactive referral status: A temporary change in the terms of youth offender foster home certification that precludes new referrals of youth offenders to the home.

(17) Information required: All information requested by OYA, including information used to conduct criminal records checks.

(18) Inhalant delivery system: A device used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device. Does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

(19) Juvenile Probation/Parole Officer (JPPO): The OYA case manager who works with the youth offender and the youth offender's family and the community while the youth offender is in OYA custody.

(20) Mechanical restraint: Any apparatus, device, or contraption applied or affixed to a youth offender to limit movement.

(21) Member of the household: Any person, other than a youth offender, who lives in the youth offender foster home, on the property

where the youth offender foster home is located, is a frequent visitor to the foster home or who assists in the care provided to a youth offender.

(22) Multidisciplinary Team (MDT): A group of persons including, but not limited to, OYA staff, the youth offender's biological and foster family and service providers responsible for developing, reviewing and revising comprehensive case plans for youth offenders.

(23) Psychotropic medications: Medication prescribed with the intent to affect or alter thought processes, mood, or behavior, including but not limited to, anti-psychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(24) Records: Any information in written or electronic form, pictures, photographs, charts, graphs, recordings, or documents pertaining to a youth offender's case.

(25) Respite care: A temporary arrangement between a foster parent and an OYA-certified respite provider to allow the foster parent(s) time away from a youth offender.

(26) Respite provider: An individual, at least 21 years of age and certified by OYA, who temporarily assists with supervision of one or more youth offenders when the foster parent is not available or is spending time away from a youth offender.

(27) Revocation: An action taken by OYA to rescind a Youth Offender Foster Home Certificate based on non-compliance with statute, administrative rule or the Youth Offender Foster Home Agreement.

(28) Second-hand smoke or vapor: Smoke or vapor that is exhaled by a smoker or inhalant delivery system user, or originates from a product that a person is using to which a second person is exposed, and includes smoke or vapor from a cigarette, cigar, pipe, inhalant delivery system, or other material.

(29) Sex trafficking: The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

(30) Structured supervision: Supervision and knowledge of the approved whereabouts of a youth offender by a certified foster parent while the youth offender engages in daily living activities or recreation.

(31) Suspension: A temporary withdrawal of a youth offender foster home certification by OYA pending determination of the foster parent's non-compliance with statute, administrative rule or the Youth Offender Foster Home Agreement.

(32) Termination: An action taken by OYA or the foster parent to terminate the Youth Offender Foster Home Agreement.

(33) Volunteer: Any person who is not a foster parent or member of the household and who assists youth offenders in the home with activities for no compensation and under foster parent supervision.

(34) Youth offender: A person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

(35) Youth offender foster home: A home in the community that is maintained and lived in by an OYA-certified foster parent who provides supervision, food, and lodging for a youth offender in that home.

(36) Youth Offender Foster Home Agreement: A written agreement between OYA and the foster parent stating mutual expectations of the parties.

(37) Youth Offender Foster Home Certificate: A certificate of approval, issued by OYA, granting approval to operate and maintain a youth offender foster home or provide respite care.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 5-2005, f. & cert. ef. 3-9-05; OYA 14-2005, f. & cert. ef. 6-13-05; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06; OYA 5-2006, f. & cert. ef. 3-20-06; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 1-2016, f. & cert. ef. 3-2-16

## 416-530-0020

### Certification Process

(1) OYA seeks to recruit individuals who meet or exceed the qualifications described in these rules to provide foster care services to youth offenders. OYA further seeks to retain qualified foster parents who continue to provide an important component of the OYA service delivery system to youth offenders. In order to accomplish these objectives and to ensure that youth offenders receive services in a safe, respectful, rehabilitative, and positive atmosphere, OYA has developed a thorough certification process.

(2) The certification process is a partnership between the applicant or foster parent and OYA. The process allows for individuals interested in providing youth offender foster care services to ask questions about foster care



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standards, foster parent qualifications, foster home qualifications, and supervision of youth offenders and it allows OYA to assess the willingness, abilities, and suitability of applicants to provide such foster care services. The process also allows foster parents to review the prior year during the re-certification process and allows OYA to re-assess the foster parent's continued qualification, willingness and ability to provide services.

(3) The granting of a Youth Offender Foster Home Certificate is not a guarantee that youth offenders will be placed in the foster home.

(4) OYA has a responsibility to Oregonians to manage its resources within available funds. When the OYA Director or designee determines that funding for these resources is jeopardized or otherwise not available, the OYA Director may suspend recruitment of new foster home resources in areas where the availability of foster homes exceeds the need for placements.

(5) Relative foster care applicants: A youth offender foster home may be maintained by a person related to the youth offender by blood or marriage when financial need can be determined by OYA. OYA must review potential relative foster care applicants to determine if there is a true financial need in order to provide the youth offender room, board, clothing, allowance, personal incidentals, transportation, respite services, educational supplies, and other costs approved by OYA. Relative foster parents are bound by the same rules and expectations as foster parents who are not relatives.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 420.888 - 420.892  
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 1-2016, f. & cert. ef. 3-2-16

## 416-530-0030

### Application Process

Applicants for initial certification must:

- (1) Complete and submit all forms required by OYA;
- (2) Participate in home studies as required by OYA; and
- (3) Provide all information required by OYA to verify compliance with these rules, including, but not limited to:

(a) Name(s), gender, address, birth date, social security number, and Oregon driver's license number of all applicants and members of the household;

(b) Names and addresses of at least four persons, three of whom are unrelated to the applicant, who have known the applicant for two years or more and who can attest to the applicant's ability to provide care and supervision to youth offenders. If applicants are applying for joint certification, each applicant must provide at least two different references unrelated to the applicant, who have known the applicant for two or more years, and who can attest to the applicant's ability to provide care and supervision to youth offenders. OYA may also contact schools, employers, adult children of the applicant(s), and other persons who can attest to the applicant's ability to provide care and supervision to youth offenders;

(c) A statement as to whether the applicant or any member of the household has ever operated or currently is operating a licensed or certified care facility or foster home and reasons for the termination or closure of that license or certification;

(d) Documentation from the applicant and all members of the household regarding all criminal arrests, all charges, and all convictions including juvenile delinquency arrests, adjudications, restraining orders, and charges, the dates of offenses, and the resolution of those matters;

(e) Documentation from the applicant and all members of the household regarding all allegations or charges of abuse or neglect, with dates, locations, and resolutions of those matters;

(f) A statement fully disclosing all information or conditions which may disqualify the applicant or applicant's home from certification; and

(g) Proof of sufficient income to meet the needs and ensure the stability and financial security of the members of the household, independent of the foster care maintenance payment. OYA will request copies of pay stubs, W-2 forms, or recent tax returns as proof of income.

(4) Applicants must participate in a criminal records check process, as defined by these rules and OAR chapter 416, division 800.

(a) OYA requires a criminal records check, including fingerprints, for applicants and other members of the household 18 years of age and older.

(b) OYA requires a computerized criminal records check for members of the household 12 through 17 years of age.

(c) OYA may conduct criminal records checks anytime that OYA deems it necessary for the safety of youth offenders in the home.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 1-2016, f. & cert. ef. 3-2-16

## 416-530-0035

### Application Process for Re-certification

A foster parent applying for re-certification must:

(1) Complete and submit all forms required by OYA;

(2) Provide information as requested by OYA to verify compliance with these rules;

(3) Participate in home studies as required by OYA;

(4) Provide documentation from the foster parent and all members of the household regarding all criminal arrests, all charges, restraining orders, and all convictions during the preceding year including juvenile delinquency arrests, adjudications, or charges, the dates of offenses, and the resolution of those matters;

(5) Provide documentation from the foster parent and all members of the household regarding all allegations or charges of abuse or neglect, with dates, locations, and resolutions of those matters;

(6) Provide proof of sufficient income to meet the needs and ensure the stability and financial security of the members of the household, independent of the foster care maintenance payment for the preceding year. OYA will request copies of pay stubs, W-2 forms, or recent tax returns as proof of income; and

(7) Participate in a criminal records check process, as defined by these rules and OAR chapter 416, division 800.

(a) OYA requires a criminal records check of all members of the household 18 years of age and older.

(b) The criminal records check of new members of the household must occur prior to the new member of the household establishing the foster home as a residence.

(c) OYA requires a computerized criminal records check for members of the household 12 through 17 years of age.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 420.888 - 420.892  
Hist.: OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 1-2016, f. & cert. ef. 3-2-16

## 416-530-0040

### Foster Parent Qualifications

Applicants must:

(1) Be at least 21 years of age;

(2) Meet the qualifications and standards described in these rules and OAR chapter 416, division 800;

(3) Certify in writing that the applicant meets the qualifications and standards described in these rules and OAR chapter 416, division 800 and has disclosed all potentially disqualifying information to OYA;

(4) Be a citizen or lawful permanent resident of the United States;

(5) Demonstrate the following personal qualifications:

(a) Be a responsible, stable, emotionally mature adult who exercises sound judgment and displays the capacity to meet the mental, physical and emotional needs of youth offenders placed in foster care.

(b) Understand the behaviors of youth offenders.

(c) Have knowledge and understanding of non-punitive discipline and ways of helping a youth offender build positive personal relationships, self-control, and self-esteem.

(d) Have respect for persons with differing values, lifestyles, philosophies, religious, and cultural identity and heritage.

(e) Be able to realistically evaluate which youth offenders they can accept, work with, and integrate into their family.

(f) Have supportive ties with family, friends, the neighborhood, and the community.

(g) Provide appropriate supervision to ensure community safety.

(6) Be physically and mentally able to perform the duties of foster care;

(a) OYA may require a medical statement from a physician verifying that the applicant or any member of the household is physically capable of supervising and caring for youth offenders.

(b) OYA may require the applicant to consent to the release of psychological, medical or physical, drug and alcohol, or other reports and evaluations to OYA for the consideration of the applicant's ability to supervise and care for youth offenders

(c) In the case of alcohol or substance abuse, the applicant must be able to provide evidence that the applicant has been substance-free and sober for at least two years prior to making application for certification.

(7) Be free from a professional or personal conflict of interest. If the applicant is an OYA staff or works in a professional capacity which may

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contribute to a conflict of interest, the application and home study must be approved by the OYA Community Services Assistant Director, or designee; and

(8) Not have any documented incidents of abuse or neglect that resulted in a founded disposition by the Department of Human Services (DHS). OYA will conduct OR-Kids, checks at the time of certification and re-certification, at the time a foster home certified by another agency wishes to serve OYA youth offenders, and when OYA deems it necessary for the safety of youth offenders in the home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06; OYA 5-2006, f. & cert. ef. 3-20-06; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 1-2016, f. & cert. ef. 3-2-16

## 416-530-0060

### Foster Parent Duties and Responsibilities

(1) Governance.

(a) Foster parents must comply with the standards of these rules and OYA procedures, including rules applicable to applicants.

(b) Foster parents must abide by the responsibilities described in the OYA Youth Offender Foster Home Agreement. This agreement will be signed at the time of initial certification and annually, thereafter.

(c) Foster parents must provide care and supervision in accordance with the youth offender's individual case plan.

(d) Foster parents must not leave youth offenders unsupervised in the foster home, except with prior written approval by the youth offender's JPPO and Foster Home Certifier specifying circumstances and length of time youth offender may be unsupervised.

(e) Foster parents must allow OYA access to the home, youth offenders, and foster care records, for the purpose of ongoing compliance monitoring.

(f) If a foster parent receives information that a youth offender has been identified as a sex trafficking victim, the foster parent must immediately within 24 hours report the information to law enforcement, the foster care certifier, and the youth offender's JPPO.

(2) Training.

(a) An applicant must complete an OYA-mandated pre-service training before the applicant is approved for certification.

(b) Foster parents must have a valid CPR/First Aid certificate. CPR/First Aid courses count toward the annual minimum training requirement.

(c) On an annual basis, thereafter, each foster parent must complete a minimum of 10 hours of training.

(d) All training must be provided or approved by OYA and must include educational opportunities designed to enhance the foster parent's knowledge, skills, and abilities to meet the special needs of youth offenders.

(A) If youth offenders are in the home and the annual training hours have not been completed, the youth offender foster home certification will be placed on inactive referral status. No additional youth offender referrals will be made until the training hours are completed.

(B) OYA may suspend a certificate if no youth offenders are currently in placement and the training requirements have not been met.

(3) Foster parents will work with OYA staff, by:

(a) Participating in Multidisciplinary Team (MDT) reviews;

(b) Implementing changes in care and supervision only as guided by the supervising Juvenile Parole/Probation Officer (JPPO) and the youth offender's case plan;

(c) Providing a youth offender with the opportunity for regular contacts and private visits or telephone calls with the youth offender's JPPO; and

(d) Notifying the Foster Home Certifier, or designee, of changes likely to impact the life and circumstances of the foster family, including but not limited to the following situations:

(A) Immediate notification to OYA of any circumstance involving the youth offender, foster parent, or other members of the household which may have a serious impact on the health, safety, physical or emotional well-being of the youth offender. This includes, but is not limited to, injury, illness, accident, law violation, or unauthorized absence;

(B) Immediate notification of any visitor remaining in the home overnight who has not received prior approval by OYA. Foster parents and the Foster Home Certifier will collaborate to ensure the safety of the youth offender and visitor(s);

(C) Prior notification when a change in address is anticipated. In the case of an emergency (e.g., fire), foster parents must provide this information as soon as possible after the change of address occurs; and

(D) Prior notification when a change in the membership of the household is anticipated. In the event of an emergency, foster parents must provide this information as soon as possible after the change occurs.

(e) Foster parents must have prior written approval from OYA to take a youth offender out of state.

(4) Foster parents will respect and support the youth offender's relationship with the youth offender's family by:

(a) Assisting OYA staff in planning and implementing visits between the youth offender and the youth offender's family or other approved visitors as indicated by the youth offender's case plan, or youth offender's JPPO;

(b) Allowing a youth offender opportunities to have at least one phone call weekly with the youth offender's family; and

(c) Informing the JPPO if the youth offender chooses to decline family visits.

(5) Confidentiality.

(a) Youth offender information and records are confidential. Foster parents must maintain information relating to youth offenders including but not limited to information relating to a youth's health, education, and placement progress in a manner sufficient to prevent unauthorized access.

(b) Foster parents must not disclose youth offender records, or the names of persons involved in the youth offender's case plan, without authorization from OYA.

(c) Youth offender records may be disclosed only when necessary to provide for the safety and wellbeing of youth offenders and with prior approval of OYA.

(d) Unauthorized disclosure of youth offender records may lead to suspension of certification.

(6) Records.

(a) Foster parents must, for the duration of the youth offender's placement in the foster home, maintain records, including, but not limited to, information relating to the youth offender's health (including immunizations), education, and placement progress.

(b) All records pertaining to the youth offender belong to OYA. The foster parent must make all records available to OYA upon request. The foster parent must immediately provide all records to the youth offender's JPPO or designee when the youth offender leaves the foster home. Any records request by foster parents after the records have been returned to OYA will be handled in accordance with OAR chapter 416, division 105.

(c) Foster parents must maintain the youth offender's confidentiality and may not post the youth offender's information or pictures on any social media or electronic outlets, unless authorized by OYA.

(7) Youth offender reformation and supervision.

(a) Foster parents must provide structure, accountability, and supervision designed to promote the physical, social, intellectual, spiritual, and emotional development of youth offenders, while providing for community protection.

(b) In accordance with a youth offender's case plan, foster parents must:

(A) Treat each youth offender with respect and dignity;

(B) Help the youth offender develop skills and perform tasks that promote independence and self-sufficiency; and

(C) Ask youth offenders to assume household chores appropriate to the youth offender's age and ability, and commensurate with those expected of the foster parent's own children.

(8) Household composition.

(a) No more than three OYA youth offenders may reside in any given foster home at one time. In addition, no more than five total children (including the foster parent's own children under the age of 18) may reside in one foster home.

(b) Children of foster parents age 18 and older will not be counted toward the limitation of five children in the foster home.

(c) Members of the household age 18 and older who remain in or return to the home after becoming 18 years of age are subject to a criminal records check, including a fingerprint records check. The foster parent must notify OYA when a member of the household remains in or returns to the home after becoming 18 years of age.

(d) Foster parents must not care for unrelated adults on a commercial basis, accept children for day care, or accept any person for placement from any source other than OYA without prior OYA written approval.

(9) Respite care.

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(a) A respite care provider may not provide care to youth offenders in the respite provider's own home without a current and valid OYA Certificate that specifically authorizes the respite care provider to provide respite care to youth offenders in the respite care provider's home.

(b) When all foster parents are absent from providing supervision of youth offenders in a foster home, an OYA-certified respite provider at least 21 years of age, capable of assuming foster care responsibilities, must be present. Other adults at least 21 years of age may provide supervision for three hours or less with prior approval from the foster parent, JPPO and Foster Home Certifier.

(c) When all foster parents anticipate being absent from providing supervision of youth offenders for overnight or longer, the foster parents must give OYA advance notice and the foster parents must receive approval from OYA before the foster parents may be absent. The foster parents must provide the following information: the dates of absence; the telephone number where the foster parents can be reached; and the name, telephone number, and home address of the OYA-certified respite provider who will provide care during the foster parent's authorized absence.

(d) The total number of youth offenders per foster home may be increased to no more than five to provide foster parents short-term respite from foster care responsibilities.

(e) Any respite care exceeding 10 days requires prior review and approval by the OYA Community Resources Manager.

(10) Food and nutrition.

(a) Foster parents must provide each youth offender three well-balanced meals and appropriate snacks on a daily basis.

(b) Foster parents must provide each youth offender daily access to kitchen facilities to prepare meals and snacks.

(c) Foster parents must accommodate a youth offender's special and cultural dietary needs, including those ordered by a physician.

(11) Clothing and personal belongings.

(a) Foster parents must provide each youth offender with clean clothing that is appropriate to the youth offender's age, gender, culture, and individual needs.

(b) Youth offenders must be allowed to participate in choosing their own clothing.

(c) Youth offenders may bring and acquire appropriate personal belongings as approved by the youth offender's JPPO, and within OYA's travel kit requirements.

(d) Foster parents must provide a weekly allowance to youth offenders in a fair and consistent manner, and within OYA's allowance policy guidelines.

(e) Foster parents must develop house rules that include, but are not limited to, youth offender money and youth offender accounts.

(f) Foster parents must provide each youth offender with individual items necessary for personal hygiene and grooming. Foster parents must also ensure culturally-specific products are available to each youth offender to meet each youth offender's needs.

(12) Discipline and guidance.

(a) Foster parents must work with a youth offender's JPPO to develop a behavior management plan that sets clear expectations, limits, and consequences of behavior through use of adequate and appropriate structure and supervision.

(A) Foster parents must provide clearly-stated basic rules, a system of incentives and rewards, graduated sanctions when necessary to hold youth offenders accountable, supervision, and guidance.

(B) Discipline must be designed to guide youth offenders with kindness and understanding, while holding the youth offender accountable for personal behaviors.

(b) No youth offender or other person(s) in a foster home will be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury, threats of harm, forced physical labor as punishment, or restriction from approved contacts as punishment.

(13) Health care.

(a) Foster parents must work with OYA to ensure that a youth offender's physical and mental health care needs are met, including but not limited to:

(A) Scheduling appointments and arranging transportation to medical, dental, or counseling appointments or assisting youth offenders in doing so if age appropriate.

(B) Ensuring that immunizations are current.

(C) Reporting to OYA when a youth offender needs corrective or follow-up medical, mental health or dental care, and arranging necessary care.

(D) Arranging for necessary consents from OYA for a youth offender's medical treatment that is not routine, including surgery.

(E) Obtaining emergency medical care, when necessary.

(b) Medication Administration.

(A) Foster parents must comply with applicable provisions of OAR chapter 416, division 340.

(B) A youth offender may refuse any medication. When this occurs, the foster parent must document the refusal and immediately notify the youth offender's JPPO.

(C) A foster parent may administer prescription medications to a youth offender only when ordered by a physician.

(D) All medications must be stored in locked storage sufficient to prevent unauthorized access.

(E) Foster parents must inform a youth offender's JPPO within one working day if any psychotropic medication is prescribed or changed for the youth offender.

(c) Medical information.

(A) Youth offender medical information must be kept confidential and in a secure location.

(B) Medical information may be shared only in compliance with Oregon Revised Statutes, and OYA administrative rules.

(C) Foster parents must provide OYA with copies of youth offender medical information.

(14) Religious, cultural, and ethnic heritage. Foster parents must respect the ethnic heritage, religious choices, cultural identity, and language of a youth offender and the youth offender's family by:

(a) Providing reasonable and meaningful opportunities for a youth offender to develop relationships with others of like cultural and ethnic background;

(b) Providing a youth offender opportunities to attend religious services of the youth offender's choice; and

(c) Not requiring a youth offender to participate in religious activities or events contrary to the youth offender's beliefs.

(15) Education.

(a) Within five days of placement in the foster home, the foster parent must enroll a youth offender in an appropriate educational or vocational program, as outlined in the youth offender's case plan.

(b) Foster parents must be actively involved in a youth offender's educational or vocational programs.

(c) Foster parents must allow a youth offender adequate time each evening to complete homework in a location conducive to study, and provide assistance as needed.

(d) Foster parents will work with school personnel when issues arise at school, and report to a youth offender's JPPO any situation that may require OYA involvement.

(16) Recreation.

(a) Foster parents must provide recreational activities appropriate to the age and abilities of a youth offender, as described in OAR chapter 416, division 500.

(b) Foster parents must encourage a youth offender to participate in community activities both with the foster family and on the youth offender's own, in accordance with the case plan.

(c) Foster parents must provide opportunities for a youth offender to pay restitution and perform community service obligations as directed by the case plan.

(17) Restrictions.

(a) No mechanical restraints, other than car seat belts, may be used on OYA youth offenders by foster parents.

(b) Foster parents and members of the household may not provide any form of tobacco, inhalant delivery system, alcohol, marijuana, drug paraphernalia, or illicit drugs to youth offenders, or allow youth offenders to consume or use such items or products.

(c) Youth offenders may use private home swimming pools and hot tubs only under supervision of a foster parent or certified respite provider.

(d) All alcoholic beverages, marijuana, and marijuana paraphernalia must be stored and locked in a manner sufficient to prevent access by youth offenders.

(18) Safety. Foster parents must:

(a) Be aware of a youth offender's location at home and in the community at all times;

(b) Have an adequate system for monitoring youth offenders during the night;

(c) Ensure that keys to locked storage and motor vehicles are secured at all times;

(d) Inspect a youth offender's room on regular basis to prevent the offender from possessing contraband;

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(e) Comply with OYA health and safety requirements for the prevention of accidents and injuries;

(f) Understand and implement suicide prevention techniques and reporting requirements; and

(g) Be knowledgeable about boundaries, inappropriate sexual behavior, monitoring and other aspects of youth offender care at the level appropriate for supervising youth offenders that are placed in the home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 4-2015(Temp), f. & cert. ef. 8-14-15 thru 2-9-16; Administrative correction, 12-24-16; OYA 1-2016, f. & cert. ef. 3-2-16

## 416-530-0070

### Standards for the Foster Home

(1) General.

(a) Schools, recreation, churches, medical care, and community facilities must be accessible from the foster home. The foster home and its premises must be comparable in appearance to other homes in the community in which it is located.

(b) If care is to be provided to one or more developmentally disabled or physically impaired youth offenders, OYA must consult with the relevant professionals to identify necessary accommodations to the foster home and ask the foster parent to implement the necessary accommodations prior to placement.

(A) OYA will coordinate the accommodations to the foster home.

(B) If the foster parent refuses to make the necessary accommodations, the youth offender will not be placed into the foster home.

(c) Foster homes must have a working telephone with service. Foster parents must secure an alternative phone service within 24 hours of any disruption of existing phone service and communicate the new telephone number to the Foster Home Certifier.

(2) Kitchen.

(a) Foster homes must have the equipment necessary for the safe preparation, storage, serving and cleanup of meals.

(b) Foster parents must ensure that all cooking and refrigeration equipment is sanitary and in working condition.

(c) Foster parents must ensure that meals are prepared and served in a safe and sanitary manner minimizing the possibility of food poisoning or food contamination.

(3) Living areas

(a) The foster home must have sufficient living or family room space that is comfortably furnished and accessible to all members of the household, including youth offenders.

(b) Foster homes must be well-heated and well-ventilated.

(4) Bedrooms.

(a) Bedrooms occupied by youth offenders must:

(A) Be safe and have adequate living space for each youth offender;

(B) Have windows that open and provide sufficient natural light and ventilation;

(C) Have a bed for each youth offender, with clean bed linens, blankets (as appropriate to the season), and pillows; and

(D) Have a functioning smoke alarms and carbon monoxide detectors, as prescribed in the OYA Safety Requirements Checklist.

(b) Youth offender(s) age 18 or older may not share a bedroom with a youth offender under age 18 without the prior approval of the OYA Community Resources Manager.

(c) Children of foster parents are prohibited from sharing a bedroom with a youth offender.

(d) The Foster Home Certifier must determine the maximum number of youth offenders allowed to occupy each bedroom based on room size and the availability of adequate personal space for each youth offender. Placement of more than the determined maximum number of youth offenders allowed to occupy each bedroom is prohibited.

(e) Each youth offender must be provided with adequate storage space in or near the bedroom he or she occupies for personal belongings and a designated space for hanging clothes.

(f) Foster parents must allow flexibility in the decoration of sleeping areas to accommodate the personal tastes and expressions of the youth offenders in care.

(g) Youth offender bedroom doors must not have locks.

(h) Youth offenders with a history of inappropriate sexual behavior or adjudicated for a sexual offense must occupy a bedroom either individually, or in a group of three youth offenders with histories of inappropriate sexual behavior or adjudicated for a sexual offense. The assignment of two youth offenders with histories of inappropriate sexual behavior or adjudicated for a sexual offense to one bedroom must be authorized by the OYA Community Resources Manager, in consultation with OYA Community Services staff.

(i) Bedrooms occupied by youth offenders that are located in basements or above the ground floor must have safe and direct emergency exits to the ground.

(5) Domestic animals.

(a) Foster parents must restrict access to potentially dangerous animals.

(b) Only domestic animals allowed by local ordinances may be kept as pets.

(c) Domestic animals must be properly cared for, supervised, and otherwise maintained in compliance with local ordinances.

(d) Rabies vaccination for pets must be kept current as required by law. Foster parents must provide proof of rabies vaccination to OYA upon request.

(6) Deadly weapons.

(a) Foster parents must immediately notify the Foster Home Certifier anytime a deadly weapon is brought to the foster home.

(b) Deadly weapons must be stored in a locked compartment behind a locked door that prohibits access and is not visible to youth offenders.

(c) Firearms.

(A) Any foster parent or member of the household who possesses a concealed weapon permit must:

(i) Give OYA a copy of the permit; and

(ii) Give OYA a written plan regarding how the foster parent or member of the household will keep concealed weapons secure from youth offenders.

(B) Firearms must remain unloaded and stored in a locked gun safe or behind double locks that prohibit access and visibility to youth offenders. For purposes of this rule, a double lock may be a locked compartment within a locked room. Ammunition must be stored in a separate locked compartment, separate from any firearm. Trigger locks and glass front display cabinets are not adequate.

(C) Except for law enforcement personnel, no person in any vehicle transporting a youth offender may carry a firearm.

(7) Safety.

(a) Swimming pools and hot tubs must be maintained in a safe and clean condition, and must comply with local safety regulations and ordinances.

(b) Any safety hazard identified by OYA staff or a qualified trade service provider must immediately be remedied by the foster parent.

(c) An emergency access must be available to any room that has a lock.

(d) Stairways must be equipped with handrails.

(e) All hazardous chemicals, cleaning materials, solvents and combustibles must be stored in locked storage sufficient to prevent unauthorized access.

(f) In addition to section (4)(a)(D) of this rule:

(A) At least one functioning smoke alarm must be placed on each floor of the foster home;

(B) At least one carbon monoxide detector must be placed within 15 feet of a youth offender's bedroom; and

(C) At least one carbon monoxide detector must be placed on each floor of the foster home.

(g) At least one unexpired and operable class 2-A-10BC or higher rated fire extinguisher must be available and maintained on each floor in each foster home.

(h) Outdoor tools and equipment and machinery must be stored in a manner sufficient to prevent unauthorized access.

(i) A written home evacuation plan must be available to all youth offenders.

(A) Foster parents must practice the evacuation plan with each youth offender at the time of placement and at least once a year to ensure all youth offenders understand the procedures.

(B) The evacuation plan, including evacuation diagram, must be readily accessible and posted in a clearly visible and conspicuous location.

(j) The use of space heaters are limited to electric space heaters equipped with tip-over protection, or propane space heaters equipped with approved venting. No extension cords may be used with such heaters or in place of permanent wiring. Kerosene space heaters are not allowed.

(k) Foster homes must have two unrestricted emergency exits in case of fire.

(A) A sliding door or window that can be used to evacuate youth offenders may be considered a usable emergency exit.

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(B) Barred windows used as possible emergency exit in case of fire must be fitted with operable quick release mechanisms.

(8) Sanitation and health.

(a) The foster home must be kept clean and free of hazards to the health and physical well-being of the family. All areas of the foster home must meet sanitation criteria as described in OYA Cleanliness Standards.

(b) Measures must be taken to keep the house and premises free of vermin.

(c) First aid supplies must be stored in an easily accessible place.

(d) A continuous supply of safe, clean drinking water must be available.

(A) Private water sources and septic tank systems must be kept safe and functioning properly.

(B) Private water sources must be tested and approved by an appropriate official upon OYA request.

(e) Only pasteurized milk, juices, or powdered milk may be used for youth offender consumption.

(f) All plumbing must be kept in working order, and an adequate supply of hot water for bathing and dish washing must be available.

(g) Water heaters must be accessible for inspection and equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(h) The foster home must have a minimum of one flush toilet, one washbasin with running water, and one bath or shower with hot and cold water.

(i) Pending weekly removal, garbage and refuse must be stored appropriately, with no accumulation of garbage, debris, or rubbish that emits offensive odors.

(j) Youth offenders in the foster home may not be subjected to second-hand smoke, or vapor.

(9) Transportation safety.

(a) All vehicles used to transport youth offenders must have, at a minimum, liability insurance coverage in accordance with Oregon law.

(b) Foster parents and other members of the household who transport youth offenders must be licensed and insured drivers, and 21 years of age or older.

(c) At least one foster parent must possess a valid license to drive, or demonstrate options for safe and accessible transportation.

(d) The driver must ensure that all passengers use seat belts during the transport.

(e) Youth offenders may not operate a vehicle owned by a foster parent, member of the household, or volunteer if the vehicle requires a state license to be operated on public roads.

(f) Youth offenders may engage in driver's education provided by public school or driver training delivered by a licensed provider in accordance with the youth offender's case plan.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2009, f. & cert. ef. 2-2-09; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 1-2016, f. & cert. ef. 3-2-16

## 416-530-0090

### Denial, Suspension, and Revocation of Youth Offender Foster Home Certification or Re-Certification; Inactive Referral Status

(1) Denial.

(a) OYA may deny an application for a youth offender foster home certification or re-certification if an applicant or foster parent fails to meet any of the criteria set forth in these rules, or does any of the following:

(A) Falsifies an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) Fails to provide information requested by OYA within the time frame set by OYA; or

(C) Fails to inform OYA of conditions that could disqualify the foster parent or the foster home from certification.

(b) If OYA proposes to deny an application for a foster home certification or re-certification, OYA will provide the applicant or foster parent with a written Notice of Proposed Denial of Youth Offender Foster Home Certification or Re-certification and a proposed Order Denying Certification or Recertification, mailed to the applicant or foster parent by certified or registered mail, or personally served upon the applicant or foster parent, and stating the reason(s) for the proposed denial.

(c) An applicant or foster parent has 60 days from the date of mailing or service of the Notice of Proposed Denial of Youth Offender Foster Home Certification or Re-certification to request a hearing. The request for hearing must be received by OYA within the 60-day period.

(d) An applicant or foster parent who has been denied certification or re-certification may not re-apply for or hold a foster home certification for a period of five years from the effective date of the Final Order Denying Youth Offender Foster Home Certification or Re-certification.

(2) Suspension.

(a) OYA may suspend a youth offender foster home certification without a prior hearing if OYA finds a serious danger to the public health or safety, including the health or safety of a youth offender or the community. In the event of a suspension, youth offenders will be removed from the foster home and no further referrals will be made to the foster home unless and until the suspension is lifted.

(b) A foster parent has 90 days from the date of mailing or service of the Notice of Suspension to request a hearing on the emergency suspension. The request for hearing must be received by OYA within the 90-day period.

(c) The Notice of Suspension must be mailed by certified mail or personally served on the foster parent.

(d) If within 10 days from the date of mailing of the Notice of Suspension the foster parent does not enter into a written agreement containing a corrective action plan with OYA, OYA will initiate proceedings to revoke the youth offender foster home certification. The 10-day period may be extended upon prior written approval of OYA.

(e) If the suspension will exceed 180 days or the expiration date of the current certification, OYA will terminate the Youth Offender Foster Home Agreement with the foster parent until such time as the suspension has been resolved as set out in this rule. The foster parent will be placed on inactive referral status and will not receive youth offender referrals until the matter is resolved.

(3) Revocation.

(a) OYA may revoke a youth offender foster home certification after considering any of the following:

(A) The severity of any alleged violation of these rules;

(B) The number of similar or related violations;

(C) Whether the violations, including the alleged violation, were willful or intentional;

(D) The prior history of violations; or

(E) Any other mitigating or aggravating circumstance determined by OYA to be relevant to the alleged violation, or to the appropriate response to the alleged violation.

(b) OYA may revoke a youth offender foster home certification if a foster parent fails to meet any of the criteria set forth in OAR chapter 416, division 530, or does any of the following:

(A) The foster parent falsified an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) After certification, the foster parent fails to provide information requested by OYA in the timeframe set by OYA;

(C) The foster parent fails to inform OYA of conditions that could disqualify the foster parent or the foster home from certification; or

(D) The foster parent fails to comply with a corrective action plan within the time frame set by OYA and the foster parent remains in violation of any of these rules.

(c) If OYA initiates revocation proceedings of a youth offender foster home certification, OYA will provide a written Notice of Proposed Revocation of Youth Offender Foster Home Certification and proposed Order Revoking Youth Offender Foster Home Certification. The Notice of Proposed Revocation and proposed Order will be mailed, by certified or registered mail, or personally delivered, to the foster parent stating the reason(s) for revocation proceedings.

(d) A foster parent has 10 days from the date of mailing of the Notice of Proposed Revocation of Youth Offender Foster Home Certification to request a hearing. The request for hearing must be received by OYA within the 10-day period.

(e) A foster parent whose certificate has been revoked may not reapply for or hold a foster home certification for five years from the effective date of the Final Order Revoking Youth Offender Foster Home Certification, unless a lesser time or specific condition is stated in the Final Order.

(4) Inactive Referral Status.

(a) Inactive referral status, provider-initiated: A foster parent may ask to be placed on inactive referral status for up to 12 months.

(A) In order for inactive referral status to be granted, there can be no unresolved matters relating to non-compliance with certification rules.

(B) Prior to a return to active referral status, a foster parent must be in compliance with all certification rules, including training requirements.

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(b) Inactive referral status, OYA-initiated

(A) OYA may place a foster parent on inactive referral status due to changes in the foster parent's family or foster home including, but not limited to, death; divorce; a new member joining the household; significant disabling health condition; the arrest of a foster parent or member of the household; initiation of a law enforcement investigation or criminal prosecution of a foster parent or member of the household; or other circumstances that OYA determines will put additional stress or pressure on the family or may pose a serious risk to the health, safety, or physical or emotional well-being of a youth offender. Prior to placing a foster parent on inactive referral status, OYA may discuss the status change with the foster parent. OYA will notify the foster parent in writing of the change in referral status and the expected duration of that change.

(B) OYA-initiated inactive status may last for up to 180 days, during which time no additional youth offenders will be placed in the home. OYA may continue the inactive status for more than 180 days under any of the following circumstances:

(i) OYA and the foster parent do not enter into an agreement that addresses the issues that led to the change to inactive status;

(ii) The foster parent is not in compliance with all certification rules, including training requirements; or

(iii) A law enforcement investigation or criminal proceeding involving a foster parent or member of the household has been initiated and has not concluded.

(5) Contested case hearings. Pursuant to the provisions of ORS 183.341, OYA adopts the Attorney General's Model Rules of Procedure OAR 137-003-0001 to 137-003-0091 and 137-003-0580, effective January 2014, as procedural rules for contested case hearings.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 183.341, 183.430 & 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 6-2009, f. 12-15-09, cert. ef. 12-16-09; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 1-2016, f. & cert. ef. 3-2-16

## 416-530-0200

### Certification Standards for Transitional Care Providers

(1) This rule establishes standards for OYA transitional care providers and their homes that offer specific independent living and transitional services for youth offenders 18 through 24 years of age.

(2) Definitions listed under OAR 416-530-0010 apply to this rule with the following additions and modifications:

(a) Frequent Visitor: A person who regularly visits a transitional care home more than five hours per week when a youth offender placed in the transitional care home is present.

(b) Member of the household: Any person, other than a youth offender, who lives in the transitional care home or on the property where the transitional care home is located, is a frequent visitor to the transitional care home, or assists in the care provided to the youth offender.

(c) Respite care: A temporary arrangement between a transitional care provider and an OYA-certified respite care provider to allow the transitional care provider time away from a youth offender.

(d) Transitional care respite provider: An individual, certified by OYA, and who temporarily assists with supervision of youth offenders when the transitional care provider is not available.

(e) Transitional care home: A Youth Offender Foster Home in the community that is maintained and lived in by an OYA-certified transitional care provider who provides supervision, food, lodging and transitional services for one or more youth offenders 18 through 24 years of age in that home.

(f) Transitional care provider: A foster parent certified by OYA who has been authorized by OYA to supervise youth offenders 18 through 24 years of age in a youth offender transitional care home setting.

(3) Unless otherwise specified in this rule, the provisions of OAR 416-530-0000 through 416-530-0090 and OAR chapter 416, divisions 335 and 800, apply to transitional care provider, applicants, transitional care providers and transitional care homes.

(4) Certification.

(a) Foster care certifiers must evaluate each transitional care home and surrounding property to determine which persons qualify as members of the household.

(b) Members of the household identified by the foster care certifier must complete criminal records checks pursuant to OAR division 800.

(c) Transitional care homes certified according to this rule must receive a certificate specifically providing that the home may provide services to youth offenders 18 through 24 years of age.

(5) Transitional care provider qualifications.

(a) Transitional care providers must be at least 25 years of age due to the age of the youth offenders in transitional care.

(b) Transitional care providers must be able to realistically evaluate which youth offenders they can accept and supervise.

(c) Transitional care providers must demonstrate competence in supervising youth offenders 18 through 24 years of age and promote the independent living skills of youth offenders as they transition toward independence.

(6) A transitional care provider must:

(a) Abide by the responsibilities described in the OYA Transitional Care Provider Agreement. This agreement must be signed at the time of initial certification and annually thereafter;

(b) Establish a system for a youth offender to notify the youth offender's transitional care provider of the youth offender's whereabouts at all times;

(c) Be accessible to youth offenders 24 hours per day so a youth offender may contact the transitional care provider in case of an emergency or other needs; and

(d) Respect and support the youth offender's relationship with his or her family by assisting OYA staff and the youth offender in planning and implementing visits between the youth offender and the youth offender's family as indicated by the youth offender's case plan, or the youth offender's JPPO.

(7) A transitional care provider must provide structure, accountability, and supervision designed to promote the development of independent living skills as identified in the youth offender's case plan.

(8) Respite transitional care.

(a) A respite care provider who provides care in his or her own home must have a current and valid OYA Certificate that specifically authorizes the individual to provide transitional care and serve youth offenders in his or her home.

(b) When transitional care providers are absent from supervising youth offenders at home during the day, youth offenders may remain in the transitional care home unsupervised if approved by the youth offender's JPPO, foster home certifier and the transitional care provider. If a youth offender's JPPO, foster home certifier, or transitional care provider determines that supervision is required, an OYA-certified respite care provider who is at least 25 years of age and capable of assuming transitional care responsibilities must be present to supervise the youth offender. Any adult who is at least 25 years of age and has obtained prior approval from the transitional care provider, JPPO, and foster home certifier may provide supervision of a youth offender in a transitional care home for three hours or less.

(c) When a transitional care provider plans to be absent from supervising youth offenders overnight or longer, the transitional care provider must provide OYA advance notice, and a respite care provider must supervise the youth offenders during the absence. The transitional care provider must provide the following information to OYA when providing OYA with such notice: the dates of absence; the telephone number where the transitional care provider may be reached; and the name, telephone number, and home address of the OYA-certified respite care provider.

(9) Food and nutrition. A transitional care provider must:

(a) Provide an appropriate quantity and quality of food. Transitional care providers are not required to provide prepared meals to youth offenders;

(b) Assist youth offenders with meal planning, and may provide meal preparation instruction;

(c) Provide youth offenders daily access to kitchen facilities to prepare meals and snacks; and

(d) Assist youth offenders to meet any special or cultural dietary needs of the youth offenders, including those ordered by a physician.

(10) Clothing and personal belongings. A transitional care provider must:

(a) Ensure each youth offender has adequate clothing that is appropriate to the youth offender's age, gender, and individual needs;

(b) Help facilitate youth offenders' money management skills to prepare for independent living and to meet any court-ordered financial obligations; and

(c) Provide each youth offender with individual, culturally-specific items necessary for personal care and grooming.

(11) Transitional care providers must ensure youth offenders have access to necessary transportation.

(12) Transitional care providers must report to OYA when a youth offender needs corrective or follow-up medical, mental health, or dental care, and assist youth offenders in arranging necessary care.

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(13) Transitional care providers must assist youth offenders in understanding the purpose of medications, medication side effects, and how to manage their medications. Either a transitional care provider or the youth offender may administer the youth offender's daily dosage of medication. If the youth offender self-administers the daily dosage, the transitional care provider must verify that the youth offender self-administered the correct dosage. Youth offenders placed in transitional care homes may have access to over-the-counter medications.

(14) Transitional care providers must assist youth offenders in pursuing educational and vocational interests and opportunities in accordance with the youth offender's case plan.

(15) Transitional care providers must encourage youth offenders to develop and participate in prosocial leisure and community activities.

(16) Youth offenders in transitional care homes may have unsupervised access to swimming pools and hot tubs if approved by the transitional care provider and JPPO.

(17) Bedroom doors in transitional care homes may have locks if approved by the foster care certifier. A transitional care provider must have access to any locked room.

(18) A youth offender in a transitional care home may have access to domestic cleaning supplies. The transitional care provider must instruct youth offenders in the proper use of such supplies.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 420.888 - 420.892  
Hist.: OYA 5-2009, f. 10-27-09, cert. ef. 11-2-09; OYA 1-2014, f. & cert. ef. 1-15-14; OYA 1-2016, f. & cert. ef. 3-2-16

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**Rule Caption:** OYA is adopting and incorporating by reference the July 1, 2015 BRS Rate Table .

**Adm. Order No.:** OYA 2-2016(Temp)

**Filed with Sec. of State:** 3-10-2016

**Certified to be Effective:** 3-10-16 thru 6-10-16

**Notice Publication Date:**

**Rules Amended:** 416-335-0090

**Subject:** OYA is amending the date and content of the BRS Rate Table referenced in OAR 416-335-0090 to reflect new rate changes.

**Rules Coordinator:** Winifred Skinner—(503) 373-7570

## 416-335-0090

### Billing and Payment for Services and Placement Related Activities

(1) Billable Care Days:

(a) The BRS Contractor is compensated for a Billable Care Day (Service and Placement Related Activities rates) on a fee-for-service basis in accordance with OAR 410-170-0110 and this rule.

(b) The BRS Contractor may include overnight Transitional Visits by the BRS Client to another placement in its Billable Care Days. The BRS Contractor must:

(A) Receive prior approval for the Transitional Visit from OYA;

(B) Ensure that the Transitional Visit is in support of the MSP, MSP-T, or MSP-S goals related to transition;

(C) Pay the hosting placement at the established Absent Rate for the sending BRS Provider; and

(D) Ensure that the hosting placement will not seek any reimbursement from OYA for the care of the visiting BRS Client.

(2) Absent Days:

(a) The BRS Contractor is compensated for an Absent Day at the Absent Day rate in order to hold a BRS Program placement for a BRS Client with the prior approval of the BRS Client's JPPO and the Community Resources Manager.

(b) Notwithstanding OAR 410-170-0110(4), the BRS Contractor may request prior approval from OYA to be reimbursed for more than eight calendar days of home visits in a month for a BRS Client. However, any additional days of home visits approved under this rule will be paid at the Absent Day rate.

(3) The BRS Contractor may be reimbursed only for the BRS Type of Care authorized in the contract with OYA.

(4) Invoice Form:

(a) The BRS Contractor must submit a monthly billing form to OYA in a format acceptable to the Agency, on or after the first day of the month following the month in which it provided Services and Placement Related Activities to the BRS Client. The billing form must specify the number of Billable Care Days and Absent Days for each BRS Client in that month.

(b) The BRS Contractor must provide upon request, in a format that meets OYA's approval, written documentation of each BRS Client's location for each day claimed as a Billable Care Day and an Absent Day.

(c) The BRS Contractor may only submit a claim for a Billable Care Day and an Absent Day consistent with the Agency's prior authorization or approval.

(5) Billable Care Day and Absent Day rates are provided in the "BRS Rates Table", dated July 1, 2015, which is adopted as Exhibit 1 and incorporated by reference into this rule. A printed copy may be obtained from OYA.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 420A.010, 420A.014  
Hist.: OYA 3-2013, f. 11-15-13, cert. ef. 1-1-14; OYA 2-2016(Temp), f. & cert. ef. 3-10-16 thru 6-10-16

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## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of Amendments to OAR 860-038-0300(2), regarding Information to Residential Customers.

**Adm. Order No.:** PUC 1-2016

**Filed with Sec. of State:** 3-10-2016

**Certified to be Effective:** 3-10-16

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 860-038-0300

**Subject:** AR 555 Part 2 — These amendments change rule language regarding the price, power source, and environmental impact information provided to residential customers of the electric companies subject to the rule. The amendments also change the frequency of reporting this information to customers from quarterly to annually.

**Rules Coordinator:** Diane Davis—(503) 378-4372

### 860-038-0300

#### Electric Company and Electricity Service Suppliers Labeling Requirements

(1) The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice.

(2) For each service or product it offers, an electric company must provide price, power source, and environmental impact information to all residential consumers annually, or at a frequency prescribed by the Commission. The information must be based on the available service options. The information must be supplied consistent with the requirements prescribed by the Commission. The electric company must report price information for each service or product for residential consumers based on the average monthly bill and price per kilowatt-hour for the available service options.

(3) An electric company and an electricity service supplier must provide price, power source and environmental impact information to nonresidential consumers consistent with the requirements and frequency prescribed by the Commission. An electric company and an electricity service supplier must report price information for nonresidential consumers as follows:

(a) The price and amount due for each service or product that a non-residential consumer is purchasing;

(b) The rates and amount of state and local taxes or fees, if any, imposed on the nonresidential consumer;

(c) The amount of any public purpose charge; and

(d) The amount of any transition charge or credit.

(4) For power supplied through its own generating resources, the electric company must report power source and environmental impact information based on the company's own generating resources, not the unspecified market purchase mix. An electric company's own resources include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from specific generating units. An electric company's own resources do not include the non-energy attributes associated with purchases under the provisions of a net metering tariff or other power production tariff unless the electric company has separately contracted for the purchase of the Tradable Renewable Certificates. For net market purchases, the electric company must report power source and environmental impact information based on the unspecified market purchase mix. The electric company must report power source and environmental impact information for standard offer sales based on the unspecified market purchase mix.

(5) For purposes of power source and environmental impact reporting, an electric company and an electricity service supplier should use the most recent unspecified market purchase mix unless the electric company

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or electricity service supplier is able to demonstrate a different power source mix and environmental impact. A demonstration of a different mix must be based on projections of the mix to be supplied during the current calendar year. Power source must be reported as the percentages of the total product supply including the following:

- (a) Coal;
- (b) Hydroelectricity;
- (c) Natural gas;
- (d) Nuclear; and
- (e) Other power sources including but not limited to new renewable resources, if over 1.5 percent of the total power source mix.

(6) Environmental impact must be reported for all retail electric consumers using the annual emission factors for the most recent available calendar year applied to the expected production level for each source of supply included in the electricity product. Environment impacts reported must include at least:

- (a) Carbon dioxide, measured in lbs./kWh of CO2 emissions;
- (b) Sulfur dioxide, measured in lbs./kWh of SO2 emissions;
- (c) Nitrogen oxides, measured in lbs./kWh of NOx emissions; and
- (d) Mercury, measured in lbs/kWh of Hg emission.

(7) Every bill to a direct access consumer must contain the electricity service supplier's and the electric company's toll-free number for inquiries and instructions as to those services and safety issues for which the consumer should directly contact the electric company.

(8) The electricity service supplier must provide price, power source, and environmental impact in all contracts and marketing information.

(9) The electric company must provide price, power source, and environmental impact in all standard offer marketing information.

(10) By September 1, each electric company and each electricity service supplier making any claim other than unspecified market purchase mix must file a reconciliation report for the prior calendar year on forms prescribed by the Commission. The report must provide a comparison of the power source mix and emissions of all of the seller's certificates, purchase or generation with the claimed power source mix and emissions of all of the seller's products and sales.

(11) Each electricity service supplier and electric company owning or operating generation facilities shall keep and report such operating data about its generation of electricity as may be specified by order of the Commission.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.600 - 757.667  
Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 7-2009, f. & cert. ef. 6-25-09; PUC 3-2014, f. & cert. ef. 3-7-14; PUC 1-2016, f. & cert. ef. 3-10-16

## Water Resources Department Chapter 690

**Rule Caption:** Extending Reservations of Water for Economic Development for Burnt River Areas of the Powder Basin.

**Adm. Order No.:** WRD 1-2016

**Filed with Sec. of State:** 3-1-2016

**Certified to be Effective:** 3-1-16

**Notice Publication Date:** 1-1-2016

**Rules Amended:** 690-509-0000, 690-509-0100

**Subject:** A reservation of water for future economic development sets aside a quantity of water for storage to meet future needs. The rules establishing the Burnt River reservations of water are set to expire on March 8, 2016, unless extended by rule by the Water Resources Commission. These rule amendments would extend reservations of water for future economic development for the South Fork Burnt River, North Fork Burnt River, and Burnt River Subbasins of the Powder River Basin for an additional 20 years, to 2036, and change reporting requirements. Without these rule amendments, the Burnt River area reservations will expire. In addition, the rules include corrections to clarify that the uses for the reservations are classified uses and address inconsistencies in terminology.

**Rules Coordinator:** Diana Enright—(503) 986-0874

### 690-509-0000

#### Classifications

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Powder Basin, and attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power develop-

ment, industrial, mining, recreation, wildlife, and fish life uses, and the waters of the Powder Basin are hereby so classified with the following exceptions:

(a) That 65,000 acre-feet annually of unappropriated water of Eagle Creek and its tributaries at or above stream mile 21 be classified for domestic, livestock, municipal, irrigation, recreation, wildlife, and fish life purposes.

(b) That 265,000 acre-feet annually of natural flows of Snake River water at or near stream mile 9 of Powder River (arm of Brownlee Reservoir) lying within Section 25, Township 9 South, Range 45 East, Willamette Meridian, be classified for domestic, livestock, municipal, irrigation and industrial purposes.

(c) That 87,000 acre-feet annually of natural flows of Snake River water at or near stream mile 327 of Snake River lying within Section 8, Township 14 South, Range 45 East, Willamette Meridian, be classified for domestic, livestock, municipal, irrigation, and industrial purposes.

(d) The maximum economic development of this state, the attainment of the highest and best use of the unappropriated waters of the natural lakes of the Powder Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife, and fish life uses, and the waters of the natural lakes of the Powder Basin are hereby so classified.

(e) Water that is stored subject to the reservation of water under OAR 690-509-0110 through 0160 may be used for any beneficial purpose, and any beneficial use of the water stored shall be a classified use.

(2) Application for the use of these specified waters of the Powder Basin shall not be accepted by any state agency for any other use and the granting of applications for such other use is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.

(3) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

(4) Notwithstanding a determination water is unavailable for appropriation, permits for domestic and livestock purposes from the Burnt River and tributaries may be issued to water-use applicants:

(a) In amounts not to exceed a cumulative total of 2.5 cubic feet per second of live-flow, and

(b) Provided water-use applicants cannot acquire access to a viable source of water supplied by a community water system, irrigation district, or other water supply organization.

(5) Applications filed prior to March 8, 1996, shall be processed under the classification in effect at the time of the application.

Stat. Auth.: ORS 536  
Stats. Implemented: ORS 536.220 & 536.310  
Hist.: WRB 43, f. 7-10-70; WRD 1-1981, f. & cert. ef. 4-20-81; Administrative Renumbering 9-1993, Renumbered from 690-080-0090; WRD 4-1996, f. & cert. ef. 3-15-96; WRD 3-2000, f. & cert. ef. 5-26-00; WRD 1-2016, f. & cert. ef. 3-1-16

### 690-509-0100

#### Reservation Applications and Process

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(2) "Multipurpose reservoir," as used in OAR 690-509-0110 through 0160, means a reservoir storing water to serve multiple potential beneficial uses of stored water such as, but not limited to, irrigation, power development, municipal, recreation, pollution abatement, and flow augmentation for instream purposes.

(3) Reservations of water for future economic development in OAR 690-509-0110 through 0160 allocate and reserve surface water for storage for the period of the reservation.

(4) Permits to store reserved water shall receive the priority date of the reservation.

(5) In addition to the requirements of ORS Chapter 537 and OAR Chapter 690, Division 310, an application for a permit to store water reserved under 690-509-0110 through 0160 shall include:



## ADMINISTRATIVE RULES

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;

(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.

(6) For the purposes of review of water right permit applications to store reserved water under OAR Chapter 690, Divisions 310, the reserved quantities of water listed in OAR 690-509-0110 through 0160 are available for appropriation. However, the determination that water is available under OAR 690-509-0110 through 0160 shall not substitute for consideration during the public interest review of site-specific information as required under ORS Chapter 537, OAR Chapter 690 or any other applicable statutes or rules. Because the finding that water is available in OAR 690-509-0110 through 0160 is a water availability determination for a sub-basin, analysis of water availability at the specific location shall be conducted at the time of permit application review.

(7) In addition to any other findings required for issuance of a reservoir permit under ORS Chapter 537 or applicable rules, and prior to issuance for a proposed project storing water reserved under 690-509-0110 through 0160, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose and intent of the reservation following consultation with the Department of Agriculture;

(b) The proposed reservoir will enhance instream values, including but not limited to instream flows; and

(c) Whether minimum bypass flows are required.

(8) The Department shall determine, and impose as a condition, an appropriate storage season, and shall include other conditions to insure no injury to senior water rights and to protect instream values.

(9) Progress Reports:

(a) Until the Department has received applications for reservoir permits for the full quantity of reserved water under OAR 690-509-0110 through 0130, the Department shall biennially report to the Water Resources Commission on the amount of water available under the reservation, and the quantity allocated under the reservation. The Department or Commission may require periodic reports from the Oregon Department of Agriculture on continued interest in the reservation, efforts undertaken to develop the reservation, and any challenges to developing the reservation.

(b) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water under OAR 690-509-0140 through 0160 by May 26, 2005, the Department of Agriculture shall provide the Commission with a progress report on development of the reservations. Progress reports shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals, while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(10) Effective date of rules:

(a) OAR 690-509-0110 through 0130 shall be effective until March 8, 2036 unless the effective date has been extended by further rulemaking of the Water Resources Commission.

(b) OAR 690-509-0140 through 0160 shall be effective until May 26, 2020, unless the effective date has been extended by further rulemaking of the Water Resources Commission.

(c) The expiration of these reservation rules shall not affect pending applications that have been received and deemed complete and not defective by the Water Resources Department pursuant to ORS 537.150(2), prior to the expiration date of the rules.

Stat. Authority: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRD 4-1996, f. & cert. ef. 3-15-96; WRD 3-2000, f. & cert. ef. 5-26-00; WRD 1-2016, f. & cert. ef. 3-1-16

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104-080-0020	12-1-2015	Repeal	1-1-2016	123-042-0180	2-29-2016	Amend	4-1-2016
104-080-0021	12-1-2015	Repeal	1-1-2016	123-042-0180(T)	2-29-2016	Repeal	4-1-2016
104-080-0022	12-1-2015	Repeal	1-1-2016	123-042-0190(T)	2-29-2016	Repeal	4-1-2016
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150-315.144	1-1-2016	Amend	2-1-2016	257-070-0015	3-7-2016	Amend	4-1-2016
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150-316.583(2)	1-1-2016	Am. & Ren.	2-1-2016	257-070-0110	3-7-2016	Adopt	4-1-2016
150-317.152	1-1-2016	Adopt	2-1-2016	257-070-0120	3-7-2016	Adopt	4-1-2016
150-317.717	1-1-2016	Adopt	2-1-2016	257-070-0130	3-7-2016	Adopt	4-1-2016
150-321.207(1)	1-1-2016	Am. & Ren.	2-1-2016	259-008-0005	1-1-2016	Amend	2-1-2016
150-358.505	1-1-2016	Amend	2-1-2016	259-008-0010	1-1-2016	Amend	2-1-2016
150-401.794	1-1-2016	Renumber	2-1-2016	259-008-0025	1-1-2016	Amend	2-1-2016
150-475B.710-(A)	1-4-2016	Adopt(T)	1-1-2016	259-008-0040	1-1-2016	Amend	2-1-2016
150-475B.710-(B)	1-4-2016	Adopt(T)	1-1-2016	259-008-0060	1-1-2016	Amend	2-1-2016
150-475B.710-(C)	1-4-2016	Adopt(T)	1-1-2016	259-008-0100	1-1-2016	Amend	2-1-2016
165-001-0016	1-1-2016	Amend	2-1-2016	259-009-0059	1-1-2016	Amend	2-1-2016
165-001-0025	1-1-2016	Amend	2-1-2016	259-009-0062	12-22-2015	Amend	2-1-2016
165-001-0034	1-1-2016	Amend	2-1-2016	259-009-0070	1-1-2016	Amend	2-1-2016
165-001-0050	1-1-2016	Amend	2-1-2016	259-060-0010	12-22-2015	Amend	2-1-2016
165-001-0095	1-1-2016	Adopt	2-1-2016	259-060-0015	12-22-2015	Amend	2-1-2016
165-005-0055	1-1-2016	Amend	2-1-2016	259-060-0145	12-22-2015	Amend	2-1-2016
165-005-0065	1-1-2016	Amend	2-1-2016	259-061-0120	12-22-2015	Amend	2-1-2016
165-005-0070	1-1-2016	Amend	2-1-2016	274-005-0040	12-28-2015	Amend	2-1-2016
165-005-0170	1-1-2016	Adopt	2-1-2016	274-005-0046	12-28-2015	Adopt	2-1-2016
165-007-0030	12-11-2015	Amend	1-1-2016	291-082-0110	3-8-2016	Amend	4-1-2016
165-007-0035	1-1-2016	Amend	2-1-2016	291-167-0005	2-29-2016	Amend	4-1-2016
165-010-0005	1-1-2016	Amend	2-1-2016	291-167-0010	2-29-2016	Amend	4-1-2016
165-012-0005	1-1-2016	Amend	2-1-2016	291-167-0015	2-29-2016	Amend	4-1-2016
165-012-0240	1-1-2016	Amend	2-1-2016	291-180-0252	3-1-2016	Amend	4-1-2016
165-013-0010	1-1-2016	Amend	2-1-2016	291-205-0020	1-21-2016	Amend	3-1-2016
165-013-0020	1-1-2016	Amend	2-1-2016	291-205-0030	1-21-2016	Amend	3-1-2016
165-013-0030	1-2-2016	Amend	2-1-2016	291-205-0050	1-21-2016	Amend	3-1-2016
165-014-0005	1-1-2016	Amend	2-1-2016	291-209-0010	1-1-2016	Amend(T)	2-1-2016
165-014-0100	1-1-2016	Amend	2-1-2016	291-209-0020	1-1-2016	Amend(T)	2-1-2016
165-014-0260	1-1-2016	Amend	2-1-2016	291-209-0030	1-1-2016	Amend(T)	2-1-2016
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165-016-0000	1-1-2016	Amend	2-1-2016	291-209-0050	1-1-2016	Suspend	2-1-2016
170-062-0000	2-10-2016	Amend	3-1-2016	291-209-0060	1-1-2016	Suspend	2-1-2016
170-063-0000	2-12-2016	Amend(T)	3-1-2016	291-209-0070	1-1-2016	Amend(T)	2-1-2016
177-010-0094	1-1-2016	Adopt	2-1-2016	309-012-0130	11-25-2015	Amend(T)	1-1-2016
177-070-0080	2-22-2016	Amend(T)	4-1-2016	309-012-0210	11-25-2015	Amend(T)	1-1-2016
250-030-0010	2-1-2016	Repeal	2-1-2016	309-012-0220	11-25-2015	Amend(T)	1-1-2016
250-030-0020	2-1-2016	Repeal	2-1-2016	309-114-0005	11-24-2015	Amend(T)	1-1-2016
250-030-0030	2-1-2016	Repeal	2-1-2016	325-005-0015	1-29-2016	Amend	3-1-2016
250-030-0041	2-1-2016	Repeal	2-1-2016	325-010-0025	1-29-2016	Amend	3-1-2016
250-030-0100	2-1-2016	Adopt	2-1-2016	330-135-0055	1-1-2016	Amend	2-1-2016
250-030-0110	2-1-2016	Adopt	2-1-2016	330-140-0020	12-23-2015	Amend	2-1-2016
250-030-0120	2-1-2016	Adopt	2-1-2016	330-140-0060	12-23-2015	Amend	2-1-2016
250-030-0130	2-1-2016	Adopt	2-1-2016	330-140-0070	12-23-2015	Amend	2-1-2016
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250-030-0160	2-1-2016	Adopt	2-1-2016	330-170-0050	3-1-2016	Amend	4-1-2016
250-030-0170	2-1-2016	Adopt	2-1-2016	330-210-0000	3-15-2016	Amend	4-1-2016
250-030-0180	2-1-2016	Adopt	2-1-2016	330-210-0010	3-15-2016	Amend	4-1-2016
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255-085-0020	1-27-2016	Adopt	3-1-2016	330-210-0100	3-15-2016	Amend	4-1-2016
255-085-0030	1-27-2016	Adopt	3-1-2016	330-210-0110	3-15-2016	Adopt	4-1-2016
255-085-0040	1-27-2016	Adopt	3-1-2016	330-210-0150	3-15-2016	Amend	4-1-2016

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333-008-0000	3-1-2016	Repeal	4-1-2016	333-008-1040	3-1-2016	Amend	4-1-2016
333-008-0010	3-1-2016	Amend	4-1-2016	333-008-1050	3-1-2016	Amend	4-1-2016
333-008-0010(T)	3-1-2016	Repeal	4-1-2016	333-008-1060	3-1-2016	Amend	4-1-2016
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333-008-0023	3-1-2016	Adopt	4-1-2016	333-008-1070(T)	3-1-2016	Repeal	4-1-2016
333-008-0025	3-1-2016	Amend	4-1-2016	333-008-1073	3-1-2016	Adopt	4-1-2016
333-008-0025(T)	3-1-2016	Repeal	4-1-2016	333-008-1075	3-1-2016	Adopt	4-1-2016
333-008-0030	3-1-2016	Amend	4-1-2016	333-008-1078	3-1-2016	Adopt	4-1-2016
333-008-0033	3-1-2016	Adopt	4-1-2016	333-008-1080	3-1-2016	Repeal	4-1-2016
333-008-0035	3-1-2016	Adopt	4-1-2016	333-008-1090	3-1-2016	Repeal	4-1-2016
333-008-0037	3-1-2016	Adopt	4-1-2016	333-008-1100	3-1-2016	Repeal	4-1-2016
333-008-0040	3-1-2016	Amend	4-1-2016	333-008-1110	3-1-2016	Amend	4-1-2016
333-008-0045	3-1-2016	Amend	4-1-2016	333-008-1120	3-1-2016	Repeal	4-1-2016
333-008-0047	3-1-2016	Adopt	4-1-2016	333-008-1130	3-2-2016	Repeal	4-1-2016
333-008-0049	3-1-2016	Adopt	4-1-2016	333-008-1140	3-2-2016	Repeal	4-1-2016
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333-008-0060	3-1-2016	Repeal	4-1-2016	333-008-1160	3-2-2016	Repeal	4-1-2016
333-008-0070	3-1-2016	Repeal	4-1-2016	333-008-1170	3-2-2016	Repeal	4-1-2016
333-008-0080	3-1-2016	Amend	4-1-2016	333-008-1180	3-2-2016	Repeal	4-1-2016
333-008-0110	3-1-2016	Amend	4-1-2016	333-008-1190	3-1-2016	Amend	4-1-2016
333-008-0120	3-1-2016	Repeal	4-1-2016	333-008-1200	3-1-2016	Amend	4-1-2016
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333-008-0499(T)	3-1-2016	Repeal	4-1-2016	333-008-1210	3-1-2016	Repeal	4-1-2016
333-008-0500	1-1-2016	Adopt(T)	2-1-2016	333-008-1220	3-1-2016	Amend	4-1-2016
333-008-0500	3-1-2016	Adopt	4-1-2016	333-008-1225	3-1-2016	Amend	4-1-2016
333-008-0500(T)	3-1-2016	Repeal	4-1-2016	333-008-1230	3-1-2016	Amend	4-1-2016
333-008-0510	1-1-2016	Adopt(T)	2-1-2016	333-008-1240	3-1-2016	Repeal	4-1-2016
333-008-0510	3-1-2016	Adopt	4-1-2016	333-008-1245	3-1-2016	Amend	4-1-2016
333-008-0510(T)	3-1-2016	Repeal	4-1-2016	333-008-1247	3-1-2016	Adopt	4-1-2016
333-008-0520	1-1-2016	Adopt(T)	2-1-2016	333-008-1248	3-1-2016	Adopt	4-1-2016
333-008-0520	3-1-2016	Adopt	4-1-2016	333-008-1250	3-1-2016	Repeal	4-1-2016
333-008-0520(T)	3-1-2016	Repeal	4-1-2016	333-008-1260	3-1-2016	Repeal	4-1-2016
333-008-0530	1-1-2016	Adopt(T)	2-1-2016	333-008-1270	3-1-2016	Repeal	4-1-2016
333-008-0530	3-1-2016	Adopt	4-1-2016	333-008-1275	3-1-2016	Repeal	4-1-2016
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333-008-0540	3-1-2016	Adopt	4-1-2016	333-008-1290	3-1-2016	Repeal	4-1-2016
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333-008-0700	3-1-2016	Adopt	4-1-2016	333-008-1610	3-1-2016	Adopt	4-1-2016
333-008-0710	3-1-2016	Adopt	4-1-2016	333-008-1620	3-1-2016	Adopt	4-1-2016
333-008-0720	3-1-2016	Adopt	4-1-2016	333-008-1630	3-1-2016	Adopt	4-1-2016
333-008-0730	3-1-2016	Adopt	4-1-2016	333-008-1640	3-1-2016	Adopt	4-1-2016
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333-008-1710	3-1-2016	Adopt	4-1-2016	333-016-2020	1-1-2016	Adopt	2-1-2016
333-008-1720	3-1-2016	Adopt	4-1-2016	333-016-2030	1-1-2016	Adopt	2-1-2016
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333-008-1750	3-1-2016	Adopt	4-1-2016	333-028-0310	1-29-2016	Adopt	3-1-2016
333-008-1760	3-1-2016	Adopt	4-1-2016	333-028-0320	1-29-2016	Adopt	3-1-2016
333-008-1770	3-1-2016	Adopt	4-1-2016	333-028-0330	1-29-2016	Adopt	3-1-2016
333-008-1780	3-1-2016	Adopt	4-1-2016	333-028-0340	1-29-2016	Adopt	3-1-2016
333-008-1790	3-1-2016	Adopt	4-1-2016	333-028-0350	1-29-2016	Adopt	3-1-2016
333-008-1800	3-1-2016	Adopt	4-1-2016	333-050-0010	1-20-2016	Amend	3-1-2016
333-008-1810	3-1-2016	Adopt	4-1-2016	333-050-0010(T)	1-20-2016	Repeal	3-1-2016
333-008-1820	3-1-2016	Adopt	4-1-2016	333-050-0040	1-20-2016	Amend	3-1-2016
333-008-1830	3-1-2016	Adopt	4-1-2016	333-050-0040(T)	1-20-2016	Repeal	3-1-2016
333-008-2000	3-1-2016	Adopt	4-1-2016	333-050-0050	1-20-2016	Amend	3-1-2016
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333-008-2020	3-1-2016	Adopt	4-1-2016	333-050-0080	1-20-2016	Amend	3-1-2016
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333-008-2040	3-1-2016	Adopt	4-1-2016	333-050-0095	1-20-2016	Amend	3-1-2016
333-008-2050	3-1-2016	Adopt	4-1-2016	333-050-0095(T)	1-20-2016	Repeal	3-1-2016
333-008-2060	3-1-2016	Adopt	4-1-2016	333-050-0100	1-20-2016	Amend	3-1-2016
333-008-2070	3-1-2016	Adopt	4-1-2016	333-050-0100(T)	1-20-2016	Repeal	3-1-2016
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333-008-2120	3-1-2016	Adopt	4-1-2016	333-052-0080	1-1-2016	Amend	1-1-2016
333-008-2130	3-1-2016	Adopt	4-1-2016	333-052-0120	1-1-2016	Amend	1-1-2016
333-008-2140	3-1-2016	Adopt	4-1-2016	333-053-0040	1-1-2016	Amend	1-1-2016
333-008-2150	3-1-2016	Adopt	4-1-2016	333-053-0050	1-1-2016	Amend	1-1-2016
333-008-2160	3-1-2016	Adopt	4-1-2016	333-053-0080	1-1-2016	Amend	1-1-2016
333-008-2170	3-1-2016	Adopt	4-1-2016	333-054-0010	1-1-2016	Amend	1-1-2016
333-008-2180	3-1-2016	Adopt	4-1-2016	333-054-0020	1-1-2016	Amend	1-1-2016
333-008-2190	3-1-2016	Adopt	4-1-2016	333-054-0050	1-1-2016	Amend	1-1-2016
333-008-2200	3-1-2016	Adopt	4-1-2016	333-054-0060	1-1-2016	Amend	1-1-2016
333-008-3000	3-1-2016	Adopt	4-1-2016	333-054-0070	1-1-2016	Amend	1-1-2016
333-008-3010	3-1-2016	Adopt	4-1-2016	333-055-0000	2-8-2016	Amend	3-1-2016
333-008-9000	1-1-2016	Adopt(T)	2-1-2016	333-055-0006	2-8-2016	Amend	3-1-2016
333-008-9000(T)	3-1-2016	Repeal	4-1-2016	333-055-0015	2-8-2016	Amend	3-1-2016
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333-015-0075	1-1-2016	Amend	2-1-2016	333-061-0040	4-1-2016	Amend	3-1-2016
333-015-0078	1-1-2016	Amend	2-1-2016	333-061-0042	4-1-2016	Amend	3-1-2016
333-015-0085	1-1-2016	Amend	2-1-2016	333-061-0043	4-1-2016	Amend	3-1-2016
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333-015-0205	1-1-2016	Adopt(T)	2-1-2016	333-061-0050	4-1-2016	Amend	3-1-2016
333-015-0210	1-1-2016	Adopt(T)	2-1-2016	333-061-0060	1-1-2016	Amend	1-1-2016
333-015-0215	1-1-2016	Adopt(T)	2-1-2016	333-061-0060	4-1-2016	Amend	3-1-2016
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333-061-0071	4-1-2016	Amend	3-1-2016	333-525-0000	2-24-2016	Amend	4-1-2016
333-061-0072	1-1-2016	Amend	1-1-2016	333-535-0061	2-24-2016	Amend	4-1-2016
333-061-0073	1-1-2016	Amend	1-1-2016	333-535-0080	2-24-2016	Amend	4-1-2016
333-061-0075	4-1-2016	Amend	3-1-2016	333-535-0110	2-24-2016	Amend	4-1-2016
333-061-0076	1-1-2016	Amend	1-1-2016	340-012-0054	1-1-2016	Amend	1-1-2016
333-061-0076	4-1-2016	Amend	3-1-2016	340-012-0135	1-1-2016	Amend	1-1-2016
333-061-0077	4-1-2016	Amend	3-1-2016	340-012-0140	1-1-2016	Amend	1-1-2016
333-061-0078	4-1-2016	Adopt	3-1-2016	340-039-0001	12-10-2015	Adopt	1-1-2016
333-061-0090	4-1-2016	Amend	3-1-2016	340-039-0003	12-10-2015	Adopt	1-1-2016
333-061-0097	4-1-2016	Amend	3-1-2016	340-039-0005	12-10-2015	Adopt	1-1-2016
333-061-0235	4-1-2016	Amend	3-1-2016	340-039-0015	12-10-2015	Adopt	1-1-2016
333-061-0265	1-1-2016	Amend	1-1-2016	340-039-0017	12-10-2015	Adopt	1-1-2016
333-064-0005	1-1-2016	Amend(T)	2-1-2016	340-039-0020	12-10-2015	Adopt	1-1-2016
333-064-0010	1-1-2016	Amend(T)	2-1-2016	340-039-0025	12-10-2015	Adopt	1-1-2016
333-064-0025	1-1-2016	Amend(T)	2-1-2016	340-039-0030	12-10-2015	Adopt	1-1-2016
333-064-0060	1-1-2016	Amend(T)	2-1-2016	340-039-0035	12-10-2015	Adopt	1-1-2016
333-076-0101	2-24-2016	Amend	4-1-2016	340-039-0040	12-10-2015	Adopt	1-1-2016
333-076-0135	2-24-2016	Amend	4-1-2016	340-039-0043	12-10-2015	Adopt	1-1-2016
333-076-0137	2-24-2016	Adopt	4-1-2016	340-045-0075	1-1-2016	Amend	1-1-2016
333-103-0025	1-1-2016	Amend	2-1-2016	340-071-0140	1-1-2016	Amend	1-1-2016
333-200-0000	1-1-2016	Amend	1-1-2016	340-071-0140	1-27-2016	Amend	3-1-2016
333-200-0010	1-1-2016	Amend	1-1-2016	340-083-0010	2-4-2016	Amend	3-1-2016
333-200-0020	1-1-2016	Amend	1-1-2016	340-083-0020	2-4-2016	Amend	3-1-2016
333-200-0030	1-1-2016	Amend	1-1-2016	340-083-0030	2-4-2016	Amend	3-1-2016
333-200-0035	1-1-2016	Amend	1-1-2016	340-083-0040	2-4-2016	Amend	3-1-2016
333-200-0040	1-1-2016	Amend	1-1-2016	340-083-0050	2-4-2016	Amend	3-1-2016
333-200-0050	1-1-2016	Amend	1-1-2016	340-083-0070	2-4-2016	Amend	3-1-2016
333-200-0060	1-1-2016	Amend	1-1-2016	340-083-0080	2-4-2016	Amend	3-1-2016
333-200-0070	1-1-2016	Amend	1-1-2016	340-083-0090	2-4-2016	Amend	3-1-2016
333-200-0080	1-1-2016	Amend	1-1-2016	340-083-0100	2-4-2016	Amend	3-1-2016
333-200-0090	1-1-2016	Amend	1-1-2016	340-083-0500	2-4-2016	Adopt	3-1-2016
333-200-0235	1-1-2016	Adopt	1-1-2016	340-083-0510	2-4-2016	Adopt	3-1-2016
333-200-0245	1-1-2016	Adopt	1-1-2016	340-083-0520	2-4-2016	Adopt	3-1-2016
333-200-0250	1-1-2016	Adopt	1-1-2016	340-083-0530	2-4-2016	Adopt	3-1-2016
333-200-0255	1-1-2016	Adopt	1-1-2016	340-097-0001	2-4-2016	Amend	3-1-2016
333-200-0265	1-1-2016	Adopt	1-1-2016	340-097-0110	2-4-2016	Amend	3-1-2016
333-200-0275	1-1-2016	Adopt	1-1-2016	340-097-0120	2-4-2016	Amend	3-1-2016
333-200-0285	1-1-2016	Adopt	1-1-2016	340-200-0040	12-10-2015	Amend	1-1-2016
333-200-0295	1-1-2016	Adopt	1-1-2016	340-215-0010	12-10-2015	Amend	1-1-2016
333-200-0300	1-1-2016	Adopt	1-1-2016	340-215-0020	12-10-2015	Amend	1-1-2016
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333-205-0020	1-1-2016	Amend	1-1-2016	340-215-0060	12-10-2015	Amend	1-1-2016
333-205-0040	1-1-2016	Amend	1-1-2016	340-248-0250	1-1-2016	Amend(T)	1-1-2016
333-205-0050	1-1-2016	Amend	1-1-2016	340-248-0270	1-1-2016	Amend(T)	1-1-2016
333-500-0045	2-24-2016	Amend	4-1-2016	340-253-0000	1-1-2016	Amend	1-1-2016
333-505-0005	2-24-2016	Amend	4-1-2016	340-253-0040	1-1-2016	Amend	1-1-2016
333-505-0007	2-24-2016	Amend	4-1-2016	340-253-0060	1-1-2016	Amend	1-1-2016
333-505-0030	2-24-2016	Amend	4-1-2016	340-253-0100	1-1-2016	Amend	1-1-2016
333-505-0050	2-24-2016	Amend	4-1-2016	340-253-0200	1-1-2016	Amend	1-1-2016
333-510-0030	2-24-2016	Amend	4-1-2016	340-253-0250	1-1-2016	Amend	1-1-2016
333-515-0030	2-24-2016	Amend	4-1-2016	340-253-0310	1-1-2016	Amend	1-1-2016
333-515-0050	2-24-2016	Repeal	4-1-2016	340-253-0320	1-1-2016	Amend	1-1-2016
333-515-0060	2-24-2016	Repeal	4-1-2016	340-253-0330	1-1-2016	Amend	1-1-2016

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340-253-0400	1-1-2016	Amend	1-1-2016	409-025-0120	1-5-2016	Amend	2-1-2016
340-253-0450	1-1-2016	Amend	1-1-2016	409-025-0130	1-5-2016	Amend	2-1-2016
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340-253-0620	1-1-2016	Amend	1-1-2016	409-025-0160	1-5-2016	Amend	2-1-2016
340-253-0630	1-1-2016	Amend	1-1-2016	409-025-0170	1-5-2016	Amend	2-1-2016
340-253-0650	1-1-2016	Amend	1-1-2016	409-026-0100	2-8-2016	Amend(T)	3-1-2016
340-253-1000	1-1-2016	Amend	1-1-2016	409-026-0110	2-8-2016	Amend(T)	3-1-2016
340-253-1010	1-1-2016	Amend	1-1-2016	409-026-0120	2-8-2016	Amend(T)	3-1-2016
340-253-1020	1-1-2016	Amend	1-1-2016	409-026-0130	2-8-2016	Amend(T)	3-1-2016
340-253-1030	1-1-2016	Amend	1-1-2016	409-026-0140	2-8-2016	Amend(T)	3-1-2016
340-253-1050	1-1-2016	Amend	1-1-2016	409-035-0020	11-24-2015	Amend	1-1-2016
340-253-2000	1-1-2016	Amend	1-1-2016	409-035-0020(T)	11-24-2015	Repeal	1-1-2016
340-253-2100	1-1-2016	Amend	1-1-2016	409-055-0010	1-1-2016	Amend(T)	2-1-2016
340-253-2200	1-1-2016	Amend	1-1-2016	409-055-0030	1-1-2016	Amend(T)	2-1-2016
340-253-8010	1-1-2016	Amend	1-1-2016	409-055-0040	1-1-2016	Amend(T)	2-1-2016
340-253-8020	1-1-2016	Amend	1-1-2016	409-055-0060	1-1-2016	Amend(T)	2-1-2016
340-253-8030	1-1-2016	Amend	1-1-2016	409-055-0070	1-1-2016	Amend(T)	2-1-2016
340-253-8040	1-1-2016	Amend	1-1-2016	410-120-0006	1-1-2016	Amend	1-1-2016
340-253-8050	1-1-2016	Amend	1-1-2016	410-120-1340	1-1-2016	Amend(T)	2-1-2016
340-253-8060	1-1-2016	Amend	1-1-2016	410-120-1340	3-1-2016	Amend	4-1-2016
340-253-8070	1-1-2016	Amend	1-1-2016	410-120-1340(T)	3-1-2016	Repeal	4-1-2016
340-253-8080	1-1-2016	Amend	1-1-2016	410-121-0000	1-1-2016	Amend	2-1-2016
407-007-0000	1-14-2016	Amend(T)	2-1-2016	410-121-0030	12-27-2015	Amend	2-1-2016
407-007-0010	1-14-2016	Amend(T)	2-1-2016	410-121-0030	1-1-2016	Amend(T)	2-1-2016
407-007-0020	1-14-2016	Amend(T)	2-1-2016	410-121-0030(T)	12-27-2015	Repeal	2-1-2016
407-007-0030	1-14-2016	Amend(T)	2-1-2016	410-121-0040	12-27-2015	Amend	2-1-2016
407-007-0050	1-14-2016	Amend(T)	2-1-2016	410-121-0040	1-1-2016	Amend(T)	2-1-2016
407-007-0060	1-14-2016	Amend(T)	2-1-2016	410-121-0040	2-12-2016	Amend(T)	3-1-2016
407-007-0065	1-14-2016	Amend(T)	2-1-2016	410-121-0040(T)	12-27-2015	Repeal	2-1-2016
407-007-0070	1-14-2016	Amend(T)	2-1-2016	410-121-0135	1-1-2016	Amend	2-1-2016
407-007-0075	1-14-2016	Suspend	2-1-2016	410-121-0146	1-1-2016	Amend	2-1-2016
407-007-0080	1-14-2016	Amend(T)	2-1-2016	410-121-4000	1-1-2016	Am. & Ren.	2-1-2016
407-007-0090	1-14-2016	Amend(T)	2-1-2016	410-121-4005	1-1-2016	Am. & Ren.	2-1-2016
407-007-0200	1-14-2016	Amend(T)	2-1-2016	410-121-4010	1-1-2016	Am. & Ren.	2-1-2016
407-007-0210	1-14-2016	Amend(T)	2-1-2016	410-121-4015	1-1-2016	Re-number	2-1-2016
407-007-0220	1-14-2016	Amend(T)	2-1-2016	410-121-4020	1-1-2016	Re-number	2-1-2016
407-007-0230	1-14-2016	Amend(T)	2-1-2016	410-122-0186	2-3-2016	Amend	3-1-2016
407-007-0240	1-14-2016	Amend(T)	2-1-2016	410-122-0204	3-1-2016	Amend	4-1-2016
407-007-0250	1-14-2016	Amend(T)	2-1-2016	410-122-0240	3-1-2016	Amend	4-1-2016
407-007-0275	1-14-2016	Amend(T)	2-1-2016	410-122-0300	3-1-2016	Amend	4-1-2016
407-007-0277	1-14-2016	Amend(T)	2-1-2016	410-122-0360	3-1-2016	Amend	4-1-2016
407-007-0280	1-14-2016	Suspend	2-1-2016	410-122-0365	3-1-2016	Amend	4-1-2016
407-007-0290	1-14-2016	Amend(T)	2-1-2016	410-122-0380	3-1-2016	Amend	4-1-2016
407-007-0300	1-14-2016	Amend(T)	2-1-2016	410-122-0475	3-1-2016	Amend	4-1-2016
407-007-0315	1-14-2016	Amend(T)	2-1-2016	410-122-0480	3-1-2016	Amend	4-1-2016
407-007-0320	1-14-2016	Amend(T)	2-1-2016	410-122-0510	3-1-2016	Amend	4-1-2016
407-007-0325	1-14-2016	Suspend	2-1-2016	410-122-0525	3-1-2016	Amend	4-1-2016
407-007-0330	1-14-2016	Amend(T)	2-1-2016	410-122-0640	3-1-2016	Amend	4-1-2016
407-007-0350	1-14-2016	Amend(T)	2-1-2016	410-122-0678	3-1-2016	Amend	4-1-2016
407-007-0370	1-14-2016	Amend(T)	2-1-2016	410-123-1240	12-1-2015	Amend	1-1-2016
407-007-0400	1-14-2016	Suspend	2-1-2016	410-123-1240(T)	12-1-2015	Repeal	1-1-2016
407-045-0260	2-3-2016	Amend	3-1-2016	410-123-1260	1-1-2016	Amend(T)	2-1-2016
407-045-0350	2-3-2016	Amend	3-1-2016	410-123-1260	2-9-2016	Amend(T)	3-1-2016
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410-130-0200(T)	1-1-2016	Repeal	2-1-2016	410-200-0110	12-22-2015	Amend(T)	2-1-2016
410-130-0220	3-4-2016	Amend(T)	4-1-2016	410-200-0111	12-22-2015	Amend(T)	2-1-2016
410-136-3040	1-1-2016	Amend	2-1-2016	410-200-0115	12-22-2015	Amend(T)	2-1-2016
410-140-0020	3-1-2016	Amend	4-1-2016	410-200-0120	12-22-2015	Amend(T)	2-1-2016
410-140-0040	3-1-2016	Amend	4-1-2016	410-200-0125	12-22-2015	Amend(T)	2-1-2016
410-140-0050	3-1-2016	Amend	4-1-2016	410-200-0130	12-22-2015	Amend(T)	2-1-2016
410-140-0080	3-1-2016	Amend	4-1-2016	410-200-0135	12-22-2015	Amend(T)	2-1-2016
410-140-0120	3-1-2016	Amend	4-1-2016	410-200-0140	12-22-2015	Amend(T)	2-1-2016
410-140-0140	3-1-2016	Amend	4-1-2016	410-200-0200	12-22-2015	Amend(T)	2-1-2016
410-140-0160	3-1-2016	Amend	4-1-2016	410-200-0215	12-22-2015	Amend(T)	2-1-2016
410-140-0200	3-1-2016	Amend	4-1-2016	410-200-0230	12-22-2015	Amend(T)	2-1-2016
410-140-0260	3-1-2016	Amend	4-1-2016	410-200-0235	12-22-2015	Amend(T)	2-1-2016
410-140-0280	3-1-2016	Amend	4-1-2016	410-200-0240	12-22-2015	Amend(T)	2-1-2016
410-140-0300	3-1-2016	Amend	4-1-2016	410-200-0310	12-22-2015	Amend(T)	2-1-2016
410-141-0000	12-10-2015	Amend	1-1-2016	410-200-0315	3-1-2016	Amend(T)	4-1-2016
410-141-0080	12-10-2015	Amend	1-1-2016	410-200-0407	12-18-2015	Adopt(T)	2-1-2016
410-141-0085	12-10-2015	Repeal	1-1-2016	410-200-0415	12-22-2015	Amend(T)	2-1-2016
410-141-0160	12-10-2015	Amend	1-1-2016	410-200-0425	12-22-2015	Amend(T)	2-1-2016
410-141-0220	12-10-2015	Amend	1-1-2016	410-200-0440	12-22-2015	Amend(T)	2-1-2016
410-141-0320	12-10-2015	Amend	1-1-2016	410-200-0500	12-22-2015	Suspend	2-1-2016
410-141-0340	12-10-2015	Amend	1-1-2016	410-200-0505	12-22-2015	Amend(T)	2-1-2016
410-141-0410	12-10-2015	Repeal	1-1-2016	410-200-0510	12-22-2015	Amend(T)	2-1-2016
410-141-0420	12-10-2015	Amend	1-1-2016	411-004-0000	1-1-2016	Adopt	1-1-2016
410-141-0520	1-1-2016	Amend(T)	2-1-2016	411-004-0010	1-1-2016	Adopt	1-1-2016
410-141-0520	3-1-2016	Amend	4-1-2016	411-004-0020	1-1-2016	Adopt	1-1-2016
410-141-0520(T)	3-1-2016	Repeal	4-1-2016	411-004-0020	1-1-2016	Amend	2-1-2016
410-141-0660	12-10-2015	Repeal	1-1-2016	411-004-0030	1-1-2016	Adopt	1-1-2016
410-141-0680	12-10-2015	Repeal	1-1-2016	411-004-0040	1-1-2016	Adopt	1-1-2016
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410-141-0720	12-10-2015	Repeal	1-1-2016	411-027-0005	3-18-2016	Amend	4-1-2016
410-141-0740	12-10-2015	Repeal	1-1-2016	411-027-0005(T)	3-18-2016	Repeal	4-1-2016
410-141-0760	12-10-2015	Repeal	1-1-2016	411-027-0170	3-18-2016	Adopt	4-1-2016
410-141-0780	12-10-2015	Repeal	1-1-2016	411-027-0170(T)	3-18-2016	Repeal	4-1-2016
410-141-0800	12-10-2015	Repeal	1-1-2016	411-030-0020	3-18-2016	Amend	4-1-2016
410-141-0820	12-10-2015	Repeal	1-1-2016	411-030-0020(T)	3-18-2016	Repeal	4-1-2016
410-141-0840	12-10-2015	Repeal	1-1-2016	411-030-0068	3-18-2016	Adopt	4-1-2016
410-141-0860	12-10-2015	Amend	1-1-2016	411-030-0068(T)	3-18-2016	Repeal	4-1-2016
410-141-3040	1-7-2016	Adopt	2-1-2016	411-030-0070	3-18-2016	Amend	4-1-2016
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410-141-3080	12-10-2015	Amend	1-1-2016	411-030-0080(T)	3-18-2016	Repeal	4-1-2016
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410-141-3150	1-1-2016	Adopt	2-1-2016	411-030-0100(T)	3-18-2016	Repeal	4-1-2016
410-141-3150(T)	1-1-2016	Repeal	2-1-2016	411-031-0020	3-2-2016	Amend(T)	4-1-2016
410-141-3267	12-27-2015	Adopt	2-1-2016	411-031-0040	3-2-2016	Amend(T)	4-1-2016
410-141-3267(T)	12-27-2015	Repeal	2-1-2016	411-031-0050	3-2-2016	Amend(T)	4-1-2016
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410-141-3345	3-1-2016	Amend	3-1-2016	411-032-0050(T)	12-27-2015	Repeal	1-1-2016
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410-141-3440	1-1-2016	Amend	2-1-2016	411-050-0615	1-1-2016	Amend(T)	2-1-2016
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410-170-0110	2-23-2016	Amend	4-1-2016	411-050-0632	1-1-2016	Amend(T)	2-1-2016
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411-050-0655	1-1-2016	Amend(T)	2-1-2016	411-328-0630	1-1-2016	Amend(T)	2-1-2016
411-050-0662	1-1-2016	Amend(T)	2-1-2016	411-328-0650	1-1-2016	Amend(T)	2-1-2016
411-050-0665	1-1-2016	Amend(T)	2-1-2016	411-328-0720	1-1-2016	Amend(T)	2-1-2016
411-050-0670	1-1-2016	Amend(T)	2-1-2016	411-328-0750	1-1-2016	Amend(T)	2-1-2016
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411-054-0000	1-1-2016	Amend(T)	2-1-2016	411-330-0020	1-1-2016	Amend(T)	2-1-2016
411-054-0005	1-1-2016	Amend(T)	2-1-2016	411-330-0050	1-1-2016	Amend(T)	2-1-2016
411-054-0012	1-1-2016	Amend(T)	2-1-2016	411-330-0060	1-1-2016	Amend(T)	2-1-2016
411-054-0025	1-1-2016	Amend(T)	2-1-2016	411-330-0070	1-1-2016	Amend(T)	2-1-2016
411-054-0027	1-1-2016	Amend(T)	2-1-2016	411-330-0080	1-1-2016	Amend(T)	2-1-2016
411-054-0036	1-1-2016	Amend(T)	2-1-2016	411-330-0110	1-1-2016	Amend(T)	2-1-2016
411-054-0038	1-1-2016	Adopt(T)	2-1-2016	411-340-0020	1-1-2016	Amend(T)	2-1-2016
411-070-0470	4-1-2016	Amend	4-1-2016	411-340-0030	1-1-2016	Amend(T)	2-1-2016
411-089-0030	4-1-2016	Amend	4-1-2016	411-340-0120	1-1-2016	Amend(T)	2-1-2016
411-300-0110	1-1-2016	Amend(T)	2-1-2016	411-340-0130	1-1-2016	Amend(T)	2-1-2016
411-300-0130	1-1-2016	Amend(T)	2-1-2016	411-340-0140	1-1-2016	Amend(T)	2-1-2016
411-300-0150	1-1-2016	Amend(T)	2-1-2016	411-340-0150	1-1-2016	Amend(T)	2-1-2016
411-300-0155	1-1-2016	Amend(T)	2-1-2016	411-340-0160	1-1-2016	Amend(T)	2-1-2016
411-300-0170	1-1-2016	Amend(T)	2-1-2016	411-340-0170	1-1-2016	Amend(T)	2-1-2016
411-308-0020	1-1-2016	Amend(T)	2-1-2016	411-345-0010	1-1-2016	Amend(T)	2-1-2016
411-308-0050	1-1-2016	Amend(T)	2-1-2016	411-345-0020	1-1-2016	Amend(T)	2-1-2016
411-308-0080	1-1-2016	Amend(T)	2-1-2016	411-345-0025	1-1-2016	Amend(T)	2-1-2016
411-308-0100	1-1-2016	Amend(T)	2-1-2016	411-345-0030	1-1-2016	Amend(T)	2-1-2016
411-308-0110	1-1-2016	Amend(T)	2-1-2016	411-345-0085	1-1-2016	Amend(T)	2-1-2016
411-308-0120	1-1-2016	Amend(T)	2-1-2016	411-345-0110	1-1-2016	Amend(T)	2-1-2016
411-308-0130	1-1-2016	Amend(T)	2-1-2016	411-345-0160	1-1-2016	Amend(T)	2-1-2016
411-317-0000	1-1-2016	Amend(T)	2-1-2016	411-346-0100	2-23-2016	Amend(T)	4-1-2016
411-318-0000	1-1-2016	Amend(T)	2-1-2016	411-346-0110	2-23-2016	Amend(T)	4-1-2016
411-318-0005	1-1-2016	Amend(T)	2-1-2016	411-346-0170	2-23-2016	Amend(T)	4-1-2016
411-318-0010	1-1-2016	Amend(T)	2-1-2016	411-346-0190	2-23-2016	Amend(T)	4-1-2016
411-320-0020	1-1-2016	Amend(T)	2-1-2016	411-346-0200	2-23-2016	Amend(T)	4-1-2016
411-320-0040	1-1-2016	Amend(T)	2-1-2016	411-350-0020	1-1-2016	Amend(T)	2-1-2016
411-320-0060	1-1-2016	Amend(T)	2-1-2016	411-350-0030	1-1-2016	Amend(T)	2-1-2016
411-320-0080	1-1-2016	Amend(T)	2-1-2016	411-350-0040	1-1-2016	Amend(T)	2-1-2016
411-320-0090	1-1-2016	Amend(T)	2-1-2016	411-350-0050	1-1-2016	Amend(T)	2-1-2016
411-320-0110	1-1-2016	Amend(T)	2-1-2016	411-350-0055	1-1-2016	Adopt(T)	2-1-2016
411-320-0120	1-1-2016	Amend(T)	2-1-2016	411-350-0080	1-1-2016	Amend(T)	2-1-2016
411-323-0010	1-1-2016	Amend(T)	2-1-2016	411-350-0100	1-1-2016	Amend(T)	2-1-2016
411-323-0020	1-1-2016	Amend(T)	2-1-2016	411-355-0000	12-28-2015	Amend	1-1-2016
411-323-0030	1-1-2016	Amend(T)	2-1-2016	411-355-0000(T)	12-28-2015	Repeal	1-1-2016
411-323-0035	1-1-2016	Amend(T)	2-1-2016	411-355-0010	12-28-2015	Amend	1-1-2016
411-323-0060	1-1-2016	Amend(T)	2-1-2016	411-355-0010	1-1-2016	Amend(T)	2-1-2016
411-325-0010	1-1-2016	Amend(T)	2-1-2016	411-355-0010(T)	12-28-2015	Repeal	1-1-2016
411-325-0020	1-1-2016	Amend(T)	2-1-2016	411-355-0020	12-28-2015	Amend	1-1-2016
411-325-0040	1-1-2016	Amend(T)	2-1-2016	411-355-0020(T)	12-28-2015	Repeal	1-1-2016
411-325-0130	1-1-2016	Amend(T)	2-1-2016	411-355-0030	12-28-2015	Amend	1-1-2016
411-325-0140	1-1-2016	Amend(T)	2-1-2016	411-355-0030	1-1-2016	Amend(T)	2-1-2016
411-325-0150	1-1-2016	Amend(T)	2-1-2016	411-355-0030(T)	12-28-2015	Repeal	1-1-2016
411-325-0170	1-1-2016	Amend(T)	2-1-2016	411-355-0040	12-28-2015	Amend	1-1-2016
411-325-0220	1-1-2016	Amend(T)	2-1-2016	411-355-0040	1-1-2016	Amend(T)	2-1-2016
411-325-0300	1-1-2016	Amend(T)	2-1-2016	411-355-0040(T)	12-28-2015	Repeal	1-1-2016
411-325-0390	1-1-2016	Amend(T)	2-1-2016	411-355-0045	12-28-2015	Adopt	1-1-2016
411-325-0430	1-1-2016	Amend(T)	2-1-2016	411-355-0045(T)	12-28-2015	Repeal	1-1-2016
411-328-0550	1-1-2016	Amend(T)	2-1-2016	411-355-0050	12-28-2015	Amend	1-1-2016

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411-355-0050(T)	12-28-2015	Repeal	1-1-2016	413-040-0010	2-1-2016	Amend	3-1-2016
411-355-0060	12-28-2015	Repeal	1-1-2016	413-040-0010(T)	2-1-2016	Repeal	3-1-2016
411-355-0070	12-28-2015	Repeal	1-1-2016	413-040-0145	1-1-2016	Amend(T)	2-1-2016
411-355-0075	12-28-2015	Adopt	1-1-2016	413-040-0150	1-1-2016	Amend(T)	2-1-2016
411-355-0075(T)	12-28-2015	Repeal	1-1-2016	413-070-0551	11-24-2015	Amend(T)	1-1-2016
411-355-0080	12-28-2015	Amend	1-1-2016	413-070-0551	2-1-2016	Amend	3-1-2016
411-355-0080(T)	12-28-2015	Repeal	1-1-2016	413-070-0551(T)	2-1-2016	Repeal	3-1-2016
411-355-0090	12-28-2015	Amend	1-1-2016	413-080-0050	11-24-2015	Amend(T)	1-1-2016
411-355-0090(T)	12-28-2015	Repeal	1-1-2016	413-080-0050	1-1-2016	Amend	2-1-2016
411-355-0100	12-28-2015	Amend	1-1-2016	413-080-0050(T)	11-24-2015	Suspend	1-1-2016
411-355-0100(T)	12-28-2015	Repeal	1-1-2016	413-080-0050(T)	1-1-2016	Repeal	2-1-2016
411-355-0110	12-28-2015	Repeal	1-1-2016	413-080-0053	1-1-2016	Adopt	2-1-2016
411-355-0120	12-28-2015	Repeal	1-1-2016	413-080-0053(T)	1-1-2016	Repeal	2-1-2016
411-360-0010	1-1-2016	Amend(T)	2-1-2016	413-080-0054	1-1-2016	Amend	2-1-2016
411-360-0020	1-1-2016	Amend(T)	2-1-2016	413-080-0054(T)	1-1-2016	Repeal	2-1-2016
411-360-0050	1-1-2016	Amend(T)	2-1-2016	413-090-0085	1-1-2016	Amend	2-1-2016
411-360-0055	1-1-2016	Amend(T)	2-1-2016	413-090-0085(T)	1-1-2016	Repeal	2-1-2016
411-360-0060	1-1-2016	Amend(T)	2-1-2016	413-090-0087	1-1-2016	Adopt	2-1-2016
411-360-0130	1-1-2016	Amend(T)	2-1-2016	413-090-0087(T)	1-1-2016	Repeal	2-1-2016
411-360-0140	1-1-2016	Amend(T)	2-1-2016	413-090-0400	2-1-2016	Amend	3-1-2016
411-360-0170	1-1-2016	Amend(T)	2-1-2016	413-090-0410	2-1-2016	Repeal	3-1-2016
411-360-0190	1-1-2016	Amend(T)	2-1-2016	413-090-0420	2-1-2016	Repeal	3-1-2016
411-370-0010	1-1-2016	Amend(T)	2-1-2016	413-090-0430	2-1-2016	Repeal	3-1-2016
411-375-0010	1-1-2016	Amend(T)	2-1-2016	413-100-0400	12-21-2015	Amend	2-1-2016
411-375-0050	1-1-2016	Amend(T)	2-1-2016	413-100-0410	12-21-2015	Amend	2-1-2016
411-375-0055	1-1-2016	Adopt(T)	2-1-2016	413-100-0420	12-21-2015	Amend	2-1-2016
411-375-0070	1-1-2016	Amend(T)	2-1-2016	413-100-0435	12-21-2015	Amend	2-1-2016
411-375-0080	1-1-2016	Amend(T)	2-1-2016	413-100-0457	12-21-2015	Repeal	2-1-2016
411-380-0010	1-1-2016	Adopt(T)	2-1-2016	413-120-0730	2-24-2016	Amend(T)	4-1-2016
411-380-0020	1-1-2016	Adopt(T)	2-1-2016	413-120-0925	1-1-2016	Amend(T)	2-1-2016
411-380-0030	1-1-2016	Adopt(T)	2-1-2016	413-130-0000	1-1-2016	Amend(T)	2-1-2016
411-380-0040	1-1-2016	Adopt(T)	2-1-2016	413-130-0300	1-1-2016	Amend(T)	2-1-2016
411-380-0050	1-1-2016	Adopt(T)	2-1-2016	413-130-0310	1-1-2016	Amend(T)	2-1-2016
411-380-0060	1-1-2016	Adopt(T)	2-1-2016	413-130-0320	1-1-2016	Amend(T)	2-1-2016
411-380-0070	1-1-2016	Adopt(T)	2-1-2016	413-130-0330	1-1-2016	Amend(T)	2-1-2016
411-380-0080	1-1-2016	Adopt(T)	2-1-2016	413-130-0340	1-1-2016	Amend(T)	2-1-2016
411-380-0090	1-1-2016	Adopt(T)	2-1-2016	413-130-0350	1-1-2016	Amend(T)	2-1-2016
413-010-0000	2-1-2016	Amend	3-1-2016	413-130-0355	1-1-2016	Amend(T)	2-1-2016
413-010-0035	2-1-2016	Amend	3-1-2016	413-130-0360	1-1-2016	Amend(T)	2-1-2016
413-015-0115	1-1-2016	Amend	2-1-2016	413-130-0365	1-1-2016	Adopt(T)	2-1-2016
413-015-0115(T)	1-1-2016	Repeal	2-1-2016	413-130-0400	1-1-2016	Suspend	2-1-2016
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413-015-0211	1-1-2016	Amend	2-1-2016	413-130-0430	1-1-2016	Suspend	2-1-2016
413-015-0211(T)	1-1-2016	Repeal	2-1-2016	413-130-0440	1-1-2016	Suspend	2-1-2016
413-015-0415	1-1-2016	Amend	2-1-2016	413-130-0450	1-1-2016	Suspend	2-1-2016
413-015-0415(T)	1-1-2016	Repeal	2-1-2016	413-130-0455	1-1-2016	Suspend	2-1-2016
413-015-0460	1-1-2016	Amend	2-1-2016	413-130-0460	1-1-2016	Suspend	2-1-2016
413-015-0470	1-1-2016	Amend	2-1-2016	413-130-0480	1-1-2016	Suspend	2-1-2016
413-015-1220	1-1-2016	Amend	2-1-2016	413-130-0490	1-1-2016	Suspend	2-1-2016
413-015-9000	1-1-2016	Amend	2-1-2016	413-130-0500	1-1-2016	Suspend	2-1-2016
413-015-9000(T)	1-1-2016	Repeal	2-1-2016	413-130-0510	1-1-2016	Suspend	2-1-2016
413-030-0400	11-24-2015	Amend(T)	1-1-2016	413-130-0520	1-1-2016	Suspend	2-1-2016
413-030-0400	2-1-2016	Amend	3-1-2016	414-150-0050	1-25-2016	Amend	3-1-2016
413-030-0400(T)	2-1-2016	Repeal	3-1-2016	414-150-0055	1-25-2016	Amend	3-1-2016
413-040-0000	1-1-2016	Amend(T)	2-1-2016	414-150-0060	1-25-2016	Amend	3-1-2016

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414-150-0090	1-25-2016	Repeal	3-1-2016	436-009-0010	4-1-2016	Amend	4-1-2016
414-150-0100	1-25-2016	Repeal	3-1-2016	436-009-0010(T)	4-1-2016	Repeal	4-1-2016
414-150-0110	1-25-2016	Amend	3-1-2016	436-009-0020	4-1-2016	Amend	4-1-2016
414-150-0120	1-25-2016	Amend	3-1-2016	436-009-0025	4-1-2016	Amend	4-1-2016
414-150-0130	1-25-2016	Amend	3-1-2016	436-009-0030	4-1-2016	Amend	4-1-2016
414-150-0140	1-25-2016	Adopt	3-1-2016	436-009-0040	4-1-2016	Amend	4-1-2016
414-150-0150	1-25-2016	Adopt	3-1-2016	436-009-0060	4-1-2016	Amend	4-1-2016
414-150-0160	1-25-2016	Adopt	3-1-2016	436-009-0080	4-1-2016	Amend	4-1-2016
414-150-0170	1-25-2016	Adopt	3-1-2016	436-009-0090	4-1-2016	Amend	4-1-2016
415-060-0010	1-5-2016	Suspend	2-1-2016	436-009-0110	4-1-2016	Amend	4-1-2016
415-060-0020	1-5-2016	Suspend	2-1-2016	436-010-0001	4-1-2016	Amend	4-1-2016
415-060-0030	1-5-2016	Suspend	2-1-2016	436-010-0005	4-1-2016	Amend	4-1-2016
415-060-0040	1-5-2016	Suspend	2-1-2016	436-010-0008	4-1-2016	Amend	4-1-2016
415-060-0050	1-5-2016	Suspend	2-1-2016	436-010-0240	4-1-2016	Amend	4-1-2016
416-335-0090	3-10-2016	Amend(T)	4-1-2016	436-010-0265	4-1-2016	Amend	4-1-2016
416-530-0010	3-2-2016	Amend	4-1-2016	436-010-0270	4-1-2016	Amend	4-1-2016
416-530-0020	3-2-2016	Amend	4-1-2016	436-010-0330	4-1-2016	Amend	4-1-2016
416-530-0030	3-2-2016	Amend	4-1-2016	436-010-0340	4-1-2016	Amend	4-1-2016
416-530-0035	3-2-2016	Amend	4-1-2016	436-050-0003	1-1-2016	Amend	2-1-2016
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416-530-0060	3-2-2016	Amend	4-1-2016	437-003-0001	1-1-2017	Amend	4-1-2016
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416-530-0090	3-2-2016	Amend	4-1-2016	437-003-0503	10-1-2017	Amend	4-1-2016
416-530-0200	3-2-2016	Amend	4-1-2016	437-003-1500	10-1-2017	Amend	4-1-2016
418-040-0000	1-1-2016	Adopt(T)	2-1-2016	437-003-1501	1-1-2017	Amend	4-1-2016
418-040-0010	1-1-2016	Adopt(T)	2-1-2016	437-003-2501	1-1-2017	Adopt	4-1-2016
418-040-0020	1-1-2016	Adopt(T)	2-1-2016	437-003-3502	10-1-2017	Repeal	4-1-2016
418-040-0030	1-1-2016	Adopt(T)	2-1-2016	438-005-0035	1-1-2016	Amend	2-1-2016
418-040-0040	1-1-2016	Adopt(T)	2-1-2016	438-015-0010	1-1-2016	Amend	2-1-2016
418-040-0050	1-1-2016	Adopt(T)	2-1-2016	438-015-0019	1-1-2016	Amend	2-1-2016
418-040-0060	1-1-2016	Adopt(T)	2-1-2016	438-015-0025	1-1-2016	Amend	2-1-2016
418-040-0070	1-1-2016	Adopt(T)	2-1-2016	438-015-0033	1-1-2016	Adopt	2-1-2016
418-040-0080	1-1-2016	Adopt(T)	2-1-2016	438-015-0045	1-1-2016	Amend	2-1-2016
418-040-0090	1-1-2016	Adopt(T)	2-1-2016	438-015-0048	1-1-2016	Adopt	2-1-2016
431-121-2005	12-7-2015	Amend	1-1-2016	438-015-0055	1-1-2016	Amend	2-1-2016
436-001-0003	1-1-2016	Amend	1-1-2016	438-015-0065	1-1-2016	Amend	2-1-2016
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436-001-0009	1-1-2016	Amend	1-1-2016	438-015-0110	1-1-2016	Amend	2-1-2016
436-001-0019	1-1-2016	Amend	1-1-2016	440-001-9000	1-1-2016	Adopt(T)	2-1-2016
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436-001-0030	1-1-2016	Amend	1-1-2016	441-175-0010	3-7-2016	Amend	4-1-2016
436-001-0170	1-1-2016	Amend	1-1-2016	441-175-0015	3-7-2016	Amend	4-1-2016
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436-001-0246	1-1-2016	Amend	1-1-2016	441-175-0030	3-7-2016	Amend	4-1-2016
436-001-0259	1-1-2016	Amend	1-1-2016	441-175-0040	3-7-2016	Amend	4-1-2016
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436-001-0420	1-1-2016	Amend	1-1-2016	441-175-0046	3-7-2016	Amend	4-1-2016
436-001-0435	1-1-2016	Adopt	1-1-2016	441-175-0050	3-7-2016	Amend	4-1-2016
436-001-0500	1-1-2016	Adopt	1-1-2016	441-175-0055	3-7-2016	Amend	4-1-2016
436-009-0001	4-1-2016	Amend	4-1-2016	441-175-0060	3-7-2016	Amend	4-1-2016
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436-009-0004	4-1-2016	Amend	4-1-2016	441-175-0085	3-7-2016	Amend	4-1-2016
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441-175-0140	3-7-2016	Amend	4-1-2016	461-145-0252	1-1-2016	Amend	2-1-2016
441-175-0150	3-7-2016	Amend	4-1-2016	461-145-0259	1-1-2016	Adopt	2-1-2016
441-175-0160	3-7-2016	Amend	4-1-2016	461-145-0260	1-1-2016	Amend	2-1-2016
441-175-0165	3-7-2016	Amend	4-1-2016	461-145-0280	1-1-2016	Amend	2-1-2016
441-175-0171	3-7-2016	Amend	4-1-2016	461-145-0300	1-1-2016	Amend	2-1-2016
441-175-0175	3-7-2016	Amend	4-1-2016	461-145-0310	1-1-2016	Amend	2-1-2016
441-710-0305	1-1-2016	Adopt	2-1-2016	461-145-0320	1-1-2016	Amend	2-1-2016
441-855-0114	1-1-2016	Adopt	1-1-2016	461-145-0330	1-1-2016	Amend	2-1-2016
441-865-0060	12-14-2015	Amend	1-1-2016	461-145-0360	1-1-2016	Amend	2-1-2016
459-001-0000	1-29-2016	Amend	3-1-2016	461-145-0365	1-1-2016	Amend	2-1-2016
459-005-0001	11-20-2015	Amend	1-1-2016	461-145-0380	1-1-2016	Amend	2-1-2016
459-005-0310	11-20-2015	Amend	1-1-2016	461-145-0410	1-1-2016	Amend	2-1-2016
459-005-0350	11-20-2015	Amend	1-1-2016	461-145-0420	1-1-2016	Amend	2-1-2016
459-005-0605	1-29-2016	Adopt	3-1-2016	461-145-0430	1-1-2016	Amend	2-1-2016
459-010-0012	11-20-2015	Amend	1-1-2016	461-145-0460	1-1-2016	Amend	2-1-2016
459-011-0500	11-20-2015	Amend	1-1-2016	461-145-0490	1-1-2016	Amend	2-1-2016
459-013-0060	11-20-2015	Amend	1-1-2016	461-145-0510	1-1-2016	Amend	2-1-2016
459-013-0310	11-20-2015	Amend	1-1-2016	461-145-0540	1-1-2016	Amend	2-1-2016
459-080-0150	1-1-2016	Amend	1-1-2016	461-145-0600	1-1-2016	Amend	2-1-2016
461-001-0000	1-1-2016	Amend	2-1-2016	461-145-0910	1-1-2016	Amend	2-1-2016
461-001-0000(T)	1-1-2016	Repeal	2-1-2016	461-145-0910(T)	1-1-2016	Repeal	2-1-2016
461-001-0025	12-28-2015	Amend	2-1-2016	461-150-0050	1-1-2016	Amend	2-1-2016
461-115-0016	1-1-2016	Amend(T)	2-1-2016	461-150-0090	1-1-2016	Amend	2-1-2016
461-115-0651	1-1-2016	Amend	2-1-2016	461-155-0030	1-1-2016	Amend	2-1-2016
461-115-0700	1-1-2016	Amend	2-1-2016	461-155-0035	1-1-2016	Amend	2-1-2016
461-120-0110	3-4-2016	Amend(T)	4-1-2016	461-155-0150	1-1-2016	Amend(T)	2-1-2016
461-120-0125	1-1-2016	Amend	2-1-2016	461-155-0150	3-1-2016	Amend(T)	4-1-2016
461-125-0370	3-1-2016	Amend(T)	4-1-2016	461-155-0150(T)	3-1-2016	Suspend	4-1-2016
461-125-0370(T)	3-1-2016	Suspend	4-1-2016	461-155-0290	3-1-2016	Amend	4-1-2016
461-125-0830(T)	1-1-2016	Repeal	2-1-2016	461-155-0291	3-1-2016	Amend	4-1-2016
461-130-0310	1-1-2016	Amend	2-1-2016	461-155-0295	3-1-2016	Amend	4-1-2016
461-130-0310	1-1-2016	Amend(T)	2-1-2016	461-155-0575	1-1-2016	Amend	2-1-2016
461-130-0330	1-1-2016	Amend	2-1-2016	461-160-0010	1-1-2016	Amend	2-1-2016
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461-135-0407	1-1-2016	Amend	2-1-2016	461-160-0300	1-1-2016	Amend	2-1-2016
461-135-0407(T)	1-1-2016	Repeal	2-1-2016	461-160-0300(T)	1-1-2016	Repeal	2-1-2016
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461-135-0520	1-1-2016	Amend	2-1-2016	461-160-0551	1-1-2016	Amend	2-1-2016
461-135-0520	2-5-2016	Amend(T)	3-1-2016	461-160-0552	1-1-2016	Amend	2-1-2016
461-135-0520	3-2-2016	Amend(T)	4-1-2016	461-165-0030	1-1-2016	Amend	2-1-2016
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461-145-0080	1-1-2016	Amend	2-1-2016	461-170-0160(T)	1-1-2016	Repeal	2-1-2016
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461-175-0222(T)	1-1-2016	Repeal	2-1-2016	575-007-0380	12-18-2015	Amend	2-1-2016
461-175-0250	1-1-2016	Amend	2-1-2016	575-030-0005	12-18-2015	Amend	2-1-2016
461-175-0300	1-1-2016	Amend	2-1-2016	575-031-0005	12-18-2015	Amend	2-1-2016
461-175-0300(T)	1-1-2016	Repeal	2-1-2016	575-031-0010	12-18-2015	Amend	2-1-2016
461-175-0305	1-1-2016	Amend	2-1-2016	575-031-0020	12-18-2015	Amend	2-1-2016
461-175-0310	1-1-2016	Amend	2-1-2016	575-031-0022	12-18-2015	Amend	2-1-2016
461-175-0340	1-1-2016	Amend	2-1-2016	575-031-0023	12-18-2015	Amend	2-1-2016
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461-180-0090	12-15-2015	Amend(T)	1-1-2016	575-035-0010	12-18-2015	Amend	2-1-2016
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461-180-0090(T)	1-22-2016	Suspend	3-1-2016	575-035-0020	12-18-2015	Amend	2-1-2016
461-180-0140	12-15-2015	Amend(T)	1-1-2016	575-035-0025	12-18-2015	Amend	2-1-2016
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461-180-0140(T)	1-22-2016	Suspend	3-1-2016	575-035-0040	12-18-2015	Amend	2-1-2016
461-190-0211	12-28-2015	Amend	2-1-2016	575-035-0045	12-18-2015	Amend	2-1-2016
461-190-0360	11-30-2015	Amend(T)	1-1-2016	575-035-0046	12-18-2015	Amend	2-1-2016
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461-195-0521	1-1-2016	Amend	2-1-2016	575-035-0051	12-18-2015	Amend	2-1-2016
461-195-0621	1-1-2016	Amend	2-1-2016	575-035-0055	12-18-2015	Amend	2-1-2016
462-220-0080	1-27-2016	Amend	3-1-2016	575-037-0005	12-18-2015	Amend	2-1-2016
471-010-0080	1-29-2016	Amend(T)	3-1-2016	575-037-0010	12-18-2015	Amend	2-1-2016
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543-010-0003	1-11-2016	Amend(T)	2-1-2016	575-037-0030	12-18-2015	Amend	2-1-2016
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543-010-0022	1-11-2016	Suspend	2-1-2016	575-038-0010	12-18-2015	Amend	2-1-2016
543-010-0026	1-11-2016	Adopt(T)	2-1-2016	575-038-0020	12-18-2015	Amend	2-1-2016
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543-010-0032	1-11-2016	Suspend	2-1-2016	575-038-0040	12-18-2015	Amend	2-1-2016
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543-020-0025	1-11-2016	Suspend	2-1-2016	575-050-0005	12-18-2015	Amend	2-1-2016
543-020-0026	1-11-2016	Suspend	2-1-2016	575-050-0010	12-18-2015	Amend	2-1-2016
543-020-0030	1-11-2016	Suspend	2-1-2016	575-050-0015	12-18-2015	Amend	2-1-2016
543-020-0050	1-11-2016	Adopt(T)	2-1-2016	575-050-0020	12-18-2015	Amend	2-1-2016
543-020-0055	1-11-2016	Adopt(T)	2-1-2016	575-050-0025	12-18-2015	Amend	2-1-2016
543-020-0060	1-11-2016	Adopt(T)	2-1-2016	575-050-0030	12-18-2015	Amend	2-1-2016
543-020-0070	1-11-2016	Adopt(T)	2-1-2016	575-050-0035	12-18-2015	Amend	2-1-2016
543-020-0080	1-11-2016	Adopt(T)	2-1-2016	575-050-0040	12-18-2015	Amend	2-1-2016
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543-060-0040	1-11-2016	Amend(T)	2-1-2016	575-050-0050	12-18-2015	Amend	2-1-2016
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575-001-0005	12-18-2015	Amend	2-1-2016	575-063-0010	12-18-2015	Amend	2-1-2016
575-001-0010	12-18-2015	Amend	2-1-2016	575-065-0001	12-18-2015	Amend	2-1-2016
575-001-0015	12-18-2015	Amend	2-1-2016	575-065-0045	12-18-2015	Amend	2-1-2016
575-001-0030	12-18-2015	Amend	2-1-2016	575-065-0055	12-18-2015	Amend	2-1-2016
575-001-0035	12-18-2015	Amend	2-1-2016	575-070-0005	12-18-2015	Amend	2-1-2016
575-007-0210	12-18-2015	Amend	2-1-2016	575-070-0010	12-18-2015	Amend	2-1-2016
575-007-0240	12-18-2015	Amend	2-1-2016	575-070-0020	12-18-2015	Amend	2-1-2016
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575-070-0050	12-18-2015	Amend	2-1-2016	581-017-0324	12-28-2015	Amend(T)	2-1-2016
575-070-0060	12-18-2015	Amend	2-1-2016	581-017-0327	12-28-2015	Amend(T)	2-1-2016
575-070-0070	12-18-2015	Amend	2-1-2016	581-017-0330	12-28-2015	Amend(T)	2-1-2016
575-070-0080	12-18-2015	Amend	2-1-2016	581-017-0333	12-28-2015	Amend(T)	2-1-2016
575-070-0090	12-18-2015	Amend	2-1-2016	581-017-0350	2-5-2016	Amend	3-1-2016
575-071-0000	12-18-2015	Amend	2-1-2016	581-017-0353	2-5-2016	Amend	3-1-2016
575-071-0040	12-18-2015	Amend	2-1-2016	581-017-0356	2-5-2016	Amend	3-1-2016
575-072-0000	12-18-2015	Amend	2-1-2016	581-017-0359	2-5-2016	Amend	3-1-2016
575-072-0010	12-18-2015	Amend	2-1-2016	581-017-0362	2-5-2016	Amend	3-1-2016
575-072-0040	12-18-2015	Amend	2-1-2016	581-017-0380	2-5-2016	Adopt	3-1-2016
575-072-0050	12-18-2015	Amend	2-1-2016	581-017-0383	2-5-2016	Adopt	3-1-2016
575-072-0060	12-18-2015	Amend	2-1-2016	581-017-0386	2-5-2016	Adopt	3-1-2016
575-072-0080	12-18-2015	Amend	2-1-2016	581-017-0389	2-5-2016	Adopt	3-1-2016
575-072-0090	12-18-2015	Amend	2-1-2016	581-017-0392	2-5-2016	Adopt	3-1-2016
575-073-0000	12-18-2015	Amend	2-1-2016	581-017-0395	2-5-2016	Adopt	3-1-2016
575-074-0000	12-18-2015	Amend	2-1-2016	581-017-0432	2-5-2016	Adopt	3-1-2016
575-075-0001	12-18-2015	Amend	2-1-2016	581-017-0435	2-5-2016	Adopt	3-1-2016
575-075-0005	12-18-2015	Amend	2-1-2016	581-017-0438	2-5-2016	Adopt	3-1-2016
575-075-0007	12-18-2015	Amend	2-1-2016	581-017-0441	2-5-2016	Adopt	3-1-2016
575-075-0008	12-18-2015	Amend	2-1-2016	581-017-0444	2-5-2016	Adopt	3-1-2016
575-075-0010	12-18-2015	Amend	2-1-2016	581-017-0447	2-5-2016	Adopt	3-1-2016
575-075-0030	12-18-2015	Amend	2-1-2016	581-017-0450	2-5-2016	Adopt	3-1-2016
575-075-0040	12-18-2015	Amend	2-1-2016	581-017-0453	2-5-2016	Adopt	3-1-2016
575-075-0043	12-18-2015	Amend	2-1-2016	581-017-0456	2-5-2016	Adopt	3-1-2016
575-075-0044	12-18-2015	Amend	2-1-2016	581-017-0459	2-5-2016	Adopt	3-1-2016
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575-075-0046	12-18-2015	Amend	2-1-2016	581-017-0465	12-28-2015	Adopt(T)	2-1-2016
575-075-0047	12-18-2015	Amend	2-1-2016	581-017-0469	12-28-2015	Adopt(T)	2-1-2016
575-075-0049	12-18-2015	Amend	2-1-2016	581-017-0473	12-28-2015	Adopt(T)	2-1-2016
575-075-0050	12-18-2015	Amend	2-1-2016	581-017-0477	12-28-2015	Adopt(T)	2-1-2016
575-075-0055	12-18-2015	Amend	2-1-2016	581-017-0481	12-28-2015	Adopt(T)	2-1-2016
575-076-0010	12-18-2015	Amend	2-1-2016	581-017-0485	12-28-2015	Adopt(T)	2-1-2016
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575-085-0030	12-18-2015	Amend	2-1-2016	581-018-0145	12-18-2015	Amend	2-1-2016
575-085-0040	12-18-2015	Amend	2-1-2016	581-018-0148	12-18-2015	Amend	2-1-2016
575-085-0050	12-18-2015	Amend	2-1-2016	581-020-0530	12-28-2015	Adopt(T)	2-1-2016
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575-085-0070	12-18-2015	Amend	2-1-2016	581-020-0536	12-28-2015	Adopt(T)	2-1-2016
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575-090-0050	12-18-2015	Amend	2-1-2016	581-020-0603	2-5-2016	Adopt	3-1-2016
575-095-0005	12-18-2015	Amend	2-1-2016	581-020-0606	2-5-2016	Adopt	3-1-2016
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581-015-2930	12-22-2015	Amend	2-1-2016	581-020-0615	2-5-2016	Adopt	3-1-2016
581-017-0287	12-18-2015	Adopt	2-1-2016	581-021-0043	2-5-2016	Adopt	3-1-2016
581-017-0291	12-18-2015	Adopt	2-1-2016	581-021-0065	2-5-2016	Amend	3-1-2016
581-017-0294	12-18-2015	Adopt	2-1-2016	581-021-0070	2-5-2016	Amend	3-1-2016
581-017-0297	12-18-2015	Adopt	2-1-2016	581-021-0077	2-5-2016	Amend	3-1-2016
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581-022-1910	12-18-2015	Amend	2-1-2016	583-030-0054(T)	2-19-2016	Repeal	4-1-2016
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581-023-0040	2-5-2016	Amend	3-1-2016	583-030-0056(T)	2-19-2016	Repeal	4-1-2016
581-023-0102	2-5-2016	Amend	3-1-2016	583-050-0006	2-19-2016	Amend	4-1-2016
581-023-0250	2-5-2016	Adopt	3-1-2016	583-050-0006(T)	2-19-2016	Repeal	4-1-2016
581-024-0275	12-22-2015	Amend	2-1-2016	583-050-0011	2-19-2016	Amend	4-1-2016
581-026-0210	12-18-2015	Amend	2-1-2016	583-050-0011(T)	2-19-2016	Repeal	4-1-2016
581-044-0250	12-18-2015	Amend	2-1-2016	583-050-0014	2-19-2016	Amend	4-1-2016
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583-001-0005	2-19-2016	Amend	4-1-2016	583-050-0016(T)	2-19-2016	Repeal	4-1-2016
583-001-0005(T)	2-19-2016	Repeal	4-1-2016	583-050-0026	2-19-2016	Amend	4-1-2016
583-001-0015	2-19-2016	Amend	4-1-2016	583-050-0026(T)	2-19-2016	Repeal	4-1-2016
583-001-0015(T)	2-19-2016	Repeal	4-1-2016	583-050-0027	2-19-2016	Amend	4-1-2016
583-030-0005	2-19-2016	Amend	4-1-2016	583-050-0027(T)	2-19-2016	Repeal	4-1-2016
583-030-0005(T)	2-19-2016	Repeal	4-1-2016	583-050-0028	2-19-2016	Amend	4-1-2016
583-030-0009	2-19-2016	Amend	4-1-2016	583-050-0028(T)	2-19-2016	Repeal	4-1-2016
583-030-0009(T)	2-19-2016	Repeal	4-1-2016	583-050-0036	2-19-2016	Amend	4-1-2016
583-030-0010	2-19-2016	Amend	4-1-2016	583-050-0036(T)	2-19-2016	Repeal	4-1-2016
583-030-0010(T)	2-19-2016	Repeal	4-1-2016	583-050-0040	2-19-2016	Amend	4-1-2016
583-030-0011	2-19-2016	Repeal	4-1-2016	583-050-0040(T)	2-19-2016	Repeal	4-1-2016
583-030-0015	2-19-2016	Amend	4-1-2016	584-010-0090	1-1-2016	Suspend	2-1-2016
583-030-0015(T)	2-19-2016	Repeal	4-1-2016	584-017-1100	2-10-2016	Adopt	3-1-2016
583-030-0016	2-19-2016	Amend	4-1-2016	584-018-0110	1-1-2016	Suspend	2-1-2016
583-030-0016(T)	2-19-2016	Repeal	4-1-2016	584-040-0005	2-10-2016	Repeal	3-1-2016
583-030-0020	2-19-2016	Amend	4-1-2016	584-040-0008	2-10-2016	Repeal	3-1-2016
583-030-0020(T)	2-19-2016	Repeal	4-1-2016	584-040-0010	2-10-2016	Repeal	3-1-2016
583-030-0025	2-19-2016	Amend	4-1-2016	584-040-0030	2-10-2016	Repeal	3-1-2016
583-030-0025(T)	2-19-2016	Repeal	4-1-2016	584-040-0040	2-10-2016	Repeal	3-1-2016
583-030-0030	2-19-2016	Amend	4-1-2016	584-040-0050	2-10-2016	Repeal	3-1-2016
583-030-0030(T)	2-19-2016	Repeal	4-1-2016	584-040-0060	2-10-2016	Repeal	3-1-2016
583-030-0032	2-19-2016	Amend	4-1-2016	584-040-0080	2-10-2016	Repeal	3-1-2016
583-030-0032(T)	2-19-2016	Repeal	4-1-2016	584-040-0090	2-10-2016	Repeal	3-1-2016
583-030-0035	2-19-2016	Amend	4-1-2016	584-040-0100	2-10-2016	Repeal	3-1-2016
583-030-0035(T)	2-19-2016	Repeal	4-1-2016	584-040-0120	2-10-2016	Repeal	3-1-2016
583-030-0036	2-19-2016	Amend	4-1-2016	584-040-0130	2-10-2016	Repeal	3-1-2016
583-030-0036(T)	2-19-2016	Repeal	4-1-2016	584-040-0150	2-10-2016	Repeal	3-1-2016
583-030-0041	2-19-2016	Amend	4-1-2016	584-040-0160	2-10-2016	Repeal	3-1-2016
583-030-0041(T)	2-19-2016	Repeal	4-1-2016	584-040-0165	2-10-2016	Repeal	3-1-2016
583-030-0042	2-19-2016	Amend	4-1-2016	584-040-0170	2-10-2016	Repeal	3-1-2016
583-030-0042(T)	2-19-2016	Repeal	4-1-2016	584-040-0180	2-10-2016	Repeal	3-1-2016
583-030-0043	2-19-2016	Amend	4-1-2016	584-040-0200	2-10-2016	Repeal	3-1-2016
583-030-0043(T)	2-19-2016	Repeal	4-1-2016	584-040-0210	2-10-2016	Repeal	3-1-2016
583-030-0045	2-19-2016	Amend	4-1-2016	584-040-0230	2-10-2016	Repeal	3-1-2016
583-030-0045(T)	2-19-2016	Repeal	4-1-2016	584-040-0240	2-10-2016	Repeal	3-1-2016
583-030-0046	2-19-2016	Amend	4-1-2016	584-040-0241	2-10-2016	Repeal	3-1-2016
583-030-0046(T)	2-19-2016	Repeal	4-1-2016	584-040-0242	2-10-2016	Repeal	3-1-2016
583-030-0049	2-19-2016	Amend	4-1-2016	584-040-0243	2-10-2016	Repeal	3-1-2016
583-030-0049(T)	2-19-2016	Repeal	4-1-2016	584-040-0250	2-10-2016	Repeal	3-1-2016
583-030-0051	2-19-2016	Adopt	4-1-2016	584-040-0260	2-10-2016	Repeal	3-1-2016
583-030-0051(T)	2-19-2016	Repeal	4-1-2016	584-040-0265	2-10-2016	Repeal	3-1-2016
583-030-0052	2-19-2016	Adopt	4-1-2016	584-040-0270	2-10-2016	Repeal	3-1-2016
583-030-0052(T)	2-19-2016	Repeal	4-1-2016	584-040-0280	2-10-2016	Repeal	3-1-2016
583-030-0053	2-19-2016	Adopt	4-1-2016	584-040-0290	2-10-2016	Repeal	3-1-2016



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584-040-0310	2-10-2016	Repeal	3-1-2016	584-220-0015	2-10-2016	Amend	3-1-2016
584-040-0315	2-10-2016	Repeal	3-1-2016	584-220-0020	2-10-2016	Amend	3-1-2016
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584-052-0005	2-10-2016	Repeal	3-1-2016	584-220-0035	2-10-2016	Amend	3-1-2016
584-052-0010	2-10-2016	Repeal	3-1-2016	584-220-0040	2-10-2016	Amend	3-1-2016
584-052-0015	2-10-2016	Repeal	3-1-2016	584-220-0045	2-10-2016	Amend	3-1-2016
584-052-0021	2-10-2016	Repeal	3-1-2016	584-220-0050	2-10-2016	Amend	3-1-2016
584-052-0025	2-10-2016	Repeal	3-1-2016	584-220-0055	2-10-2016	Amend	3-1-2016
584-052-0027	2-10-2016	Repeal	3-1-2016	584-220-0060	2-10-2016	Amend	3-1-2016
584-065-0001	2-10-2016	Repeal	3-1-2016	584-220-0065	2-10-2016	Amend	3-1-2016
584-065-0060	2-10-2016	Repeal	3-1-2016	584-220-0070	2-10-2016	Amend	3-1-2016
584-065-0070	2-10-2016	Repeal	3-1-2016	584-220-0075	2-10-2016	Amend	3-1-2016
584-065-0080	2-10-2016	Repeal	3-1-2016	584-220-0080	2-10-2016	Amend	3-1-2016
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584-065-0120	2-10-2016	Repeal	3-1-2016	584-220-0090	2-10-2016	Amend	3-1-2016
584-065-0125	2-10-2016	Repeal	3-1-2016	584-220-0095	2-10-2016	Amend	3-1-2016
584-066-0001	2-10-2016	Repeal	3-1-2016	584-220-0100	2-10-2016	Amend	3-1-2016
584-066-0010	2-10-2016	Repeal	3-1-2016	584-220-0105	2-10-2016	Amend	3-1-2016
584-066-0015	2-10-2016	Repeal	3-1-2016	584-220-0110	2-10-2016	Amend	3-1-2016
584-066-0020	2-10-2016	Repeal	3-1-2016	584-220-0120	2-10-2016	Amend	3-1-2016
584-066-0025	2-10-2016	Repeal	3-1-2016	584-220-0130	2-10-2016	Amend	3-1-2016
584-066-0030	2-10-2016	Repeal	3-1-2016	584-220-0140	2-10-2016	Amend	3-1-2016
584-070-0012	2-10-2016	Amend	3-1-2016	584-220-0145	2-10-2016	Amend	3-1-2016
584-070-0014	2-10-2016	Repeal	3-1-2016	584-220-0150	2-10-2016	Amend	3-1-2016
584-070-0510	2-10-2016	Adopt	3-1-2016	584-220-0155	2-10-2016	Amend	3-1-2016
584-200-0004	1-1-2016	Adopt(T)	2-1-2016	584-220-0160	2-10-2016	Amend	3-1-2016
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584-200-0010	1-1-2016	Amend(T)	2-1-2016	584-220-0170	2-10-2016	Amend	3-1-2016
584-200-0010	2-10-2016	Adopt	3-1-2016	584-220-0175	2-10-2016	Amend	3-1-2016
584-200-0020	2-10-2016	Adopt	3-1-2016	584-220-0180	2-10-2016	Amend	3-1-2016
584-200-0030	2-10-2016	Adopt	3-1-2016	584-220-0185	2-10-2016	Amend	3-1-2016
584-200-0040	2-10-2016	Adopt	3-1-2016	584-220-0190	2-10-2016	Amend	3-1-2016
584-200-0050	1-1-2016	Amend(T)	2-1-2016	584-220-0195	2-10-2016	Amend	3-1-2016
584-200-0050	2-10-2016	Adopt	3-1-2016	584-220-0200	2-10-2016	Amend	3-1-2016
584-200-0060	2-10-2016	Adopt	3-1-2016	584-220-0205	2-10-2016	Amend	3-1-2016
584-200-0070	2-10-2016	Adopt	3-1-2016	584-220-0210	2-10-2016	Amend	3-1-2016
584-200-0080	2-10-2016	Adopt	3-1-2016	584-220-0215	2-10-2016	Amend	3-1-2016
584-200-0090	2-10-2016	Adopt	3-1-2016	584-220-0220	2-10-2016	Amend	3-1-2016
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584-210-0080	2-10-2016	Amend	3-1-2016	584-225-0050	2-10-2016	Adopt	3-1-2016
584-210-0090	2-10-2016	Amend	3-1-2016	584-225-0070	2-10-2016	Adopt	3-1-2016
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584-210-0110	2-10-2016	Amend	3-1-2016	584-225-0100	2-10-2016	Adopt	3-1-2016
584-210-0130	2-10-2016	Amend	3-1-2016	584-255-0010	2-10-2016	Amend	3-1-2016
584-210-0140	2-10-2016	Amend	3-1-2016	584-255-0030	2-10-2016	Amend	3-1-2016
584-210-0150	2-10-2016	Amend	3-1-2016	584-420-0010	2-10-2016	Adopt	3-1-2016
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584-210-0165	2-10-2016	Adopt	3-1-2016	584-420-0030	2-10-2016	Adopt	3-1-2016
584-210-0190	2-10-2016	Amend	3-1-2016	584-420-0040	2-10-2016	Adopt	3-1-2016

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584-420-0345	2-10-2016	Adopt	3-1-2016	635-004-0215	1-19-2016	Amend	3-1-2016
584-420-0360	2-10-2016	Adopt	3-1-2016	635-004-0275	11-25-2015	Amend(T)	1-1-2016
584-420-0365	2-10-2016	Adopt	3-1-2016	635-004-0275	1-19-2016	Amend	3-1-2016
584-420-0375	2-10-2016	Adopt	3-1-2016	635-004-0275(T)	11-25-2015	Suspend	1-1-2016
584-420-0390	2-10-2016	Adopt	3-1-2016	635-004-0295	1-19-2016	Amend	3-1-2016
584-420-0415	2-10-2016	Adopt	3-1-2016	635-004-0300	1-19-2016	Amend	3-1-2016
584-420-0420	2-10-2016	Adopt	3-1-2016	635-004-0340	1-19-2016	Amend	3-1-2016
584-420-0425	2-10-2016	Adopt	3-1-2016	635-004-0350	1-19-2016	Amend	3-1-2016
584-420-0440	2-10-2016	Adopt	3-1-2016	635-004-0355	1-19-2016	Amend	3-1-2016
584-420-0460	2-10-2016	Adopt	3-1-2016	635-004-0360	1-19-2016	Amend	3-1-2016
584-420-0475	2-10-2016	Adopt	3-1-2016	635-005-0290	1-1-2016	Amend	1-1-2016
584-420-0490	2-10-2016	Adopt	3-1-2016	635-005-0305	1-1-2016	Amend	1-1-2016
584-420-0600	2-10-2016	Adopt	3-1-2016	635-005-0310	1-1-2016	Amend	1-1-2016
584-420-0610	2-10-2016	Adopt	3-1-2016	635-005-0350	1-1-2016	Amend	1-1-2016
584-420-0620	2-10-2016	Adopt	3-1-2016	635-005-0355	1-1-2016	Amend	1-1-2016
584-420-0630	2-10-2016	Adopt	3-1-2016	635-005-0355	2-23-2016	Amend(T)	4-1-2016
584-420-0640	2-10-2016	Adopt	3-1-2016	635-005-0385	1-1-2016	Amend	1-1-2016
584-420-0650	2-10-2016	Adopt	3-1-2016	635-005-0387	1-1-2016	Adopt	1-1-2016
584-420-0660	2-10-2016	Adopt	3-1-2016	635-005-0465	11-20-2015	Amend(T)	1-1-2016
589-002-0120	2-12-2016	Amend	3-1-2016	635-005-0465	1-1-2016	Amend(T)	2-1-2016
603-025-0150	2-9-2016	Amend	3-1-2016	635-005-0465(T)	1-1-2016	Suspend	2-1-2016
603-025-0151	2-9-2016	Adopt	3-1-2016	635-006-0210	2-1-2016	Amend(T)	3-1-2016
603-025-0152	2-9-2016	Adopt	3-1-2016	635-006-0232	1-19-2016	Amend	3-1-2016
603-025-0190	12-2-2015	Amend	1-1-2016	635-007-0605	2-23-2016	Amend(T)	4-1-2016
603-048-0200	1-29-2016	Amend(T)	3-1-2016	635-008-0123	11-25-2015	Amend	1-1-2016
603-048-0600	1-29-2016	Amend(T)	3-1-2016	635-008-0123(T)	11-25-2015	Repeal	1-1-2016
603-052-0052	11-18-2015	Adopt(T)	1-1-2016	635-010-0015	11-25-2015	Amend	1-1-2016
603-052-0347	2-12-2016	Amend	3-1-2016	635-011-0100	1-1-2016	Amend	2-1-2016
603-052-0385	2-12-2016	Amend	3-1-2016	635-013-0004	1-1-2016	Amend	2-1-2016
603-057-0107	1-1-2016	Adopt(T)	1-1-2016	635-014-0080	1-1-2016	Amend	2-1-2016
603-057-0155	1-1-2016	Adopt(T)	1-1-2016	635-014-0090	1-1-2016	Amend	2-1-2016
603-057-0157	1-1-2016	Adopt(T)	1-1-2016	635-016-0080	1-1-2016	Amend	2-1-2016
603-057-0502	2-26-2016	Amend	4-1-2016	635-016-0090	1-1-2016	Amend	2-1-2016
603-057-0529	2-26-2016	Adopt	4-1-2016	635-017-0080	1-1-2016	Amend	2-1-2016
603-057-0530	2-26-2016	Amend	4-1-2016	635-017-0090	1-1-2016	Amend	2-1-2016
603-057-0531	2-26-2016	Adopt	4-1-2016	635-017-0095	1-1-2016	Amend	2-1-2016
603-057-0532	2-26-2016	Amend	4-1-2016	635-018-0080	1-1-2016	Amend	2-1-2016
629-025-0000	3-11-2016	Amend	4-1-2016	635-018-0090	1-1-2016	Amend	2-1-2016
629-025-0005	3-11-2016	Amend	4-1-2016	635-019-0080	1-1-2016	Amend	2-1-2016
629-025-0011	3-11-2016	Amend	4-1-2016	635-019-0090	1-1-2016	Amend	2-1-2016
629-025-0020	3-11-2016	Amend	4-1-2016	635-021-0080	1-1-2016	Amend	2-1-2016
629-025-0021	3-11-2016	Adopt	4-1-2016	635-021-0090	1-1-2016	Amend	2-1-2016
629-025-0022	3-11-2016	Adopt	4-1-2016	635-023-0080	1-1-2016	Amend	2-1-2016
629-025-0030	3-11-2016	Amend	4-1-2016	635-023-0090	1-1-2016	Amend	2-1-2016
629-025-0040	3-11-2016	Amend	4-1-2016	635-023-0095	1-1-2016	Amend	2-1-2016
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629-025-0060	3-11-2016	Amend	4-1-2016	635-023-0125	1-1-2016	Amend	2-1-2016
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629-025-0090	3-11-2016	Adopt	4-1-2016	635-023-0130	1-1-2016	Amend	2-1-2016
629-025-0098	3-11-2016	Adopt	4-1-2016	635-023-0134	1-1-2016	Amend	2-1-2016
629-025-0099	3-11-2016	Adopt	4-1-2016	635-023-0140	1-1-2016	Amend	2-1-2016
632-030-0016	1-14-2016	Amend(T)	2-1-2016	635-039-0080	1-1-2016	Amend	2-1-2016
632-030-0022	1-14-2016	Amend(T)	2-1-2016	635-039-0080	1-19-2016	Amend	3-1-2016

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635-041-0065	2-1-2016	Amend(T)	3-1-2016	635-435-0045	12-9-2015	Amend	1-1-2016
635-041-0065	2-12-2016	Amend(T)	3-1-2016	635-435-0050	12-9-2015	Amend	1-1-2016
635-041-0065	2-19-2016	Amend(T)	4-1-2016	635-435-0055	12-9-2015	Amend	1-1-2016
635-041-0065	2-26-2016	Amend(T)	4-1-2016	635-435-0060	12-9-2015	Amend	1-1-2016
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635-041-0065(T)	2-12-2016	Suspend	3-1-2016	660-006-0005	2-10-2016	Amend	3-1-2016
635-041-0065(T)	2-19-2016	Suspend	4-1-2016	660-006-0010	2-10-2016	Amend	3-1-2016
635-041-0065(T)	2-26-2016	Suspend	4-1-2016	660-006-0025	2-10-2016	Amend	3-1-2016
635-041-0065(T)	3-5-2016	Suspend	4-1-2016	660-006-0026	2-10-2016	Amend	3-1-2016
635-042-0130	2-1-2016	Amend(T)	3-1-2016	660-006-0027	2-10-2016	Amend	3-1-2016
635-042-0145	2-8-2016	Amend(T)	3-1-2016	660-015-0000	1-1-2016	Amend	2-1-2016
635-042-0160	2-8-2016	Amend(T)	3-1-2016	660-023-0115	2-10-2016	Amend	3-1-2016
635-042-0170	2-8-2016	Amend(T)	3-1-2016	660-024-0000	1-1-2016	Amend	2-1-2016
635-042-0180	2-8-2016	Amend(T)	3-1-2016	660-024-0050	1-1-2016	Amend	2-1-2016
635-044-0200	12-9-2015	Repeal	1-1-2016	660-024-0060	1-1-2016	Amend	2-1-2016
635-044-0205	12-9-2015	Repeal	1-1-2016	660-024-0065	1-1-2016	Adopt	2-1-2016
635-044-0210	12-9-2015	Repeal	1-1-2016	660-024-0067	1-1-2016	Adopt	2-1-2016
635-044-0215	12-9-2015	Repeal	1-1-2016	660-024-0070	1-1-2016	Amend	2-1-2016
635-044-0240	12-9-2015	Repeal	1-1-2016	660-025-0020	2-10-2016	Amend	3-1-2016
635-044-0245	12-9-2015	Repeal	1-1-2016	660-025-0035	2-10-2016	Amend	3-1-2016
635-044-0250	12-9-2015	Repeal	1-1-2016	660-025-0040	2-10-2016	Amend	3-1-2016
635-044-0255	12-9-2015	Repeal	1-1-2016	660-025-0060	2-10-2016	Amend	3-1-2016
635-044-0280	12-9-2015	Repeal	1-1-2016	660-025-0085	2-10-2016	Amend	3-1-2016
635-044-0300	12-9-2015	Repeal	1-1-2016	660-025-0090	2-10-2016	Amend	3-1-2016
635-044-0305	12-9-2015	Repeal	1-1-2016	660-025-0130	2-10-2016	Amend	3-1-2016
635-044-0310	12-9-2015	Repeal	1-1-2016	660-025-0140	2-10-2016	Amend	3-1-2016
635-045-0000	11-25-2015	Amend	1-1-2016	660-025-0150	2-10-2016	Amend	3-1-2016
635-045-0002	11-25-2015	Amend	1-1-2016	660-025-0160	2-10-2016	Amend	3-1-2016
635-060-0000	11-25-2015	Amend	1-1-2016	660-025-0175	2-10-2016	Amend	3-1-2016
635-060-0005	11-25-2015	Amend	1-1-2016	660-027-0070	2-10-2016	Amend	3-1-2016
635-060-0018	11-25-2015	Amend	1-1-2016	660-033-0030	2-10-2016	Amend	3-1-2016
635-062-0000	12-9-2015	Adopt	1-1-2016	660-033-0045	2-10-2016	Amend	3-1-2016
635-062-0005	12-9-2015	Adopt	1-1-2016	660-033-0120	2-10-2016	Amend	3-1-2016
635-062-0010	12-9-2015	Adopt	1-1-2016	660-033-0130	2-10-2016	Amend	3-1-2016
635-062-0015	12-9-2015	Adopt	1-1-2016	660-033-0135	2-10-2016	Amend	3-1-2016
635-062-0020	12-9-2015	Adopt	1-1-2016	660-033-0150	2-10-2016	Repeal	3-1-2016
635-062-0025	12-9-2015	Adopt	1-1-2016	660-038-0000	1-1-2016	Adopt	2-1-2016
635-062-0030	12-9-2015	Adopt	1-1-2016	660-038-0010	1-1-2016	Adopt	2-1-2016
635-062-0035	12-9-2015	Adopt	1-1-2016	660-038-0020	1-1-2016	Adopt	2-1-2016
635-062-0040	12-9-2015	Adopt	1-1-2016	660-038-0030	1-1-2016	Adopt	2-1-2016
635-062-0045	12-9-2015	Adopt	1-1-2016	660-038-0040	1-1-2016	Adopt	2-1-2016
635-062-0050	12-9-2015	Adopt	1-1-2016	660-038-0050	1-1-2016	Adopt	2-1-2016
635-062-0055	12-9-2015	Adopt	1-1-2016	660-038-0060	1-1-2016	Adopt	2-1-2016
635-062-0060	12-9-2015	Adopt	1-1-2016	660-038-0070	1-1-2016	Adopt	2-1-2016
635-065-0765	2-25-2016	Amend(T)	4-1-2016	660-038-0080	1-1-2016	Adopt	2-1-2016
635-067-0027	12-1-2015	Amend(T)	1-1-2016	660-038-0090	1-1-2016	Adopt	2-1-2016
635-435-0000	12-9-2015	Amend	1-1-2016	660-038-0100	1-1-2016	Adopt	2-1-2016
635-435-0005	12-9-2015	Amend	1-1-2016	660-038-0110	1-1-2016	Adopt	2-1-2016
635-435-0010	12-9-2015	Amend	1-1-2016	660-038-0120	1-1-2016	Adopt	2-1-2016
635-435-0010	12-9-2015	Amend(T)	1-1-2016	660-038-0130	1-1-2016	Adopt	2-1-2016
635-435-0015	12-9-2015	Amend	1-1-2016	660-038-0140	1-1-2016	Adopt	2-1-2016
635-435-0020	12-9-2015	Amend	1-1-2016	660-038-0150	1-1-2016	Adopt	2-1-2016
635-435-0025	12-9-2015	Amend	1-1-2016	660-038-0160	1-1-2016	Adopt	2-1-2016
635-435-0030	12-9-2015	Repeal	1-1-2016	660-038-0170	1-1-2016	Adopt	2-1-2016

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660-038-0180	1-1-2016	Adopt	2-1-2016	734-020-0019	11-20-2015	Amend	1-1-2016
660-038-0190	1-1-2016	Adopt	2-1-2016	734-074-0027	12-17-2015	Amend	2-1-2016
660-038-0200	1-1-2016	Adopt	2-1-2016	734-082-0005	12-17-2015	Amend	2-1-2016
668-010-0010	3-9-2016	Amend	4-1-2016	734-082-0040	12-17-2015	Amend	2-1-2016
690-051-0000	1-1-2016	Amend	2-1-2016	734-082-0045	12-17-2015	Amend	2-1-2016
690-051-0010	1-1-2016	Amend	2-1-2016	734-082-0070	12-17-2015	Amend	2-1-2016
690-051-0020	1-1-2016	Amend	2-1-2016	735-032-0070	1-1-2016	Adopt	1-1-2016
690-051-0030	1-1-2016	Amend	2-1-2016	735-062-0005	1-1-2016	Amend	2-1-2016
690-051-0050	1-1-2016	Amend	2-1-2016	735-062-0035	1-1-2016	Amend	2-1-2016
690-051-0060	1-1-2016	Amend	2-1-2016	735-062-0110	1-1-2016	Amend	2-1-2016
690-051-0090	1-1-2016	Amend	2-1-2016	735-062-0120	1-1-2016	Amend	2-1-2016
690-051-0095	1-1-2016	Amend	2-1-2016	735-064-0070	1-1-2016	Amend	2-1-2016
690-051-0130	1-1-2016	Amend	2-1-2016	735-070-0080	1-1-2016	Amend	2-1-2016
690-051-0140	1-1-2016	Amend	2-1-2016	735-070-0082	1-1-2016	Amend	2-1-2016
690-051-0150	1-1-2016	Amend	2-1-2016	735-118-0000	1-1-2016	Amend	2-1-2016
690-051-0160	1-1-2016	Amend	2-1-2016	735-118-0050	1-1-2016	Amend	2-1-2016
690-051-0170	1-1-2016	Amend	2-1-2016	735-150-0010	1-1-2016	Amend	2-1-2016
690-051-0180	1-1-2016	Amend	2-1-2016	735-150-0015	1-1-2016	Amend	2-1-2016
690-051-0190	1-1-2016	Amend	2-1-2016	735-150-0017	1-1-2016	Amend	2-1-2016
690-051-0200	1-1-2016	Amend	2-1-2016	735-150-0020	1-1-2016	Amend	2-1-2016
690-051-0210	1-1-2016	Amend	2-1-2016	735-150-0037	1-1-2016	Amend	2-1-2016
690-051-0220	1-1-2016	Amend	2-1-2016	735-150-0047	1-1-2016	Amend	2-1-2016
690-051-0230	1-1-2016	Amend	2-1-2016	735-150-0055	1-1-2016	Amend	1-1-2016
690-051-0240	1-1-2016	Amend	2-1-2016	735-150-0110	1-1-2016	Amend	2-1-2016
690-051-0250	1-1-2016	Amend	2-1-2016	735-150-0110	1-1-2016	Amend	2-1-2016
690-051-0270	1-1-2016	Repeal	2-1-2016	735-150-0140	1-1-2016	Amend	1-1-2016
690-051-0280	1-1-2016	Amend	2-1-2016	738-001-0035	12-15-2015	Amend	1-1-2016
690-051-0290	1-1-2016	Amend	2-1-2016	738-010-0025	12-15-2015	Amend	1-1-2016
690-051-0310	1-1-2016	Repeal	2-1-2016	738-010-0035	12-15-2015	Amend	1-1-2016
690-051-0320	1-1-2016	Amend	2-1-2016	738-010-0040	12-15-2015	Repeal	1-1-2016
690-051-0330	1-1-2016	Repeal	2-1-2016	738-010-0050	12-15-2015	Amend	1-1-2016
690-051-0340	1-1-2016	Repeal	2-1-2016	738-010-0060	12-15-2015	Amend	1-1-2016
690-051-0350	1-1-2016	Amend	2-1-2016	738-080-0010	12-15-2015	Amend	1-1-2016
690-051-0360	1-1-2016	Repeal	2-1-2016	738-080-0015	12-15-2015	Adopt	1-1-2016
690-051-0370	1-1-2016	Repeal	2-1-2016	738-080-0020	12-15-2015	Amend	1-1-2016
690-051-0380	1-1-2016	Amend	2-1-2016	738-080-0030	12-15-2015	Amend	1-1-2016
690-051-0400	1-1-2016	Amend	2-1-2016	738-080-0040	12-15-2015	Repeal	1-1-2016
690-079-0010	12-2-2015	Amend(T)	1-1-2016	738-080-0045	12-15-2015	Adopt	1-1-2016
690-079-0160	12-2-2015	Adopt(T)	1-1-2016	738-140-0005	12-15-2015	Adopt	1-1-2016
690-509-0000	3-1-2016	Amend	4-1-2016	738-140-0010	12-15-2015	Adopt	1-1-2016
690-509-0100	3-1-2016	Amend	4-1-2016	738-140-0015	12-15-2015	Adopt	1-1-2016
715-013-0005	12-14-2015	Amend(T)	1-1-2016	738-140-0020	12-15-2015	Adopt	1-1-2016
715-013-0005	2-19-2016	Amend	4-1-2016	738-140-0025	12-15-2015	Adopt	1-1-2016
715-013-0005(T)	2-19-2016	Repeal	4-1-2016	738-140-0030	12-15-2015	Adopt	1-1-2016
715-045-0001	3-9-2016	Amend	4-1-2016	738-140-0035	12-15-2015	Adopt	1-1-2016
715-045-0007	3-9-2016	Amend	4-1-2016	738-140-0040	12-15-2015	Adopt	1-1-2016
715-045-0012	3-9-2016	Amend	4-1-2016	741-520-0010	11-17-2015	Repeal	1-1-2016
731-035-0010	12-17-2015	Amend	2-1-2016	801-001-0035	1-1-2016	Amend(T)	2-1-2016
731-035-0020	12-17-2015	Amend	2-1-2016	806-010-0010	12-14-2015	Amend	1-1-2016
731-035-0030	12-17-2015	Amend	2-1-2016	806-010-0020	12-14-2015	Amend	1-1-2016
731-035-0040	12-17-2015	Amend	2-1-2016	806-010-0035	12-14-2015	Amend	1-1-2016
731-035-0050	12-17-2015	Amend	2-1-2016	808-002-0020	1-1-2016	Amend	2-1-2016
731-035-0060	12-17-2015	Amend	2-1-2016	808-002-0200	1-1-2016	Amend	2-1-2016
731-035-0070	12-17-2015	Amend	2-1-2016	808-002-0250	1-1-2016	Repeal	2-1-2016
731-035-0080	12-17-2015	Amend	2-1-2016	808-002-0300	1-1-2016	Amend	2-1-2016
734-020-0018	11-20-2015	Amend	1-1-2016	808-002-0320	1-1-2016	Amend	2-1-2016

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808-002-0455	1-1-2016	Amend	2-1-2016	830-011-0020	1-1-2016	Amend	2-1-2016
808-002-0480	1-1-2016	Amend	2-1-2016	830-011-0040	1-1-2016	Amend	2-1-2016
808-002-0490	1-1-2016	Amend	2-1-2016	830-011-0065	1-1-2016	Adopt	2-1-2016
808-002-0500	1-1-2016	Amend	2-1-2016	830-020-0000	1-1-2016	Amend	2-1-2016
808-002-0730	1-1-2016	Amend	2-1-2016	830-020-0030	1-1-2016	Amend	2-1-2016
808-002-0780	1-1-2016	Amend	2-1-2016	830-020-0040	1-1-2016	Amend	2-1-2016
808-002-0810	1-1-2016	Repeal	2-1-2016	830-030-0004	1-1-2016	Amend	2-1-2016
808-002-0884	1-1-2016	Repeal	2-1-2016	830-030-0090	1-1-2016	Amend	2-1-2016
808-002-0920	1-1-2016	Amend	2-1-2016	830-040-0095	1-1-2016	Adopt	2-1-2016
808-003-0015	1-1-2016	Amend	2-1-2016	834-020-0000	3-1-2016	Amend	4-1-2016
808-003-0018	1-1-2016	Amend	2-1-2016	834-030-0000	3-1-2016	Amend	4-1-2016
808-003-0040	1-1-2016	Amend	2-1-2016	834-030-0010	3-1-2016	Amend	4-1-2016
808-003-0060	1-1-2016	Amend	2-1-2016	834-040-0000	3-1-2016	Amend	4-1-2016
808-003-0095	1-1-2016	Amend	2-1-2016	834-050-0000	3-1-2016	Amend	4-1-2016
808-003-0125	1-1-2016	Amend	2-1-2016	834-050-0010	3-1-2016	Amend	4-1-2016
808-003-0126	1-1-2016	Amend	2-1-2016	836-011-0000	2-3-2016	Amend	3-1-2016
808-003-0230	1-1-2016	Amend	2-1-2016	836-027-0005	3-3-2016	Amend	4-1-2016
808-003-0610	1-1-2016	Amend	2-1-2016	836-027-0010	3-3-2016	Amend	4-1-2016
808-003-0610(T)	1-1-2016	Repeal	2-1-2016	836-027-0012	3-3-2016	Amend	4-1-2016
808-003-0611	1-1-2016	Amend	2-1-2016	836-027-0100	3-3-2016	Amend	4-1-2016
808-003-0613	1-1-2016	Amend	2-1-2016	836-027-0125	3-3-2016	Amend	4-1-2016
808-004-0180	1-1-2016	Amend	2-1-2016	836-027-0140	3-3-2016	Amend	4-1-2016
808-004-0211	1-1-2016	Amend	2-1-2016	836-027-0160	3-3-2016	Amend	4-1-2016
808-004-0320	1-1-2016	Amend	2-1-2016	836-051-0150	1-1-2016	Adopt	2-1-2016
808-040-0020	1-1-2016	Amend	2-1-2016	836-051-0153	1-1-2016	Adopt	2-1-2016
808-040-0080	1-1-2016	Amend	2-1-2016	836-051-0156	1-1-2016	Adopt	2-1-2016
813-013-0001	11-30-2015	Amend(T)	1-1-2016	836-052-0142	1-1-2016	Amend	2-1-2016
813-013-0005	11-30-2015	Amend(T)	1-1-2016	836-053-0002	12-17-2015	Amend(T)	2-1-2016
813-013-0010	11-30-2015	Amend(T)	1-1-2016	836-053-0004	12-17-2015	Adopt(T)	2-1-2016
813-013-0015	11-30-2015	Amend(T)	1-1-2016	836-053-0008	12-17-2015	Amend(T)	2-1-2016
813-013-0020	11-30-2015	Amend(T)	1-1-2016	836-053-0009	12-17-2015	Amend(T)	2-1-2016
813-013-0035	11-30-2015	Amend(T)	1-1-2016	836-053-0012	12-17-2015	Adopt(T)	2-1-2016
813-013-0040	11-30-2015	Amend(T)	1-1-2016	836-053-0013	12-17-2015	Adopt(T)	2-1-2016
813-013-0050	11-30-2015	Amend(T)	1-1-2016	836-053-0600	1-1-2016	Adopt	2-1-2016
813-013-0054	11-30-2015	Amend(T)	1-1-2016	836-053-0600(T)	1-1-2016	Repeal	2-1-2016
813-330-0000	2-11-2016	Adopt	3-1-2016	836-053-0605	1-1-2016	Adopt	2-1-2016
813-330-0010	2-11-2016	Adopt	3-1-2016	836-053-0605(T)	1-1-2016	Repeal	2-1-2016
813-330-0020	2-11-2016	Adopt	3-1-2016	836-053-0610	1-1-2016	Adopt	2-1-2016
813-330-0030	2-11-2016	Adopt	3-1-2016	836-053-0610(T)	1-1-2016	Repeal	2-1-2016
813-330-0040	2-11-2016	Adopt	3-1-2016	836-053-0615	1-1-2016	Adopt	2-1-2016
813-330-0050	2-11-2016	Adopt	3-1-2016	836-053-0615(T)	1-1-2016	Repeal	2-1-2016
813-330-0060	2-11-2016	Adopt	3-1-2016	836-053-1020	12-17-2015	Amend(T)	2-1-2016
820-010-0505	2-16-2016	Amend	4-1-2016	836-053-1404	12-17-2015	Amend(T)	2-1-2016
820-010-3020	1-14-2016	Adopt	2-1-2016	836-053-1405	12-17-2015	Amend(T)	2-1-2016
820-010-4000	3-15-2016	Amend(T)	4-1-2016	836-054-0000	1-1-2016	Amend	2-1-2016
820-010-5000	1-15-2016	Amend(T)	2-1-2016	836-054-0000(T)	1-1-2016	Repeal	2-1-2016
820-015-0026	2-16-2016	Amend	4-1-2016	836-054-0020	1-1-2016	Adopt	2-1-2016
820-020-0015	2-16-2016	Amend	4-1-2016	836-071-0354	1-1-2016	Adopt	2-1-2016
820-020-0025	2-16-2016	Amend	4-1-2016	836-071-0354	1-20-2016	Adopt	3-1-2016
820-020-0030	2-16-2016	Amend	4-1-2016	836-071-0355	1-1-2016	Amend	2-1-2016
820-020-0035	2-16-2016	Amend	4-1-2016	836-071-0355	1-20-2016	Amend	3-1-2016
820-020-0040	1-14-2016	Amend	2-1-2016	836-071-0370	1-1-2016	Amend	2-1-2016
820-025-0015	1-15-2016	Amend(T)	2-1-2016	836-071-0370	1-20-2016	Amend	3-1-2016
820-030-0005	2-16-2016	Adopt	4-1-2016	836-071-0380	1-1-2016	Amend	2-1-2016
820-040-0005	2-16-2016	Amend	4-1-2016	836-071-0380	1-20-2016	Amend	3-1-2016



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839-020-1010	1-1-2016	Amend	2-1-2016	845-025-2050	1-1-2016	Adopt(T)	1-1-2016
839-025-0700	1-1-2016	Amend	1-1-2016	845-025-2060	1-1-2016	Adopt(T)	1-1-2016
845-003-0210	2-23-2016	Amend(T)	4-1-2016	845-025-2070	1-1-2016	Adopt(T)	1-1-2016
845-003-0220	2-23-2016	Amend(T)	4-1-2016	845-025-2080	1-1-2016	Adopt(T)	1-1-2016
845-003-0270	2-23-2016	Amend(T)	4-1-2016	845-025-2400	1-1-2016	Adopt(T)	1-1-2016
845-003-0331	2-23-2016	Amend(T)	4-1-2016	845-025-2800	1-1-2016	Adopt(T)	1-1-2016
845-004-0015	2-23-2016	Amend(T)	4-1-2016	845-025-2820	1-1-2016	Adopt(T)	1-1-2016
845-004-0101	2-1-2016	Amend	2-1-2016	845-025-2840	1-1-2016	Adopt(T)	1-1-2016
845-004-0105	2-1-2016	Repeal	2-1-2016	845-025-2860	1-1-2016	Adopt(T)	1-1-2016
845-005-0400	3-1-2016	Amend	4-1-2016	845-025-2880	1-1-2016	Adopt(T)	1-1-2016
845-005-0413	2-1-2016	Amend	2-1-2016	845-025-2890	1-1-2016	Adopt(T)	1-1-2016
845-005-0417	1-1-2016	Amend(T)	2-1-2016	845-025-3200	1-1-2016	Adopt(T)	1-1-2016
845-005-0420	1-1-2016	Suspend	2-1-2016	845-025-3210	1-1-2016	Adopt(T)	1-1-2016
845-005-0431	2-1-2016	Amend	2-1-2016	845-025-3220	1-1-2016	Adopt(T)	1-1-2016
845-006-0392	1-1-2016	Amend(T)	2-1-2016	845-025-3230	1-1-2016	Adopt(T)	1-1-2016
845-006-0396	1-1-2016	Amend(T)	2-1-2016	845-025-3240	1-1-2016	Adopt(T)	1-1-2016
845-006-0452	2-1-2016	Amend	2-1-2016	845-025-3250	1-1-2016	Adopt(T)	1-1-2016
845-025-1000	1-1-2016	Adopt(T)	1-1-2016	845-025-3260	1-1-2016	Adopt(T)	1-1-2016
845-025-1015	1-1-2016	Adopt(T)	1-1-2016	845-025-3280	1-1-2016	Adopt(T)	1-1-2016
845-025-1030	1-1-2016	Adopt(T)	1-1-2016	845-025-3290	1-1-2016	Adopt(T)	1-1-2016
845-025-1045	1-1-2016	Adopt(T)	1-1-2016	845-025-3500	1-1-2016	Adopt(T)	1-1-2016
845-025-1060	1-1-2016	Adopt(T)	1-1-2016	845-025-5000	1-1-2016	Adopt(T)	1-1-2016
845-025-1070	1-1-2016	Adopt(T)	1-1-2016	845-025-5030	1-1-2016	Adopt(T)	1-1-2016
845-025-1080	1-1-2016	Adopt(T)	1-1-2016	845-025-5045	1-1-2016	Adopt(T)	1-1-2016
845-025-1090	1-1-2016	Adopt(T)	1-1-2016	845-025-5060	1-1-2016	Adopt(T)	1-1-2016
845-025-1100	1-1-2016	Adopt(T)	1-1-2016	845-025-5075	1-1-2016	Adopt(T)	1-1-2016
845-025-1115	1-1-2016	Adopt(T)	1-1-2016	845-025-5300	1-1-2016	Adopt(T)	1-1-2016
845-025-1115	1-1-2016	Amend(T)	2-1-2016	845-025-5350	1-1-2016	Adopt(T)	1-1-2016
845-025-1130	1-1-2016	Adopt(T)	1-1-2016	845-025-5500	1-1-2016	Adopt(T)	1-1-2016
845-025-1145	1-1-2016	Adopt(T)	1-1-2016	845-025-5520	1-1-2016	Adopt(T)	1-1-2016
845-025-1160	1-1-2016	Adopt(T)	1-1-2016	845-025-5540	1-1-2016	Adopt(T)	1-1-2016
845-025-1175	1-1-2016	Adopt(T)	1-1-2016	845-025-5560	1-1-2016	Adopt(T)	1-1-2016
845-025-1190	1-1-2016	Adopt(T)	1-1-2016	845-025-5580	1-1-2016	Adopt(T)	1-1-2016
845-025-1200	1-1-2016	Adopt(T)	1-1-2016	845-025-5590	1-1-2016	Adopt(T)	1-1-2016
845-025-1215	1-1-2016	Adopt(T)	1-1-2016	845-025-5700	1-1-2016	Adopt(T)	1-1-2016
845-025-1230	1-1-2016	Adopt(T)	1-1-2016	845-025-5720	1-1-2016	Adopt(T)	1-1-2016
845-025-1245	1-1-2016	Adopt(T)	1-1-2016	845-025-5740	1-1-2016	Adopt(T)	1-1-2016
845-025-1260	1-1-2016	Adopt(T)	1-1-2016	845-025-5760	1-1-2016	Adopt(T)	1-1-2016
845-025-1275	1-1-2016	Adopt(T)	1-1-2016	845-025-7000	1-1-2016	Adopt(T)	1-1-2016
845-025-1290	1-1-2016	Adopt(T)	1-1-2016	845-025-7020	1-1-2016	Adopt(T)	1-1-2016
845-025-1295	1-1-2016	Adopt(T)	1-1-2016	845-025-7020	2-23-2016	Amend(T)	4-1-2016
845-025-1300	1-1-2016	Adopt(T)	1-1-2016	845-025-7040	1-1-2016	Adopt(T)	1-1-2016
845-025-1400	1-1-2016	Adopt(T)	1-1-2016	845-025-7060	1-1-2016	Adopt(T)	1-1-2016
845-025-1410	1-1-2016	Adopt(T)	1-1-2016	845-025-7500	1-1-2016	Adopt(T)	1-1-2016
845-025-1420	1-1-2016	Adopt(T)	1-1-2016	845-025-7520	1-1-2016	Adopt(T)	1-1-2016
845-025-1430	1-1-2016	Adopt(T)	1-1-2016	845-025-7540	1-1-2016	Adopt(T)	1-1-2016
845-025-1440	1-1-2016	Adopt(T)	1-1-2016	845-025-7560	1-1-2016	Adopt(T)	1-1-2016
845-025-1450	1-1-2016	Adopt(T)	1-1-2016	845-025-7580	1-1-2016	Adopt(T)	1-1-2016
845-025-1460	1-1-2016	Adopt(T)	1-1-2016	845-025-7590	1-1-2016	Adopt(T)	1-1-2016
845-025-1470	1-1-2016	Adopt(T)	1-1-2016	845-025-7700	1-1-2016	Adopt(T)	1-1-2016
845-025-1600	1-1-2016	Adopt(T)	1-1-2016	845-025-7750	1-1-2016	Adopt(T)	1-1-2016
845-025-1620	1-1-2016	Adopt(T)	1-1-2016	845-025-8000	1-1-2016	Adopt(T)	1-1-2016
845-025-2000	1-1-2016	Adopt(T)	1-1-2016	845-025-8020	1-1-2016	Adopt(T)	1-1-2016
845-025-2020	1-1-2016	Adopt(T)	1-1-2016	845-025-8040	1-1-2016	Adopt(T)	1-1-2016
845-025-2030	1-1-2016	Adopt(T)	1-1-2016	845-025-8060	1-1-2016	Adopt(T)	1-1-2016

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845-025-8080	1-1-2016	Adopt(T)	1-1-2016	852-070-0035	4-1-2016	Amend	4-1-2016
845-025-8500	1-1-2016	Adopt(T)	1-1-2016	852-070-0037	4-1-2016	Adopt	4-1-2016
845-025-8520	1-1-2016	Adopt(T)	1-1-2016	852-070-0047	4-1-2016	Adopt	4-1-2016
845-025-8540	1-1-2016	Adopt(T)	1-1-2016	855-006-0005	12-23-2015	Amend	2-1-2016
845-025-8560	1-1-2016	Adopt(T)	1-1-2016	855-019-0110	12-23-2015	Amend	2-1-2016
845-025-8580	1-1-2016	Adopt(T)	1-1-2016	855-019-0200	12-23-2015	Amend	2-1-2016
845-025-8590	1-1-2016	Adopt(T)	1-1-2016	855-019-0264	12-23-2015	Adopt	2-1-2016
847-001-0015	1-8-2016	Amend	2-1-2016	855-019-0270	12-23-2015	Amend	2-1-2016
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847-008-0022	1-8-2016	Amend	2-1-2016	855-025-0015(T)	12-23-2015	Repeal	2-1-2016
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847-008-0056	1-8-2016	Repeal	2-1-2016	856-010-0012	2-10-2016	Amend	3-1-2016
847-010-0073	1-8-2016	Amend	2-1-2016	858-010-0007	2-1-2016	Amend	3-1-2016
847-020-0135	1-1-2016	Adopt	1-1-2016	858-010-0020	2-1-2016	Amend	3-1-2016
847-050-0025	1-8-2016	Amend	2-1-2016	858-010-0036	2-2-2016	Amend	3-1-2016
847-050-0025(T)	1-8-2016	Repeal	2-1-2016	858-040-0035	2-1-2016	Amend	3-1-2016
847-050-0043	1-8-2016	Amend	2-1-2016	858-040-0055	2-1-2016	Amend	3-1-2016
847-050-0063	1-8-2016	Repeal	2-1-2016	858-040-0065	2-1-2016	Amend	3-1-2016
847-050-0065	1-8-2016	Repeal	2-1-2016	859-010-0005	12-3-2015	Amend(T)	1-1-2016
847-070-0045	1-8-2016	Amend	2-1-2016	860-038-0300	3-10-2016	Amend	4-1-2016
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851-050-0138	11-24-2015	Amend(T)	1-1-2016	877-020-0021	12-15-2015	Adopt	1-1-2016
851-050-0138	4-1-2016	Amend	4-1-2016	877-030-0110	1-1-2016	Adopt	2-1-2016
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851-056-0000	4-1-2016	Amend	4-1-2016	918-020-0090(T)	1-1-2016	Repeal	1-1-2016
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